

Commonwealth of Kentucky
Court of Appeals

NO. 2005-CA-002594-MR

DONALD ROGERS AND DONNA ROGERS

APPELLANT

v. APPEAL FROM LIVINGSTON CIRCUIT COURT
HONORABLE BILL CUNNINGHAM, JUDGE
ACTION NO. 02-CI-00092

TAD DAVENPORT

APPELLEE

OPINION
AFFIRMING

** ** *

BEFORE: NICKELL AND TAYLOR, JUDGES; PAISLEY,¹ SENIOR JUDGE.

TAYLOR, JUDGE: Donald Rogers and Donna Rogers bring this appeal from a September 20, 2005, order of the Livingston Circuit Court dismissing their counterclaim against Tad Davenport for breach of a promise to marry and for services rendered under the *quantum meruit* doctrine. We affirm.

¹ Senior Judge Lewis G. Paisley sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

Donna Rogers and Tad Davenport were engaged to be married and had lived together in Livingston County at Tad's home for more than fifteen years. During this time, Tad began a seal coating business for which Donna provided bookkeeping and secretarial services. Tad apparently ended the relationship unexpectedly and forced Donna to move from his residence on Thanksgiving weekend in 2001. Tad initiated this action by filing a complaint in the Livingston Circuit Court on May 22, 2002. Tad alleged in his complaint that Donna and her father, Donald Rogers, committed against Tad tortuous acts of intentional infliction of emotional distress, defamation, assault and battery, trespass and conversion, abuse of process, and malicious prosecution. Donna and Donald answered. Relevant to this appeal, Donna also asserted a counterclaim against Tad.² Therein, Donna alleged she was entitled to payment for services performed on behalf of Tad's business and for reimbursement of money invested in real estate with Tad.

A bench trial was conducted on July 21, 2005. At trial, Tad proceeded *pro se* and made a motion to dismiss his complaint against Donna and Donald. The circuit court granted Tad's motion and dismissed the complaint. The case proceeded on Donna's counterclaim against Tad. Following the trial, the court permitted the parties to submit memorandums and proposed findings. On September 20, 2005, the court entered an order dismissing Donna's counterclaim against Tad. On November 23, 2005, the circuit court entered an order denying Donna's motion for a new trial. This appeal follows.

² Donald Rogers, Donna Roger's father, also asserted a counterclaim against Tad Davenport for intentional infliction of emotional distress and assault. Those claims were not tried by the circuit court nor have they been raised as issues on appeal. Accordingly, Donald's counterclaim will be deemed abandoned and not addressed in this appeal.

This case was tried by the court without a jury. Accordingly, in our review, the circuit court's findings of fact will not be set aside unless clearly erroneous and its conclusions of law will be reviewed *de novo*. Ky. R. Civ. P. (CR) 52.01; *Gosney v. Glenn*, 163 S.W.3d 894 (Ky.App. 2005).

Donna contends the circuit court erred by dismissing her counterclaim against Tad. Specifically, Donna asserts that the circuit court erred by dismissing her claim for damages for the bookkeeping and secretarial services she performed in Tad's business. Donna is alleging entitlement to payment for the services based upon Tad's breach of the contract to marry and the doctrine of *quantum meruit*.

It is well-established that an action for breach of the promise to marry is no longer recognized as a viable cause of action in this Commonwealth. *Gilbert v. Barks*, 987 S.W.2d 772 (Ky. 1999). Eliminating this cause of action did not, however, eradicate the ability of a party to seek a remedy for such a wrong. *Id.* Rather, the form of the remedy has merely been altered. A remedy may still be available for an aggrieved party for breach of a contract or intentional infliction of emotional distress, if a party is able to prove such a case. *Id.* However, in breach of contract cases, only direct economic losses such as the “normal expenses attendant to a wedding” may be recoverable. *Id.* at 776. Similarly, under the proper circumstances, emotional damages may be recovered in an action for intentional infliction of emotional distress. *Id.*

In the case *sub judice*, the circuit court correctly concluded that an action for the breach of the promise to marry is no longer recognized in Kentucky, and, as such,

Donna could not recover based upon a breach of that promise. As Donna has neither asserted a claim for the “normal expenses attendant to a wedding” nor has she asserted a claim for intentional infliction of emotional distress, Donna is precluded from recovering damages for the services rendered to Tad's business under the theory attributable to the breach of a promise to marry.

Donna alternatively contends she was entitled to reimbursement for the services she rendered to Tad's business under the doctrine of *quantum meruit*. *Quantum meruit* is an equitable doctrine and literally means “as much as he has deserved.” *Black's Law Dictionary* 1255 (7th ed. 1999). To recover upon a claim based upon *quantum meruit*, one must show:

1. that valuable services were rendered, or materials furnished;
2. to the person from whom recovery is sought;
3. which services were accepted by that person, or at least were received by that person, or were rendered with the knowledge and consent of that person; and
4. under such circumstances as reasonably notified the person that the plaintiff expected to be paid by that person.

66 Am. Jur. 2d *Restitution and Implied Contracts* § 38 (2001).

In the the case *sub judice*, the circuit court concluded that Donna failed to prove Tad was reasonably notified that she expected to be paid for the services rendered. The circuit court also found that under the circumstances presented, Donna provided the services to Tad's business based upon natural affection or mutuality of benefit; thus, there

is a presumption that the services were rendered gratuitously. *See Corbin's Executor's v. Corbin*, 302 Ky. 208, 194 S.W.2d 65 (1964). Thus, we do not believe that the circuit court's findings were clearly erroneous or that the circuit court erred as a matter of law in dismissing Donna's claim under a theory of *quantum meruit*.

Donna next contends that the circuit court erred by dismissing her claim against Tad for the theft or conversion of various vehicles, including a 4-wheeler that she purchased during their relationship. Donna claims that the vehicles were either not returned to her by Tad or were returned to her in a deteriorated condition. As concluded by the circuit court, Donna did not assert a claim in her counterclaim related to the vehicles. Donna's counterclaim only sought payment for work performed in Tad's business and reimbursement for money invested in real estate with Tad. Moreover, Donna never amended the counterclaim to assert a cause of action for recovery of the vehicles. In short, Donna has failed to assert a cause of action for recovery of the vehicles. *See* CR 8.01; *Security Trust Co. v. Dabney*, 372 S.W.2d 401 (Ky.App. 1963). Accordingly, the circuit court did not err in dismissing the counterclaim.

For the foregoing reasons, the order of the Livingston Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE.

Tod D. Megibow
Paducah, Kentucky