

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-000072-MR

ANGELA RATLIFF AND
MARK T. ZIMMERMAN

APPELLANTS

v. APPEAL FROM BULLITT CIRCUIT COURT
HONORABLE THOMAS L. WALLER, JUDGE
ACTION NO. 01-CI-00835

CHARLES J. RIGGLE

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: COMBS, CHIEF JUDGE; DYCHE AND KNOPF, JUDGES.

DYCHE, JUDGE: Appellants Ratliff and Zimmerman made an oral agreement to purchase a training and boarding kennel business from appellee, Riggle. They agreed upon a schedule of payments. After the agreement had been in effect for 12 months, a dispute arose as to whether the payments were to be made to Riggle for 15 or 30 years. Riggle terminated the agreement, and appellants filed this suit, seeking reimbursement for the sums they had

expended, or amounts for which they claimed Riggle had been unjustly enriched through their efforts.

Riggle defended by asserting that there could be no enforcement, due to the Statute of Frauds. KRS 371.010 reads, in pertinent part, as follows:

No action shall be brought to charge any person:

. . .

(6) Upon any contract for the sale of real estate, or any lease thereof for longer than one year;

(7) Upon any agreement that is not to be performed within one year from the making thereof;

. . .

(9) Upon any promise, contract, agreement, undertaking, or commitment to loan money, to grant, extend, or renew credit, or make any financial accommodation to establish or assist a business enterprise or an existing business enterprise including, but not limited to the purchase of realty or real property, but this subsection shall not apply to agreements pursuant to which credit is extended by means of a credit card or similar device, or to consumer credit transactions; unless the promise, contract, agreement, representation, assurance, or ratification, or some memorandum or note thereof, be in writing and signed by the party to be charged therewith, or by his authorized agent. . . .

The litigation proceeded, and discovery was taken by both sides. As a part of the discovery, Riggle propounded an

interrogatory, asking appellants to "state with specificity an itemization of each and every element of damage which you claim to have suffered as a result of the alleged breach." Appellants answered as follows:

Personal monies not paid to self when the kennel was slow. We made a temporary investment into our business to reimburse ourselves when business picked up. Moneys charged on credit cards to pay kennel bills. Loss of personal money due to the breach of contract regarding the sale of a litter of puppies. Loss of business opportunity. Unjust enrichment to John Riggle for the increase in business and the items used by the business but paid for personally by the Plaintiffs. Other items of damage will be named as the item is discovered.

In response to another interrogatory, the identity of any expert was sought. Appellants named none, and never supplemented the answer.

Riggle moved the court to grant him a judgment on the pleadings, which was denied. Trial date was set for October 9, 2003, and compliance with the local rules concerning discovery was ordered by the court. On September 10, Riggle moved the court to enter an order *in limine* forbidding appellants from using any expert testimony, as they had failed, after many demands and within the ordered time, to name any expert who would testify concerning their unjust enrichment theories. The

motion was granted. The trial was continued until December 18, 2003.

Riggle then sought summary judgment (CR 56), arguing that the statute of frauds prevents enforcement of the alleged agreement, and that appellants had produced no evidence of their only other claim, the unjust enrichment theory, or even indicated that they could. Appellants attempted to respond to the statute of frauds argument, but failed to address in any way their lack of proof on the unjust enrichment theory. The trial court granted the summary judgment for Riggle, and this appeal followed.

As they did below, appellants concede that the statute of frauds bars enforcement of the contract. They argue, however, that there are genuine issues of material fact as to

whether Appellee acted fraudulently in accepting partial fulfillment of the contract from Appellants, then voiding the contract; the Appellant[']s damages; and how much were these damages. . . . Appellants asked for what they may recover, their damages resulting from having relied upon the false promises of the Appellee.

Unfortunately for appellants, they have no proof of any damages available to them. Having failed to comply with discovery requests specifically asking them for the nature of any damages and the amounts, they are without evidence in the record to oppose the properly supported summary judgment motion.

Steelvest, Inc. v. Scansteel Service Center, Inc., 807 S.W.2d
476, 483 (Ky. 1991). They simply cannot prove their case
against Riggles without such evidence. The judgment of the
Bullitt Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANTS:

Patrick B. McClure
Shepherdsville, Kentucky

BRIEF FOR APPELLEE:

Louis E. Reinhart, III
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Shepherdsville, Kentucky