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FRAMBACH v. DUNIHUE: THE MOST UNDERRATED DECISION

*Russell L. Weaver**

In presenting a truly unique set of facts, Frambach v. Dunihue is an underrated remedies decision because it raises so many questions about common remedies doctrines. Through an examination of the complex familial relationship involved in the case, this Article outlines how Frambach can be used as a unique teaching device to shed light on the boundaries of restitution and estoppel claims.

I. INTRODUCTION

*Frambach v. Dunihue*¹ is among the most “underrated” remedies decisions. The decision is not an underrated decision because of the brilliance of the legal reasoning. On the contrary, *Frambach* does not dazzle the reader with its brilliance, and the decision is not avant-garde or cutting edge in its approach to the issues presented. Indeed, the court did not definitively resolve the issues before it. The court simply decided that the lower court had erred and remanded the matter to the lower court for further hearings and findings while appending some thoughts about how the lower court might resolve the case.² Moreover, in terms of legal reasoning, it is not clear that *Frambach* “got it right.”

So, you might ask, how in the world can *Frambach* be classified as one of the most underrated remedies decisions? *Frambach* is underrated because of its teachability. The case arises out of an absolutely extraordinary set of facts, which the judge described as an “amazing account of human relationships.”³ In addition, the case presents issues that are not only unique but interesting and engaging. Moreover, the facts raise so many questions that the case allows both

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1. 419 So. 2d 1115 (Fla. Dist. Ct. App. 1982).
2. *Id.* at 1117.
3. *Id.* at 1116.

professors and students to wander around the remedies curriculum asking (and trying to resolve) all sorts of stimulating issues.

In this short Article, I try to do a couple of things. First, I outline the facts of the case and the decision. Second, I suggest some of the many issues raised by the case. In the end, I hope the reader will agree that *Frambach* is underrated in terms of its teachability—if not in its legal logic or the wisdom of its result.

II. THE FACTS

Frambach involves two families who coexisted for nearly three decades before coming to a disagreeable termination of their relationship (for reasons that remain unknown).⁴ At the beginning of the *Frambach* opinion, Judge Upchurch raises the issue that baffles everyone who examines the case: “Why people who for many years had demonstrated an incredible ability to solve their disputes would ultimately end up in litigation is mystifying.”⁵

The unusual story begins with Dunihue, a widower with seven children ranging in age from three to eleven years, who lived near the Frambachs, who had four children of their own.⁶ The families were introduced to each other when Mrs. Frambach asked if she could take the Dunihue children to church and was allowed to do so. Over time, Mrs. Frambach began to babysit the Dunihue children and became closer to the entire family. The Frambachs’ relationship with the Dunihues solidified when the families endured a hurricane in the Frambachs’ home. Afterwards, the families decided to see if they could live together.⁷

The difficulty with the common living arrangement was that the Frambachs’ home, the chosen home for the two families, was very small.⁸ It contained only a bedroom, a living room, and a kitchen, which totaled six hundred square feet. Mr. Dunihue enlarged the house by adding a bedroom and a bathroom and by making various other improvements. In the ensuing years, Mr. Dunihue continued to improve the home, which was worth \$65,000 at the date of separation. When Mrs. Frambach had another child sometime later,

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

there were fifteen people (twelve children and three adults) living in the two bedroom house. This situation continued until some of the children reached the age of majority and moved out.⁹

Under the arrangement between the Frambachs and Mr. Dunihue, Mrs. Frambach ran the household, did the cooking, and oversaw the children, who were expected to do the cleaning, washing, and other appropriate chores.¹⁰ As a general rule, Mr. Dunihue had a larger income than Mr. Frambach, but both Mr. Frambach and Mr. Dunihue deposited their paychecks in bank accounts that Mrs. Frambach was allowed to draw on to pay household expenses. She was given discretion regarding whether to pay a particular bill from one account as opposed to another.¹¹ In Mr. Dunihue's view, "it was just one family and whatever money was available was used wherever it was most needed."¹² Indeed, it was not uncommon for the Frambachs and Mr. Dunihue to jointly shop for clothes, furniture, and automobiles.

After nineteen years of living together, when all of Mr. Dunihue's children were grown, Mrs. Frambach abruptly terminated the living arrangement.¹³ She did so by calling Mr. Dunihue at work and telling him that he had thirty minutes to move out. Mrs. Frambach never offered any explanation for her ultimatum.¹⁴

III. THE DECISIONS

After his ejection, Mr. Dunihue sought to impose an equitable lien on the Frambachs' home.¹⁵ He based his claim on a couple of arguments. First, he claimed that the Frambachs had promised him a place to live for the rest of his life in exchange for his work.¹⁶ Second, he claimed that he relied on that promise in exchange for making improvements to the home and that the Frambachs would be unjustly enriched at his expense if they were allowed to keep the

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.* at 1116-17.

improvements without paying for them.¹⁷ For their part, the Frambachs denied that they had promised Dunihue a place to live for the rest of his life and claimed that the improvements were necessary in order to make the house suitable for so many people.¹⁸

After considering the evidence, the trial court awarded Mr. Dunihue an equitable lien against the Frambachs' home, concluded that the two families had operated as a "single family," and held that "the association of the parties was almost as close as though there had been a single wife and two husbands."¹⁹ The court concluded that the parties had pooled their assets and commingled everything into a common pot with the intention of assuring Dunihue "that he would have a home as long as he lived."²⁰ In determining the amount of the lien, the court noted that the Frambachs began with \$20,000 equity in their home. Given that the parties had treated everything as equal, the court treated the breakup as similar to a divorce and concluded that the "only fair thing to do is to make them tenants in common right down the middle."²¹

Although the appellate court recognized that a court may impose a constructive trust to prevent unjust enrichment, the court held that a constructive trust could not be imposed in favor of an individual who made improvements to another person's land.²² When one party helps improve the home of another, she is entitled to an equitable lien for the value of the improvements because "[n]either a constructive trust nor a resulting trust arises in favor of a person who pays no part of the purchase price even though he pays for improvements on the property."²³ At most, he is entitled to reimbursement.²⁴ Applying these principles, the court emphasized that there was no promise or agreement by the Frambachs to deed part of their property to Dunihue and no evidence that Dunihue had paid a portion of the purchase price. As a result, the appellate court reversed the trial court's judgment awarding Dunihue a one-half

17. *Id.* at 1117.

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.* (citing RESTATEMENT OF RESTITUTION § 161, cmt. a.).

23. *Id.*

24. *Id.*

interest in the property. There was insufficient evidence to support an award of a constructive trust.²⁵

Rather than decide these issues itself, the appellate court remanded the case for further fact-finding and a second decision.²⁶ The trial court was specifically directed to attempt to determine the “value of the respective contributions of Dunihue and the Frambachs” by “calculating the fair market value of the improvements attributable to Dunihue and the fair market value of the services rendered by the Frambachs to him during the nineteen years the parties lived together.”²⁷ However, the court suggested that the trial court might alternatively attempt to determine “the cost to Dunihue for his labor, services and material in making the improvements as compared to the cost to the Frambachs of providing services to Dunihue.”²⁸ In passing, the appellate court surmised that “under either measure, the contributions of the parties will be equal.”²⁹ On the other hand, “if the court finds that Dunihue’s contributions exceed the value of the benefits received by him from the Frambachs, an equitable lien in this amount should be imposed to prevent the unjust enrichment of the Frambachs.”³⁰

IV. TEACHABILITY

Frambach allows a remedies professor to discuss a host of issues. Not only does the case raise interesting restitution questions, but it also raises estoppel issues.

A. Estoppel Claims

Of course, running throughout the *Frambach* case is the assertion that the Frambachs agreed to provide Dunihue with a place to live for the rest of his life in exchange for his improvements to the house, his income, and access to his bank account for family expenses.³¹ As every first-year contracts student knows, courts can “estop” individuals from denying their promises and enforce those

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.* at 1116.

promises.³² The classic example of estoppel is *Feinberg v. Pfeiffer Co.*,³³ a case in which a company passed a resolution offering a long-time employee, Ms. Feinberg, a pension of \$200 per month for life upon her retirement for “long and faithful service.”³⁴ Relying on the pension offer, Feinberg decided to retire.³⁵ Although the company paid the pension for some time, it ultimately sought to renege on its promise.³⁶ Relying on the *Restatement of the Law of Contracts*,³⁷ the court applied promissory estoppel principles and precluded the employer from withdrawing the pension.³⁸ The court asked a rhetorical question: “Was there such an act on the part of plaintiff, in reliance upon the promise contained in the resolution, as will estop the defendant, and therefore create an enforceable contract under the doctrine of promissory estoppel?”³⁹ Relying on the *Restatement*,⁴⁰ the court answered this question in the affirmative: “we think there was.”⁴¹

In analyzing the *Frambach* case, students must think about whether the Frambachs should be estopped from refusing to provide permanent housing to Dunihue. In analyzing that issue, the answer is not as clear as it was in *Feinberg*. In that case, the requirements of a promise and reliance were clearly proven.⁴² Not only had the corporation adopted a resolution granting Ms. Feinberg a pension for her long years of service, she offered testimony suggesting that she

32. See *Feinberg v. Pfeiffer Co.*, 322 S.W.2d 163, 168 (Mo. Ct. App. 1959); *Ricketts v. Scothorn*, 77 N.W. 365, 367 (Neb. 1898).

33. 322 S.W.2d 163.

34. *Id.* at 164.

35. *Id.* at 166.

36. *Id.* at 165.

37. *Id.* at 167–68. The court cited section 90 of the *Restatement of the Law of Contracts* for the following proposition: “A promise which the promisor should reasonably expect to induce action or forbearance of a definite and substantial character on the part of the promisee and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise.” RESTATEMENT (FIRST) OF CONTRACTS § 90 (1932).

38. *Feinberg*, 322 S.W.2d at 168.

39. *Id.* at 168.

40. *Id.* at 167. The *Restatement of the Law of Contracts*, section 75 states that “[c]onsideration for a promise is (a) an act other than a promise, or (b) a forbearance, or (c) the creation, modification or destruction of a legal relation, or (d) a return promise, bargained for and given in exchange for the promise.” RESTATEMENT (FIRST) OF CONTRACTS § 75 (1932).

41. *Feinberg*, 322 S.W.2d at 168.

42. *Id.* at 167.

retired in reliance on the pension.⁴³

In *Frambach*, the evidence of estoppel is considerably more muddled. Although Dunihue asserted that the Frambachs promised him lifetime housing, the Frambachs denied that they made the promise.⁴⁴ Moreover, even if students are able to conclude that a promise existed, the court would then have to determine whether Dunihue had relied on the promise and that his reliance was reasonable. The case presents interesting questions on that point. Can someone like Dunihue reasonably rely on a promise that the Frambachs will provide him with housing *for the rest of his life*? That is a very long time, and the circumstances between the parties can change over time (as they evidently did).

Of course, even if students are willing to find the elements of promissory estoppel, they must then address a host of remedial questions. In *Feinberg*, the court ordered the Pfeiffer Company to perform its promise by providing Ms. Feinberg a pension for the rest of her life.⁴⁵ Do students really think that a court is going to order the Frambachs to perform their promise by providing Dunihue with housing for the rest of his life? What about the host of decisions suggesting that courts will not enforce contracts for personal services?⁴⁶ Those cases suggest that courts are concerned about foisting unwilling parties on each other,⁴⁷ as well as involuntary servitude issues⁴⁸ and concerns that specific enforcement of a personal services contract will embroil the court in continuing supervision problems.⁴⁹ Ultimately, most students will conclude that specific performance (in the sense of requiring actual compliance with the promise) is unrealistic.

Even if a court is unwilling to order the Frambachs to actually

43. *Id.* at 166.

44. *Frambach v. Dunihue*, 419 So. 2d 1115, 1117 (Fla. Dist. Ct. App. 1982).

45. *Feinberg*, 322 S.W.2d at 169.

46. *See generally* *Wash. Capitols Basketball Club, Inc. v. Barry*, 304 F. Supp. 1193, 1202 (N.D. Cal. 1969) (granting plaintiff basketball team preliminary injunctive relief against a player from another team so long as he was in default under the franchise contract); *Lumley v. Wagner* (1852) 42 Eng. Rep. 687, 689 (Q.B.) (granting plaintiff theater injunctive relief against a singer from performing at any other venue while under contract to sing solely at that venue).

47. *See* *Wash. Capitols*, 304 F. Supp. at 1202; *Lumley*, 42 Eng. Rep. at 689.

48. *See* *Wash. Capitols*, 304 F. Supp. at 1202; *Lumley*, 42 Eng. Rep. 687. at 689.

49. *See* *Lumley*, 42 Eng. Rep. at 692; RESTATEMENT (SECOND) OF CONTRACTS § 366 (1981).

house Dunihue, students must then think about whether a court should order them to specifically perform their promise by paying for Dunihue's housing and support for the rest of his life. Is a court likely to impose such an order? The cost would be significant if not prohibitive. In a close case, will the cost influence the court when determining whether there was a promise or reasonable reliance?

B. Restitution

Of course, the primary focus of both the trial and appellate court opinions in the *Frambach* case is on the restitution issue. As students think about whether the Frambachs must pay Dunihue restitution, they must consider basic remedial issues. Were the Frambachs "enriched" at Dunihue's expense?⁵⁰ If so, is the retention of that enrichment "unjust?"⁵¹

Was there "enrichment" in the traditional sense? Students can readily find "enrichment" in two senses. First, over the decades, Dunihue made numerous improvements to the Frambachs' home, including the immediate addition of an extra bedroom and an additional bathroom to the house.⁵² In addition, over the course of the ensuing decades, Dunihue continued to make improvements to the home.⁵³ Further, over the decades, Dunihue regularly deposited his paycheck in a bank account that Mrs. Frambach had access to and used to pay various bills for the family.⁵⁴ As a result, it is difficult to argue that Dunihue did not confer a "benefit" or an "enrichment" on the Frambachs.

Students must also think about how to measure the enrichment. In resolving that issue, students must first think about the house. Is it appropriate or permissible to simply determine the difference between the fair market value of the Frambachs' home at the time of trial and the original purchase price? Should a court not take inflation into account, which would have resulted in an increase in the value of the home with or without any improvements or

50. See generally *W. Coach Corp. v. Roscoe*, 650 P.2d 449, 455 (Ariz. 1982) (holding defendants unjustly enriched when plaintiff repaired and restored defendants' mobile home).

51. See generally *Beacon Homes, Inc. v. Holt*, 146 S.E.2d 434, 439 (N.C. 1966) (holding defendant unjustly enriched by assuming dominion over a house without paying for its construction).

52. *Frambach v. Dunihue*, 419 So. 2d 1115, 1116 (Fla. Dist. Ct. App. 1982).

53. *Id.*

54. *Id.*

additions? In regard to the money taken from Dunihue's bank account, how is it possible to know whether it constituted an "enrichment" to the Frambachs? After all, does not an assessment of enrichment require some understanding or knowledge of how the money was spent? If it was spent purchasing clothes for Dunihue's children, is there really an enrichment? On the other hand, if the money was spent to make improvements to the home or to pay for the Frambachs' vacation, is the court more likely to find an enrichment?

Of course, students must also think about whether it is "unjust" to allow the Frambachs to retain any "enrichment" without paying for it. The difficulty with the *Frambach* case is that the enrichment was not all one-sided. Over the years, Mrs. Frambach watched Dunihue's children for him and cooked meals for the entire family, including Dunihue and his children.⁵⁵ There is undoubtedly a "value" that should be attached to these services, and Dunihue was undoubtedly "enriched" by receiving them. Accordingly, as the appellate court suggests, a reasonable unjust enrichment calculation requires the court to attempt to place some value on the benefits received by Dunihue and to offset those benefits against the enrichment that he bestowed on the Frambachs.⁵⁶

Students must then think about how to make the relative calculations. Is it really possible to fairly value not only the benefits conveyed by Mrs. Frambach to the Dunihue family over such a long period of time, but also to assess the benefits the Frambachs received over that same period? Is a wage to be attached to the value of Mrs. Frambach's services? If so, what value per hour (or week or month)? Over the twenty-seven year period, how many hours of benefit did she convey on the Dunihue family? On a relative basis, what is the level of enrichment?

The reality is that the parties may be unable, indeed are likely to be unable, to precisely calculate the benefits they conferred on each other. It is doubtful that Mrs. Frambach has precise records showing the number of hours she spent over several decades cooking for the joint families and taking care of the Dunihue children. At best, she can make an estimate of the hours and attach an approximate value.

55. *Id.*

56. *Id.* at 1117.

Likewise, for Dunihue, it is unlikely that he will be able to definitively show what monies were taken from his bank account over the decades and how the money was spent.

Assuming that the parties have adequate records of their contributions to the joint household, it might be possible to create an accurate estimate of the benefits that Dunihue conferred on the Frambachs and the benefits that they conferred on him. In the absence of adequate records, the calculations become difficult if not impossible. If so, perhaps the appellate court was correct in assuming that the value of the benefits received by Dunihue provide a full offset to the money and services he provided.⁵⁷

VI. CONCLUSION

I hope that the foregoing discussion reveals why *Frambach v. Dunihue* is an extraordinary teaching device. The case presents an unusual set of facts and unique legal issues that professors and their classes can wrestle with for some time. Not only does the case present the restitution issues, which were specifically discussed by the appellate court, it also presents questions of contract and estoppel. Moreover, the broad issues are not only interesting but complex. There is much to think about and discuss to determine whether the Frambachs were unjustly enriched (something that the appellate court doubts), as well as the amount of the enrichment. Moreover, the facts are compelling enough to engage the student attention.

57. *Id.*