

COURT OF APPEALS
TUSCARAWAS COUNTY, OHIO
FIFTH APPELLATE DISTRICT

ROBERT KENNEDY

Plaintiff-Appellant

VS.

KAREEN E. CONRAD, EXECUTRIX OF THE ESTATE OF ELLA LOUISE KRANTZ

Defendant-Appellee

JUDGES:
Hon. William B. Hoffman, P.J.
Hon. Sheila G. Farmer, J.
Hon. John W. Wise, J.

Case No. 2003AP060046

: OPINION

CHARACTER OF PROCEEDING: Appeal from the Court of Common Pleas,
Case No. 1999CV090402

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: January 26, 2004

APPEARANCES:

For Plaintiff-Appellant

For Defendant-Appellee

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Farmer, J.

{¶1} On September 28, 1999, appellant, Robert Kennedy, filed a complaint against appellee, Kareen Conrad, Executrix of the Estate of Ella Louise Krantz, for monies due and owing for services rendered to Mrs. Krantz. Appellee claimed he performed work on Mrs. Krantz's farm commencing in 1993 and continuing through March of 1999. Mrs. Krantz passed away in July of 1999.

{¶2} A bench trial commenced on October 24, 2000. By judgment entry filed March 9, 2001, the trial court found in favor of appellee. An appeal was filed. This court vacated the judgment and remanded the matter for findings of fact and conclusions of law. See, *Kennedy v. Conrad*, Tuscarawas App. No. 2001AP060053, 2002-Ohio-1280.

{¶3} Upon remand, the trial court filed a revised judgment entry on May 12, 2003, again finding in favor of appellee.

{¶4} Appellant filed an appeal and this matter is now before this court for consideration. Assignments of error are as follows:

I

{¶5} "THE TRIAL COURT ERRED IN FAILING TO SUPPLEMENT ITS FINDINGS OF FACT AND CONCLUSIONS OF LAW AND THEN REENTER JUDGMENT IN ACCORD THERETO."

II

{¶6} "AN INDEFINITE PAROL CONTRACT FOR SERVICES ON A FARM BY A NON-RELATIVE IS NOT WITHIN THE STATUTE OF FRAUDS."

III

{¶7} "THE JUDGMENT OF DISMISSAL IS NOT SUSTAINED BY SUFFICIENT EVIDENCE AND THUS IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

IV

{¶8} "PREJUDGMENT INTEREST IS AWARDED FROM THE TIME THE AMOUNT AT ISSUE BECOMES DUE AND PAYABLE."

I

{¶9} Appellant claims the trial court failed to follow the mandate of this court's remand. We disagree.

{¶10} In our opinion cited supra, this court vacated the trial court's decision and specifically remanded the case "for the trial court to supplement the findings of facts and conclusions of law and then reenter judgment in accord thereto." ¹

{¶11} After a review of the revised judgment entry, we find the trial court did not violate this court's mandate.

{¶12} Assignment of Error I is denied.

II

{¶13} Appellant claims the trial court erred in finding the statute of frauds applied sub judice. We agree.

{¶14} R.C. Chapter 1335. governs the statute of frauds. R.C. 1335.05 states as follows:

{¶15} "No action shall be brought whereby to charge the defendant, upon a special promise, to answer for the debt, default, or miscarriage of another person; nor to

¹This writer respectfully dissented and found the findings of fact and conclusions of law to be sufficient.

charge an executor or administrator upon a special promise to answer damages out of his own estate; nor to charge a person upon an agreement made upon consideration of marriage, or upon a contract or sale of lands, tenements, or hereditaments, or interest in or concerning them, or upon an agreement that is not to be performed within one year from the making thereof; unless the agreement upon which such action is brought, or some memorandum or note thereof, is in writing and signed by the party to be charged therewith or some other person thereunto by him or her lawfully authorized."

{¶16} In *Sherman v. Haines*, 73 Ohio St.3d 125, 1995-Ohio-222, the Supreme Court of Ohio explained the following at 127:

{¶17} "For over a century, the 'not to be performed within one year' provision of the Statute of Frauds, in Ohio and elsewhere, has been given a literal and narrow construction. The provision applies only to agreements which, by their terms, cannot be fully performed within a year, and not to agreements which may possibly be performed within a year. Thus, where the time for performance under an agreement is indefinite, or is dependent upon a contingency which may or may not happen within a year, the agreement does not fall within the Statute of Frauds." (Citations omitted.)

{¶18} Although appellant submitted evidence that he had cared for cattle on Mrs. Krantz's farm from 1993 to 1999, these services were contingent upon there being cattle on the farm and Mrs. Krantz owning the farm. T. at 39. Therefore, any agreement proven would have been for an indefinite period of time or could have been completed within less than a year. The statute of frauds does not apply sub judice.

{¶19} Assignment of Error II is granted.

III, IV

{¶20} Appellant claims the trial court erred in finding no contract or agreement existed between the parties. We disagree.

{¶21} A judgment supported by some competent, credible evidence will not be reversed by a reviewing court as against the manifest weight of the evidence. *C.E. Morris Co. v. Foley Construction Co.* (1978), 54 Ohio St.2d 279. A reviewing court must not substitute its judgment for that of the trial court where there exists some competent and credible evidence supporting the judgment rendered by the trial court. *Myers v. Garson*, 66 Ohio St.3d 610, 1993-Ohio-9. As the trier of fact, the trial court is the best to judge the credibility of the witnesses and the veracity of their testimony. *State v. Jamison* (1990), 49 Ohio St.3d 182, certiorari denied (1990), 498 U.S. 881.

{¶22} The trial court acknowledged the evidence advanced by appellant, but determined it was insufficient to establish his claim for funds and interest. See, Findings of Fact Nos. 3, 4, 8 and 10. Based upon these findings, the trial court concluded there was no enforceable agreement.

{¶23} Appellant's evidence and exhibit (Plaintiff's Exhibit A) on the amount he claimed was due was not written by him, and he failed to provide any collaborating evidence of where these figures were kept, recorded or compiled. T. at 15-18, 37, 44. Appellant also claimed prior to Mrs. Krantz's death, she acknowledged she owed him money, but would settle up as soon as the farm sold. T. at 29. Contrary to his claim, appellant did not have any receipts for items he claimed to have purchased, never deposited any money in a bank and never declared payments made by Mrs. Krantz as income. T. at 37.

{¶24} Appellant never pressed Mrs. Krantz for payment, and for his work for 1993 and 1994, appellant claimed he was owed \$4,774.00. T. at 45-50. Appellant wanted the trial court to believe he continued working despite not being paid and at the end, there was an outstanding balance of \$22,143.00. T. at 18. There was testimony that some of Mrs. Krantz's tenants on the property also took care of the cattle in exchange for rent reduction. T. at 127.

{¶25} The trial court never found appellant did not perform work for Mrs. Krantz, just that the amount he now claims due was not proven.

{¶26} Given the quality of the evidence presented, we cannot find the trial court erred in concluding appellant had failed to meet the burden of proof required to prove his case.

{¶27} Assignments of Error III and IV are denied.

{¶28} The judgment of the Court of Common Pleas of Tuscarawas County, Ohio is hereby affirmed.

By Farmer, J.

Hoffman, P.J. and

Wise, J. concur.