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CHARLES DUSH, APPELLANT, V. SANDRA DUSH, APPELLEE.

___ N.W.3d ___

Filed November 24, 2026. No. A-25-735.

1. **Summary Judgment: Appeal and Error.** An appellate court reviews the district court's grant of summary judgment de novo, viewing the record in the light most favorable to the nonmoving party and drawing all reasonable inferences in that party's favor.
2. ____: ____. A grant of summary judgment will be affirmed if the pleadings and admitted evidence show that there is no genuine issue as to any material facts or as to the ultimate inferences that may be drawn from the facts and that the moving party is entitled to judgment as a matter of law.
3. **Trial: Appeal and Error.** An appellate court determines cases on the theory upon which they were tried.
4. **Contracts: Specific Performance: Decedents' Estates: Proof.** In an action for specific performance of an oral agreement with a deceased person to convey land, one trying to enforce such a contract must prove (1) an oral contract the terms of which are clear, satisfactory, and unequivocal and (2) that the thing done constituting performance is such as is referable solely to the contract sought to be enforced, and not such as might be referable to some other or different contract.
5. **Summary Judgment: Proof.** If the burden of proof at trial would be on the nonmoving party, then the party moving for summary judgment may satisfy its prima facie burden either by citing to materials in the record that affirmatively negate an essential element of the nonmoving party's claim or by citing to materials in the record demonstrating that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim.
6. **Contracts: Intent.** The essential elements of a valid, legally enforceable contract are a definite offer, unconditional acceptance of the offer, and a

meeting of the minds that meets at every point, leaving nothing open for future arrangement.

7. **Contracts: Specific Performance: Real Estate.** A written contract for the transfer of real property is valid and enforceable if the agreement contains the essential elements of a contract with sufficient certainty and definiteness as to the parties, property, consideration, terms, and time of performance.
8. **Contracts: Words and Phrases.** An offer must be so definite in its terms, or require such definite terms in its acceptance, that the promises and performances to be rendered by each party are reasonably certain.
9. **Contracts: Specific Performance.** Where a party orally contracts to devise to another certain real estate in consideration that the beneficiary shall assume a peculiar and domestic relation to the promissor, and render the promissor services of a character to make it practically impossible to estimate their value by any pecuniary standard, and the beneficiary, in reliance upon the oral promise, in good faith assumes the relations and fully performs the beneficiary's part of the agreement, the beneficiary will be entitled, in the event of a breach of the contract by the promissor, to a specific performance of the same as made.
10. **Contracts: Real Estate.** In an oral contract to convey real estate, there must be an identifiable point in time when the promisor is to transfer the land to the promisee.
11. **Contracts: Intent: Proof.** Intent is insufficient where proof of a contract is required.
12. **Contracts: Real Estate.** An oral agreement for the transfer of title to real estate is voidable under the statute of frauds.
13. **Contracts: Specific Performance: Real Estate.** Specific performance of an oral agreement to convey real estate will be enforced by a court of equity where one party has wholly performed its part thereof and the other party has not performed its part, and its nonperformance on the one hand would amount to a fraud on the party who has fully performed its part.

Appeal from the District Court for Platte County: ROBERT R. STEINKE and JASON S. DOELE, Judges. Affirmed.

Clark J. Grant, of Grant & Grant, for appellant.

Luke P. Henderson, Ronald E. Temple, and Preston T. Koehler, of Fitzgerald, Vetter, Temple, Bartell & Henderson, for appellee.

Riedmann, Chief Judge, and Pirtle and Piccolo, Judges.

Riedmann, Chief Judge.

INTRODUCTION

Despite evidence from 9 of 10 siblings that their parents promised the family farm to their only brother, the district court for Platte County granted summary judgment in favor of the lone objecting sibling on the brother's complaint for specific performance of the oral promise. Because we find that the objecting sibling presented evidence demonstrating that her brother's evidence was insufficient to establish the essential elements of an enforceable contract, we affirm the district court's order granting her summary judgment.

BACKGROUND

Charley Dush and Dorothy Dush married in 1950 and had 11 children—10 daughters and 1 son. During their marriage, they acquired 360 acres of land, which included farmland and the family home (hereinafter referred to as the "Platte County farm"). Charley passed away in 2001, and Dorothy passed away in 2020. Neither parent executed a will or deed to the Platte County farm.

A dispute arose among the siblings regarding the disposition of the Platte County farm. Ten of the children agreed that their parents had indicated the farm belonged to the only brother, Charles Dush; one sibling, Sandra Dush, disagreed. Charles filed an action against Sandra in the district court, seeking specific performance of promises made by their father and mother to convey the Platte County farm to him. Attached to his amended complaint was a quitclaim deed executed by all his siblings, except Sandra, conveying each of their interest in the farm to Charles. Sandra responded, denying any oral agreement between Charles and their parents and asserting the statute of frauds. She also filed a motion for summary judgment asserting the same.

In support of her motion for summary judgment, Sandra offered the depositions of Charles, his various discovery

responses, and the operative pleadings. Charles offered the depositions of eight of his sisters, including Sandra; the quitclaim deed attached to his amended complaint; and a letter from one of his sisters. The evidence reveals the following.

Charles recalled many times when his father and mother promised that the Platte County farm either was his or would be his. Charles stated in his deposition that as early as when he was in third or fourth grade, his father promised him that the farm would be his. This promise first occurred when Charles came home with a school assignment asking what he would be when he grew up. After reviewing the assignment, his father responded, "[O]h, no . . . you're going to stay here and farm and . . . the farm would be [yours] some day." Charles claimed that this conversation created the expectation that he would spend the rest of his life farming in exchange for the farm. Charles' testimony fluctuated regarding whether the farm was to be his "someday" or became his sometime during his parents' lives.

Charles explained that he forwent other opportunities because of his father's promise. For example, he did not consider pursuing other vocations and when he considered purchasing other farmland, his father dissuaded him and told him again that the farm was his. Charles asked, "'Dad, what—what's it gonna cost me?' And [his father] said nothing." Further, in the 1990s, Charles refrained from removing an existing cattle barn after building a new one on the land because his father stated that the farm would be his someday and he could tear it down then.

Charles had similar moments with his mother where she acknowledged and agreed with his father's promise to give Charles the farm. While his father was still alive, Charles told his mother about something he was going to do on the farm. She responded, "[D]ad says you're the boss and the farm is yours, you can do what you want." In a later conversation, Charles asked if the other siblings knew that the farm was his, to which his mother replied, "Yes."

Many of Charles' sisters confirmed that they knew the farm belonged, or would belong, to Charles. Maxine Rybak recalled that in March 1988, when their father was hospitalized, he told her, "'The farm is [Charles'], and I need you to help him and to take care of Mom.'" Again, in September 1995, referring to Charles and the farm, their father told her, "'When I'm gone, it is his to do what he wants.'" Rybak also recalled conversations with their mother that occurred around late 2019 or early 2020. Their mother stated, "'What do you mean about the farm? The farm is [Charles']. He has done all of the work, everything around here. He has put the roof on the house, built the barn, fixed all the corrals, put in the well and is paying the taxes.'"

Another sister, Stella Brandt, testified about conversations she had with their parents regarding their promise to give Charles the farm. Roughly 5 years before her father passed away, he asked Brandt if she liked living on the farm, to which she said she did. He responded, "'This farm will belong to your brother someday.'" She had a similar discussion with their mother in 2015, who told Brandt, "'This farm will go to your brother,'" to which Brandt responded, "'I know that.'" Five other sisters confirmed they had similar conversations with their parents in which they were advised that the Platte County farm belonged, or would belong, to Charles.

After their father's death, Charles, his sister Rita Hillen, and their mother met with an attorney to discuss putting the Platte County farm in Charles' name, but documents were never executed for reasons undisclosed in our record. Therefore, there is no written document conveying the Platte County farm to Charles.

In addition to the conversations outlined above, Charles testified that he primarily maintained the Platte County farm. Around the 1980s, Charles began paying the farm inputs, and in 2009, he began paying taxes on the farmland. Charles improved the farm by installing fixtures like a calving barn, costing around $11,500; a pole barn, costing around $31,500;

a stock well, costing around $4,100; and a corral fence, costing around $51,600. Further, he installed a new roof on the garage, the summer kitchen, and the house; erected grain bins, costing $4,500; and installed water pipelines and hydrants in the fields, costing $5,000.

The district court granted Sandra's motion for summary judgment, reasoning that Charles could not meet his burden of showing clear, satisfactory, and unequivocal proof that a contract was created between him and his parents. The district court held that even if a contract could be proved, Charles could not show that his acts done in performance were referable solely to the contract sought to be enforced.

Charles appeals.

ASSIGNMENTS OF ERROR

Charles assigns that the district court erred as a matter of law in granting Sandra's motion for summary judgment and dismissing his amended complaint with prejudice. Charles further assigns that the district court erred when it held that he failed to show that his acts were solely in reference to the oral contract.

STANDARD OF REVIEW

[1,2] An appellate court reviews the district court's grant of summary judgment de novo, viewing the record in the light most favorable to the nonmoving party and drawing all reasonable inferences in that party's favor. *D&M Roofing & Siding v. Distribution, Inc.*, 319 Neb. 707, 24 N.W.3d 850 (2025). A grant of summary judgment will be affirmed if the pleadings and admitted evidence show that there is no genuine issue as to any material facts or as to the ultimate inferences that may be drawn from the facts and that the moving party is entitled to judgment as a matter of law. See *id.*

ANALYSIS

[3,4] Charles sought specific performance of his parents' oral promises to convey the Platte County farm to him on

the theory that his parents' promises were an oral contract to convey real estate. An appellate court determines cases on the theory upon which they were tried. See *In re Estate of Adelung*, 306 Neb. 646, 947 N.W.2d 269 (2020). The Nebraska Supreme Court has long held that in an action for specific performance of an oral agreement with a deceased person to convey land, one trying to enforce such a contract must prove (1) an oral contract the terms of which are clear, satisfactory, and unequivocal and (2) that the thing done constituting performance is such as is referable solely to the contract sought to be enforced, and not such as might be referable to some other or different contract. *In re Estate of Knapp*, 321 Neb. 155, 33 N.W.3d 250 (2026).

Because this case was decided on summary judgment, we analyze whether the district court erred in determining Sandra met her burden of proving Charles' evidence was insufficient to establish the essential elements of an oral contract or that Charles' acts were not referable solely to the contract. For the following reasons, we find no error in the district court's grant of Sandra's motion for summary judgment. Accordingly, we affirm the order of the district court.

Summary Judgment Principles.

[5] A motion for summary judgment is to be granted if the pleadings and the evidence admitted at the hearing show that there is no genuine dispute as to any material fact and that the moving party is entitled to a judgment as a matter of law. The evidence that may be received on a motion for summary judgment includes depositions, answers to interrogatories, admissions, stipulations, and affidavits. *Bohling v. Bohling*, 304 Neb. 968, 937 N.W.2d 855 (2020). If the burden of proof at trial would be on the nonmoving party, then the party moving for summary judgment may satisfy its prima facie burden either by citing to materials in the record that affirmatively negate an essential element of the nonmoving party's claim or by citing to materials in the record demonstrating that the

nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim. *Clark v. Scheels All Sports*, 314 Neb. 49, 989 N.W.2d 39 (2023).

Applying the above principles, because the burden of proof at trial would be on Charles, Sandra was required to prove that the evidence received at the summary judgment hearing affirmatively negated an essential element of Charles' claim or demonstrated that Charles did not have sufficient evidence to establish an essential element of his claim. Accordingly, we begin by defining the essential elements of Charles' claim and then review the evidence to determine whether Sandra met her burden of proof.

Elements of Oral Contract to Convey Real Estate.

[6,7] The essential elements of a valid, legally enforceable contract are a definite offer, unconditional acceptance of the offer, and a meeting of the minds that meets at every point, leaving nothing open for future arrangement. See *Logan Ranch v. Farm Credit Bank*, 238 Neb. 814, 472 N.W.2d 704 (1991). A written contract for the transfer of real property is valid and enforceable if the agreement contains the essential elements of a contract with sufficient certainty and definiteness as to the parties, property, consideration, terms, and time of performance. See *Satellite Dev. Co. v. Bernt*, 229 Neb. 778, 429 N.W.2d 334 (1988). These essential elements remain the same when the contract is an oral agreement to convey real property. See *Ficke v. Wolken*, 22 Neb. App. 587, 858 N.W.2d 249 (2014) (identifying evidence supporting identity of parties, property to be conveyed, consideration, terms, and time of performance in concluding terms of oral contract to convey real estate were clear, satisfactory, and unequivocal).

In *Lintz v. Apking*, 145 Neb. 714, 18 N.W.2d 55 (1945), a tenant sought to enforce an alleged oral contract with a property owner that upon the property owner's death, she would leave the property to the tenant. Rejecting the tenant's claim,

the Supreme Court observed the record was devoid of the date of any offer or acceptance. It stated, "[T]here is not even a word of evidence of any occasion when the parties negotiated or entered into any kind or character of agreement with regard to the farm in question after the date of the [lease]." *Id*. at 717, 18 N.W.2d at 56.

Likewise, in *Ross v. Ross*, 192 Neb. 186, 219 N.W.2d 756 (1974), the Supreme Court affirmed a decision of the district court finding that the plaintiff had failed to clearly define the terms of an alleged oral contract to convey land, including the purchase price and time of performance. Instead, the plaintiff asserted only vague conversations regarding amounts to be paid with no set time for payments to begin.

Unlike the tenant in *Lintz*, Charles identified the specific conversation that he believed constituted an offer and acceptance, although Charles was just a child at the time. Charles testified that when he was in third or fourth grade, he was required for a school assignment to write what he wanted to be when he grew up. When he showed the assignment to his father, his father responded, "[O]h, no . . . you're going to stay here and farm and . . . the farm would be [yours] some day." Charles claims he accepted that promise and from that point on, he and his father had a contract. In his answers to Sandra's interrogatories, Charles again identified this conversation as the basis for his allegation that he was promised the farm and expounded that his staying home and farming for the rest of his life was the expectation. But the expectation to farm another's land in exchange for receiving it someday does not, itself, amount to an offer without more specificity.

[8] An offer must be so definite in its terms, or require such definite terms in its acceptance, that the promises and performances to be rendered by each party are reasonably certain. See *Kennedy v. Central Power Co.*, 129 Neb. 637, 262 N.W. 504 (1935). As explained by the Missouri Court of Appeals, "The offer must be *sufficiently specific* on the terms of the contract that, upon its acceptance, a court may

enforce the contract so formed." *Around the World Importing v. Mercantile*, 795 S.W.2d 85, 90 (Mo. App. 1990) (emphasis supplied).

The "offer" identified by Charles was his father's telling him "you're going to stay here and farm and . . . the farm would be [yours] some day." A court could reasonably identify the parties and the property to be conveyed; however, the terms are not sufficiently specific such that a court could enforce the promise upon Charles' acceptance. Charles testified he only inferred that he would have to stay and farm the land in order to acquire it. The offer says nothing about whether this was a requirement and, if so, how long he must do so. It is silent as to whether monetary compensation would also be required, the estate to be conveyed, or when the conveyance would occur. See e.g. *Blohme v. Blohme*, 166 Neb. 369, 89 N.W.2d 127 (1958) (identifying absence of estate in which land was to be taken, conditions of purchase and payment, and manner of use precluded finding of clear and unequivocal evidence of oral contract to convey land). Thus, this statement does not constitute an operative offer that Charles could have accepted.

Charles further testified, however, that "there was lots of times my dad said the farm was mine." He identified a statement made by his mother after his father's death in which she told an attorney she wished to transfer the farm to Charles. The evidence reveals other statements by her to Charles that the farm was his. Other than claiming he "accept[ed] that promise" in the initial conversation with his father, Charles was unable to point to any conversation with either his father or his mother in which there was an explicit offer of the farm in exchange for Charles' promise to remain on the land and farm it.

Charles testified that he forwent an opportunity to purchase additional farmland because his father told him the family farm was Charles', and he refrained from removing a barn on the land because his father told him he could tear it down after he died. But even if either of these events could

be construed as evincing an acceptance of some offer by his parents, at least two essential terms of the contract are absent: consideration and time of performance.

The term "consideration" is "any promise, payment, service, or thing that could be given by one party of the contract under its terms to compensate the other party for their actions under the contract." I The Wolters Kluwer Bouvier Law Dictionary 535 (desk ed. 2012). To constitute consideration, a performance or a return promise must be bargained for. Restatement (Second) of Contracts § 71 (1981). The performance or return promise is bargained for if it is sought by the promisor in exchange for his or her promise and is given by the promisee in exchange for that promise. *Id.*

It is undisputed that no monetary consideration was contemplated, and although forbearance of a lawful action can create the basis for consideration, this is not the case when it is not expressly agreed that the promisee would refrain from lawful actions in exchange for the benefit conferred by the promisor. See *Scottsbluff Nat. Bank v. Blue J Feeds, Inc.*, 156 Neb. 65, 54 N.W.2d 392 (1952). As set forth above, Charles could not identify any conversation from which we can derive a bargained-for exchange and, subsequently, an agreement to convey the farm if Charles agreed to stay and farm it. The evidence falls short of being clear, satisfactory, and unequivocal.

[9] There are instances where caring for a family member forms the basis for consideration of an oral contract to convey real estate. See, e.g., *Rine v. Rine*, 100 Neb. 225, 158 N.W. 941 (1916); *Denesia v. Denesia*, 116 Neb. 789, 219 N.W. 142 (1928). In *Rine*, 100 Neb. at 228-29, 158 N.W. at 942, the Supreme Court explained:

> "Where a party orally contracts to devise . . . to another certain real estate . . . in consideration that the beneficiary shall assume a peculiar and domestic relation to the promissor, and render him services of a character to make it practically impossible to estimate their value by any pecuniary standard, and the beneficiary, in reliance upon the

> oral promise, in good faith assumes the relations and fully performs her part of the agreement, she will be entitled, in the event of a breach of the contract by the promissor, to a specific performance of the same as made."

But here, Charles does not assert that the conveyance of the land was conditioned upon his caring for either of his parents. To the contrary, although Charles testified the conveyance was made upon the expectation that he would stay on the farm, he also testified that there was a present conveyance of the land. When asked whether his father told him "the farm is yours" or "the farm was going to be yours," Charles responded, "I'd say he said it was mine, 'cause I never ever thought anything different." This negates a finding that any performance by Charles was required prior to conveyance; hence, there cannot be consideration. This brings us to another essential contract element that fails: time of performance.

[10] Time of performance in this context means the point at which the land would transfer to Charles. Formal delivery of a deed is not required because implicit in an oral contract is the absence of a deed; however, there must be an identifiable point in time when the promisor is to transfer the land to the promisee. Examples include, but are not limited to, possession after a lien or mortgage is paid off, possession after the happening of a specific event, or transfer on a predetermined date. See, e.g., *Kobza v. Spath*, 166 Neb. 623, 90 N.W.2d 246 (1958) (stating time of performance was 10 days after furnishing of abstract of title); *Hackbarth v. Hackbarth*, 146 Neb. 919, 22 N.W.2d 184 (1946) (if son would continue to work on farm, father would, upon payment of indebtedness against his lands, convey real and personal property to him); *Te Poel v. Shutt*, 57 Neb. 592, 78 N.W. 288 (1899) (conditioning performance on securing loan on farm conveyed, furnishing abstract showing perfect title, paying liens remaining on land, assigning insurance policies, executing warranty deed, and assuming existing mortgage); *Ficke v. Wolken*, 22 Neb. App. 587, 858 N.W.2d 249 (2014) (showing time of performance

was to occur after plaintiff worked for defendant for period of 10 years).

Charles was unable to establish *when* transfer of the land would occur. Charles' testimony demonstrates there was no identifiable date for the transfer of the land. He testified:

> [Sandra's counsel:] . . . And I'm asking you if you believe that you had a contract with your father to convey the Platte County farms to you?
>
> [Charles:] I wouldn't use the word "convey".
>
> Q. Okay. What word would you use?
>
> A. Because the farm was mine.
>
> Q. Okay. Is — is it, um, true that you would use the phrase, um, you had an agreement with your father that you would receive the farm after his passing?
>
> A. I wouldn't even say after his passing.
>
> Q. Well, what's the agreement then?
>
> A. Well, because dad had always told me that the farm was mine.

Charles defined the agreement he had with his father as being that "the farm was mine." Testimony of Charles' sisters substantiates the absence of a specific date of transfer. Mary Johns testified in her deposition that the land passed to Charles after their mother passed away. Brandt testified that roughly 5 years before her father's death, he told her that the land would be Charles' someday, and that in 2015, her mother said that the land would go to Charles. Rybak iterated a conversation with their mother in which she stated the farm was Charles'. Accordingly, Charles failed to identify a point in time when transfer was to occur. Thus, he was unable to prove time of performance, an essential element of the contract.

[11] Contrasting his case to *Guynan v. Guynan*, 208 Neb. 775, 305 N.W.2d 882 (1981), Charles argues that "there is a plethora of evidence that substantiates [Charles'] claim of the promise made by his parents to convey the farm." Brief for appellant at 14. We recognize that the testimony and execution of the quitclaim deed by 9 of his 10 sisters supports an

inference that his parents intended Charles to have the farm and that his sisters were aware of this; however, Nebraska law requires that in an action for specific performance of an oral agreement with a deceased person to convey land, one trying to enforce such a contract must prove (1) an oral contract the terms of which are clear, satisfactory, and unequivocal and (2) that the thing done constituting performance is such as is referable solely to the contract sought to be enforced, and not such as might be referable to some other or different contract. See *In re Estate of Knapp*, 321 Neb. 155, 33 N.W.3d 250 (2026). Intent is insufficient where proof of a contract is required. *See id.* Here, Sandra has met her burden of proving that Charles is unable to prove clear, satisfactory, and unequivocal terms of the oral contract; therefore, despite evidence that their parents may have intended Charles to have the farm, the district court did not err in granting Sandra's motion for summary judgment.

Performance Referable Solely to Contract.

[12,13] It is the general rule that an oral agreement for the transfer of title to real estate is voidable under the statute of frauds. *Ficke v. Wolken*, 22 Neb. App. 587, 858 N.W.2d 249 (2014). A well-known exception to that rule, however, is that specific performance of an oral agreement to convey real estate will be enforced by a court of equity where one party has wholly performed its part thereof and the other party has not performed its part, and its nonperformance on the one hand would amount to a fraud on the party who has fully performed its part. See *id.* Therefore, as set forth above, a person seeking specific performance of an oral agreement with a deceased person to convey real estate not only needs to prove the existence of the oral contract, but must also prove that the thing done constituting performance is such as is referable solely to the contract sought to be enforced, and not such as might be referable to some other or different contract. See *In re Estate of Knapp, supra.*

Because Charles was required to prove both the terms of the oral contract and that his actions were referable solely to the contract, we need not analyze whether the district court erred in determining Charles was unable to show that his acts done were referable solely to his parents' alleged promise. An appellate court is not obligated to engage in an analysis that is not necessary to adjudicate the case and controversy before it. See *Slater v. Ichtertz*, 320 Neb. 159, 26 N.W.3d 504 (2025).

CONCLUSION

For these reasons, we find that the district court did not err when it granted Sandra's motion for summary judgment.

AFFIRMED.