

PROBATE CORNER

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ARTICLE: PERSONAL SERVICE AGREEMENTS WITH DECEDENT

If your client provided personal services to decedent without a written agreement regarding compensation, is he entitled to payment of those services from the estate?

I. BREACH OF CONTRACT

When a person provides services to another without a written agreement regarding compensation, a promise to pay for those services will generally be implied. However, this general rule is not applicable if the services are rendered by and for members of the same family who live together, or relatives who live together, or individuals who live together as husband and wife. In such cases, no presumption arises that one is to be paid for the services rendered. In the absence of an express contract or an implied contract to pay, no right of action accrues for the services, especially where the relationship is characterized as normal family life. This is commonly referred to as the “family member presumption”. See Della Ratta v. Della Ratta, 927 So. 2d 1055 (Fla. 4th DCA 2006) and McLane v. Musick, 792 So. 2d 702 (Fla. 5th DCA 2001). An “implied contract” can be proven by facts and circumstance which show that both parties at the time the services were performed contemplated or intended pecuniary recompense. See Mills v. Joiner, 20 Fla. 479 (1884).

First Example: Daughter lives in her parents’ home and performed housekeeping services for them based on an agreement with her father to pay for her services. Seven years later, the father reneged on the deal. Daughter could recover damages if she establishes that either an express contract or an implied contract existed between her and her father to pay for her services. See Mills, supra.

Second Example: Boyfriend and girlfriend cohabited as husband and wife for a number of years with the understanding that they would eventually marry and that each would execute a will in favor of the other. Neither event came to pass before girlfriend was diagnosed with terminal cancer and died shortly thereafter. Boyfriend sought \$21,000.00 from girlfriend’s estate to compensate him for personal care rendered to girlfriend during her terminal illness. He calculated this at \$50.00 per day for transporting her to doctors and the hospital, and for taking care of her at home. When asked whether he did these things because of an expectation of being paid, he replied he would have rendered the services even if he knew he would not be paid, because of his love and affection for her. Boyfriend was denied reimbursement. See McLane, supra.

Third Example: Mother gave daughter a note and mortgage on her home in appreciation of the fact that daughter lived with her and cared for her over an extended period of years. The court held that despite the presumption of a valuable consideration, the gratuitous rendering of services by daughter, without any prior agreement as to her compensation for providing such services, was not sufficient to constitute consideration for the mortgage. See Florida Nat’l Bank & Trust Co. v. Brown, 47 So. 2d

748 (Fla. 1950).

II. QUANTUM MERUIT

Example: Two individuals were involved in a ten year personal relationship which ended badly. Girlfriend sued boyfriend seeking damages for certain services that she provided to him, his family and employees including cleaning, cooking, shopping, catering, hair cutting, laundry, driving and other personal services during the ten year period. Girlfriend alleges that she expected to be paid for such services; that boyfriend accepted and received benefit from the services she provided; and that boyfriend failed to pay her the reasonable value of \$250,000 for the services, i.e., the value of the trust fund that boyfriend agreed to establish for her benefit in exchange for her services. Judgment on the pleadings on the basis of statute of frauds was reversed and remanded for a trial on the merits. *See Harrison v. Pritchett*, 682 So. 2d 650 (Fla. 1st DCA 1996).

III. UNJUST ENRICHMENT

Example: Father orally promised son that he and his mother would either convey their condo to him as a gift or give him a right of first refusal to purchase the condo; estate planning considerations and tax consequences would determine the method of transfer. Parents allowed son to occupy their condo pending performance of their promises. Relying on his parent's assurance that he would one day own the condo by gift or purchase, son relocated to Florida and resided in the condo. From the time he moved into the condo until the filing of the amended complaint, son paid all the carrying charges on the condo, including real estate taxes, maintenance fees, association fees, insurance, utilities, maintenance, and repairs. In addition, son made capital improvements to the condo; all these improvements were made with his parent's knowledge and consent. When son offered to purchase the condo, his father declined, indicating that he intended to sell the property to a third party. The appellate court found that the son properly stated a claim for unjust enrichment. *See Della Ratta v. Della Ratta*, 927 So. 2d 1055 (Fla. 4th DCA 2006).