MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jill Hutsler,
Appellant-Plaintiff,

v.

Brian Snyder,
Appellee-Defendant.

June 22, 2022

Court of Appeals Case No. 21A-PL-1126

Appeal from the Lake County Superior Court

The Honorable Thomas P. Hallett, Special Judge

Trial Court Cause No. 45D03-1606-PL-000003

May, Judge.

[1] Jill Hutsler appeals the trial court's grant of summary judgment to her brother, Brian Snyder, in Jill's action to recover funds she claims Brian promised to give her following the sale of their mother's house. The parties agree: (1) the Statute of Frauds, Indiana Code section 32-21-1-1, generally precludes recovery on an oral promise that was not to be fulfilled within one year, and (2) promissory estoppel creates an exception to the Statute of Frauds that allows such an oral contract to be enforced. The trial court determined, as a matter of law, the facts most favorable to Jill failed to demonstrate an issue of material fact about two elements of promissory estoppel and, therefore, the Statute of Frauds precluded Jill's claim. Jill argues the trial court erred in granting summary judgment. We reverse and remand for further proceedings.

Facts and Procedural History

[2] Jill filed suit against Brian on April 2, 2014. Brian pro se requested an extension of time to respond, which the trial court granted. Brian then hired counsel and answered the complaint on May 24, 2014. However, in the envelope with the summons and complaint was a Request for Admissions (hereinafter "Admissions"), to which Brian did not respond. On June 19, 2014, Brian moved to set aside his Admissions. On May 8, 2018,[1] Jill filed opposition to Brian's motion to set aside his Admissions, and therein she asked the court to

[1] During the nearly four years that passed, changes of judge occurred, discovery was exchanged, and multiple trial dates were set and rescheduled.

deem them admitted. On May 24, 2018, Brian filed a response to Jill's motion. After a hearing, the trial court denied Brian's motion and deemed the Admissions admitted by Brian. Brian filed a motion to reconsider and a motion to certify for interlocutory appeal, and the trial court denied both. Accordingly, to recite the facts, we quote the Admissions,[2] as they contain the facts most favorable to Jill:

> 1. That Janet Snyder (Janet) the mother of Jill Hutsler and yourself, died on January 22, 2002.
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> 2. That upon the death of Janet, you and Jill agreed (Agreement) to share equally, fifty-fifty, the assets (Assets) in which Janet had an interest in [sic] at the time of her death, whether held in her name alone, joint tenancy, or in the name of another, or any form of ownership.
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> 3. That at the time of transfer of the real estate at **** Monix St., St. John, Indiana, to you, you Janet and Jill agreed that upon Janet's death, the real estate would pass to you and Jill, fifty-fifty, each with an equal interest.
>
> 4. That on or about December 6, 2002, the real estate at **** Monix St., St. John, Indiana, was sold, resulting in net proceeds of $225,512.44.

[2] Because the Admissions were sent to and admitted by Brian, any reference to "you" or "yourself" within the Admissions is a reference to Brian.

5. That Exhibit "A", the Settlement Statement (HUD) is a true and accurate copy of the HUD report of the sale of the real estate.

6. That pursuant to the Agreement, you and Jill agreed to share equally, fifty-fifty, the net proceeds of the sale of the real estate.

7. That an equal fifty-fifty share of the net proceeds of the real estate is $112,756.22.

8. That subsequent to the sale of the real estate you transferred to Jill $30,000.00 toward her one-half interest in the net proceeds of the Estate.

9. That upon the transfer of the $30,000.00 to Jill, you and Jill agreed that she would receive the balance of her fifty percent interest in the net proceeds of the sale, in the sum of $82,756.22 on 6-30-06, her 25th birthday.

10. That subsequent to the sale of the real estate, you kept for yourself $195,512.22 from the net proceeds of the sale of the real estate.

11. That you currently owe Jill $82,756.22 from the net proceeds of the sale of the real estate.

12. That on or about May 1, 2004, pursuant to the Agreement, you transferred to Jill $3,500.00 towards her fifty percent interest in Janet's assets.

13. That in 2003, pursuant to the Agreement, you transferred to Jill the sum of $5,000.00 towards her fifty percent interest in Janet's assets to purchase a 2003 Honda.

14. That in 2007, pursuant to the Agreement, you transferred to Jill the sum of $5,000.00 towards her fifty percent interest in Janet's assets towards the purchase of a 2006 Dodge automobile.

15. That on or about June 30, 2006, Jill requested from you the balance of her fifty percent interest in Janet's assets and you stated you could not pay her as promised because you "did not have the money right now and would need to take a second mortgage on your house."

16. That on or about June 30, 2006, you and Jill agreed that you would transfer the balance of her fifty percent interest in Janet's assets on June 30, 2011, her 30th [b]irthday.

17. That on May 6, 2009, pursuant to the Agreement, you transferred to Jill $2,800.00 towards her fifty percent interest in Janet's assets.

18. That Exhibit "B", is a true and accurate copy of the Purchase Receipt reflecting the transfer to Jill of $2,800.00 on May 6, 2009 towards her fifty percent interest in Janet's assets.

19. That on or about June 30, 2011, Jill requested the balance of her fifty percent interest in Janet's assets and you stated you could not pay her as promised because "you didn't have it right now and had other bills".

20. That on or about August 15, 2012, Jill requested the balance of the fifty percent interest in Janet's assets and you refused to pay.

21. That subsequent to August 15, 2012, Jill and Attorney Ray L. Szarmach requested that you pay the balance of her fifty percent interest in Janet's assets and you refused to pay.

22. That Exhibit "C", the July 16, 2013 letter from Attorney Ray L. Szarmach, representing Jill Hutsler, is a fair and accurate copy of the letter you received from Attorney Ray L. Szarmach requesting the balance of Jill's fifty percent interest in Janet's assets.

23. That Kenneth Snyder, the father of Jill Hutsler and yourself died on October 22, 2007.

24. That upon the death of Kenneth Snyder, you and Jill agreed (Agreement) to share equally, fifty-fifty, the assets (Assets) in which Kenneth had an interest at the time of his death, either held in his name alone, joint tenancy, in the name of another or in any other form of ownership.

25. That on the death of Kenneth, Jill was the sole joint tenant with right of survivorship with Kenneth on Savings Account No. *******517 at People's Bank in the sum of $120,310.79.

26. That on or about November 14, 2007, Jill signed a disclaimer for one-half interest in Savings Account No. *******517 in order to honor the Agreement to transfer to you a one-half interest in Kenneth's Assets.

27. That Exhibit "D" is a true and accurate copy of the Disclaimer regarding Savings Account No. *******517 executed by Jill on November 14, 2007, honoring the

> Agreement to transfer to you a one-half interest in Kenneth's Assets.
>
> 28. That on or about 11-14-07, you received approximately $60,155.40 out of the savings Account No. *******517, pursuant to the Agreement.
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> 29. That pursuant to the Agreement, you currently owe Jill additionally [sic] money toward the one-half interest in Kenneth's [sic] Assets.

(Appellant's App. Vol. II at 34-40) (capitalization and response spaces omitted).

[3] Following several continuances, on September 25, 2020, Brian filed a motion for summary judgment, memorandum of law, and designation of evidence. Jill filed an affidavit and memorandum in opposition to summary judgment on October 26, 2020. After extensions of time, Brian filed a response to Jill's memorandum and his own affidavit on February 2, 2021. The court held a hearing that included only argument of counsel. The trial court granted summary judgment to Brian in an order that determined:

> 6. The elements of promissory estoppel are (1) a promise by the promissor; (2) made with the expectation that the promissee will rely thereon; (3) which induces reasonable reliance by the promissee; (4) of a definite and substantial nature; and (5) injustice can be avoided only by enforcement of the promise. *Brown v. Branch*, 758 N.E.2d 48 (Ind. 2001) at 52.
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> 7. Plaintiff alleges she shared her interest in her father's assets with Defendant in reliance on Defendant's promise.

8. Plaintiff has designated no evidence to establish Defendant had the expectation that Plaintiff would give him part of an account she owned nearly five years after his alleged promise.

9. Plaintiff's act of giving Defendant $60,000.00 at the time she knew he owed her over $65,000.00 can not be considered "reasonable reliance" on Defendant's alleged promise. *Coca-Cola Company v. Babyback's International, Inc.*, 841 N.E.2d 557 (Ind. 2006).

10. Two of the essential elements of the doctrine of promissory estoppel are absent as a matter of law.

11. Plaintiff's action is barred under the Statute of Frauds.

(*Id*. at 20-21.)

Discussion and Decision

[4] Jill appeals the trial court's grant of summary judgment. Summary judgment is appropriate if designated evidence demonstrates "that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Ind. Trial Rule 56(C). The party that moves for summary judgment has the burden to make a prima facie showing as to those two elements, and then the burden "shifts to the non-moving party to show the existence of a genuine issue." *Burton v. Benner*, 140 N.E.3d 848, 851 (Ind. 2020).

[5] When we review the trial court's decision, we "'stand in the shoes of the trial court[,]'" *id*. (quoting *Murray v. Indpls. Pub. Schools*, 128 N.E.3d 450, 452 (Ind. 2019)), and ask "'whether there is a genuine issue of material fact, and whether the moving party is entitled to judgment as a matter of law.'" *Id.* (quoting *Goodwin v. Yeakle's Sports Bar & Grill, Inc.*, 62 N.E.3d 384, 386 (Ind. 2016)). As we conduct our de novo review, we "draw all reasonable inferences in favor of the non-moving party." *Arrendale v. American Imaging & MRI, LLC*, 183 N.E.3d 1064, 1068 (Ind. 2022).

[6] Indiana's codification of the Statute of Frauds provides, in pertinent part:

> A person may not bring any of the following actions unless the promise, contract, or agreement on which the action is based, or a memorandum or note describing the promise, contract, or agreement on which the action is based, is in writing and signed by the party against whom the action is brought or by the party's authorized agent:
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> * * * * *
>
> (5) An action involving any agreement that is not to be performed within one (1) year from the making of the agreement.

Ind. Code § 32-21-1-1(b). The parties agree the Agreement at issue was never reduced to writing and, therefore, falls within the Statute of Frauds, but Jill asserts she nevertheless can recover under the doctrine of promissory estoppel. *See*, *e.g.*, *Brown v. Branch*, 758 N.E.2d 48, 51 (Ind. 2001) ("Even when oral

promises fall within the Statute of Frauds, they may be enforced under the doctrine of promissory estoppel.").

[7] Estoppel is "based on the rationale that a person whose conduct has induced another to act in a certain manner should not be permitted to adopt a position inconsistent with such conduct so as to cause injury to the other." *Huber v. Hamilton*, 33 N.E.3d 1116, 1123 (Ind. Ct. App. 2015), *reh'g denied*, *trans denied*. The reliance injury that results to the promisee must be both "independent from the benefit of the bargain and resulting incidental expenses and inconvenience," *Coca-Cola Co. v. Babyback's Intern., Inc.*, 841 N.E.2d 557, 569 (Ind. 2006), and "so substantial as to constitute an unjust and unconscionable injury." *Id*. As our Indiana Supreme Court explained some thirty-five years ago:

> The mere nonperformance of an oral promise which falls within the scope of the Statute [of Frauds] does not constitute such a fraud as would warrant the intervention of a court of equity. But, if one party is induced by another, on the faith of an oral promise, to place himself in a worse position than he would have been in had no promise been made, and if the party making the promise derives a benefit as a result of the promise, a constructive fraud exists which is subject to the court's equity jurisdiction.

Stafford v. Barnard Lumber Co., Inc., 531 N.E.2d 202, 205 (Ind. 1988) (quoting *Lawshe v. Glen Park Lumber Co.*, 375 N.E.2d 275, 278 (Ind. Ct. App. 1978)). Promissory estoppel has five elements: "(1) a promise by the promisor; (2) made with the expectation that the promisee will rely thereon; (3) which induces reasonable reliance by the promisee; (4) of a definite and substantial

nature; and (5) injustice can be avoided only by enforcement of the promise." *Brown*, 758 N.E.2d at 52.

[8] The trial court determined Jill's claim of promissory estoppel failed on the second and third elements:

> 8. Plaintiff has designated no evidence to establish Defendant had the expectation that Plaintiff would give him part of an account she owned nearly five years after his alleged promise.
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> 9. Plaintiff's act of giving Defendant $60,000.00 at the time she knew he owed her over $65,000.00 can not be considered "reasonable reliance" on Defendant's alleged promise. *Coca-Cola Company v. Babyback's International, Inc.*, 841 N.E.2d 557 (Ind. 2006).

(Appellant's App. Vol. II at 20-21.) We hold the trial court erred as to both of those determinations.

[9] The second element of promissory estoppel is that the promisor's promise was "made with the expectation that the promisee will rely thereon." *Brown*, 758 N.E.2d at 52. The trial court determined Jill had failed to designate evidence that Brian made the promise to give her half of the money with the expectation that Jill would give him half of their father's money when their father died. We agree with the trial court that Jill did not designate such evidence, but we disagree with the trial court's decision that this was determinative as to this

element of promissory estoppel.[3] The facts most favorable to Jill, as the non-movant, are that Brian promised to share equally the value of their mother's $225,512.44 house and that he expected Jill to rely on that promise by accepting $30,000 in 2002 along with a promise to receive her remaining $82,756.22 on her twenty-fifth birthday in 2006. This promise to receive half the value of the house, according to the Admissions, is the promise Brian made that he expected Jill to rely upon and upon which the Admissions indicate Jill did rely until August 15, 2012, when Brian refused to pay her the remainder of her half of the value of their mother's house.

[10] The third element requires the promise to induce reliance that is "reasonable." *Brown*, 758 N.E.2d at 52. The trial court cited *Coca-Cola*, 841 N.E.2d 557, to support its determination that Jill's reliance was not reasonable, but *Coca-Cola* is inapposite. In *Coca-Cola*, two companies, Babyback's and Coca-Cola, were attempting to reach a contract regarding expansion of a joint-marketing venture. *Id*. at 560. After discussions, Babyback's faxed a letter to Coca-Cola indicating it was proud of having reached an agreement, and Babyback's included a "new revised agreement" with the letter. *Id*. at 570. That same day, Coca-Cola responded with a fax that stated: "We … feel compelled to remind you that contrary to your cover letter, we have *not* reached an agreement with

[3] We construe Jill's release of half of their father's money to Brian, which the facts most favorable to Jill suggest was prompted by Brian's continued promises to pay and his continued payments of small amounts toward the balance of Jill's share from their mother's house, as a reliance injury that was "independent from the benefit of the bargain" and "so substantial as to constitute an unjust and unconscionable injury." *Coca-Cola Co.*, 841 N.E.2d at 569.

your company." *Id*. (emphasis in original). Our Indiana Supreme Court held Babyback's reliance on its proposed agreement to roll out the marking plan, when Coca-Cola had explicitly rejected the agreement that same day, was unreasonable. *Id*.

[11] Here, however, the admitted facts create a genuine issue of material fact about the reasonableness of Jill's continued reliance on Brian's promise. Brian promised Jill half the value of their mother's house at, or soon after, their mother's death in January 2002. Then, in December 2002, when the house sold, Brian transferred $30,000 to Jill and promised she would receive the remaining $82,756.22 of her one-half share on her twenty-fifth birthday in 2006. In 2003, Brian transferred $5,000 to Jill toward her fifty percent interest. In 2004, Brain transferred $3,500 to Jill toward her fifty percent interest. On her twenty-fifth birthday in 2006, Jill requested her remaining funds, and Brian told her that he "did not have the money right now" but would give it to her on her thirtieth birthday. (Appellant's App. Vol. 2 at 37.) In 2007, Brian transferred $5,000 to Jill toward her fifty-percent interest. In 2009, Brain transferred $2,800 to Jill toward her fifty-percent interest. In 2011, on Jill's thirtieth birthday, Brian told Jill he could not pay her the remaining fund because he did not have it "right now[.]" (*Id*.) Finally, in August of 2012, Brian told Jill that he was not going to pay her the remainder of her interest in their mother's house. Without more information about these two siblings and their relationship before the Agreement was made and the during the ten years in which Brian repeatedly gave Jill small amounts of money with continued promises to pay the

remainder, we cannot declare, as a matter of law, that Jill's continued reliance on Brian's promise that she would receive half of the value of their mother's house was reasonable or unreasonable.

[12] Because the trial court erred in determining Jill failed to designate evidence to demonstrate Brain expected her to rely on his promise for half of the money from their mother's house and because a genuine issue of material facts exists regarding the reasonableness of Jill's continued reliance of Brian's promise, the trial court erred in granting summary judgment for Brian. Accordingly, we reverse the trial court's grant of summary judgment and remand for further proceedings.

Conclusion

[13] The trial court erred in granting summary judgment to Brian on Jill's claims for promissory estoppel to remove his promise from the Statutes of Frauds. Accordingly, we reverse and remand for further proceedings.

[14] Reversed and remanded.

Brown, J., and Pyle, J., concur.