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IN THE SUPREME COURT OF THE STATE OF IDAHO

DEANN C. TURCOTT,

Plaintiff/Appellant,

vs.

THE ESTATE OF CLARENCE D.
BATES, CLINTON D. BATES,
PERSONAL REPRESENTATIVE, ET
AL.,

Respondents.

Supreme Court No: 45920-2018

Kootenai County No. CV-16-6970

Appeal from the District Court of the First Judicial District
Of the State of Idaho, in and for the County of Kootenai

Honorable Rich Christensen, Presiding

APPELLANT'S REPLY BRIEF

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A. **The Reasoning of the District Court is Set Forth in a Written Decision. If Bates Believes Something in the Trial Transcript Provides Insight as to Why the District Court Ignored Precedent Then Bates Needed to Provide the Transcript.**

Bates argues that the District Court should be affirmed because Deann did not incur the expense of ordering a trial transcript.

Immediately after this appeal was filed, Deann filed a Motion for an Immediate Remand to the District Court because the District Court had refused to follow Idaho precedent and not provided any explanation as to why for purposes of Appellate review. Bates argued that the motion should be denied because “...as the record will show once it is compiled and argued to the Supreme Court, there were alternative sets of prior precedent that were presented to the Trial Court that were applicable to the facts of this case. Determining whether the Trial Court applied the correct legal precedent to the very specific facts of the case based on the entirety of the record is the very heart of an appeal.”

This leaves the reader expectantly awaiting something further from the record that would explain why the District Court ignored existing Idaho precedent concerning the law of quantum meruit. Yet, in response, Bates only recites complaints about the state of the record on appeal — suggesting that something has been left out of the record that would explain the District Court’s ruling without so much as a suggestion as to what that might be.

The appealed ruling is a written decision. The Trial Court ruled that quantum meruit was not the proper measure of damages because Clarence (the property owner) did not specifically request that the work be done, even though he was well aware it was being done. Whether or not this ruling is in error can be resolved without further reference to any portion of the record other than the written Decision itself.

All the cases cited by Bates for the proposition that an appealing party must provide an adequate record are cases where the Appellate Court was unable to evaluate the rationale of the lower Court in reaching a Decision or in making a finding of fact. The rationale of the District Court is set forth in writing. If something in the transcript of the trial in this matter shed's further light on the reasoning of the District Court in reaching its written Decision, then it was incumbent upon Bates to provide that information to this Court.

As it stands, the District Court's reasoning is set forth in the written Opinion and is in error.

B. Bates Did Not Argue Below That the District Court Could Engage in a Balancing of the Equities to Determine which Measure of Damages to Apply and Cannot do so for the First Time on Appeal.

The issue on appeal is whether or not the District Court committed error when it ruled that Deann was not entitled to damages based in quantum meruit because Clarence had not specifically requested the work for which she seeks compensation. Bates' Response Brief makes no attempt to address that issue, but instead suggests that the District Court was free to consider the facts of the case and balance the parties' equities to determine what equitable remedy is available to a litigant. (Respondents' Brief at page 9).

This point was never raised to the Trial Court. As to the proper measure of damages, the only argument ever advanced by Bates as to why Deann was not entitled to quantum meruit was because the work was done for her benefit, and not at the request of Clarence. (R. Vol. 1, pages 296-301, R. Vol. 1, pages 312-315, R. Vol. 1, pages 413-415).

Bates did not argue below that the District Court was free to balance the equities in order to deny Deann damages based in quantum meruit so Bates cannot do so for the first time on appeal.

C. **Even if Bates' Pleadings Could Be Read to Have Raised the Argument that the District Court Considered the Equities of the Case in Choosing Which Remedy to Apply, the District Court Did Not Rule on that Issue and There is Nothing to Appeal.**

As set forth above, Bates never argued that the District Court was free to consider to balance the equities to determine which remedy to apply. As can be expected, the District Court made no such ruling. In such a case, there is no adverse ruling to consider on appeal.

We note that although Wells Fargo raised the issue of standing during the Trial Court proceedings it was never ruled on by the District Court. 'To raise an issue on appeal, the record must contain an adverse ruling to form the basis for assignment of error....' *State v. Hoyle*, 140 Idaho 679, 687 99 P.3d 1069, 1077 (2004) (citation omitted) (quotation marks omitted). *Haupt v. Wells Fargo Bank, Nat. Ass'n*, 160 Idaho 181, 186, 370 P.3d 384, 389 (Idaho, 2016).

This Court should not consider the argument that the equities of this case support the District Court's refusal to grant recovery to Deann based on quantum meruit. The District Court did not make any such ruling so there is nothing to consider on appeal.

D. **The District Court Was not Free to Ignore Established Equitable Principles When Determining Which Equitable Remedy is Appropriate in This Case.**

Bates argues that the District Court was free to consider the equities of the case and then ignore existing equitable jurisprudence if the District Court believes the equities require and that Deann must establish that the District Court abused its discretion in choosing the measure of damages that it did. Review of a District Court's choice of remedy is a question of law, not fact, and the District Court was not free to ignore existing equity jurisprudence when determining if Deann was entitled to the remedy of quantum meruit.

First, the equities of the situation do not favor Bates. Clarence had full knowledge of the work that Deann and her husband were doing and knew that Deann was aware she was to inherit the property. Clarence then disinherited Deann because he thought she was trying to take over

his place by her actions in researching the property at the court house and because 50 or 75 people had told him that Deann told them she owned the place. (Exhibit Record, Vol. 1, at page 1095, page 20, Lines 1-25) and because of an incident with Tom. (Id at pages 19-20).

Clarence also did not understand the nature of his estate plan that disinherited Deann. When asked if he understood that his current plan allowed Jan to completely control the property after his death, including his son Clint's rock pit, he replied that was not the way it was set up, when clearly that is the case. (Exhibit Record, Vol. 1, at page 1045, paragraph 6, 1427 paragraph 12b.) Similarly, Clarence did not understand that his position in this lawsuit was that he owned the house Deann built not her. (Exhibit Record, Vol. 1, at page 1096). The equities do not favor the Defendants in this action, but even if they did, the District Court was not free to ignore existing equity jurisprudence in determining which remedy to apply.

A Court sitting in equity is bound to follow established equitable principles when acting in equity.

Coming now to the Defendants' claim that it would be inequitable to grant specific performance in this case and that the Court should exercise its discretion to refuse the remedy, it must be remembered that the discretion of a court of equity in cases of this character is judicial in its nature and the relief is not 'of grace'; **that, within the domain of equity, judicial remedies are not in any true sense discretionary but are governed by the established principles and rules which constitute the body of equity jurisprudence.** *Wetherby v. Griswold*, 75 Or. 468, 474, 147 P. 388; *Hawkins v. Doe*, 60 Or. 437, 446, 119 P. 754, Ann.Cas.1914A, 765; *Pomeroy's Specific Performance of Contracts* 114, 116, §§ 36, 37. *Chatterton v. Luker*, 66 Idaho 242, 258, 158 P.2d 809, 816 (Idaho 1945) (Emphasis supplied).

"Most agree that a Court in equity possesses 'discretion' to fix a remedy so long as the Court's choice is not contrary to established equitable principles." *Murr v. Selag Corp.*, 113 Idaho 773, 785, 747 P.2d 1302, 1314 (Ct. App. 1987).

In this case, existing equity jurisprudence pertaining to the remedy of quantum meruit establishes that it is not relevant whether or not Clarence Bates specifically requested Deann do the work she did. As set forth in Deann’s Opening Brief on appeal, a case for quantum meruit is made when it is established that the work was done with the knowledge of the property owner, whether or not the property owner requested the work be done.

Furthermore, quantum meruit jurisprudence dictates that whether a “benefit” is received by the property owner receiving the services is not relevant to whether or not quantum meruit is an available remedy to person performing the work. Therefore, for whose “benefit” the working being done is not relevant and Bates has not cited a single case to support such a proposition.

The District Court ignored existing equity jurisprudence when it ruled that Deann was not entitled to the remedy of quantum meruit because Clarence had not specifically requested the work be done. The District Court did not “balance any equities” in doing so, but even if it had, that balancing would not allow the District Court to ignore prior Idaho equity jurisprudence.

E. The “Questions of Fact” Pointed Out by Bates are not Relevant to Anything in this Appeal and are not Inaccurate.

Bates takes issues with certain aspects of Deann’s recitation of the facts of the case. Deann took her facts from the Findings of Fact from the District Court’s Opinion. To the extent that any of Deann’s assertions of fact are not verbatim from the District Court’s Opinion, those facts are reasonably inferred. However, none of the alleged misstatements of fact have any relevance to the issues before the Court.

- 1. Appellant’s Opening Brief, page 7 – Deann states that “[i]t is undisputed that when Deann and her husband were doing all of this work, everyone, including Clarence, understood that she was to inherit half the property and her father knew that was why she was doing all this work.”**

The last sentence that Clarence was aware of why Deann was doing all the work she was doing is not contained in the District Court's Findings of Fact. However, Clarence had not farmed in a long time and Deann quit her life in Hayden to begin remediating the farm after she and Clarence decided to leave his Will in place. Clarence should have reasonably understood why Deann was doing the work.

In any event, why Clarence thought Deann was doing the work is not relevant, only that he knew she was doing the work.

2. Appellant's Opening Brief, page 7 – Deann claims that she uprooted her “life on reliance on her father's promise to leave her the land.”

Admittedly, the District Court did not find that Deann uprooted her life in reliance upon her father's promise to leave her his property. It is another reasonable inference from the facts the District Court did find and again not relevant to any issue before this court.

3. Appellant's Opening Brief, page 8 – Deann claims that she undertook the work for herself and “for her brother Clint.”

It is not disputed that she and her brother Clint were going to inherit the property in equal shares. Whatever Deann and her husband Tom were doing to improve the property would benefit Clint also. Again, this fact has no relevance to the issue on appeal.

4. Appellant's Opening Brief, page 8 – Deann alleges that “Clarence knew that Deann expected to be compensated for all this work by way of inheriting half the property.”

This is along the same lines as the first complaint. It is undisputed that Clarence Bates knew his daughter was doing all this work and he knew that his Will at the time provided she would inherit one half of the property. It is reasonable to assume he understood why Deann was doing all this work. This fact is not relevant to the issue on appeal.

F. Deann Did Not Ask For the District Court to Award Her Unjust Enrichment Damages Until She Filed Her Motion to Reconsider Because Deann Did Not Foresee the District Court Ignoring Existing Equity Jurisprudence.

Bates argues that Deann asked for unjust enrichment damages for the first time on a Motion to Reconsider. This is true, but Deann could not have anticipated the District Court ignoring existing Idaho law when it made its Decision.

G. Bates is Not Entitled to Attorney's Fees on Appeal.

The District Court in this case ignored existing Idaho precedent when it ruled and provided no explanation as to why. When the issue on appeal is one of law, attorney's fees are only awardable upon showing that the legal issue was well settled law and that no showing was made that the District Court misapplied the law. *Lanham v. Fleenor*, No. 45488, 2018 WL 5813559, at *10 (Idaho Nov. 7, 2018).

In this case, the District Court ignored well settled equity jurisprudence. The District Court did not provide any explanation as to why it did so and Bates has not cited a single case that supports what the District Court did. Under these circumstances, Deann's appeal cannot be considered frivolous.

DATED this 27th day of November, 2018.

/s
ARTHUR M. BISTLINE
Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on the 27th of November, 2018, I served a true and correct copy of the following APPELLANTS' REPLY BRIEF by the method indicated below, and addressed to the following:

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