STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1249

In re the Estate of:
Nievedia Crystal Ross, Deceased.

Filed May 27, 2008
Affirmed
Shumaker, Judge

Mille Lacs County District Court
File No. 48-PR-05-2719

Robert J. Bruno, Robert J. Bruno, LTD., 1601 East Highway 13, Suite 107, Burnsville, MN 55337 (for appellant Cheryl Valentin)

David M. Cox, Hess Law Office, P.A., 19230 Evans Street, Suite 202, Elk River, MN 55330 (for respondent Stormy Knight)

Considered and decided by Willis, Presiding Judge; Shumaker, Judge; and Poritsky, Judge.[*]

U N P U B L I S H E D   O P I N I O N

SHUMAKER, Judge

Appellant challenges the district court's order for summary judgment in favor of the estate. On appeal, she argues that her claim against the estate is valid as a charitable subscription, enforceable under the theory of promissory estoppel, and also a valid unilateral contract. She further contends that the district court erroneously denied her

[*] Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

claim for sales tax on two vehicles gifted to her. Because we find that the district court did not err in its disposition, we affirm.

FACTS

This appeal raises the issue of the enforceability of a promise of monetary gifts. The district court ruled the promise unenforceable and granted summary judgment in favor of the deceased promisor's estate.

Decedent Nievedia Crystal Ross was a member of the Mdewakanton Sioux Tribe, which owns the Mystic Lake Casino in Shakopee. She learned that, at age 18, she would receive large sums of money from the tribe.

Anticipating that money, she told her half-brother, Shane Valentin, and his wife, appellant Cheryl Valentin, that she wanted to help them buy a house because Shane earned only $25,000 a year and Cheryl was unemployed. Accordingly, Ross signed and sent the following letter to the Valentins:

> Shane and Cheryl will receive $20,000.00 in gift money from me on August 15, 2001. They will also receive $2,000.00 more on the 30 of August. Starting in September, I will give them $4000.00 a month. This is expected to continue until Shane and Cheryl decide[] they do not wish to receive this gift from me anymore.

When Ross reached age 18 on August 2, 2001, she received $260,273.23 and became entitled to a monthly stipend of approximately $72,000.

The Valentins, with Ross's financial assistance, purchased a home for $240,000. To qualify for a mortgage, they listed Ross's monthly gift of $4,000 as income and a cash gift of $54,200 from Ross as an asset. Ross also gave the sum of $53,500 for a down payment on the home.

From September 2001 through June 2004, Ross gave the Valentins $4,000 a month as she promised. After they purchased the house, Ross also paid their monthly mortgage installments directly to the lender until June 2004.

Ross also bought two motor vehicles, in 2001 and 2002, for the Valentins. She made all payments for the purchase of the first vehicle. She paid some fees relating to the second, but the Valentins made the installment payments on that vehicle from the $4,000 they received each month from Ross.

Shane Valentin died on June 27, 2004. Ross then stopped paying the Valentin mortgage and ceased the monthly gift. On July 31, 2004, Ross transferred titles to the vehicles to Cheryl Valentin but did not sign a gift declaration, and Cheryl Valentin incurred a sales tax on them. Because Ross ceased the monthly gift and the mortgage payments, Cheryl Valentin could not afford the home and she had to sell it.

Ross died on August 3, 2005. Her mother, respondent Stormy Knight, was appointed personal representative of her estate. Cheryl Valentin filed claims in probate against the estate in the amounts of $186,943.42, representing the mortgage balance on her home; $21,187.97 for credit-card debt; and $2,321.88 for sales taxes on the vehicles Ross had given to the Valentins. Knight rejected the claims in their totality.

Both Cheryl Valentin and Knight brought summary-judgment motions in the district court, probate division, seeking a determination of the validity of the claims. The court denied Valentin's motion and granted Knight's motion, entering summary judgment in favor of the Ross estate. Cheryl Valentin appealed.

D E C I S I O N

Because this is an appeal from summary judgment, we review the record to determine whether there is any genuine issue of material fact for trial and whether, in granting summary judgment, the district court committed an error of law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990).

Valentin concedes in her brief that "no disputed facts exist on this record," and she points to nothing in the court's factual recitation with which she disagrees or which she deems erroneous. Instead, she contends that the court was in error when it ruled that Ross's promise of monetary gifts is unenforceable against the estate. She argues that she is entitled to summary judgment on the issue of the enforceability of Ross's promise.

Valentin posits three alternative legal theories in support of her primary claim for damages of approximately $208,000, representing her outstanding credit-card debt and the balance on the mortgage: (1) what she calls the "enforceable gifts doctrine," (2) unilateral contract, and (3) promissory estoppel. She also asserts that in equity she is entitled to reimbursement of the sales taxes she paid on the donated vehicles. Underlying her primary claim and interwoven with all three theories of liability is Valentin's contention that she detrimentally relied on Ross's promise of gifts and, therefore, the law binds the estate to that promise.

Enforceable Gifts

In her first theory of liability, Valentin relies on Minnesota's "charitable subscriptions" authorities, namely, *Albert Lea College v. Brown*, 88 Minn. 524, 93 N.W. 672 (1903), and *In re Estate of Stack*, 164 Minn. 57, 204 N.W. 546 (1925).

In *Albert Lea College*, a trustee of "a college for the education of young women" executed and delivered to the board of trustees a nonnegotiable promissory note by which he promised to donate $2,500 to the college. 88 Minn. at 526-27, 93 N.W. at 672. Before the money was paid, the promisor died and the college filed a claim in probate for the promised sum. *Id.* at 527, 93 N.W. at 672. To bolster its claim, the college showed that it relied on the donation, and other contributions, to carry on the work of the college and that the promise induced the college to incur debts and obligations. *Id.* at 528, 93 N.W. at 672-73. The college also demonstrated that, without this and other gifts, it would have to suspend its operation. *Id.* The district court held the decedent's promise to be enforceable. *Id.* at 528, 93 N.W. at 673. The supreme court affirmed. *Id.* at 534, 93 N.W. at 675.

In re Estate of Stack also involved a claim in probate on a promissory note to make a gift. There, the trustees of a college launched a campaign for contributions of money to "a fund to aid poor boys in getting an education." 164 Minn. at 58, 204 N.W. at 546. The decedent became interested in the project and executed a note for $5,000 payable on demand to the college. *Id.* The college publicly announced this contribution to induce others to donate money as well, and, in reliance on the promise, and other donations, the college erected new buildings and purchased equipment. *Id.* at 59, 204 N.W. at 546.

The college did not attempt to collect on the note until the promisor died, and then it asserted a claim in probate. *Id.* at 58-59, 204 N.W. at 546. The district court held the promise enforceable against the estate, and the supreme court affirmed. *Id.* at 62, 204 N.W. at 547-48

Valentin cites these cases as authority for the proposition that "Minnesota law clearly provides that promises to make gifts are enforceable when they are supported by legal consideration." But her analogy is faulty, for neither case espouses such a broadly stated rule. Rather, both cases focus on the unique facts of "charitable subscriptions," and the law they apply relates only to promises to make gifts to "charitable" institutions or organizations.

The supreme court in *Albert Lea College* reviewed the history of cases dealing with the issue of "the validity of executory agreements or contracts of the character of that here involved." 88 Minn. at 529, 93 N.W. at 673. The court's entire focus was on cases "involv[ing] donations or subscriptions to charitable, religious, or educational institutions." *Id.* at 530, 93 N.W. at 674. Noting various theories on which courts have premised enforceability of executory promises of such gifts, the supreme court expressly rejected those offered to defeat enforceability and adopted a rule rooted in the unique nature of the promisee:

> In the case at bar the trustees, upon delivery of the note to them, expressly accepted the same, and thereby assumed the obligations imposed by the terms of the promise; and upon

> the strength of this promise, and others, were enabled to continue the purposes of the college, when, without it, it would have been necessary that they suspend operations and dissolve the corporation. As already stated, plaintiff was incorporated as an educational institution, and depended for its support, and to enable it to carry out its purposes, upon donations of philanthropists, and other charitably disposed persons.

Id. at 534, 93 N.W. at 675.

The supreme court also noted that such organizations exist and operate with legislative sanction and regulation, evincing an intention in the law to uphold as valid the type of agreement without which they could not exist and operate. *Id.* There is nothing in *Albert Lea College* that could be extrapolated so as to apply to an individual promisee, such as Valentin.

The supreme court in *In re Estate of Stack* cited *Albert Lea College,* 88 Minn. 524, 93 N.W. 672, as "sufficient authority for the conclusion that payment of the decedent's note can be enforced." 164 Minn. at 61, 204 N.W. at 547. The court also noted that *Albert Lea College* held valid the type of "subscription" commonly involved with charitable, religious or educational organizations. *Id.* In its own review of theories of enforceability, the court confines its discussion entirely to "charitable subscription" cases. *Id.* at 60-61, 204 N.W. at 547. There is no language in the decision from which we can reasonably infer a rule that is intended to apply more broadly to all executory promises to make gifts, irrespective of the promisee's identity. Furthermore, it would be improper for this court to broaden the reach of existing precedent for "the task of extending existing law falls to the supreme court or the legislature, but it does not fall to this court."

Tereault v. Palmer, 413 N.W.2d 283, 286 (Minn. App. 1987), *review denied* (Minn. Dec. 18, 1987).

Unilateral Contract

A unilateral contract is formed when an offer is "accepted by performance of the designated act or forbearance." *Hartung v. Billmeier*, 243 Minn. 148, 153, 66 N.W.2d 784, 789 (1954). Upon that principle, Valentin constructs her argument that Ross's promise of monetary gifts coupled with the Valentins' actions in obtaining a mortgage and incurring other debts resulted in an enforceable unilateral contact. The district court found otherwise, and that finding is supported by this record.

Under settled law, all "contract[s] must be supported by consideration." *Deli v. Hasselmo*, 542 N.W.2d 649, 656 (Minn. App. 1996), *review denied* (Minn. Apr. 16, 1996). And under settled law, consideration must be something "bargained for and given in exchange for the promise." Restatement (Second) of Contracts § 73 (1981). In a classic hornbook illustration of the idea of a bargained-for exchange, one author explains:

> A promisee may suffer detriment in reliance on the promise, but if the promisor did not bargain for the detriment there is no consideration for the promise. To illustrate, if after a sale of real estate the seller promises the buyer to see to assignment of the fire policy on the house but fails to do so, and the house burns without insurance, there is no consideration for the seller's promise to insure the house for the buyer. Legal detriment to the promisee is clear, since he forbore to secure the insurance himself; but such forbearance was not bargained for or requested as the price of the promise, so the promise is gratuitous.

Laurence P. Simpson, *Handbook of the Law of Contracts* § 53, at 83 (2d ed. 1965) (footnotes omitted).

We are unable to find anything in the record that either expressly or impliedly shows any type of "bargaining" element in Ross's promise. The language of the letter, through which she memorialized her promise, indicates no required act or forbearance to entitle the Valentins to the gift. In fact, there is nothing at all before us to suggest any forbearance by the Valentins or either of them at any time with respect to Ross's promise; and, although Ross wanted to help the Valentins buy a home, their act in doing so, with Ross's money, does not show any sort of bargained-for exchange.

Valentin confuses purely gratuitous promises with promises coupled with bargained-for conduct. The latter results in an enforceable contract, but the former is pure gift and as such unenforceable at law. Ross's promise was purely gratuitous.

The authorities Valentin cites for the proposition that a unilateral contract existed here do not support that proposition. She has quoted broad language in those cases but has failed to consider the entire factual and legal contexts of the cases. Thus, in *C & D Invs. v. Beaudoin*, 364 N.W.2d 850, 852-53 (Minn. App. 1985), *review denied* (Minn. June 14, 1985), there was clearly a bargained-for exchange of guarantees, mortgages, and partnership interests. Valentin cites that case for the rule that "[c]onsideration need not pass from the promisee to the promisor to be valid." *Id.* at 853. We agree, but Valentin overlooks the fundamental requirement of the bargained-for exchange. That element existed in *C & D Invs.*; it does not exist here.

Similarly with *Estrada v. Hanson*, 215 Minn. 353, 355, 10 N.W.2d 223, 225 (1943), a bargained-for exchange could be found in acceptance of a reduced liquidation price of an apartment building, receipt of loan money, and relief from personal liability. There were no purely gratuitous promises in that case.

Valentin has offered no authority that contradicts the principle of bargained-for exchange. Ross's mere promise to give financial aid to the Valentins does not satisfy that principle. There was no unilateral contract here.

Promissory Estoppel

Even in the absence of consideration or a bargained-for exchange, it is sometimes possible for the promisee to recover damages under the theory of promissory estoppel. *Cohen v. Cowles Media Co.*, 479 N.W.2d 387, 392 (Minn. 1992). Valentin alleges that the theory applies here.

"Under promissory estoppel, a promise which is expected to induce definite action by the promisee, and does induce the action, is binding if injustice can be avoided only by enforcing the promise." *Id.* at 391. The elements of the theory are (1) a clear and definite promise, (2) intention by the promisor to induce the promisee's reliance on the promise, (3) the promisee's detrimental reliance, and (4) the need to enforce the promise to prevent an injustice. *Id.*

Ross promised to give to the Valentins certain lump sums of money, which she did, and to pay to them $4,000 a month, which she did for two and a half years. She did not promise to make the Valentins' mortgage payments, although she did that as well for two and a half years. And Ross never promised to pay Cheryl Valentin's credit-card debt. Thus, the only clear and definite promise that arguably was not fulfilled was the promise of a monthly payment to Shane and Cheryl Valentin of $4,000.

Valentin argues that she relied on the gift letter in incurring her credit-card debt. But that is not the test. The question is whether Ross intended that her promise of monetary gifts would induce such reliance. There is nothing whatsoever in the record to conclude that Ross intended such inducement.

It is also questionable whether Ross intended to induce the Valentins to rely on her monthly $4,000 gift in the purchase of their home. Ross gave them all the money they needed for the down payment, and, thus, any promise in that regard was fulfilled. And even though Ross never promised to make the mortgage payments, she did so. That indicates that Ross did not intend to induce reliance on the $4,000 monthly gift for mortgage purposes because the Valentins from the outset were relieved of any obligation to use the monthly sum to pay the mortgage.

What we are left with then is a clear promise as to a monthly payment but no evidence that Ross made it to induce any particular reliance on the money. Without a showing that "the promisor . . . intended to induce reliance on the part of the promisee," the theory of promissory estoppel fails. *Id.*

Furthermore, even the clear promise to pay $4,000 each month to "Shane and Cheryl" becomes ambiguous when one of the joint recipients dies. We do not know from this record what Ross's intention was. But considering that Ross terminated all payments when her half-brother died, it is a reasonable inference that her intent was not to continue to make the payments if her sibling did not receive a benefit. Even if the first three elements of promissory estoppel could be resolved in Valentin's favor, the remaining issue is whether the promise should be enforced to prevent an injustice. *Id.* "[T]his is a legal question for the court, as it involves a policy decision." *Id.*

In answering the question, perhaps the appropriate focus is on what Valentin received and what her detriment was when Ross ceased to carry through on her promise. Valentin and her husband received a $240,000 house and two and a half years of mortgage payments that built equity free of charge. In addition, she and her husband received $48,000 a year for two and a half years as spending money. When that stipend ceased, Valentin was left with a house of sufficient value to net her nearly $100,000 in profit when she sold it.

This promissory estoppel case is different from cases in which promisees have significantly altered their positions in reliance on promises and then have been left in substantial legal or economic difficulty or peril when the promisors failed to honor their promises. Valentin was unemployed and her husband earned a small income when Ross made her promise. For two and a half years thereafter, she and her husband enjoyed the benefit of Ross's charitable actions. Even when Ross stopped her donations, Valentin was left with substantially more than meager value resulting from Ross's contributions. Valentin has failed to show that "enforcement is required to prevent an injustice." *Id.*

Sales Tax Reimbursement

Ross was the co-owner of two motor vehicles that she gave as gifts to the Valentins. After Shane Valentin's death, Cheryl Valentin asked Ross to transfer title to her. Ross provided her with transfer documents and, when Valentin filed them to effectuate the transfer, she incurred sales taxes under Minn. Stat. § 297B.02 (2002).

Ross refused to sign an affidavit attesting to the transfers as gifts. Valentin claims that Ross "was under a duty to cooperate to sign the required forms for the registration under the equitable doctrine of avoidable harm."

We are aware of no Minnesota authority stating that one who makes a gift is required to assist a donee in avoiding all taxes or other expenses incidental to that gift. Although Valentin has cited a case for a general equitable principle as to allocation of losses, the case does not support Valentin's proposition that a donor must give a gift free and clear of all collateral costs. Because Valentin has failed to provide authority for that specific point, we decline to address the issue further. *Ganguli v. Univ. of Minn.*, 512 N.W.2d 918, 919 n.l (Minn. App. 1994).

Affirmed.