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Contracts - Recovery for Services to Parents

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RECENT DECISIONS

Contracts — Recovery for Services to Parents — Claimant, an adult daughter residing and employed in Milwaukee, left her job at various intervals and returned to the home of her parents one hundred miles away to care for her mother and father. The following trips were made: (1) A trip for an extended period of two months, the time being spent at the hospital and at home, caring for her mother in her last illness; (2) two further extended periods at home, one in 1942 and one in 1945, totaling three months; and (3) bi-weekly "weekend" and "vacation" trips home at intervals throughout the four years. Upon the father's death in 1945 the daughter filed claim for the reasonable value of her services, plus travel expenses, during the above itemized periods at home. At the hearing the only evidence bearing on the father's promise to pay was a statement to the daughter that it would be necessary for her to come home and take care of her mother or he would have to obtain the services of a trained nurse. There was testimony of the daughter that she expected to be paid for the services, and further testimony of a doctor as to their necessity and reasonable value. The record also revealed that the father's will favored the daughter to the extent of $500.00, the will having been drawn while the daughter was caring for her father in 1942. *Held:* Evidence offered by the claimant, while not too strong, was sufficient to overcome the presumption that the services were gratuitous and to sustain a judgment for the claimant against the father's estate. Recovery was allowed for the three extended periods outlined above, but the balance of the claim covering the week-end visits was disallowed on the theory that these were no different than ordinary visits home prior to the mother's illness. Travel expenses were also disallowed. *In Re Grossman's Estate, 250 Wis. 457, 27 N.W. (2d) 365 (1947).*

The rule in Wisconsin has always been that the burden is upon a claimant who stands in a close relation to the deceased to prove an express contract for services rendered, either by direct evidence or by circumstantial evidence equivalent to direct evidence.[1] In the absence of express contract a presumption of gratuity arises which prevents a contractual liability from arising for want of consideration.[2] The reason for the presumption of gratuity has been to prevent frauds upon the estates of deceased persons who were unable to come to their own defense.[3] The present case is of interest because it appears to allow

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[1] Byrnes v. Clark, 57 Wis. 13, 14 N.W. 815 (1883); Hall v. Finch, 29 Wis. 278, 9 Am.Rep. 559 (1871); Tyler v. Burrington, 39 Wis. 376 (1876).
[2] Restatement of Contracts, Section 75.
[3] Will of Goldrick, 198 Wis. 500, 224 N.W. 741 (1929); Hinkle v. Sage, 67 Ohio 256, 65 N.E. 999 (1902).

recovery on something less than express contract. The precise basis of the recovery is not made clear by the decision.

The decision may be based on contract implied-in-fact, which is actually recovery on a true contract basis, the offer and acceptance being implied from the facts rather than being affirmatively expressed. The father's request that the daughter care for the mother may contain an implied promise to pay for the services requested; or the father's silence in the face of services rendered by the daughter with expectation of payment may furnish the necessary promise to pay.[4]

There are also indications in the opinion that the recovery in theory was quasi-contractual, and that on this theory attention was given to the subjective attitude of the daughter that she expected payment.[5] A quasi-contractual obligation does not arise from the consent of the parties, but is a fiction imposed by the law to adapt the case to an existing remedy. Intention is disregarded and the duty defines the contract.[6] Under this theory there is no need to prove a contract, but merely to prove that the equitable considerations of the case require that the obligor account for the benefit received.[7]

The measure of recovery used in the case casts little light upon which of the above theories was followed in allowing the claim. The week-end trips were disallowed on the basis that there was nothing to indicate a request for the services at that time. But there was nothing to indicate a request for either of the extended visits made in caring for the father. The court uses the phrase "no parent would expect to pay" for occasional visits, which may indicate reliance upon a contract theory of recovery for the extended visits. On the other hand the fact that recovery was not allowed for travel expenses indicates a quasi-contractual theory of recovery, as there the measure of recovery is limited to benefit conferred, and does not generally include expenses incurred by the plaintiff not resulting in any benefit. But the court's entire approach to the recovery leaves the impression that it was merely seeking to allow a certain amount, disregarding the theory upon which it was granting relief. It made no investigation into the propriety of the amount claimed as the reasonable value of the services, and disallowed all travel expense, which should at least have been allowed for the extended visits.

It thus appears that in this case Wisconsin has departed from the certainty afforded by the old "express contract" rule. This seems in accord with a growing tendency to allow supposed equities to weaken the force of fixed and certain rules. As a matter of public policy and

[4] Restatement of Contracts, Section 72(1)a.
[5] Kellum v. Browning's Administrators, 231 Ky. 308, 21 S.W.(2d) 459 (1929).
[6] 36 A.L.R. 1088.
[7] Woodward, The Law of Quasi-Contracts, Ch. 1, Secs. 3-4 (1913).

to aid in preventing raids upon the estates of deceased persons by disappointed relatives, it is the writer's opinion that proof which is "not too strong" should not be allowed to support a judgment of this nature.

PAUL E. HERBST

Corporations—Promoter's Contracts Binding upon a Corporation — Plaintiff and one Wells agreed to form a corporation to carry on a coal business. Wells personally executed a written contract employing plaintiff as manager for three years at $5,000.00 a year. The corporation was formed thereafter and plaintiff worked under his contract with Wells without any new agreement with the officers and directors of the corporation of which Wells was made President. Shortly after the corporation was formed, plaintiff's salary was temporarily reduced to $4,000.00 a year because of the newness of the business, and upon his discharge some four years later plaintiff sued the corporation to recover the difference between $4,000.00 per year, which was paid him, and $5,000.00 per year, which he contracted for with Wells. Plaintiff recovered judgment. The judgment was affirmed. *Held:* if a corporation accepts the benefits of a pre-incorporation contract, there is an adoption of the contract by the corporation and it is liable on the contract. *Meyers v. Wells, 252 Wis. 352, 31 N.W.(2nd) 512 (1948).*

American decisions in like cases almost unanimously reach the same result, but vary widely in the legal principles applied in finding the corporation liable. The courts all recognize that a corporation is not liable on pre-incorporation contracts unless it becomes so by its own act after it is organized.[1] But in construing this act the courts have used such terms as ratification, adoption, novation, acceptance of a continuing offer or implied adoption in determining corporate liability. Ratification and adoption are used interchangeably by the courts, yet there can be no "ratification" by the corporation under principles of agency, for at the time the promoter contracts, there is no principal in existence.[2] Adoption is a term peculiar to corporation law which the courts have used to label the corporate act of acceptance of the contract. However, by adoption the promoter remains liable and this is invariably contrary to the intention of the contracting parties.[3] In these circumstances adoption can be considered a novation because the promoter is released at the moment the corporation assumes the contract — a change which the other party impliedly assented to in advance.[4] Wisconsin has followed the continuing offer theory; i.e., a

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[1] 123 A.L.R. 726 (1939); Fletcher Cyclopedia Corporations, Vol. 1, Chapt. 9, Sec. 207 (1931); 17 A.L.R. 505 (1922); 49 A.L.R. 673 (1927).
[2] Badger Paper Co. v. Rose, 95 Wis. 145, 70 N.W. 302 (1897).
[3] Fletcher Cyclopedia Corporations, Vol. 1, Chapt. 9, Sec. 207 (1931).
[4] Williston on Contracts, Vol. 1, Chapt. 12, Sec. 306 (1936).