McCormack, Judge

[T]he district court found that if there was an implied contract, it was void under the statute of frauds, because the contract could not be performed within one year. [W]e disagree.

The statute of frauds provides, in relevant part: "In the following cases every agreement shall be void, unless such agreement, or some note or memorandum thereof, be in writing, and subscribed by the party to be charged therewith: (1) Every agreement that, by its terms, is not to be performed within one year from the making thereof . . . ." Neb. Rev. Stat. § 36-202. "A contract 'not to be performed within one year' is one which by its terms cannot be performed within one year." [Citation omitted.] A contract is not within the statute of frauds merely because it may not, or probably will not, be performed within one year. To state the rule in positive terms, an oral agreement is valid under the statute of frauds if it is capable of being performed within one year from the date of making.

Here, the record does not establish that this implied contract could not be performed within one year. Each of the open cases subject to the implied contract could have wrapped up within the year either by settlement, dismissal, or final disposition. Nothing by the terms of the oral contract indicates that such occurrence was impossible. To be void, the express terms of a contract must show that performance was to occur outside of one year or the facts must show that the parties could not have intended for performance to be completed within one year. Neither situation is applicable here.

Shasteen and Brock argue that the fact the actual performance of this contract has taken over seven years [(from shortly after the breakup of the firm to the time of trial)] indicates the impossibility of the contract's being performed within one year. However, even if a contract is not performed within one year, it is not void if it [was] capable of being performed within one year. Although seven years indicates the unlikelihood of the contract's being performed within one year, it does not establish that the implied contract could not have been performed within one year had it been carried out in a different manner.

Additionally, Shasteen and Brock . . . argue that the partial performance [of the parties in sharing fees from September 2004 until January 2005] is insufficient to avoid the statute of frauds. This argument is irrelevant, because we hold that the statute of frauds is not applicable.

We conclude that the district court erred . . . in determining that . . . an implied in fact contract [could not have existed under the facts of the case]. We also [hold] that the district court erred . . . in its determination that the statute of frauds rendered any implied contract void.

District court decision reversed in favor of Linscott; case remanded for further proceedings.

In July 2002, Rolf Shasteen, Marvin Linscott, and Tony Brock formed the law firm Shasteen, Linscott & Brock, P.C. (SLB) a Nebraska professional corporation. Two years later, Linscott drafted a proposed shareholder agreement that specified how attorney fees would be divided if a shareholder left the firm. The proposed agreement contemplated that the departed attorney would receive a one-third share of all fees from existing in-process cases and that the firm would receive two-thirds. The proposed agreement was never executed by Linscott, Shasteen, or Brock.

Shortly after the proposed shareholder agreement was circulated, Shasteen and Brock left a signed letter on Linscott's office chair. The letter requested that Linscott leave SLB. The letter stated, "Keep all your cases and we'll keep ours or we can divide them as per the proposed agreement." Linscott withdrew from the day-to-day operations of SLB and began practicing law with a new firm. Shasteen and Brock continued to operate SLB but did so under a different firm name.

On September 16, 2004, Linscott sent Shasteen and Brock an e-mail discussing issues arising from Linscott's leaving the firm. In particular, the e-mail stated, "Cases: Should be handled as proposed in the agreement, me paying you 2/3 of the fees on my SLB cases, you paying me 1/3 of the remaining SLB cases . . . ." On September 17, 2004, Linscott sent an e-mail to Shasteen and Brock indicating that he intended to pay them for their portion of fees collected from three clients. That same date, Linscott began sharing fees with Shasteen and Brock. On September 20, 2004, Linscott e-mailed Shasteen and Brock and stated that he intended to continue splitting fees the "same way" as they had been doing. The e-mail further stated, "I am going to honor our fee arrangement and trust that you will do the same, so I'm not going to require any additional documentation other than maybe the disbursement letter on non [sic] weekly checks (settlements). Let me know if you disagree."

From September 17, 2004 through January 10, 2005, Linscott sent 42 fee checks to Shasteen and Brock. Likewise, starting on September 20, 2004 and continuing through December 28, 2004, Shasteen and Brock sent 26 fee checks to Linscott. The 68 checks exchanged represented fees from a total of 134 cases.

In a September 22, 2004 e-mail sent in reply to Linscott's September 20 e-mail discussing the splitting of fees, Brock did not object to the fee arrangement. On November 17, Linscott sent a letter to Shasteen and Brock, which stated, "As far as the fees are concern [sic], I think things are working well on our cases where fees are currently being generated." In a response letter dated November 29, 2004, Shasteen disagreed with certain requests made by Linscott but did not discuss or contest the fee arrangement between the parties. On January 24, 2005, Shasteen sent Linscott an SLB case list, which indicated cases that existed at the time of Linscott's departure which were retained by Shasteen and Brock.

According to Brock, the exchange of fees from September 17, 2004 through January 10, 2005 was done without his knowledge. When Brock learned of this arrangement, he ordered it to stop. Shasteen and Brock ceased sending checks on December 28, 2004. Linscott sent his last fee check on January 10, 2005.

Linscott then filed a breach of contract lawsuit against Shasteen and Brock, seeking one-third of the attorney fees recovered in connection with other SLB cases that existed at the time Linscott withdrew from SLB as a shareholder. After a bench trial, a Nebraska district court held that Linscott was not owed any attorney fees because there was no valid contract between the parties. The district court further held that even if an oral contract existed, its enforcement would be barred by the statute of frauds.

Linscott appealed to the Supreme Court of Nebraska, arguing that a contract existed and that the statute of frauds did not apply. In a portion of the decision not included below, the Supreme Court held that a remand to the district court was in order because proper consideration of all relevant aspects of the parties' communications and conduct could lead to the conclusion that an implied contract existed. The portion of the decision included below focuses on the Supreme Court's analysis of whether the statute of frauds would bar enforcement of any contract that may have existed.