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IN THE
COURT OF APPEALS OF INDIANA

PETE BURGMEIER,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 36A01-1009-SC-480
	)	
ROBERT AKIN,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE JACKSON SUPERIOR COURT
The Honorable Bruce S. Markel, III, Judge
Cause No. 36D01-0809-SC-1153

June 22, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Judge

Appellant-respondent, Pete Burgmeier, appeals from the trial court's judgment awarding $2,348.09 to appellee-petitioner, Robert Akin, and denying Burgmeier's counterclaim seeking $5,020 in damages. Specifically, Burgmeier argues that Akin breached their oral contract first, and, therefore, cannot maintain a claim for damages against him. Additionally, Burgmeier contends that there was insufficient evidence indicating that Akin fertilized Burgmeier's fields as required under their agreement. Finding that the oral contract was not enforceable but that Akin could recover under quantum meruit, we affirm.

FACTS[1]

Sometime in early 2006, Burgmeier and Akin entered into an oral farming agreement (Agreement). Under the Agreement, Akin was to plant, grow, and harvest alfalfa hay. In exchange, Burgmeier agreed to pay for lime and fertilizer for the land. The parties agreed to divide the crop equally for the two-year term of the Agreement and then reevaluate whether to continue the arrangement.

Burgmeier was not satisfied with the quality of a considerable portion of the crop, and on June 16, 2008, his attorney sent Akin a letter stating that "[u]pon completion of the harvesting of the last cutting, the [Burgmeiers] have made other arrangements for their property." Appellant's App. p. 110. Sometime around September 19, 2008, Akin

[1] We note that the Appellee's Brief does not contain a Statement of the Facts, Statement of the Issues, or a Statement of the Case nor does the Brief "state that the appellee agrees with the appellant's statements." Ind. Appellate Rule 46(B)(1). We caution Appellee's counsel to comply with the Indiana Appellate Rules in the future.

took the entire crop,[2] complaining that Burgmeier had failed to pay him for an outstanding fertilizer invoice even though Akin had not informed him of it. Akin eventually tried to give Burgmeier his half from the third cutting, but Burgmeier refused to accept it. Instead, Akin left Burgmeier all of the crop from the fourth cutting in late October 2008.

On September 30, 2008, Akin filed his complaint seeking damages for Burgmeier's failure to pay for the fertilizer and farm equipment rental and "for reimbursement of his labor for plowing, discing, cultivating, and seeding." Appellant's App. p. 116. On October 20, 2008, Burgmeier filed a counterclaim seeking $5,020 in damages for hay that had molded in 2007 and for his half from the third cutting of the 2008 crop.

On June 30, 2010, a bench trial was held on Akin's claim and Burgmeier's counterclaim. Akin testified that after he had cut the hay for the third time in 2008, he took the entire crop instead of giving one-half to Burgmeier. Akin stated that, at that time, he never mentioned to Burgmeier that there were any outstanding expenses or fees. When Akin was pressed as to why he handled the situation in this manner, he stated that he had "prior knowledge" that Burgmeier engaged in "shady business practices" and he wanted to get his "expenses covered" even though Akin admitted that Burgmeier had paid for everything he was supposed to pay for under the Agreement up until that point. Tr. p. 17.

[2] As an aside, we note that Akin was arrested for class A misdemeanor conversion for taking Burgmeier's hay bales on September 20, 2008. Akin was found not guilty following a bench trial in June 2010.

On July 6, 2010, the trial court entered a judgment for Akin in the amount of $2,348.09, which was the cost of the fertilizer that Akin had used on Burgmeier's field. The trial court denied Burgmeier's counterclaim. On August 4, 2010, Burgmeier filed a motion to correct error, which was denied on August 27, 2010. Burgmeier now appeals.

DISCUSSION DECISION

Burgmeier argues that it was Akin who breached their Agreement first when he took Burgmeier's share of the crop "and in effect, held it for ransom for payment of an expense that had not been communicated to [Burgmeier]." Appellant's Br. p. 7. Put another way, Burgmeier contends that his performance under the Agreement is excused because of Akin's initial breach. Additionally, Burgmeier contends that there was insufficient evidence from which the trial court could conclude that Akin applied the fertilizer.

Here, the trial court entered a general judgment without specifying its reasons. This Court's standard of review of a general judgment "requires affirmance of a trial court's judgment if there is any legal theory upon which the trial court's action may be sustained." Colonial Disc. Corp. v. Berkhardt, 435 N.E.2d 65, 66 (Ind. Ct. App. 1982).

Initially, we note that our review of the record indicates that when the Agreement was formed, Akin and Burgmeier intended it to last at least two years. Specifically, Akin testified that "after a two (2) year period, we were going to review how things had went and a decision would be made at that time if we were going to extend it . . . the agreement or not." Tr. p. 6. Likewise, Burgmeier stated that "[m]y recollections [sic] it was two (2)

years. And I do recall talking to Mr. Akin's [sic] about it, if I were [sic] satisfied and then we would discuss it at that time." Id. at 63. Accordingly, the Agreement fell within the Statute of Frauds and was required to be in writing to be enforceable. See Jarboe v. Landmark Cmty. Newspapers of Ind., Inc., 625 N.E.2d 1291, 1294 (Ind. Ct. App. 1993), vacated in part on other grounds, (refusing to enforce oral employment contract that both parties acknowledged would last at least thirteen months); see also Ind. Code § 32-21-1-1 (stating that a "person may not bring . . . [a]n action involving any agreement that is not to be performed within one (1) year from the making of the agreement" unless the agreement "is in writing and signed by the person against whom the action is brought or by the party's authorized agent").

Nevertheless, a party may still recover in quantum meruit in the absence of an enforceable contract. "'Quantum meruit is an equitable doctrine that prevents unjust enrichment by permitting one to recover the value of work performed or material furnished if used by another and if valuable.'" Carr v. Pearman, 860 N.E.2d 863, 870 (Ind. Ct. App. 2007) (quoting Galanis v. Lyons & Truitt, 715 N.E.2d 858, 861 (Ind. 1999)).

In this case, while this Court may not condone the manner in which Akin conducted himself, the trial court awarded Akin $2,348.09 in damages, which was the cost of the fertilizer that Akin stated he used on Burgmeier's field. Tr. p. 26-29. Additionally, the trial court viewed receipts from the purchases of the fertilizer and heard testimony that Burgmeier received all of the hay from the fourth cutting in late October

2008. Appellant's App. p. 108-09; Tr. p. 72-73. And because it is well settled that weighing the evidence and judging witness credibility is within the trial court's sound discretion, we will not second guess this determination on appeal. Captain & Co., Inc. v. Towne, 404 N.E.2d 1159, 1163 (Ind. Ct. App. 1980). Consequently, we cannot say that the trial court erred, and we affirm its decision.

The judgment of the trial court is affirmed.

MAY, J., and BRADFORD, J., concur.