IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

FILED

June 16, 1998

Cecil W. Crowson
Appellate Court Clerk

IN RE:	)	
ESTATE OF HAROLD JENKINS	)	
	)	
CLAIM OF BILLY R. PARKS,	)	Appeal No.
	)	01-A-01-9707-CH-00348
Claimant/Appellant,	)	
	)	Sumner Chancery Probate
VS.	)	No. 93P-30
	)	
ESTATE OF HAROLD JENKINS,	)	
	)	
Appellee.	)	

APPEALED FROM THE CHANCERY PROBATE COURT OF SUMNER COUNTY
AT GALLATIN, TENNESSEE

THE HONORABLE JANE WHEATCRAFT, JUDGE

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AFFIRMED AND REMANDED

BEN H. CANTRELL, JUDGE

CONCUR:
TODD, P.J., M.S.
BUSSART, S.J.

O P I N I O N

The sole question in this appeal is whether the appellant had a binding oral contract entitling him to a $20,000 bonus after twenty years of service to his employer. The Probate Court of Sumner County denied the claim. We affirm.

I.

The appellant, Billy R. Parks, worked for Harold Jenkins, whose professional name was Conway Twitty. Mr. Parks went to work in 1972 as Mr. Twitty's bus driver, valet, and general handyman. He was paid a regular salary, and he received medical benefits and a pension plan paid for by his employer. When Mr. Twitty was not on the road, Mr. Parks worked on odd jobs at Mr. Twitty's direction.

Mr. Parks claims that Mr. Twitty promised to pay a $20,000 bonus to members of his crew that stayed with him for twenty years. In fact, he made two bonus payments, one to the widow of a band member killed in an auto accident and another to a band member who completed twenty years of service in 1981. After that time, no other employees received the bonus, even though four of them passed their twenty-year anniversaries in the late 1980's. Mr. Parks completed his twenty years in April of 1992. He did not ask for his bonus then and Mr. Twitty did not pay it. When Mr. Twitty died suddenly in June of 1993, the subject had apparently never come up.

Mr. Parks presented the testimony of several witnesses who testified that Mr. Twitty repeated his intent to pay the twenty-year bonuses at various times, even as late as 1992 when Mr. Parks was eligible to receive it. Some of the testimony did not fare well under cross-examination, and the trial judge, after hearing all the proof, made the following findings of fact:

> I think that some vague statements, gratuitous comments were made, and that they have been testified to, concerning bonuses. But, certainly, there is nothing in the record that would rise to the level of a contract that is enforceable at this point.

> Not only does the Court find, by a preponderance of the evidence, that nothing has been paid since 1981, the Court does not find that there have been any other payments, in lieu of $20,000, given to any of the employees who were with Mr. Twitty.
>
> Between 1981 and his death, he certainly did have a material change in his financial circumstances, particularly after 1986, when he had to pay that very, very high alimony payment.
>
> And I think, as I have stated, that it was his decision to not pay these bonuses. Mr. Twitty lived for, I figured, 14 months after the Plaintiff reached the 20 year anniversary date. And I think that he made the decision, for whatever reason, simply not to pay that bonus. And he had not paid once since 1981.
>
> So the case seems very clear to me that there was absolutely no bonus. There was -- I mean no contract. There was no offer, acceptance, consideration.

II.

The court's findings of fact are presumed to be correct unless the evidence preponderates against them. Rule 13(d), Tenn. R. App. Proc. To the extent that the court's findings of fact involve a determination of witness credibility, the burden to overcome the findings is even greater. *Tennessee Valley Kaolin Corp. v. Perry*, 526 S.W.2d 488 (Tenn. App. 1974). We cannot find, on the basis of the record before us, that the trial judge's findings of fact should be reversed.

Mr. Parks' claim is based on a unilateral contract, an offer that may be accepted by performance. *See Hutchinson v. Dobson-Bainbridge Realty Co.*, 217 S.W.2d 6 (Tenn. App. 1946). A binding contract is not formed until acceptance -- that is full performance -- but the promisor may lose the power to withdraw the promise where the promisee has partly performed in reliance on the promise. *Id.*

Even if we were to ignore the credibility problems of the plaintiff's witnesses, we think the evidence falls short of establishing an unequivocal promise

to Mr. Parks that "If you will work for me for twenty years I will pay you $20,000." The most that we could conclude is that at one time Mr. Twitty intended to pay his road crew a $20,000 bonus after twenty years of service. But an expression of intention or a general willingness to do something on the happening of a particular event does not amount to an offer that can be accepted by the other party. *Mason v. Pearson*, 668 S.W.2d 656 (Tenn. App. 1983). Therefore, we conclude that Mr. Parks failed to establish his claim for the bonus.

The judgment of the lower court is affirmed and the cause is remanded to the Probate Court of Sumner County for any further proceedings necessary. Tax the costs on appeal to the appellant.

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BEN H. CANTRELL, JUDGE

CONCUR:

_____
HENRY F. TODD, PRESIDING JUDGE
MIDDLE SECTION

_____
WALTER W. BUSSART, SPECIAL JUDGE