COURT OF COMMON PLEAS OF PHILADELPHIA
ORPHANS' COURT DIVISION
Estate of Catherine Hines, Deceased
No. 554 DE of 2002
Control No. 040470
Sur First Interim Account of Linda Tucker, Co-administratrix

The account was called for Audit April 5, 2004 By: **HERRON, J.**
Counsel appeared as follows:

Paul L. Feldman, Esquire – for the Accountant
Mary Jane Barrett, Esquire – for Milton Johnson
William Torchia, Esquire - for Marilyn Howell
Michael Simone, Esquire – for Green Acres Nursing Home
A. James Miller, Esquire – for Commonwealth of Pennsylvania

ADJUDICATION

Catherine Hines died intestate on October 5, 2002. She was not survived by a husband but she was survived by six grandchildren: Marilyn Howell; Linda Tucker; Carolyn Thomas; Phillip Harris; Ruth Thomas and Dennis Harris. She also left behind a companion of twenty five years, Milton Johnson. Letters of Administration were granted to Marilyn Howell and Linda Tucker on January 22, 2003. Linda Tucker, as co-administratrix, filed an account on March 3, 2004, proposing that the principal and income of the estate be retained by the co-administrators pending administration of the estate. In her petition, she also lists each of the six grandchildren as having a one-sixth intestate share of the Estate.

The accountant raised as a question for adjudication whether a claim by Milton Johnson for an amount exceeding $885,827 should be allowed.[1] For the reasons set forth below, Milton Johnson's claim should be allowed in the amount of $295,152 for his services to Catherine during the period between June 1999 through May 31, 2001 but not

[1] In her original petition, the accountant also raised as a question whether the claim of Ann Miller, former counsel to Marilyn Howell, should be charged against Marilyn Howell's share as a distribution, but this question was not pursued.

for the period of her extensive hospitalizations or institutionalizations from June 1, 2001 through October 5, 2002.

The Claim of Milton Johnson

Procedural Background

On January 22, 2003 Milton Johnson filed a claim against the Estate of Catherine Hines for $490,880. In August 2003, he filed an amended claim in the amount of $885,825.00. Linda Tucker responded by filing a petition to show cause why this claim should not be stricken, but her petition was dismissed by decree dated December 10, 2003, and the administrators of the Estate of Catherine Hines were ordered to file an account. Linda Tucker, alone, as co-administratrix filed an "interim" account on March 3, 2004. Objections to this account were filed by Marilyn Howell,[2] a co-administratrix, and the Green Acres Nursing and Rehabilitation Center.[3] These objections were discontinued,[4] but Milton Johnson persisted in his claim and a hearing was held on September 28, 2004 and November 18, 2004.

Factual Background

Milton Johnson and Catherine Hines had been companions for 25 years prior to her death at age 77 on October 5, 2002. They never married, however, because Milton was married to another woman.[5] For many years beginning around 1995, they resided together in the home of Catherine's grandchild, Marilyn Howell, who was raised by

[2] Marilyn Howell claimed that she should be considered as the daughter of Catherine Hines by virtue of the doctrine of equitable adoption because she had been raised as a daughter by Ms. Hines. Marilyn Howell subsequently abandoned this theory and objection.
[3] Green Acres claimed an outstanding balance of $15,973.18 due to admission of Catherine Hines on February 5, 2002 until her death in October 2002.
[4] Marilyn Howell filed a praecipe to withdraw her objections on October 5, 2004. By decree dated May 17, 2004, this court ordered that a check payable to the Green Acres Nursing Home in the amount of $15,973.15 would be issued in satisfaction of the decedent's nursing home charges.
[5] 9/28/04 Hearing (hereinafter N.T.) at 9, 12.

Catherine as her daughter.[6] Milton and Catherine paid rent to Marilyn[7] and they shared expenses.

A critical event in Catherine's life occurred in June 2001 when Catherine suffered serious personal injuries due to an overdose of the drug coumadin while she was a patient at St. Agnes Hospital.[8] As a result of these injuries, a personal injury action was initiated and that action ultimately resulted in the fund that is the bulk of the Hines Estate's assets.[9] Nearly a year after the coumadin episode on May 24, 2002, Marilyn and Milton were appointed Catherine's co-guardians. At that time, Catherine had an estate consisting of approximately $7,000 in a Wachovia account. She also had an expectancy of a recovery from the previously filed coumadin malpractice case against St. Agnes Medical Center and other defendants.[10] After Catherine's death in October 2002, Letters of Administration were granted to Linda Tucker and Marilyn Howell. The Hines Estate and the other parties subsequently reached a gross settlement of the personal injury action in the amount of $900,000 with the net proceeds for the Hines Estate totaling $476,107.76 as approved by Judge O'Keefe with a May 21, 2003 court order.[11] This sum is presently being held in the escrow fund of the personal injury attorney.[12]

After Catherine's death, Milton filed an amended claim in which he sought compensation in the amount of $885,825 for the services he had rendered to Catherine after her health began to seriously decline around January 1999. The amended claim set forth various theories of recovery: quantum meruit; contract, reimbursable expenses;

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6 Johnson 12/30/04 Memorandum at 3.
7 9/28/04 N.T. at 67.
8 Johnson 12/30/04 Memorandum at 1.
9 See Account at 1 (Settlement proceeds: $476,107.76)
10 See Johnson 12/30/04 Memorandum at 2.
11 Tucker, 6/25/04 Motion in Limine, Ex. "C."
12 Johnson 12/30/04 Memorandum at 2.

partnership/palimony claim; estoppel; unjust enrichment; and injuries suffered in the course of caregiving services. A hearing was scheduled on these claims, but by the time of the hearing, Milton had narrowed his theory of recovery to quantum meruit or unjust enrichment focusing on the services he had rendered to Catherine.[13]

To support his claim, Milton presented testimony from 3 relatives (Addie Cotton, Ernestine Green and Carolyn Thomas), from Catherine's cardiologist (Dr. Veronica Covalesky) as well as from Andrea Jones, Executive Director of Intervention Association, a non-for-profit case manager agency.[14] The co-administratrix, Linda Tucker, in contrast, presented no witnesses.

The testimony of Catherine's relatives[15] and her physician were unequivocal as to Milton's critical role in Catherine's survival at home by providing substantial and essential services at a time when she required full time care. What was particularly striking was that the most compelling testimony was by witnesses who either were disinterested, such as Catherine's cardiologist, or whose interests were adverse—such as Catherine's granddaughter (and thus an intestate heir)-- Carolyn Thomas.

Catherine's cardiologist, Dr. Veronica Covalesky, described the devastation wrought on Catherine's health and independence in early 1999 by a heart attack and then a series of strokes. Dr. Covalesky testified that she first met Catherine while she was hospitalized at St. Agnes Hospital in April 1999. Significantly, at this first meeting Milton was present with Catherine in her hospital room. As the doctor recalled, "She was

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[13] See 11/18/2004 N.T. at 56-58. This is also the theory persuasively set forth in Johnson 12/30/04 Memorandum and his 2/7/05 Reply Memorandum.

[14] 9/28/04 N.T. at 44. Ms Jones explained that Intervention Services provides services to people of various ages from case management services to home health aides. Id. at 44.

[15] Marilyn Howell was precluded from testifying due to the Dead Man's Rule, 42 Pa.C.S.A. § 5930, for the reasons set forth in this court's opinion dated September 21, 2004.

very sick at the time having been in congestive heart failure because of the heart attack causing a problem with her mitral valve."[16] After arranging for Catherine's transfer to Hahnemann Hospital for cardio catherization, Dr. Covelsky "was her attending cardiologist for the remainder of her existence."[17] During a first office visit, the doctor observed that Catherine "was limited in her ability to walk and to stand. She needed to be reoriented. Her memory wasn't good and she certainly could not take her medicines without assistance getting around without assistance."[18]

Catherine suffered several strokes, one at the time of a mitral valve replacement and another during oral surgery.[19] From a medical standpoint, Catherine at this point "had a whole host of medical problems besides the strokes. The strokes left her with something called neurocognitive deficit. She had issues with her blood pressure, chronic issues with her anticoagulation. She was subject to infections. I don't have the medical record in front of me but there was a whole laundry list of problems that she had."[20] This "laundry list" included problems with memory, difficulty standing up, poor balance and a lack of awareness as to where she was.[21] The cascading effect of Catherine's medical problems had a profound effect on her:

> It was an ongoing issue and every time something else happened to her, more medical problems would occur. So the degree and numbers of the problems just progressed with time. And, for instance, she had a heart rhythm problem that came and went. She had infections that came and went. If she fell, that would create more problems. So it was really one thing after another with poor Ms. Hines. 11/18/04 N.T. at 8.

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16 1/18/04 N.T. at 5. See also id. at 6.
17 1/18/04 N.T. at 7.
18 11/18/04 N.T. at 7-8.
19 11/18/04 N.T. at 7.
20 11/18/04 N.T. at 8.
21 11/18/04 N.T. at 12-13.

As a consequence of these debilities, Catherine "absolutely needed full support. She couldn't—if left to her own devices, I'm sure she couldn't be able to feed herself on a regular basis, couldn't negotiate her medicines, couldn't get back and forth to her doctor visits. She needed full assistance with every aspect of her life."[22] When asked how Catherine had been able to manage, Dr. Covelsky immediately pointed to Milton Johnson's key role in her survival:

> Q: Do you know how she got this assistance?
> A: Well, Mr. Johnson was always at her side from the first day that I met her. He was there. Her daughter also helped, that I spoke with on the phone most of the time, and I believed that was how care was rendered.
> He would help her in the office. If she had to go to the bathroom, she was in a wheelchair, couldn't stand up by herself. He would have to take the wheelchair out of the room. My medical assistant would point them in the right direction and take her to the bathroom and help her with the commode. She would have to go a lot. She didn't have control of her bowels. He was a pretty faithful caretaker in that regard. 11/18/04 N.T. at 9-10.

In addition to witnessing Mr. Johnson's care of these personal needs, Dr. Covalesky relied on Milton to manage Catherine's complicated medication regimen. He generally arranged for Catherine's numerous medical appointments as well as administering her medication, at which he "was very compulsive" and attune to the dangers of drug interactions.[23] He questioned the staff if he sensed any errors had been made and was "very much on top" of her medical regimen which was "prone to errors and interactions because of its complexity" due not only to potential drug interactions but food interactions as well. In fact, according to Dr. Covalesky, Milton "was striking in the way that he managed this. We have lots of patients in lots of families and I have to say in the course of 15 years he sticks out in my mind as being someone who was compulsive, compassionate, interested and very detail oriented about this, and I don't think that she

[22] 11/18/04 N.T. at 9.
[23] 11/18/04 N.T. at 10.

would have survived as long as she did in the state that she did without his help."[24] More specifically, Dr. Covalesky expressed the opinion that without Milton's assistance, Catherine would have been placed in a nursing home where "usually people deteriorate much more quickly in that environment than they do in a loving home environment."[25]

The claimant concedes, however, that after the coumadin overdose at St. Agnes Hospital, "Catherine spent approximately the last year of her life in and out of hospitals and rehabilitation and nursing facilities.[26] The record, however, is unclear as to the exact amount of time that Catherine was living away from home. On cross-examination, for instance, Dr. Covelsky conceded that she would need to review the record as to these various institutions and hospitalizations. Catherine's care when in these institutions, she agreed, would have been primarily provided by the "institution staff."[27] The doctor did point out, however, that because of serious staffing problems plaguing hospitals: "In the last couple of years, being a patient in the hospital, if your family is not there helping you out, you may not be getting the care you should be."[28] When pressed more specifically as to Milton Johnson's role in Catherine's care while hospitalized, the doctor observed: "He was there a lot. I rounded early in the morning and late in the day, and whenever I was there, he was there."[29] The doctor did not, however, describe any specific services she observed Milton providing during these periods.

The relatives of Catherine who testified as to Milton's role in her care likewise underscored his substantial and significant work to assure Catherine's day-to-day survival

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[24] 11/18/04 N.T. at 11-12. (emphasis added).
[25] 11/18/04 N.T. at 16.
[26] Johnson 12/30/04 Memorandum at 3. Dr. Covelsky likewise testified that during this period Catherine "would get discharged from the hospital and be too sick to go home." 11/18/04 N.T. at 17.
[27] 11/18/N.T. at 19.
[28] 11/18/04 N.T. at 19.
[29] 11/18/04 N.T. at 20.

at home. Milton was specifically observed feeding Catherine,[30] administering her medicine,[31] caring for bed sores,[32] taking her to the doctors,[33]helping her bathe,[34] changing her underwear,[35] supervising her care while hospitalized,[36]and advancing money to purchase medicine and other necessities for Catherine.[37] Although the testimony of Milton's daughter, Ernestine Green, suffered from a vagueness and lack of clear recollection, ironically Milton's essential services for Catherine were effectively described by Carolyn Thomas, who, as one of Catherine's six grandchildren, would benefit as an intestate heir if Milton's claim were denied. As a home health aid in her own right, Ms. Thomas was uniquely suited to comment on Milton's role. After noting that around January 1999 Catherine could not feed herself, walk, give herself medicine or go to the toilet by herself, Ms. Thomas noted that Milton was always with Catherine and "he would never leave her alone."[38] As to the ways Milton assisted Catherine, Ms. Thomas observed:

> He would do a lot. He would take her up and down the steps by hisself when she couldn't move. He would help transfer her with assistance to the wheelchair and then later years, he'd just be there, he just would be there, he just would sit there.[39]

Ms. Thomas testified that she accompanied Milton and Catherine on trips to North Carolina when they visited Catherine's sister. On those occasions, Milton would still help with the feeding, medicating and toileting for Catherine, while Ms. Thomas

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[30] 9/28/04 N.T. at 58 (Ernestine Green); Id. at 76 & 79 (Carolyn Thomas).
[31] 9/28/04 N.T. at 59(Ernestine Green); Id. at 76 & 79 (Carolyn Thomas).
[32] 9/28/04 N.T. at 60 (Ernestine Green).
[33] 9/28/04 N.T. at 60 (Ernestine Green).
[34] 9/28/04 N.T. at 76 & 79 (Carolyn Thomas).
[35] 9/28/04 N.T. at 56 (Ernestine Green); Id. at 76 & 79 (Carolyn Thomas).
[36] 9/28/04 N.T. at 62 (Ernestine Green).
[37] 9/28/04 N.T. at 65-66 (Ernestine Green).
[38] 9/28/04 N.T. at 75 (Carolyn Thomas).
[39] 9/28/04 N.T. at 76.

would accompany her to the public restrooms.[40] For this assistance, Ms. Thomas was paid.[41]

The strongest accolade to Milton's services to Catherine was from her sister, Addie Thomas. According to Addie, Catherine "didn't have nobody to take care of her but Milton and Marilyn. That's all the ones that she had to take care of her."[42] Milton's services were therefore particularly crucial, Ms. Cotton suggested, because except for Marilyn Howell and Carolyn Thomas, Catherine's other grandchildren, the intestate heirs, rarely—if ever—visited.[43]

The critical role that Milton played in maintaining Catherine's life was emphatically outlined by Addie Cotton in the following colloquy:

> Q. Tell me, how was Catherine doing in 1999, the spring of "99 when you saw her?
> A. She wasn't doing too good after she had that heart attack and right after that she had a stroke.
> Q. Was she able to walk on her own?
> A. Not that much.
> Q. Was she able to toilet herself?
> A. Had to, you know, take her.
> Q. Was she able to give herself her own medicine?
> A. No.
> Q. Was she able to prepare her own meals?
> A. No. Couldn't fix her own meals.
> Q. Who helped her walk?
> A. Who?
> Q. Who helped Catherine walk?
> A. Milton.
> Q. Who helped prepare Catherine's meals?
> A. Milton.
> Q. Who gave Catherine her medicines?
> A. Milton
> Q. Who helped Catherine with toileting?

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[40] 9/28/04 N.T. at 78-80.
[41] 9/28/04 N.T. at 84.
[42] 11/18/04 N.T. at 39.
[43] 11/18/04 N.T. at 44-47.

A. Milton.[44]

Not surprisingly, Ms. Cotton affirmed: "Thank God for Milton. He was with her day and night until she died."[45]

Legal Analysis

In seeking compensation for his services to Catherine after her health began to decline precipitously in 1999, Milton is asserting a claim based on quantum meruit or unjust enrichment. As the Pennsylvania Supreme Court observed in Lach v. Fleth, 361 Pa. 340, 348, 64 A.2d 821, 825 (1949), to establish a claim for quantum meruit, the petitioner has the burden of proving the following three elements:

(1) the performance of services,
(2) the decedent's acceptance of them, and
(3) their value.

A claim based on quantum meruit does not depend on an express contract. It is thus distinct from a breach of contract action. Id., 361 Pa. at 348, 64 A.2d at 825. See also Lebo Estate, 403 Pa. 123, 169 A.2d 105 (Pa. 1961)(recognizing claim based on quantum meruit, not contract). In recognizing claims based on quantum meruit, "the law is also clear that where one accepts valuable services from another, the law implies a promise to pay for them and the contract implied by law, a quasi contract, may support a claim against his estate." Fronheiser Estate, 15 Pa. D & C. 3d 176, 178 (Berks Cty. 1980). Significantly, these quasi-contracts, "unlike true contracts are not based on the apparent intention of the parties to undertake the performances in question, nor are they promises" but rather they "are obligations created by law for reasons of justice." Id. at 178. In explaining the rationale for a quantum meruit claim, the Lach court observed:

[44] 11/18/05 N.T. at 42-43.
[45] 11/18/05 N.T. at 39.

> Where one accepts valuable services from another the law implies a promise to pay for them and the contract implied by law may support a claim against his estate. To warrant a finding of an implied contract of decedent to pay for services rendered by claimant, the elements of intention to pay and expectation of payment must be found to exist. A presumption of compensation arises and the presumption of gratuity is inapplicable where the parties were in legal contemplation strangers and not members of a family, or where there was neither legal nor moral obligation to render the services without compensation,… if there was an express or implied contract to pay for the services after the death of the recipient no presumption of payment before death can arise. Lach, 361 Pa. at 351, 64 A.2d at 827 (citations omitted).

To establish a claim for quantum meruit, therefore, it is not enough to show that an implied contract to pay was created by acceptance of services. It must also be shown "that the relationship between the parties created no legal presumption the services were to be rendered free of charge; and, further, the presumption of payment at regular intervals" must be overcome. Gibbs Estate, 266 Pa. 485, 487, 110 A. 236, 237 (1920). A claim based on quantum meruit must be "supported by clear, precise and convincing evidence" as a means of protecting "decedents' estates from spoliation." Fronheiser Estate, 15 Pa. D & C. 3d at 178. The measure of damages likewise differs in these actions. In a quantum meruit claim damages are fixed by law, in contrast to a breach of contract case where the amount of damage is determined by the parties. Lach, 361 Pa. at 348, 64 A.2d at 825.

The accountant challenges Milton's quantum meruit claim based on his relationship between Catherine and Milton. Because of this relationship, the accountant argues, it must be presumed that Milton's services were gratuitous—or rendered without an expectation of payment.[46] Although the accountant raises a valid argument, after careful analysis of the particular facts of this case and relevant precedent, the claim of Milton should be compensated for the period between June 1999 through May 31, 2001.

[46] Tucker 1/27/05 Memorandum at 5-6.

The claimant, however, failed to present sufficiently specific evidence of his services for the period of Catherine's prolonged stays in institutions from June 1, 2001 until October 5, 2004 to provide an adequate basis for estimating with reasonable certainty the value of his services for that period.

The obstacle facing Milton in establishing his claim for compensation was clearly set forth by the Pennsylvania Supreme Court in the Gibbs Estate when it observed:

> Ordinarily, an implied promise exists to pay for services rendered and accepted, and the burden is on the person denying liability to show no debt was, in fact, intended. This rule does not apply, however, where the services were rendered by members of the family to each other, as such services are usually performed without expectation of remuneration; consequently, where the family relation exists no action can be maintained for services of the kind here claimed, unless an express promise or agreement to pay is proven. In other words, the existence of the family relationship rebuts the presumption which the law would otherwise raise that there was a promise to pay. Gibbs Estate, 266 Pa. at 487, 110 A. at 237 (citations omitted).

While these general precepts might seem to thwart Milton's claim, the facts in Gibbs Estate suggest otherwise. The claimant in Gibbs was an aunt who had provided room and board to her nephew prior to his death. The Pennsylvania Supreme Court concluded that she was entitled to payment of her claim by her nephew's estate. While noting that the decedent had been treated as a member of the family by his aunt, the claimant, the Court concluded that the "existence of the relationship did not in itself rebut the promise which the law implies to pay for the services. . ." Id. 266 Pa. at 488. Rather, the court explained that the familial relationship of a claimant to the decedent is sufficient to overcome the presumption of payment "only in the case of parent and child." [47] In all

[47] Id., 266 Pa. at 487, 110 A. at 237. See generally Miller's Appeal, 100 Pa. 568 (1882)(son could recover for care extended to aged parents only where the court found a contract to board the parents). A rationale for this rule was set forth in the early case of Perkins v. Hasbrouck, 155 Pa. 494, 498, 26 A. 695, 696 (1893) where the Supreme Court stated that this "rule naturally has its foundation in the close relationship and the consequent obligation springing from it, …"

other relationships, a more nuanced approach is mandated since the "closer the relationship the less expectation of payment, and greater strictness of proof to overcome the presumption is required." Gibb's Estate, 266 Pa. at 488, 110 A. at 237.

Early Pennsylvania case law is replete with examples of family members who have recovered from the estates of deceased relatives for services rendered. A son-in-law was able to recover against the estate of his father-in-law, for instance, after the Pennsylvania Supreme Court concluded that this familial relationship was insufficient to defeat the presumption of payment where the father-in-law had resided with his son-in-law, who then subsequently presented a claim against the father-in-law's estate. Smith v. Milligan, 43 Pa. 107 (1862). A brother was permitted to recover for his extraordinary services in caring for his incapacitated sister in the final three and one-half years of her life when she was plagued by unanticipated debilitating physical infirmities. Shubart's Estate, 154 Pa. 230, 26 A. 202 (1893). A niece of decedent's second wife was not precluded by that relationship from successfully asserting a claim for compensation for her services as housekeeper and nurse. Appeal of Emily Ranninger, 118 Pa. 20, 12 A. 511 (1888). Finally, the relationship of brother-in-law to a decedent did not raise a "presumption of a gratuitous service to or maintenance of the decedent" in Shumberger v. Hoy, 7 Pa. Super. 206 (1898).

More recently, Judge Taxis concluded that a niece's claim against her aunt's estate should be awarded because by moving the aunt to a nursing home, the niece provided a "dignified and befitting standard of living to her aunt during the last three years of her life." Lograsso Estate, 11 Fid. Rep. 2d 346, 347-48. Hence, the niece was

allowed to recover the expenses she incurred in negotiating with the nursing home, relocating her aunt, taking her to the doctor and shopping excursions.

In the instant case, no evidence was presented that Milton Johnson was related to Catherine Hines or that he was legally married to her. Although there was much testimony that Milton and Catherine shared a loving, familial relationship, those inchoate feelings cannot be confounded with the presumption of gratuitous services as between a parent and child. As the Pennsylvania Supreme Court observed in Perkins v. Hasbrouck, 155 Pa. 494, 26 A. 695 (1893), an implied promise to pay for services rendered is not recognized in the parent-child relationship because this rule has its "foundation in the close relationship and the consequent obligation springing from it" though that presumption does not automatically extend to other relations. Id., 135 Pa. Super. at 498, 26 A. at 696. In the instant case, in contrast, Milton was not related to Catherine nor were they legally married.

The administratrix Linda Tucker invokes several cases to support her position that Milton Johnson's claim should be deemed invalid. She emphasizes, first, that in Brown v. McCurdy, 278 Pa. 19, 122 A. 169 (1923), a claim by a daughter-in-law against her deceased mother-in-law's estate for services as a domestic and nurse from 1903 until her death in 1918 was deemed invalid.[48] As Ms. Tucker notes, in Brown the Pennsylvania Supreme Court stated:

> It has been said an intention to pay for work done will be assumed except in the case of parent and child. Where, however, it is apparent that the parties, though not so related by blood, in reality bore like connection to each other, the implication does not rise. Under such circumstances it is necessary, before a judgment can be had, that there be proof of an express contract, which must be clearly shown. The mere fact that the claimant was a daughter-in-law of the

[48] See Tucker 1/27/05 Memorandum at 5.

> decedent raises no presumption of gratuitous service; but if, as here, the claimant has become part of the family, the contrary is true.
> Brown v. McCurdy, 278 Pa. at 22, 122 A. at 170.

Ms. Tucker seizes on the Brown court's suggestion that while the status of daughter-in-law alone did not create a presumption of gratuitous payment, the critical test is whether "the claimant has become a part of the family." She notes that "at least two family members felt that he (Milton) performed these services out of love" and that Milton himself acknowledged in his post trial memorandum that he knew he was not going to be compensated because Catherine lacked the assets to do so.[49]

These arguments are unconvincing for several reasons. First, Milton was precluded from testifying under the Dead Man's Rule, and no other evidence was presented—or cited—as to his motivations or expectations in assisting Catherine. Second, while the daughter-in-law in Brown initially became a member of the family through marriage to the decedent's son, there was no such legal tie binding Milton to Catherine's family. Third, as a member of the family in Brown, the daughter-in-law claimant enjoyed the bounty of the family fortunes: under her father-in-law's will she received "the home property with the furniture, a legacy of $600, and a share in the residuary estate."[50] Moreover, the mother-in-law paid the household expenses.

As administrator of the Catherine Hines Estate, Ms. Tucker properly takes the position that Milton is not legally entitled to any distribution from Catherine's estate because Milton does not qualify as a legal intestate heir nor as a spouse. It is, however, unjust to then deny his claim for compensation for his essential and substantial services to Catherine on the grounds that he was perceived by the other intestate heirs as a member

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[49] Tucker 1/27/05 Memorandum at 7 (citing 9/28/04 N.T. at 83 & 70).
[50] Brown, 278 Pa. at 21, 122 A. at 170.

of the family. In light of the precedent that carefully excludes more distant relatives from the presumption of gratuitous service, the herculean services that Milton rendered to a woman to whom he was neither legally married nor related likewise should not fall within a general presumption of familial gratuitous service. If sons-in-laws, nieces and brothers can be compensated by the estates of relatives to whom they provided services, so too should Milton be compensated for his substantial and essential services for Catherine in the absence of any legal obligation to do so.

Ms. Tucker also invokes the more recent case of Mitchell v. Moore, 1999 Pa. Super. 77, 729 A.2d 1200 (1999), app. denied, 561 Pa. 698, 751 A.2d 192 (2000) involving a claim for services rendered within a homosexual relationship. This case is relevant, Ms. Tucker suggests, because as was the case with Catherine and Milton, the partners in Mitchell could not hold themselves out as common law spouses nor could they be legally married.[51] While this is true, the critical facts of Mitchell are distinguishable. In that case, Mitchell brought a claim against Moore based, inter alia, on quantum meruit, alleging that he had been promised compensation for his services in operating a farm and antiques business. In concluding that Mitchell had failed to set forth a valid claim based on quantum meruit, the court observed that unjust enrichment is "essentially an equitable doctrine" and where "unjust enrichment is found, the law implies a contract, which requires the defendant to pay to the plaintiff the value of the benefit conferred." Mitchell, 729 A.2d at 1203. The court emphasized as well that in "determining if the doctrine applies, our focus is not on the intention of the parties but on whether the defendant was unjustly enriched." Id., 729 A.2d at 1204. The Mitchell court

[51] Tucker 1/27/05 Memorandum at 6.

concluded that the claimant had failed to establish unjust enrichment on the record presented:

> We note first that Mitchell had complete access to a large farm house where he lived rent free and virtually unencumbered by any utility expenses. The nature and amount of benefits that plaintiff received from living at Moore's farm rebuts any presumption that the benefit conferred upon Moore was unjust. In fact, the advantages plaintiff obtained were compensation enough for all the work he offered to do on the farm; further Mitchell derived an obvious personal benefit by living with the defendant, his partner of thirteen years, on the farm.
> Id., 729 A.2d at 1204-05 (emphasis added).

The same cannot be said about Milton. There was no evidence presented as to any material benefits he may have enjoyed due to his relationship with Catherine. The record indicates that he did not live rent free but rather that he and Catherine paid rent to Marilyn Howell. The record also indicates that he paid for Catherine's medications and necessities out of his own funds. The record indicates that because of Catherine's modest assets prior to the personal injury recovery there could be no expectation of payment for the extensive services Milton rendered to her. The record indicates that Milton performed essential and substantial services for Catherine that were necessary for her survival. Finally, the record indicates that due to Milton's services, Catherine's life was enhanced and prolonged—to her benefit and that of her estate. While the record also suggests that Milton extended these services with love and devotion, those feelings should not be factored in to diminish the considerable benefits reaped on Catherine by Milton's care.[52]

[52] The accountant also relies on Witten v. Stout, 284 Pa. 410, 131 A. 360 (1925), but that case is factually distinguishable because in contrast to the clear testimony outlining Milton's services to Catherine, the Witten court found the quantum meruit theory untenable because the "testimony as to the nature and extent of the services rendered was so meager, and of such a general nature, that it is questionable whether a jury could, therefrom, have intelligently fixed the value of such services." Id., 284 Pa. at 413, 131 A. at 361.

In light of all the benefits Milton bestowed on Catherine, it would be unconscionable for her estate to deny his claim.[53]

The Presumption of Periodic Payments Was Not Raised by the Accountant

To establish a quantum meruit claim, the claimant must also overcome the presumption that any services rendered were paid for from time to time. Fronheiser Estate, 15 Pa.D. & C. 3d at 180. In analyzing this issue in a case where the claimant was -- like Milton Johnson-- precluded from testifying because of the Dead Man's Rule, Justice Musmanno posed the obvious question: "How does one prove that he was not paid except through the assertion thereof?"[54] He answered this question by noting:

> How does one prove that he was not paid, except through the assertion thereof? Of course, Mrs. Peffley (the claimant) was disqualified from testifying because of the Dead Man's Act which legally sealed her lips as death sealed those of the decedent. But the fact that she made a claim for payment is in itself a denial of payment. The appellant, executor, however, was not required to stand mute, nor was he denied access to the records which would have definitively revealed payment if there had been payment.
> Lebo Estate, 403 Pa. at 126, 169 A.2d at 107.

In the instant case, however, the accountant not only failed to present any records of payment, she actually concedes this issue and states that "the fact that Mr. Johnson

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[53] In conclusion, the Mitchell court made the general observation:

> While we do not attempt to characterize the services rendered in all unmarried couple's relationships as gratuitous, we do believe that such a presumption exists and that in order to recover restitution for services rendered, the presumption must be rebutted by clear and convincing evidence. The basis of this presumption rests on the fact that the services provided by plaintiff to the defendant are not of the type for which one would normally expect to be paid, nor did they confer upon the defendant a benefit that is unconscionable for him to retain.
> Mitchell, 729 A.2d at 1206

The two bases for the presumption in Mitchell are not present in the instant case. First, the substantial, constant services provided by Milton to Catherine after her health precipitously declined in 1999 are in the nature of expenses for which one might normally expect to be paid as evidenced by the testimony of her granddaughter Carolyn Thomas, who accepted payment for her services to Catherine and Andrea Jones, whose company provides such services for a fee. Second, it would be unconscionable for the Hines Estate to benefit from Milton's substantial services without payment to him.

[54] Lebo Estate, 403 Pa. 123, 126, 169 A.2d 105, 107, (Pa. 1961).

was not paid" is not disputed.[55] Hence, there is no need to address the question of the presumption of periodic payments.

Milton Johnson Met His Burden to Support His Claim for $295,152 For the Period Between June 1999 Through May 31, 2001 But Not To Support His Claim for $95,040 For The Period After Catherine's Extensive Hospitalizations from June 1, 2001 Until Her Death

After the presentation of his evidence and witnesses at the hearings on his claim, Milton sought to recover $390,192 as the value of his services to Catherine Himes for two distinct periods:

(1) He sought $295,152 for the period of June 1999 through May 31, 2001[56] when Catherine was mostly living at home prior to the coumadin overdose, and;
(2) He sought the amount of $95,040 for the 16 month period from June 1, 2001 through October 5, 2002 for his supplementary services to Catherine when she was either hospitalized or undergoing rehabilitations.[57]

Milton, as claimant seeking quantum meruit compensation, has the burden of proving the reasonable value of his services by clear and convincing evidence. Pulli v. Warren National Bank, 488 Pa. 194, 197, 412 A.2d 464, 465 (1979); Ruppert Estate, 18 Fid. Rep. 2d 173, 176 (York Cty. 1996). In establishing the value of these services, mathematical exactness is not required. In a case where the plaintiff's quantum meruit claim was not supported by evidence showing the precise days on which the claimant worked or the hours worked each day, the Pennsylvania Supreme Court observed that the "law does not require that proof in support of claims for damages or in support of claims for compensation must conform to the standard of mathematical exactness." Lach v.

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[55] See Tucker 1/27/05 Memorandum at 8, n.8.
[56] Johnson 12/30/04 Memorandum at 13, n.8. This figure is based on testimony by Andrea Jones of Intervention Associates, as modified by the dates when Ms. Hines was released from Hahnemann Hospital. Although Ms. Jones had offered calculations based on a release in April 1999, in fact, Ms. Hines was not released until June 1999. Id., at 13 & n. 8.
[57] Johnson 12/30/04 Memorandum at 14.

Fleth, 361 Pa. at 352, 64 A.2d at 827. See also Fronheiser Estate, 15 Pa. D & C. 3d at 179 ("Generally the law does not require that proof of claims for compensation must conform to a standard of mathematical exactness). Instead, if "the facts afford a reasonably fair basis for calculating how much plaintiff is entitled to such evidence cannot be regarded as legally insufficient to support a claim for compensation." Id.

As a threshold issue, Milton Johnson presented sufficient evidence of the critical services he rendered to Catherine for the period from June 1999 through May 31, 2001. Catherine's cardiologist, Dr. Covalesky, testified that during this period Catherine required full time care and that Milton's services during this period were essential in prolonging Catherine's life. Her relatives, Carolyn Thomas and Addie Thomas, likewise testified to his continual presence and critical care of Catherine at home during this period.

To provide a monetary value for these services, the claimant presented testimony by Andrea Jones, Executive Director of Intervention Association, a private non-for-profit agency that provides services including home health aides and case managers.[58] Courts in other cases have accepted similar testimony as to the value of these kinds of services. See Wlodarczyk Estate, 15 Fid. Rep. 2d 398 (Bucks Cty. 1995)(Director of Bucks County Area Agency on Aging testified as to compensation for persons who cared for disabled persons); Greaves Estate, 1 Fid. Rep. 2d 139 (Beaver Cty. 1980)(judicial notice taken of rates charged by the Beaver County Geriatric Center).

Based on her review of Catherine's records, Ms. Jones concluded that during this period at home Catherine required 24 hour services from health aides (at an hourly rate of $16 to $18) as well as the assistance of case managers (at $110 per hour) to handle the

[58] 9/28/04 N.T. at 42.

more complex tasks of scheduling doctor's appointments and dispensing medication.[59] Based on these figures, Ms. Jones estimated that the services provided by Milton for the period March 1999 through May 31, 2001 would be $396 per day, with $6,160 for the case manager for a total of $325,908.[60] In his brief, however, the claimant notes that these figures spanned too great a period, since Ms. Jones had based her computations on a January 1999 date of hospitalization at Hahnemann rather than an April 1999 hospitalization date. He therefore revised the figures to reflect a reduction of three months, asserting that he was entitled to compensation in the amount of $295,152 for the 24 month period from June 1999 through May 31, 2001 when Catherine had returned home prior to the readmission to St. Agnes and subsequent coumadin overdose.[61] On the basis of the testimony as to the services that Milton rendered during this period, this figure or valuation of services is reasonable.

In contrast, Milton's valuation of the services he rendered to Catherine during the 16 month period of her various hospitalizations from June 1, 2001 through her death on October 5, 2002 is not well documented or supported. A primary defect is the lack of clear testimony concerning the nature of the services that he rendered to Catherine during this period. Ernestine Green, for instance, testified that she had observed Milton's care of Catherine for a two year period beginning in January 1999.[62] She noted that toward the end of her life, Catherine was fed by feeding tube,[63] thereby suggesting that Milton no longer performed the vital service of actually feeding Catherine. Carolyn Thomas

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[59] 11/18/04 N.T. at 22-30.
[60] 11/28/04 N.T. at 31.
[61] Johnson 12/30/04 Memorandum at 12-13. This $295,152 figure is calculated at a cost of $12,298 per month for the 24 month period.
[62] 9/28/04 N.T. at 50 & 61.
[63] 9/28/04 N.T. at 57.

likewise confirmed that toward the end of her life, Catherine was on a feeding tube, while in "the later years, he'd (i.e. Milton) just be there, but he just would be there. He just would sit there."[64] Dr. Covelsky also noted that Milton was at Catherine's bedside for long periods during these final months of hospitalization, but she did not identify any specific services he performed for Catherine.[65]

In contrast to the earlier period where testimony described Milton's vital role in feeding, transporting, medicating and grooming Catherine, there is a dearth of testimony as to the services he performed during her final last year of hospitalizations and institutionalizations. While Milton's presence by her bedside was undoubtedly beneficial,[66] this emotional support—in contrast to the essential services he provided during the earlier period—is not amenable to monetary valuation. The present record thus does not provide a sufficient basis for estimating with reasonable certainty the monetary value of these later services. Lach, 361 Pa. at 349, 64 A.2d at 826. See also Lorah Estate, 2 Fid. Rep. 2d 34, 38 (Bucks Cty. 1981)(quantum meruit claim was not established absent "credible evidence as to the precise services rendered"). Hence, the claim for $95,040 for the period after June 1, 2001 is denied, while the claim for $295,152 for the earlier period between

June 1999 through May 31, 2001 is granted.

According to the accountant, all parties in interest had notice of the audit. She noted that no Pennsylvania Transfer Inheritance and Estate tax has yet been paid. A.

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[64] 9/28/04 at 76.

[65] See generally 11/18/04 N.T. at 17-19.

[66] Significantly, in his memorandum explaining his claim for the period between June 1999 through June 2001, claimant revised down the figure presented by Ms. Jones because it included a 3 month period when Catherine had, in fact, been hospitalized. See Johnson 12/30/04 Memorandum at 13. He fails to explain why his claim for the period after June 2001 when Catherine was admittedly hospitalized for the last year of her life should not likewise be uncompensated.

James Miller, Esquire, made an entry of appearance for the Commonwealth claiming such Transfer Inheritance and Estate Tax as may be due and assessed without prejudice to the right of the Commonwealth to pass on Debts and Deduction. Any award shall be subject to this claim.

According to the account, the balance of principal before distribution is $448,193.89 and the balance of income before distribution is $0 for a total of $448,193.89. This sum, composed as stated in the account, plus income received since the filing thereof, subject to any distributions already properly made and subject to any additional transfer inheritance tax as may be due and assessed, is awarded as set forth in the petition for adjudication and statement of proposed distribution to be retained by the co-administrators pending administration of the estate. As set forth in this adjudication, the claim of Milton Johnson in the amount of $295,152 should be awarded to him.

Leave is hereby granted to the accountant to make all transfers and assignments necessary to effect distribution in accordance with this adjudication.

AND NOW, this _____ day of APRIL 2005, the account is confirmed absolutely.

Exceptions to this Adjudication may be filed within twenty (20) days from the date of the issuance of the Adjudication. An appeal from this Adjudication may be taken to the appropriate Appellate Court within thirty (30) days from the issuance of the Adjudication. See Phila. O.C. Rule 7.1.A and Pa. O.C. Rule 7.1 as amended, and Pa. R.A.P. 902 and 903.

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John W. Herron, J.