

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0302

September Term, 2015

BORISLAV TODOROV, PERSONAL
REPRESENTATIVE OF THE ESTATE OF
CYNTHIA B. RUBINSTEIN

v.

IAN RUBINSTEIN

Wright,
Hotten,
Nazarian,

JJ.

Opinion by Nazarian, J.

Filed: December 17, 2015

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This appeal involves a dispute between siblings over the payment of expenses for two family properties. Ian and Cynthia Rubinstein¹ each owned a quarter-interest in the properties, as did two other family members. Since 2005, Ian paid both his and Cynthia's shares of the properties' taxes and maintenance expenses. After Cynthia died in April 2014, Ian filed a claim against her estate for \$74,230, the amount he said he had paid on her behalf, and contended that she had agreed to repay him. The estate disallowed the claim, and Ian filed a petition for allowance with the Orphans' Court for Baltimore County. The court found that Cynthia and Ian had an implied-in-fact contract obligating Cynthia to reimburse Ian for her share of the properties' expenses, and granted Ian's claim. The estate appeals and we affirm.

I. BACKGROUND

Ian and Cynthia each own a quarter-interest in two properties in Flemington, New Jersey. Their cousin, Stephen Daiboch, also owns a quarter interest, and Stephen's mother, Sandra Daiboch, owns the remaining quarter.

Ian and Stephen both testified that, by informal agreement, Stephen managed the properties and collected payment from the other three for expenses, including tax bills and property maintenance. According to their testimony, each owner was responsible for paying a quarter of the properties' expenses each year. Although the record is silent as to how long these four have owned the Flemington properties, there is no dispute that since

¹ In light of their common last name, we will depart from our usual convention and refer to the siblings by their first names.

2005, and continuing after Cynthia died in April 2014, Ian paid half of the properties' expenses. Ian testified that he paid his quarter-share, along with his sister's, with the understanding that Cynthia would repay him when the properties sold, "if not sooner." Stephen also testified that "[he] understood that [Ian] was going to be paid back by one—by Cynthia." However, no party produced written documentation reflecting this agreement.

The Flemington properties never sold, and Cynthia passed away on April 11, 2014. Her husband, Borislav Todorov, was appointed personal representative of her estate.² Ian continued to pay half of the properties' expenses, but at Stephen's request, in November 2014, Mr. Todorov paid Cynthia's share of the expenses in his capacity as personal representative.

On October 8, 2014, Ian filed a claim in Cynthia's estate for \$74,230.00, the amount reflecting the properties' expenses he had paid on her behalf since 2005.³ The estate disallowed the claim, and Ian filed a petition for allowance with the Orphans' Court for Baltimore County.⁴ In the memorandum accompanying his petition, Ian argued that his

² Cynthia and Mr. Todorov were married close to the time of her death, and Ian testified that he did not learn of the marriage until Cynthia died in April 2014. In a separate hearing, the orphans' court ruled that Mr. Todorov is the personal representative of Cynthia's estate as the surviving spouse.

³ Ian filed two claims against Cynthia's estate. The second, which is no longer at issue, sought \$16,270.28 in reimbursement for Cynthia's funeral expenses.

⁴ In addition, the Estate has a pending lawsuit against Ian Rubinstein in the United States District Court for the District of Maryland, seeking \$420,578.79—the value of Cynthia Rubinstein's entire brokerage account that apparently was transferred to Ian the day Cynthia died.

payment for Cynthia’s share of the properties’ expenses created an implied-in-law contract, or in the alternative, an implied-in-fact contract, either of which obligated Cynthia to repay him. On behalf of the estate, Mr. Todorov argued that Ian failed to meet his burden of establishing that an agreement existed. And even if a contract did exist, Mr. Todorov argued, both the rule against perpetuities and the statute of frauds rendered it unenforceable. Finally, Mr. Todorov argued that the three-year statute of limitations articulated in Md. Code (1974, 2013 Repl. Vol.), § 5-101 of the Courts & Judicial Proceedings Article (“CJP”) began to run each time Ian made a payment on Cynthia’s behalf, and therefore Ian could not recover for any payment made more than three years prior to October 8, 2011 when he filed his claim.

The court held a hearing on March 25, 2015, and on April 17, 2015, granted Ian’s petition for allowance. The court found that Ian and Cynthia had an implied-in-fact contract under which Ian paid Cynthia’s share of the properties’ expenses, and that both parties intended that she would reimburse Ian for these expenses. In addition, the court found that the statute of frauds did not apply to the agreement, as the contract was for the payment of expenses rather than the transfer of real property. Finally, the court found that Ian and Cynthia had a continuing creditor relationship, and that the statute of limitations would require Ian to bring an action within three years after he stopped paying expenses on behalf of Cynthia, rather than within three years after each check was written. Mr. Todorov filed a timely notice of appeal.

II. DISCUSSION

Mr. Todorov raises three questions on appeal: *first*, whether the trial court erred in finding a contract between Ian and Cynthia; *second*, whether the contract is unenforceable under the rule against perpetuities;⁵ and *third*, whether Ian’s claims were barred by the statute of limitations.⁶ When reviewing a decision by an orphans’ court, we defer to its findings of fact and will not set them aside unless clearly erroneous. *See* Md. Rule 8-131(c) (governing the standard of review for actions tried without a jury, as is the case here); *see also Pfeufer v. Cyphers*, 397 Md. 643, 648 (2007) (“It is well settled that the findings of fact of an Orphans’ Court are entitled to a presumption of correctness.”) (internal quotations omitted). We evaluate questions of law under a *de novo* standard of review. *Id.* (quoting *Banks v. Pusey*, 393 Md. 688, 697 (2008)).

The orphans’ court’s unchallenged finding that “the contract was for the payment of expenses and not a contract with respect to the transfer of real property” obviates any

⁵ Although the Orphans’ Court did not make any findings as to whether the rule against perpetuities is applicable to this case, the issue is preserved because Mr. Todorov argued it there.

⁶ Mr. Todorov phrases the issues as follows:

1. Did the Appellee establish all of the terms of the alleged contract between himself and the decedent?
2. Was the alleged contract unenforceable as a violation of the Rule Against Perpetuities?
3. If a contract was proven, were the claims for the expenses of the New Jersey property allegedly incurred prior to October 8, 2011 barred by the Statute of Limitations?

need to address Mr. Toderov’s rule against perpetuities argument because the Rule applies only to contracts that “create[] an equitable right in real property, enforceable by specific performance.” *Dorado Ltd. P’ship v. Broadneck Dev. Corp.*, 317 Md. 148, 152 (1989).⁷ With respect to Mr. Toderov’s other arguments, we discern no error in the orphans’ court’s finding that an implied-in-fact contract existed, and agree that the statute of frauds does not bar Ian’s claims.

A. The Orphans’ Court Did Not Err By Finding An Implied Contract.

Ian argued to the orphans’ court that he and Cynthia agreed that he would forward her the funds necessary to pay the Flemington properties’ expenses, and that she would repay him. Even in the absence of a written agreement, the orphans’ court found a contract implied in fact from the testimony of Ian and their cousin, Mr. Daiboch, not only about their understanding, but their actions in carrying out that understanding. An implied-in-fact contract “is an agreement which legitimately can be inferred from [the] intention of the parties as evidenced by the circumstances and the ordinary course of dealing and the common understanding of men.” *Cty. Comm’ners of Caroline Cty. v. J. Roland Dashiell & Sons, Inc.*, 358 Md. 83, 94 (2000) (internal quotation omitted). It is implied by the parties’ *conduct* “show[ing] a mutual intention to enter into contract,” rather than by explicit oral or written agreement. *Mogavero v. Silverstein*, 142 Md. App. 259, 277 (2002) (internal quotation omitted). The burden of proving that a contract existed rested on Ian,

⁷ This finding also eliminates any need to address Ian’s claim for unjust enrichment, relief not available where the court finds a contract. *Cty. Comm’ners of Caroline Cty. v. J. Roland Dashiell & Sons, Inc.*, 358 Md. 83, 97-98 (2000).

the party trying to enforce it. *See Cannon v. Cannon*, 384 Md. 537, 555 (2005) (explaining that the party seeking to enforce a contract shoulders the burden of proving that the contract is valid).

Mr. Todorov argues that the orphans' court erred by finding an implied contract because Ian failed to meet his burden of establishing mutual asset to contract. We disagree. Disputes over the existence and terms of a contract are matters for the trier of facts to determine, and we will not overturn those findings unless they are clearly erroneous. *See, e.g., Bontempo v. Lare*, 217 Md. App. 81, 137 (2014) (explaining that disputes over the existence and terms of an oral contract are questions of fact), *aff'd*, 444 Md. 344 (2015). In this case, there was ample evidence to support the orphans' court's conclusion that an adequate meeting of the minds took place and that the owners carried it out. *First*, Stephen maintained a check register that accounted for all deposits and payments relating to the Flemington properties, and the register demonstrated that Ian was paying for half of the expenses. Some of the checks were labeled "Ian and Cynthia," indicating that he was not simply responsible for half of the expenses, but was paying on behalf of both him and his sister. *Second*, the court found that Mr. Todorov, as representative of Cynthia's estate, paid Cynthia's share of the properties' expenses for the November 2014 quarter. This indicated Mr. Todorov's understanding that Cynthia's estate was responsible for reimbursing Ian for her share of the properties' expenses.

Third and most importantly, Stephen's testimony that he "understood that [Ian] was going to be paid back by . . . Cynthia" corroborated Ian's account of the agreement with

his sister. Although Mr. Todorov contests that Stephen’s testimony demonstrates Cynthia’s assent to contract, we think the testimony of an uninterested party confirming that an agreement existed *supports* the orphans’ court’s finding that Cynthia intended to enter into contract with her brother. The court found Stephen’s testimony a credible account of Cynthia’s agreement, and we will not second-guess that conclusion on this record. *See* Md. Rule 8-131(c) (requiring that we “give due regard to the opportunity of the trial court to judge the credibility of the witnesses”).

Mr. Todorov also argues that Ian’s testimony indicating that he expected to be repaid upon the sale of the Flemington properties “if not sooner” was insufficient to establish an agreement between him and Cynthia, because Maryland courts have interpreted the dead man’s statute to bar a claimant’s testimony that he “‘understood’ that he would be reimbursed at some point in the future.” *Boyd v. Bowen*, 145 Md. App. 635, 663 (2002); *see also Farah v. Stout*, 112 Md. App. 106 (1996). The dead man’s statute prohibits a party to a proceeding against a personal representative from testifying about facts that could be disputed only by the deceased. CJP § 9-116; *Farah*, 112 Md. App. at 114 (citing *Reddy v. Mody*, 39 Md. App. 675, 679 (1978)). However, Mr. Todorov makes no claim that Ian’s testimony on this point was improperly admitted. And even without Ian’s testimony, the orphans’ court had other evidence on which to base its conclusion that Ian and Cynthia entered into an implied-in-fact contract, including the corroborating testimony of Stephen, a non-party to the action and to whom the dead man’s statute does not apply.

Finally, Mr. Todorov argues that the orphans' court erred by failing to take into account a presumption that payments advanced by a family member are gifts, but he misstates the law on this point. Although we held in *Boyd* that *services* rendered by a family member are presumed to have been rendered for free, we explicitly declined to expand this presumption to the advancement of funds. 145 Md. App. at 651. Thus, the orphans' court was not required to start from a presumption that Ian's payments (of almost \$75,000) were a gift. And given the evidence we have recounted above and the absence of evidence to the contrary, we see no error in the court's conclusion that both parties intended that Ian would be reimbursed.

B. The Statute of Limitations Does Not Bar Ian's Claim.

Mr. Todorov argues *next* that even if we find a valid contract between Ian and Cynthia, Ian is barred from recovering payments made prior to October 8, 2011, because the three-year statute of limitations applies to each check Ian wrote on Cynthia's behalf. The statute of limitations provides that "[a] civil action at law shall be filed within *three years from the date it accrues.*" CJP § 5-101 (emphasis added). A cause of action for breach of contract accrues "when 'the breach was or should have been discovered.'" *Boyd*, 145 Md. App. at 669 (quoting *Jones v. Hyatt Ins. Agency, Inc.*, 356 Md. 639, 648 (1999)). "The accrual date in any given case is left to judicial determination, and may be a question of law, a question of fact, or a mixed question of law and fact." *Id.* (citing *Frederick Rd. Ltd. P'ship v. Brown & Sturm*, 360 Md. 76, 95 (2000)). There is no dispute that Ian had been paying Cynthia's share of the Flemington properties' expenses since 2005, and that

Cynthia did not repay Ian before her death. Moreover, both Ian and Stephen testified that Cynthia agreed to repay Ian for her share of the properties' expenses. As such, the orphans' court did not err by concluding that "there was a continuing creditor relationship with respect to the payment of properties' expenses." Ian's cause of action accrued when he stopped paying Cynthia's expenses and demanded repayment by filing a claim with the estate. *See Boyd*, 145 Md. at 669 (finding that an oral contract with a decedent for reimbursement for repayment of expenses "at some point in the future, upon demand" was not breached until the estate disallowed appellant's claim for repayment). And we find no error in the court's conclusion that the statute of limitations would not require Ian to bring an action within three years after each check was written, but rather three years after he stopped paying Cynthia's properties' expenses.

**JUDGMENT OF THE ORPHANS'
COURT FOR BALTIMORE
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**