NOT DESIGNATED FOR PUBLICATION

No. 108,935

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

KATHERINE COLE,
Appellee,

v.

LANE PETERSON,
Appellant.

MEMORANDUM OPINION

Appeal from Johnson District Court; JAMES CHARLES DROEGE, judge. Opinion filed September 27, 2013. Affirmed.

Robert M. Pitkin and *Shane C. Mecham*, of Levy Craig Law Firm, of Kansas City, Missouri, for appellant.

Brant A. McCoy, of McCoy Law Firm, LLC, of Olathe, for appellee.

Before MALONE, C.J., ATCHESON, J., and LARSON, S.J.

Per Curiam: This is an appeal by Lane Peterson from the district court's judgment ordering him to pay $53,289.25 to Katherine Cole based on the parties' oral contract entered into during their long-term romantic relationship.

Peterson argues (1) the district court erred in granting Cole recovery under the mutually exclusive legal theories of breach of contract and unjust enrichment, (2) the parties' oral agreement is unenforceable because it violates the statute of frauds, and (3) the statute of limitations periods established by K.S.A. 60-512 and K.S.A. 60-513(a)(4)

bar Cole's right to recovery under the breach of contract theory and unjust enrichment theory respectively.

We do not find that any of Peterson's arguments justify reversal and consequently we affirm the district court.

FACTUAL AND PROCEDURAL BACKGROUND

Cole and Peterson met and started dating in 1999 while they were both in medical school. They moved in together in 2001 and continued to be together as the locations of their residencies and fellowship programs in Virginia and Florida allowed until they both returned to Kansas in 2009. They lived together in Kansas until September 2010 when their relationship ended and Cole moved out.

The testimony at trial revealed that both parties believed they were going to marry eventually. They had discussed marriage, and Peterson even bought an engagement ring but had never given it to Cole. They had never been formally engaged or married. During the 11-year relationship, the couple generally maintained separate finances, did not have joint bank accounts, but did share daily living expenses.

After the split, Cole filed the lawsuit, the subject of this appeal on August 12, 2011, in Johnson County where both parties lived. The issues pertinent to this appeal are Cole's claims of breach of contract, quantum meruit, and unjust enrichment. Cole alleged Peterson owed her thousands of dollars for her financial support to him during the course of their relationship. A bench trial was held in September 2012. Both Cole and Peterson testified.

The evidence at trial showed that Cole made 13 transfers of money from her bank account to Peterson's bank account starting while the couple was in Virginia in April

2008. The first transfer was April 1, 2008, in the amount of $2,500. Cole testified Peterson had requested the "loan" because he was unable to pay his bills. Cole maintained that while she was "happy to help him out" the money advanced was from her family inheritance and she had clearly communicated to Peterson that he would be obligated to pay her back. Cole made two more transfers of money to Peterson in April 2008 totaling $3,000.

The next relevant transfers of money from Cole occurred at Peterson's request while they were both in the process of moving to Kansas City. Cole transferred $1,000 to Peterson in August 2009; $2,000 on October 13, 2009; and $5,000 on October 21, 2009. Cole explained in her testimony that she made these transfers because Peterson's job in Kansas City did not work out and he did not have consistent full-time employment until mid-2010. Between November 9, 2009, and May 3, 2010, Cole made multiple direct transfers of money totaling $14,500 from her bank account to Peterson's bank account. The total of the above transfers was $32,000.

Cole testified that she discussed with Peterson that these transfers of monies from her family inheritance were only loans to support him while he started his private practice and that she expected to be repaid. She said Peterson always agreed that he would pay her back when he was able to do so. Peterson, in his testimony consistently and firmly denied that Cole ever told him that she expected repayment of these transfers or that he agreed to repay her.

When the couple moved from Virginia to Kansas in 2009, Cole paid $4,000 of the moving expenses not covered by her employer. Peterson never reimbursed her for his half of this cost.

In January 2010, while Peterson was setting up his private practice, Cole again used family inheritance money to write him a $25,000 check, which was stated on the

check to be a "business loan." She testified that the money allowed Peterson to pay his credit card debt so he could get a business loan from a bank. Cole said they discussed putting their agreement in writing but never did. At the time of the bench trial, the $25,000 loan remained unpaid.

Peterson testified that Cole wrote him the $25,000 check because he needed to show the bank that he had enough money in his account to cover his business expenses until his practice became profitable. Peterson testified he received the business loan and offered to repay Cole the $25,000 but, according to Peterson, Cole suggested he use the money to pay down his other debts. Peterson denied that he and Cole had never entered into any agreement that the $25,000 was a loan he was to repay.

When questioned on why the couple never reduced their agreements to writing, Cole explained she had assumed they would eventually marry and she believed in "good faith" that Peterson would eventually pay her back.

Throughout her testimony, Cole stated she had multiple conversations with Peterson, each time she continued to lend him money, explaining that she expected repayment of the money she had given him; however, she could not give any specific details regarding exactly when those conversations occurred or what terms were agreed upon.

On cross-examination, Cole stated that she had given money to Peterson beginning in the fall of 2003 and he had agreed he would repay her after he had completed his schooling and was employed as a physician. Peterson completed his medical education (3 years of residency and a 1-year fellowship) in 2007, but Cole said she did not require him to start paying her back because he was still financially unable to do so.

At the end of the trial, and without any argument or assistance of counsel, the district court ruled from the bench in a not totally consistent manner as to the theory that was being utilized in granting judgment. It is clear that the court found there was an oral contract between the parties as outlined in Cole's testimony. The court stated at one point that it was awarding damages for breach of contract and to prevent unjust enrichment.

The journal entry of judgment states the following relating to the numerous payments from Cole to Peterson:

> "Concerning the transfers of funds from the Bank of America accounts that occurred between April of 2008 until May of 2010, the Court finds that the first four transactions that occurred between April of 2008 and August of 2009 are outside the statute of limitations and thus barred. The Court finds that the transactions beginning in October of 2009 until May of 2010 consist of a breach of contract and orders that Defendant Peterson pay the Plaintiff $26,500."

As to the "business loan" from Cole to Peterson, the journal entry of judgment reads: "Concerning the $25,000 paid by Plaintiff to Defendant Peterson in January of 2010, the Court finds that there was a breach of contract and that Defendant Peterson is ordered to pay $25,000 to the Plaintiff."

The journal entry then states Cole was not entitled to recover for gym membership fees, damages to her car, and repairs of an air conditioning unit but then concludes: "The Court does, however, find that Defendant Peterson owes $1,789.25 to Plaintiff for half of the moving expenses that were incurred in 2009 and orders Defendant Peterson to pay that amount." Judgment in the total amount of $53,289.25 was entered on behalf of Cole and against Peterson.

From the trial court's ruling, Peterson has timely appealed.

Peterson first makes an untenable contention that because the trial court found a breach of contract and said damages were to be awarded to "prevent unjust enrichment," we should reverse "the quantum meruit/unjust enrichment judgment entered against the defendant."

At the end of a long day of trial, the district court's wording as to the adopted theory of recovery is at times subject to question, but our long-time rule clearly is that a "correct result in district court will be upheld even where court relied on wrong ground or assigned erroneous reasons for decision." *Hockett v. Trees Oil Co.*, 292 Kan. 213, 218, 251 P.3d 65 (2011) (citing *Robbins v. City of Wichita*, 285 Kan. 455, 472, 172 P.3d 1187 [(2007]). Further, in a civil action, a district court's journal entry of judgment controls over a prior announcement from the bench. *Steed v. McPherson Area Solid Waste Utility*, 43 Kan. App. 2d 75, Syl. ¶ 7, 221 P.3d 1157 (2010).

Peterson correctly states that it is our Kansas rule that "[r]ecovery for payment under the terms of a contract and recovery for quantum meruit are mutually exclusive legal concepts." *Midwest Asphalt Coating v. Chelsea Plaza Homes*, 45 Kan. App. 2d 119, Syl. ¶ 5, 243 P.3d 1106, *rev. denied* 292 Kan. 965 (2011). However, there was no motion by Peterson at the end of the evidence to require Cole to elect the theory she wished to proceed on, so it was proper for both theories to be considered by the trial court. And, when questioned by Peterson's counsel near the end of the trial court's ruling, the court may have somewhat ineloquently said, "So if you want to call it a breach of contract, it would be a breach of the quasi contract that results in the theory of unjust enrichment and quantum meruit." But, immediately following, when Peterson's counsel asked, "So the damages are pursuant to breach of the contract count?" The court said, "Yeah."

Further, when the manner in which the 3-year limitation period was applied to the $32,000 in loans to Peterson is recognized and the wording of the journal entry, it is clear that the trial court ruled that a breach of contract occurred as to all the October 2009 to

May 2010 advances and the $25,000 business loan in January 2010. As to the $1,789.25 judgment requiring Peterson to pay a portion of the parties' moving expenses, the theory of recovery is not directly stated but it can only logically be based on a separate and valid quantum meruit/unjustment theory.

There was clearly sufficient competent evidence to support the district court's limited findings of fact and conclusions of law. *Hodges v. Johnson*, 288 Kan. 56, 65, 199 P.3d 1251 (2009). Further, we do not weigh conflicting evidence, evaluate witnesses' credibility, or redetermine questions of fact. *In re Adoption of Baby Girl P.*, 291 Kan. 424, 430-31, 242 P.3d 1168 (2010).

Based on our review of the record submitted, the judgments rendered in the amount of $51,500 was based on the breach of oral contracts and the judgment in the amount of $1,789.25 was one based on unjust enrichment due to the parties' "relationship and cohabitation." There is no reversible error here.

Peterson argues the statute of frauds, K.S.A. 33-106, bars Cole from recovering under her breach of contract judgment which was entered against him. We cannot grant Peterson any relief under this argument for several reasons.

First, there was no ruling on this contention in the district court for us to review. A litigant must object to inadequate findings and rulings in order to give the trial court the opportunity to correct them. In the absence of an objection, omission in findings and conclusions will not be considered on appeal. *Hill v. Farm Bureau Mut. Ins. Co.*, 263 Kan. 703, 706, 952 P.2d 1286 (1998). Also, an appellant has the burden to designate a record sufficient to establish the claimed error and without an adequate record the claim of error fails. *McCubbin v. Walker*, 256 Kan. 276, 295, 886 P.2d 790 (1994). Further, assertions in an appellate brief are not sufficient to satisfy inadequacies in the record on appeal. *Smith v. Printup*, 254 Kan. 315, 353, 866 P.2d 985 (1993).

Additionally, if we were required to reach this issue, the standard of review in determining whether an alleged contract satisfies the statute of frauds involves an interpretation of a statute, and our standard of review is unlimited. *Young v. Hefton*, 38 Kan. App. 2d 846, 850, 173 P.3d 671 (2007).

K.S.A. 33-106 bars any action brought "upon any agreement that is not to be performed within the space of one year . . . unless the agreement . . . shall be in writing and signed by the party to be charged therewith."

Peterson does not connect any of the current loans Cole made to him to this statute of frauds argument and relies on conversations going back to 2003 regarding advances which were not to be repaid until after Peterson finished his medical education. There is no nexus or relevance from those conversations to the 2009 and 2010 loans.

All of the testimony in this case pointed to the time of repayment as being "uncertain." When the contract is of an uncertain duration, the statute of frauds only deems contracts that cannot *possibly* be completed within 1 year as unenforceable. *Nutt v. Knutson*, 245 Kan. 162, 164, 776 P.2d 475 (1989); Restatement (Second) of Contracts § 130 (1979), comment A.

Furthermore, "[w]hen a defendant asserts the statute of frauds as an affirmative defense, the burden of proof is on him." *Augusta Bank & Trust v. Broomfield*, 231 Kan. 52, 59, 64 P.2d 100 (1982). Peterson has clearly failed in such burden. There are numerous possible ways Peterson could have repaid Cole, a loan, an inheritance, a windfall, income from employment, or other ways. As in *Augusta Bank*, we conclude Peterson failed to satisfy his burden of proof to invoke the statute of frauds.

Finally, as *Walker v. Ireton*, 221 Kan. 314, 320, 559 P.2d 340 (1977), said: "The statute of frauds was enacted to prevent fraud and injustice, not to foster or encourage it." Under our facts, it was not properly raised and ruled on below, the record is inadequate, the facts relied on are not relevant, the term was uncertain, and Peterson's burden of proof was not satisfied. This issue does not merit reversing the trial court.

Peterson's final contentions that the limitation periods set forth in K.S.A. 60-512 and K.S.A. 60-513(a)(4) bar Cole's $51,500 recovery do not entitle him to any relief. In fact, the court below correctly applied the 3-year limitation period of K.S.A. 60-512 to Peterson's advantage to bar Cole's requests for repayment of $5,500 of advances made more than 3 years prior to August 12, 2011, when this case was filed.

K.S.A. 60-512 states: "The following actions shall be brought within three (3) years: (1) All actions upon contracts, obligations or liabilities expressed or implied but not in writing."

The court specifically found that the limitations period for the loans made by Cole to Peterson between April 2008 and August 2009 had expired. Cole's cause of action *did not* accrue in 2007; there is no nexus or relevance to earlier advances between the parties, and no finding was made by the trial court upon which Peterson may receive more benefits from K.S.A. 60-512 than he received from the trial court.

All of the numerous transactions between October 2009 and May 2010 resulting in the $26,500 judgment were properly within the 3-year period allowed by K.S.A. 60-512.

Likewise, the $25,000 "business loan" of January 2010 was within the 3-year period prior to August 12, 2011.

The court found in each of these transactions the obligation on part of Peterson to repay the amount he received, that he had breached his contract to do so, and judgment in the amount of $51,500 was correctly entered.

A different limitation period applies to the court's award of the $1,789.25 judgment for Peterson's failure to reimburse Cole for his portion of the moving expenses she paid on his behalf.

K.S.A. 60-513(a)(4) provides for a 2-year statute of limitations for "an action for injury to the rights of another, not arising on contract, and not herein enumerated." This 2-year period of limitations applies to the unjust enrichment and quantum meruit recovery of $1,789.25 which Cole was awarded against Peterson.

The transaction upon which this part of the court's judgment was based was found by the court to have occurred on or after October 2009. With the suit brought in August 2011, this part of the judgment was clearly within the 2-year limitation contained in K.S.A. 60-513(a)(4).

We are confident in our conclusion that the district court reached the correct result in this case for all the reasons we have expressed herein.

Affirmed.