

IN THE COURT OF APPEALS OF TENNESSEE  
AT KNOXVILLE  
February 10, 2009 Session

**IN RE: THE ESTATE OF SAMUEL L. TUCKER, Deceased, v. KNOX  
COUNTY CHANCERY COURT, PROBATE DIVISION**

**Direct Appeal from the Chancery Court for Knox County  
No. 65461-3 Hon. Michael W. Moyers, Chancellor**

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**No. E2008-01225-COA-R3-CV - FILED APRIL 13, 2009**

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Plaintiff filed a claim for personal services to decedent in his probate estate proceedings. The Clerk and Master heard evidence on the claim and reported to the Court that plaintiff was not entitled to recover. The Trial Judge confirmed the Master's report on the basis that there was no contract between the parties for the claimed services, and invoked the presumption that the services were rendered by a family member out of love and affection. On appeal, we affirm.

**Tenn. R. App. P.3 Appeal as of Right; Judgment of the Chancery Court Affirmed.**

HERSCHEL PICKENS FRANKS, P.J., delivered the opinion of the Court, in which CHARLES D. SUSANO, JR., J., and J. STEVEN STAFFORD, J., joined.

Harry Lillard, Oak Ridge, Tennessee, for appellant, Pat Stooksbury.

Farrell A. Levy and Julie M. Cochran, Knoxville, Tennessee, for appellee, The Estate of Samuel L. Tucker.

**OPINION**

The Will of the Late Samuel L. Tucker was admitted to probate by the Petition of his brothers, co-executors named in his Will. The estate was bequeathed to his brothers.

Patricia Stooksbury, decedent's stepdaughter, filed a claim against the estate, seeking compensation for her time and services for caring for the deceased. An exception was filed to her

claim, essentially on the grounds there was no written contract for her to provide services to the deceased.

After several preliminary motions, a hearing was held before the Clerk and Master on February 11 and 12, 2008, who heard testimony on the issue before the Court. Following the evidentiary hearing, the Clerk and Master found that Stooksbury's claim for monetary compensation should be disallowed because her services were rendered with the expectation of receiving a legacy or devise by the decedent based solely upon his generosity, and not upon a contract nor quasi-contract. The Clerk and Master found that all of the witnesses who testified were, "from their perspectives, honest, forthright, and truthful", and that Stooksbury was so related to decedent that a presumption arose that the services she performed were gratuitous. She provided valuable services to decedent, but there was no contract for those services, rather, Stooksbury simply hoped that decedent would leave her something in his will, which did not entitle her to recovery. The Clerk and Master found that the services provided by Stooksbury were out of love and affection by a family member, and also benefitted her mother as well. The Master further found that the deceased did not expressly request any of Stooksbury's services.

The Chancery Court entered an Order confirming the Master's Report.

On appeal, the issues presented are:

1. Is the kinship between the deceased and Ms. Stooksbury such as to prevent her from recovering for her services?
2. Was there a legal contract between the decedent and Ms. Stooksbury?
3. Did the Clerk and Master's report rely on the controlling cases?

The Trial Court found that Ms. Stooksbury's claim should be denied based in part on the "family service rule", which provides that "family members are generally precluded from receiving compensation for their services to other family members because the law presumes that these services were gratuitous, motivated more by love and affection than by expectation of compensation." *In re Estate of Marks*, 187 S.W.3d 21, 29 (Tenn. Ct. App. 2005).

Ms. Stooksbury argues that this rule would not apply, since she was merely decedent's step-daughter, and was not related by blood nor adopted by him. This Court has explained, however, that "family" is a "flexible term that is broad enough to include a collective body of persons who form one household and who have reciprocal, natural, or moral obligations to support and care for one another." *Id.* at 30. This Court further stated that "while a family relationship may be based on a biological or legal relationship, it does not necessarily require ties of consanguinity or affinity." *Id.* at 30; *see* f.n. 3 and 4 (defining consanguinity as a blood relationship, and affinity as a relationship by marriage). Thus, this Court has found that the family service rule would apply as between unmarried persons who lived together, or to a nephew and aunt

who lived in separate houses on the same farm. *Id.*; see also *Cotton v. Estate of Roberts*, 337 S.W.2d 776 (Tenn. Ct. App. 1960).

In this case, we conclude the Trial Court correctly held that the family service rule would apply, as the decedent was Ms. Stooksbury's step-father for thirty some years, and she admitted that she considered him family and had affection for him. The other facet to the Court's ruling was the fact that all of the services rendered by Ms. Stooksbury were done while her mother was still alive, and were done for the benefit of both decedent and his wife, Ms. Stooksbury's mother, with whom Ms. Stooksbury testified that she shared a very close relationship and a great deal of love. Ms. Stooksbury admitted that most of the services she sought compensation for also benefitted her mother, and that she clearly performed these services out of love and affection for her.<sup>1</sup>

In order to rebut the presumption created by the family service rule, Ms. Stooksbury would need to prove that decedent expressly agreed to pay for the services, or that the decedent knew or should have known that she expected compensation for the same. *Marks*, at 29-30.<sup>2</sup> She would also need to establish the reasonable value of the services rendered to decedent. *Id.* Ms. Stooksbury did not show that decedent expressly agreed to pay her, nor that he knew or should have known that she would expect payment, and while there was testimony that decedent said he would "take care" of her, or that she would be wealthy one day, the evidence shows that his prior Will left his estate to his wife, or if she predeceased him, to Ms. Stooksbury, which was later revoked by the probated Will.

The Trial Court found, however, that the promise to "take care of" someone does not give rise to a contract or an agreement to pay for services. See *Marks* and *Cotton* ("[w]here one renders services to another in the hope or expectation of a legacy, devise, or other provision by will for his benefit, without any contract, express or implied, but relying solely upon the generosity of the person for whom such services were rendered, he cannot recover for such services because of the failure of such person to make such testamentary provision in his behalf"). In this case, decedent's statements that he would "take care of" her, are not specific or definite enough to create a contract. There is no evidence that decedent promised to pay Ms. Stooksbury a set amount or that he promised her a specific bequest. The proof was undisputed that she received an annuity upon decedent's death in the sum of \$9,000+, and decedent's final Will said that he felt she had been adequately provided for. In addition, Ms. Stooksbury admitted that she told decedent that his property was his to dispose

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<sup>1</sup>The Estate argues that the Clerk and Master's findings of fact are not reviewable because it was concurred in by the Chancellor. See Tenn. Code Ann. § 27-1-113. There are exceptions to the rule set forth in the code, i.e., where the question is a mixed one of law and fact, which appears to be the case here.

<sup>2</sup> The two cases appended to Ms. Stooksbury's brief and relied upon by her, i.e. *Brown v. Fuqua*, 9 Tenn. App. 22 (1928) and *In re Estate of McClanahan*, 471 S.W.2d 555 (Tenn. Ct. App. 1971), are distinguishable from this case because in both of those cases, the services were requested by the deceased and a contract was formed.

of as he wished, and this statement does not comport with her claim that they had an agreement. Accordingly, we affirm the Judgment of the Trial Court on its findings. Finally, Ms. Stooksbury argues the Court failed to apply the controlling law to the facts of this case. She argues that the case of *Cobble v. McCamey*, 790 S.W.2d 279 (Tenn. Ct. App. 1989), controls this case, because it involved a situation where neighbors (i.e. non-family) were compensated for services they provided to decedent, who promised to leave them a farm and some money when she died in exchange for their help. In that situation, however, there was no implication of the family service rule. There was also an express agreement that the plaintiffs would be compensated for their services. The case is inapposite.

We affirm the Judgment of the Trial Court and remand, with the cost of the appeal assessed to Patricia Stooksbury.

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HERSCHEL PICKENS FRANKS, P.J.