

Appellant/Plaintiff Katherine Weber appeals the trial court's entry of summary judgment in favor of Appellee/Defendant Carrie Schlichtenmyer, Personal Representative of the Estate of Gerald Schlichtenmyer ("the Estate"). Specifically, Weber contends that the trial court erred by entering summary judgment in favor of the Estate. We affirm.

FACTS AND PROCEDURAL HISTORY

Weber was first introduced to Gerald Schlichtenmyer at a festival in Albion, Indiana, in the fall of either 1998 or 1999. Following their introduction, Weber and Schlichtenmyer engaged in an intimate, exclusive relationship that lasted until his passing in April of 2009. Over the course of their relationship, Weber and Schlichtenmyer befriended numerous individuals who knew them as a couple. They enjoyed spending a significant amount of time together, including regularly attending weekly or bi-weekly dances at the local American Legion Post.

After approximately two years of dating, Weber and Schlichtenmyer discussed and generally agreed that the depth of their relationship was akin to marriage. At some point, Schlichtenmyer gave Weber a ring that represented the exclusive and committed nature of their relationship. In addition to the ring, Schlichtenmyer gave Weber other gifts, including transportation to and lodging at a variety of vacation destinations. However, given their respective positions in life, neither felt it necessary to formalize their relationship with a marriage ceremony.

Weber's family welcomed Schlichtenmyer as a member of the family. Schlichtenmyer was invited to all family gatherings, including birthdays and holidays. Schlichtenmyer

participated in Weber's family's annual Christmas gift exchange. In instances where appropriate, Weber and Schlichtenmyer would give presents jointly, signing the card "Grandma [or Mom] and Gerald'." Appellant's App. 29.

Though they maintained separate physical addresses during the majority of their relationship, Weber and Schlichtenmyer observed a regular visitation schedule which included Schlichtenmyer spending Wednesday and Friday nights at Weber's residence in Albion and Weber spending Sunday and Tuesday nights at Schlichtenmyer's residence in Fort Wayne. On nights spent apart, Weber and Schlichtenmyer kept a standing date for an 8:00 p.m. telephone call "to discuss the events of each person's day and to review their favorite television programs, including Wheel of Fortune." Appellant's App. p. 28.

Approximately eighteen months before his passing, Schlichtenmyer was diagnosed with prostate cancer. Schlichtenmyer's diagnosis and treatment impacted his and Weber's ability to attend social gatherings, but "did not hamper their feelings for each other." Appellant's App. p. 29. During this period, Weber attended some of Schlichtenmyer's doctor's appointments with him so as to better understand his diagnoses, prognoses, and treatment. Weber also "added to her daily routine" by cooking enough food for both herself and Schlichtenmyer, made sure Schlichtenmyer's refrigerator and pantry were stocked, and picked up Schlichtenmyer's various prescriptions. Appellant's App. p. 29.

Eventually, Schlichtenmyer succumbed to prostate cancer. Schlichtenmyer left a will which named his granddaughter, Carrie Schlichtenmyer, as the sole beneficiary and personal representative of his estate. Weber did not challenge the validity of Schlichtenmyer's will

after learning that she was not included as a beneficiary, but rather filed a claim asserting that the Estate owed her a sum of \$204,500 for personal services rendered to Schlichtenmyer before his death. The Estate denied Weber's claim.

On April 28, 2010, the Estate filed a motion for summary judgment asserting that there was no issue of material fact regarding Weber's claim against the Estate for \$204,500, and that it was entitled to judgment as a matter of law. On May 28, 2010, Weber filed a response in opposition to the Estate's summary judgment motion. The Estate then filed a reply to Weber's response. On June 30, 2010, the trial court conducted a hearing on the Estate's motion for summary judgment, after which it determined that the Estate was entitled to judgment as matter of law and consequently granted summary judgment in favor of the Estate. This appeal follows.

DISCUSSION AND DECISION

Weber contends that the trial court erred by entering summary judgment in favor of the Estate.

I. Standard of Review

Our standard of review for a trial court's grant or denial of a motion for summary judgment is well-settled. *Purdy v. Wright Tree Serv., Inc.*, 835 N.E.2d 209, 212 (Ind. Ct. App. 2005), *trans. denied*. The purpose of summary judgment is to end litigation where no factual dispute exists and which may be determined as a matter of law. *Powdertech, Inc. v. Joganic*, 776 N.E.2d 1251, 1255 (Ind. Ct. App. 2002). Summary judgment is appropriate only where there is no genuine issue of material fact and the moving party is entitled to

judgment as a matter of law. *Purdy*, 835 N.E.2d at 212. The party moving for summary judgment has the burden of showing that it is entitled to summary judgment. *Powdertech*, 776 N.E.2d at 1256. Appellate review of a summary judgment motion is limited to those materials designated to the trial court. *Purdy*, 835 N.E.2d at 212. We do not reweigh the designated evidence; rather, all facts and reasonable inferences drawn therefrom are construed in favor of the nonmovant. *Id.* The party appealing the denial of a motion for summary judgment has the burden of persuading the court on appeal that the trial court's ruling was improper. *Powdertech*, 776 N.E.2d at 1256. A grant of summary judgment may be affirmed upon any theory supported by the designated evidence. *Purdy*, 835 N.E.2d at 212.

II. Whether Weber and Schlichtenmyer were Engaged in a Familial Relationship

Generally, where one accepts valuable services from another, the law implies a promise to pay for them. *Estate of Prickett v. Womersley*, 905 N.E.2d 1008, 1012 (Ind. 2009). This principle appropriately applies to general creditors. *Id.* However, where the parties are engaged in a familial relationship and the services are rendered in the family context, no implication of a promise to pay by the recipient arises. *Id.* Instead, in these circumstances, the rebuttable presumption is that the services are gratuitous. *Id.* The public policy advanced by this presumption is that family members have reciprocal, natural, and moral duties to support and care for each other. *Id.*

Weber claims that the trial court erred in concluding that there was no genuine issue of material fact regarding whether she was engaged in a familial relationship with

Schlichtenmyer because she and Schlichtenmyer were not legally married. In support, Weber argues that although she and Schlichtenmyer often “held themselves out as a couple,” they maintained separate residences throughout the majority of their relationship. However, upon review of the facts, we are convinced that Weber and Schlichtenmyer were engaged in a familial relationship. Weber admits that she and Schlichtenmyer were engaged in an intimate, exclusive relationship which they agreed was akin to marriage. Although maintaining separate residences for most of their relationship, Weber and Schlichtenmyer stayed overnight with each other at least four nights each week and had a standing 8:00 p.m. telephone date on nights when they were not together. Weber and Schlichtenmyer introduced and generally held themselves out as a couple and attended both social and family events, including birthdays and holidays together. Weber and Schlichtenmyer also traveled together as a couple. In addition, Weber’s daughter averred that Weber’s family considered Schlichtenmyer to be a member of the family. In addition, Weber stated that neither her nor Schlichtenmyer’s feelings about the other changed after Schlichtenmyer was diagnosed with prostate cancer. Weber and Schlichtenmyer continued to hold themselves out as a couple, and to the extent possible, continued the routine developed during the course of their relationship. These facts clearly establish that Weber and Schlichtenmyer were engaged in a familial relationship.¹

¹ To the extent that Weber relies on *Moslander v. Moslander’s Estate*, 110 Ind. App. 122, 38 N.E.2d 268 (1941), in support of her claim that she and Schlichtenmyer were not engaged in a familial relationship, we observe that the facts presented in *Moslander* can easily be distinguished from the instant matter. In *Moslander*, the claimant and her ex-husband divorced in 1905, but claimant continued to live at ex-husband’s farm until his death in 1940. 110 Ind. App. at 127, 38 N.E.2d at 270. While living at husband’s farm, the claimant performed labor of the same sort as would be performed by a household servant for a period of thirty-five years. *Id.* at 130, 38 N.E.2d at 271. Upon considering the tasks performed by the claimant as well as the

III. Whether the Record Contains Evidence of Implied Contract Between Weber and Schlichtenmyer

Having concluded that Weber and Schlichtenmyer were engaged in a familial relationship, we must determine whether Weber has successfully created an issue of material fact that rebutted the presumption that her alleged services to Schlichtenmyer were rendered gratuitously. Our state has traditionally recognized only one way to rebut the presumption that services by parties engaged in a familial relationship were rendered gratuitously, which requires evidence of an express or implied contract. *Id.* “Rebutting the presumption in this manner requires the family member to demonstrate two specific elements: ‘an intention on the part of recipient of the services to pay or compensate therefor, and an expectation of pay or compensation on the part of the one rendering the services.’” *Id.* (quoting *Grout v. Solon*, 131 Ind. App. 650, 174 N.E.2d 593, 594 (1961)).

Weber concedes that she and Schlichtenmyer did not enter into an express contract relating to the services that she claims to have performed for Schlichtenmyer. Instead, Weber argues that the record provides evidence that Schlichtenmyer intended to compensate her and she expected to receive compensation for the services she performed during his illness, including attending some doctor’s appointments with Schlichtenmyer so as to better understand his prognosis and treatment, cooking enough food for both herself and Schlichtenmyer, making sure that Schlichtenmyer’s pantry was stocked, and picking up Schlichtenmyer’s various prescriptions.

fact that she and ex-husband did not attend social functions together or hold themselves out to be a couple, this court determined that claimant and ex-husband were not engaged in a familial relationship. *Id.* at 134, 38 N.E.2d at 273.

In support of her claim that Schlichtenmyer intended to compensate her for the services she performed during his illness, Weber relies on her daughter's assertion that during a conversation with Schlichtenmyer, Schlichtenmyer shared his disgust for and frustration with friends who, like he, engaged in long-term committed relationships but did not provide any financial security for their companion after their death. This statement, however, does not indicate that Schlichtenmyer intended to compensate Weber for the services she claims to have provided him during his illness. Moreover, Schlichtenmyer's granddaughter Carrie averred that she has not found and is not aware of any expression of agreement by Schlichtenmyer to compensate Weber for any assistance she may have provided to him during his lifetime. Carrie further averred that "[d]uring the various and multiple instances of communication which she had with [her grandfather] during his lifetime, he never expressed to her an intent or agreement that [Weber] be compensated for any 'assistance' which she may have provided to him during his lifetime." Appellant's App. p. 16.

Upon review, we conclude that the record is devoid of any evidence suggesting that Schlichtenmyer intended to compensate Weber for the services she provided during his illness. Moreover, nothing in the record even suggests that Schlichtenmyer ever requested that Weber pick up his prescriptions, stock his pantry, or cook for him. To the extent that Schlichtenmyer did request Weber's assistance with these tasks, we find these tasks to be akin to the types of tasks that family members often gratuitously perform for one another during the other's time of need. *Cf. Moslander*, 110 Ind. App. at 130, 38 N.E.2d at 271

(providing that the services provided by claimant were more akin to those provided by a household servant than those provided gratuitously by members of one's family). Thus, while Weber may claim that she expected to receive compensation for the services provided to Schlichtenmyer, there is no designated evidence tending to prove this. Therefore, we affirm the trial court's order granting summary judgment in favor of the Estate.

The judgment of the trial court is affirmed.

KIRSCH, J., and CRONE, J., concur.