

STATE OF MICHIGAN
COURT OF APPEALS

BEVERLY COMER HARGROW,

Plaintiff-Appellee,

v

ESTATE OF CHARLES D. COMER, by
CHERYL D. COMER and CRISTINA D.
COMER, Co-Personal Representatives,

Defendant-Appellant.

UNPUBLISHED

March 17, 2020

No. 347615

Kalamazoo Probate Court
LC No. 2017-001512-CZ

Before: MURRAY, C.J., and METER and K. F. KELLY, JJ.

PER CURIAM.

In this allowance of disallowed claim action, the Estate of Charles D. Comer, by Cheryl D. Comer (Cheryl) and Cristina D. Comer (Cristina), as copersonal representatives of the estate, appeals as of right the trial court order granting a default judgment in favor of plaintiff, Beverly Comer Hargrow. We affirm.

This case arises from decedent’s sister—Hargrow—paying bills on his behalf before his death, and requesting reimbursement from his estate on the basis of either a contractual or unjust enrichment basis. Hargrow testified at trial, and provided account statements, receipts, and other documented proof of expenses that she paid on behalf of decedent from her own funds. The trial court granted judgment in favor of Hargrow “consistent with the proofs.” This appeal followed.

Defendant asserts that Hargrow committed intrinsic fraud on the trial court by misrepresenting the costs that she incurred on behalf of decedent. Defendant did not make this argument in the trial court, so we review the issue for plain error affecting substantial rights. *Lawrence v Mich Unemployment Ins Agency*, 320 Mich App 422, 442; 906 NW2d 482 (2017). “[A]n error affects substantial rights if it caused prejudice, i.e., it affected the outcome of the proceeding.” *Id.* at 443 (quotation marks and citation omitted).

Defendant argues that Hargrow’s testimony and documentation amounted to intrinsic fraud on the trial court. However, defendant presented no factual proof to support this contention. See *Yee v Shiawassee Co Bd of Comm’rs*, 251 Mich App 379, 405; 651 NW2d 756 (2002). And, the

record reflects that the trial court used Hargrow's testimony and documents, after questioning her thoroughly on the subject, to conclude that her payments were substantiated. The trial court found no fraud after engaging in a thorough examination of the evidence presented at the hearing. Nothing argued by defendant causes us to alter the trial court's ruling.

Moreover, the factual questions that defendant presents were clarified at trial. Hargrow explained that she was unable to pay expenses out of decedent's account because Cheryl was concerned that Cristina was inappropriately spending decedent's funds, and cleared out his account in order to prevent Cristina from spending any more of his money. Hargrow testified that Cheryl took approximately \$30,000 from decedent's bank account in October 2015, and put it in an account in South Carolina, in Hargrow's and decedent's names. Although Hargrow had access to the joint account, she testified that the reimbursement was for bills she paid out of her own funds before she had access to that money. Additionally, Hargrow testified that, even after she had access to decedent's funds, she continued to pay some of his expenses out of her own account. Hargrow noted that some of decedent's bills were auto-paid from her account, and that she had not yet received paper checks from decedent's account, causing her to have to pay from her own account, even after she had access to his funds. Moreover, Hargrow presented receipts and account statements to the trial court demonstrating her costs incurred, which the court relied on in making its findings.

Although defendant argues that Hargrow committed fraud by asking for reimbursement for expenses from her own account, the trial court questioned Hargrow extensively regarding her use of her own account after she had access to decedent's funds. The trial court also questioned Hargrow regarding her travel costs. Hargrow admitted that she was not clear on the total of the travel costs between a vacation that she took and her expenses to travel to decedent's home. However, Hargrow only requested reimbursement for one of the flights, and produced a receipt of her travel cost for trial. The trial court then found Hargrow's payments were appropriate for reimbursement.

Defendant has failed to establish that fraud occurred, and that the trial court plainly erred in its judgment. The trial court considered all the testimony and evidence presented to it, and defendant has not provided specific, significant factual proof of fraud to overcome the trial court's findings. See *Yee*, 251 Mich App at 405. The trial court did not plainly err. See *Lawrence*, 320 Mich App at 442.

Defendant also argues that Hargrow did not prove the existence of an oral contract between her and decedent regarding the payment of his bills. We hold that oral contract principles did not apply, but that the trial court properly found that Hargrow was entitled to reimbursement.

Even though no contract exists between the parties, under the equitable doctrine of unjust enrichment, a person who has been unjustly enriched at the expense of another is required to make restitution to the other. *Morris Pumps v Centerline Piping, Inc*, 273 Mich App 187, 193; 729 NW2d 898 (2006). "The theory underlying quantum meruit recovery is that the law will imply a contract in order to prevent unjust enrichment when one party inequitably receives and retains a benefit from another." *Id.* at 194. A claim of unjust enrichment requires the complaining party to establish (1) the receipt of a benefit by the other party from the complaining party and (2) an

inequity resulting to the complaining party because of the retention of the benefit by the other party. *Id.* at 195.

Preliminarily, defendant misconstrues this issue by solely arguing that Hargrow was not entitled to relief if no oral contract existed. Hargrow requested relief under a contract or unjust enrichment theory. Even if we agree that no oral contract existed, as defendant argues, Hargrow was not foreclosed from reimbursement for her expenses on an unjust-enrichment claim. Hargrow's testimony and proofs, and the trial court's findings, squarely fit under a theory of unjust enrichment. Hargrow successfully proved that decedent received a benefit from her and that inequity resulted to her because his estate was retaining the benefit. See *id.* at 193-195.

Affirmed.

/s/ Christopher M. Murray

/s/ Patrick M. Meter

/s/ Kirsten Frank Kelly