

NOTICE: Summary decisions issued by the Appeals Court pursuant to M.A.C. Rule 23.0, as appearing in 97 Mass. App. Ct. 1017 (2020) (formerly known as rule 1:28, as amended by 73 Mass. App. Ct. 1001 [2009]), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 23.0 or rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

21-P-995

HOLLY STEVENSON

vs.

MICHAEL P. STEVENSON, personal representative.<sup>1</sup>

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

Michael Stevenson, personal representative of the estate of his mother, Genevieve Stevenson, appeals from a judgment, entered after a jury-waived trial, awarding the plaintiff, Holly Stevenson, \$140,000 in damages plus interest.<sup>2</sup> We conclude that, although the mother's oral promise to compensate the plaintiff with half the value of her house in exchange for services rendered is unenforceable under the Statute of Frauds, the plaintiff may recover in quantum meruit. Further concluding that the evidence at trial supported the plaintiff's recovery in

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<sup>1</sup> Of the estate of Genevieve Stevenson.

<sup>2</sup> The parties waived detailed written findings of fact and rulings of law under then applicable Rule 20 of the Rules of the Superior Court (2018). See Motsis v. Ming's Supermarket, Inc., 96 Mass. App. Ct. 371, 379 n.20 (2019).

quantum meruit and that the amount of damages was appropriate, we affirm.

1. Standard of review. Where, as here, the parties agree, pursuant to Rule 20(2)(h) of the Rules of the Superior Court (2022), to waive detailed findings of fact, "appellate review of the court's decision and of the judgment entered shall be according to the standard of review that would apply to a verdict by a jury in a case tried to a jury and to the judgment entered thereon." Rule 20(8)(b) of the Rules of the Superior Court. "To the extent the [parties] argue that the basis of the judge's finding is unclear, that argument is waived." Spinosa v. Tufts, 98 Mass. App. Ct. 1, 17 (2020).<sup>3</sup> Thus, we will uphold the judgment if "anywhere in the evidence, from whatever source derived, any combination of circumstances could be found from which a reasonable inference could be drawn in favor of the [prevailing party]." Rabassa v. Cerasuolo, 97 Mass. App. Ct. 809, 814 (2020), quoting Dobos v. Driscoll, 404 Mass. 634, 656, cert. denied, 493 U.S. 850 (1989). See Spinosa, supra at 10 (standard of review applicable to verdict by jury applies to judge's answers to special questions).

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<sup>3</sup> Although the Superior Court Rules were most recently updated in September 2022, the language in Rule 20(8)(b) remains identical to the earlier version applicable here. See Rule 20(8)(b) of the Rules of the Superior Court (2018). Accord Spinosa, 98 Mass. App. Ct. at 10 n.10.

2. Statute of Frauds. The Statute of Frauds requires that a contract to make a devise be in "writing signed by the decedent evidencing the contract." G. L. c. 190B, § 2-514 (iii).<sup>4</sup> Where "the agreement amount[s] to an oral contract . . . and hence is unenforceable by reason of the Statute of Frauds, the plaintiff's suit may proceed for recovery in quantum meruit." Northrup v. Brigham, 63 Mass. App. Ct. 362, 369 (2005). "[I]ndeed, often the reason the recovery in quantum meruit is allowed is because an oral contract is unenforceable by reason of the Statute of Frauds." Mike Glynn & Co. v. Hy-Brasil Restaurants, Inc., 75 Mass. App. Ct. 322, 325 (2009). See Uniform Probate Code comment to G. L. c. 190B, § 2-514, 31 Mass. Gen. Laws Ann. at 154 (West 2012). Cf. Boston Med. Ctr. Corp. v. Secretary of the Executive Office of Health & Human Servs., 463 Mass. 447, 467 (2012) ("A plaintiff is not entitled to recovery on a theory of quantum meruit where there is a valid contract that defines the obligations of the parties").

Here, the decedent's oral promise to pay the plaintiff "half of the house" as compensation for the plaintiff's caretaking services is unenforceable because of the Statute of Frauds. See G. L. c. 190B, § 2-514. Nonetheless, the plaintiff's "claim for quantum meruit [was] not barred by the

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<sup>4</sup> In addition, such a promise could be enforceable if stated or referenced in a will. See G. L. c. 190B, § 2-514 (i), (ii).

Statute of Frauds." Mike Glynn & Co., 75 Mass. App. Ct. at 325. See Northrup, 63 Mass. App. Ct. at 366 (although decedent's oral agreement bequeathing estate to plaintiff was unenforceable under the Statute of Frauds, agreement "could provide the basis for the recovery in quantum meruit . . . [for] the fair value of her services"). Cf. Cantell v. Hill Holliday Connors Cosmopulos, Inc., 55 Mass. App. Ct. 550, 554 n.6 (2002) ("Because G. L. c. 259, § 7, applies to a contract implied in fact or in law, the statute also precludes recovery on any claim based on a contract implied in law, including recovery in quantum meruit"). Because the Statute of Frauds does not bar a claim for quantum meruit, it is irrelevant whether the plaintiff and the decedent anticipated that the plaintiff would be paid prior to the decedent's death or what the expected source of that payment would be. See Northrup, 63 Mass. App. Ct. at 370.<sup>5</sup>

3. Quantum meruit. "Quantum meruit 'is a claim independent of an assertion for damages under the contract, although both claims have as a common basis the contract itself.'" Liss v. Studeny, 450 Mass. 473, 479 (2008), quoting J.A. Sullivan Corp. v. Commonwealth, 397 Mass. 789, 793 (1986).

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<sup>5</sup> Whether the ruling on the motion to dismiss improperly limited the scope of the plaintiff's recovery is not before us, as the plaintiff did not cross-appeal. See Taylor v. Beaudry, 82 Mass. App. Ct. 105, 112 (2012) ("in the absence of a cross appeal an appellee may not obtain a decree more favorable than the one issued below").

To recover on a theory of quantum meruit, the plaintiff must prove "(1) that [she] conferred a measurable benefit upon the defendant[]; (2) that the claimant reasonably expected compensation from the defendant[]; and (3) that the defendant[] accepted the benefit with the knowledge, actual or chargeable, of the claimant's reasonable expectation." Finard & Co. v. Sitt Asset Mgt., 79 Mass. App. Ct. 226, 229 (2011). It is unsettled in Massachusetts whether there is a presumption that household services rendered by an unmarried cohabitant are gratuitous. See Northrup, 63 Mass. App. Ct. at 368. Accord Guild v. Guild, 15 Pick. 129, 130-131 (1833) (noting the court's division on the question). Cf. Vickery v. Ritchie, 202 Mass. 247, 250 (1909), S.C., 207 Mass. 318 (1911) (familial relationship may serve to rebut presumption "that labor and materials furnished for a person at his request are to be paid for"). Like the Superior Court, we will assume without deciding that such a rebuttable presumption applies here.

Here, the evidence presented at trial supported a conclusion that the plaintiff was entitled to recover in quantum meruit. See Northrup, 63 Mass. App. Ct. at 366-367 ("At this stage, the plaintiff has presented sufficient evidence in support of her theory [for quantum meruit] that in return for the substantial services she provided to the decedent over the years, he had promised her the bulk of his estate"). The

plaintiff testified that, upon the mother's discharge from a rehabilitation facility in May 2015, the facility "made [the plaintiff] sign a paper that said that [she] would be there with [the mother] 24/7" as a condition of the mother's return to the home. The plaintiff testified that the mother did not "want to go into a nursing home" and instead insisted that the plaintiff "take care of [her]." <sup>6</sup>

From May 2015 until the mother's death in February 2017, the plaintiff provided full-time caregiving services at the mother's home. The plaintiff testified that her mother told her "[m]any times" that she "was getting half of the house" as "compensation . . . for the services that [she] had been providing." See Hastoupis v. Gargas, 9 Mass. App. Ct. 27, 34-35 (1980) ("the decedent promised to bequeath to the plaintiff one-half of his estate in exchange for the plaintiff's performing services for him until his death"). This was a case where "[t]he facts and circumstances fully warranted the [trier of fact] in finding that the [decedent] . . . understood that [her daughter] expected to be paid for [her] services . . . and that [the decedent] received them with that understanding, and with an intent that there should be pecuniary recompense." Butler v.

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<sup>6</sup> The plaintiff testified that, "it got to the point where she didn't really call me her daughter much. She called me her caretaker."

Butler, 225 Mass. 22, 28 (1916). Accordingly, the plaintiff was "entitled to recover here under a theory of quantum meruit." Finard & Co., 79 Mass. App. Ct. at 231.

4. Damages. In the context of quantum meruit, "we have held that '[t]he reasonable value of the services to the promisor, that is to say, the value of the benefit conferred upon the promisor, is the appropriate restitutional measure of damages.'" Nardone v. LVI Servs., Inc., 94 Mass. App. Ct. 326, 335 (2018), quoting Slawsby v. Slawsby, 33 Mass. App. Ct. 465, 467 (1992). "While a party does not recover on the contract itself under quantum meruit, a court may look to the terms of the underlying contract to help determine appropriate recovery under quantum meruit." Liss, 450 Mass. at 480.

Here, the plaintiff's award of \$140,000 in quantum meruit damages was based on "the 'fair and reasonable value' of the services [s]he provided" to the decedent. Chang v. Winklevoss, 95 Mass. App. Ct. 202, 211 (2019), quoting J.A. Sullivan Corp., 397 Mass. at 797. See Nardone, 94 Mass. App. Ct. at 335 ("ample evidence of the enormous value of Nardone's work to the promisor" justified recovery in quantum meruit).<sup>7</sup> At trial, a

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<sup>7</sup> The plaintiff's full-time caretaking services encompassed "house maintenance including shoveling, yard upkeep, repairs[,], cleaning, cooking . . . [and] accompany[ing] [the mother] for shopping, groceries, etc." They also included administering the mother's medications, scheduling doctor's appointments, paying

licensed social worker with experience "in the elder care industry" testified that "the cost for a live-in caregiver at that time would have been 325 [dollars] per day," and the hourly rate for "24/7 care . . . would have been \$26 per hour." She testified that, based on "the training that [the plaintiff] received . . . at both the nursing center as well as at home from the Winchester Home Care," the value of the plaintiff's services "would be similar to a live-in caregiver . . . 325 [dollars] a day."

In addition to the trial testimony, the plaintiff's breakdown of care provided and a deed of the mother's estate were presented as exhibits. See Hastoupis, 9 Mass. App. Ct. at 35-36, quoting 5 Corbin, Contracts § 1113, at 601 (1964) ("When the unperformed promise is to leave a percentage of the estate, reliable evidence of the estate's value becomes some proof of 'the reasonable value of the performance that [the decedent] has received'"). The judge's determination of the reasonable value of services that the plaintiff rendered to the mother was supported by the evidence. See Nardone, 94 Mass. App. Ct. at 335; Hastoupis, supra at 38, quoting Downey v. Union Trust Co., 312 Mass. 405, 417 (1942) ("The ascertainment of the fair market value of services . . . must to a large extent be left to the

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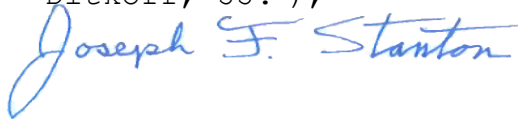
bills, bathing, and helping the mother go up and down the stairs.

good sense, practical wisdom and sound judgment of the trier of fact, mindful of the evidence and guided by the correct principles of law").

The estate argues that the plaintiff's award constitutes a windfall because the plaintiff expected to receive only "half of the house" as compensation for services rendered to the mother, and thus the plaintiff's total recovery, both as a beneficiary of the estate and as a judgment creditor, should not exceed half of the value of the house. This claim, however, was not raised at trial. "Issues not raised in the trial court are considered waived on appeal." Trapp v. Roden, 473 Mass. 210, 220 n.12 (2015). Accord Zielinski v. Connecticut Valley Sanitary Waste Disposal, Inc., 70 Mass. App. Ct. 326, 335-336 (2007). Accordingly, the windfall claim is not before us.<sup>8</sup>

Judgment affirmed.

By the Court (Rubin, Shin &  
Ditkoff, JJ.<sup>9</sup>),



Clerk

Entered: November 22, 2022.

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<sup>8</sup> The plaintiff's request for attorney's fees is denied. "Although the . . . appeal is unsuccessful, it is not frivolous." Filbey v. Carr, 98 Mass. App. Ct. 455, 462 n.10 (2020), quoting Gianareles v. Zegarowski, 467 Mass. 1012, 1015 n.4 (2014).

<sup>9</sup> The panelists are listed in order of seniority.