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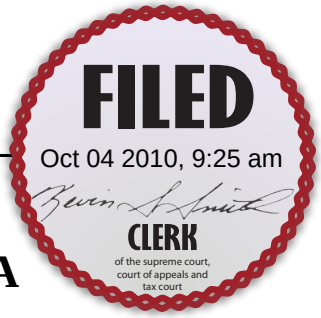

IN THE COURT OF APPEALS OF INDIANA

WAYNE MILLER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 34A04-1002-SC-105
	)	
JENNIFER SHUE,	)	
	)	
Appellee-Plaintiff.	)	
	)	

APPEAL FROM THE HOWARD SUPERIOR COURT
The Honorable Douglas A. Tate, Judge
Cause No. 34D03-0909-SC-03211

October 4, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Wayne Miller appeals the small claims court's judgment of $3600 in favor of Jennifer Shue. Shue and Miller, who had been in a relationship for over two years, purchased a car for Shue. In order to obtain a loan on the car, Miller had to sell his truck (which had an outstanding loan balance of $3600) to the dealership and buy it back for $1.00. The $3600 was then rolled into the car loan. The parties' relationship ended three months later. Miller has made no contribution toward his $3600 portion of the car loan though he still has his truck.

We find that the equitable doctrine of quantum meruit applies in this instance because Shue has established that a measurable benefit has been conferred on Miller under such circumstances that Miller's retention of the benefit without payment would be unjust. Also, because Miller's contentions on appeal are so utterly lacking in plausibility as to warrant damages for substantive bad faith, we remand to the small claims court for a determination of the amount of appellate attorney's fees and costs to which Shue is entitled.

Facts and Procedural History

On June 21, 2008, Shue and Miller, who had been dating for two and one-half years and were living together, went to Tom Wood Pontiac/GMC to purchase a 2006 Pontiac Vibe for Shue. The purchase price of the Vibe was $13,318.50. Because Shue could not secure financing in her own name, Miller agreed to sign for the loan with Shue. Because Miller already had a vehicle loan in his name, specifically a $3600 loan on a 2000 Dodge Dakota, he was required to sell the Dakota to the dealership for $3600 and

buy it back for $1.00. The $3600 was then rolled into the loan on the Vibe. Both parties then signed the Retail Installment Contract and Security Agreement and purchase agreement for the Vibe. Pursuant to these documents, the payments for the Vibe are $354.53 per month for seventy-two months. According to Shue, the parties had an oral agreement that Miller would pay one-half of the monthly payments on the Vibe until his $3600 portion was paid off. In October 2008, approximately three months after Shue and Miller purchased the Vibe, their relationship ended. Miller then promised Shue that he would pay her back the $3600. Shue, however, has made all of the monthly payments on the Vibe without any contribution from Miller.

In September 2009 Shue, by counsel, filed a small claims action against Miller in Howard Superior Court alleging unjust enrichment. A hearing was held following which the small claims court entered judgment in favor of Shue and against Miller in the amount of $3600 plus 8% interest and costs. Miller now appeals.

Discussion and Decision

Miller raises two issues on appeal which we more generally restate as whether the small claims court erred in entering judgment in favor of Shue for $3600 plus interest and costs. In her appellee's brief, Shue requests appellate attorney's fees pursuant to Indiana Appellate Rule 66(E) for both procedural and substantive bad faith.

Judgments from small claims actions are reviewable "as prescribed by Indiana rules and statutes." Ind. Small Claims Rule 11(A). "On appeal of claims tried by the court without a jury . . . , the court on appeal shall not set aside the findings or judgment unless clearly erroneous . . . ." Ind. Trial Rule 52(A). In determining whether a

judgment is clearly erroneous, we do not reweigh the evidence or determine the credibility of the witnesses but consider only the evidence which supports the judgment and reasonable inferences drawn therefrom. *Counceller v. Ecenbarger*, 834 N.E.2d 1018, 1021 (Ind. Ct. App. 2005). This "deferential standard of review is particularly important in small claims actions, where trials are 'informal, with the sole objective of dispensing speedy justice between the parties according to the rules of substantive law.'" *Trinity Homes, LLC v. Fang*, 848 N.E.2d 1065, 1067-68 (Ind. 2006) (citing Ind. Small Claims Rule 8).

Here, Shue alleged unjust enrichment in her small claims action. Appellant's App. p. 30. Miller then raised a statute of frauds defense at the hearing and argued that any oral agreement between Shue and Miller was unenforceable because it could not be performed within a year. *See* Ind. Code § 32-21-1-1(b)(5). Shue's attorney responded:

> I believe that falls under a *quantum mer[u]it* and he clearly received a benefit as her detriment to be paying for a vehicle that or a loan that she does not have a vehicle to. He's got the benefit of having a vehicle that he owes thirty six hundred dollars on and now he's got it receiving that benefit and she's paying for it.

Tr. p. 18 (emphasis added). The small claims court informed the parties at the end of the hearing:

> My initial inclination on this and I don't know how I am going to ultimately rule I will give you both an idea here let you have any opportunities to persuade me other wise, but I think clearly I kind of, I guess it's just kind of a lesson in not obligating yourself to debts without, while you're not married from both stand points. Both of you would have been better off had you not entered into this agreement, but we're left with what we're left with. On the one hand, . . . Mr. Miller obligated himself to a fourteen thousand dollar debt, on the other hand Ms. Shue is paying for it. On one hand Mr. Miller had a thirty six hundred dollar debt that was paid down as a result of this loan I think that just out of *equity* and just out of *fairness*

> that he shouldn't be placed in a better position that he was going into the contract simply because there are now two buyers and Ms. Shue can't, can't default or she loses her car, but I also don't want Mr. Miller to pay the thirty six hundred dollars and then have Ms. Shue default and be left, him left with paying a greater portion of the obligation that he really should pay. So my initial inclination is and . . . other than the statute of frauds . . . he came out ahead of the deal, if I, if I order that he doesn't have to pay that back he reaps a windfall of thirty six hundred dollars . . . .

Id. at 18-20 (emphases added). The court then responded to Miller's statute of frauds argument as follows:

> And the only way that he doesn't have to pay that back is going to be based upon a legal technicality that, if the statute of frauds applies then he's not obligated. I don't think it does and I think *quantum mer[u]it* would step in and say you can't you're not going to be allowed to prosper on this technicality . . . .

Id. at 20 (emphasis added). The court later entered a general judgment in favor of Shue.

"'[A] party who cohabitates with another without subsequent marriage is entitled to relief upon a showing of an express contract or a viable equitable theory such as an implied contract or unjust enrichment.'" *Fowler v. Perry*, 830 N.E.2d 97, 103 (Ind. Ct. App. 2005) (quoting *Bright v. Kuehl*, 650 N.E.2d 311, 315 (Ind. Ct. App 1995), *reh'g denied*). Unjust enrichment is also referred to as quantum meruit. *See Town of New Ross v. Ferretti*, 815 N.E.2d 162, 168 (Ind. Ct. App. 2004). To prevail on a claim for unjust enrichment, the plaintiff must establish that a measurable benefit has been conferred on the defendant under such circumstances that the defendant's retention of the benefit without payment would be unjust. *Fowler*, 830 N.E.2d at 103; *Ferretti*, 815 N.E.2d at 168. The existence of a contract, however, precludes application of the equitable doctrine of quantum meruit because (1) a contract provides a remedy at law and

(2) as a remnant of chancery procedure, a plaintiff may not pursue an equitable remedy when there is a remedy at law. *Ferretti*, 815 N.E.2d at 168.

As for whether there is an oral contract which would preclude application of quantum meruit in this case, Shue testified at the small claims hearing that Miller "agreed to repay his part of the loan[.]" Tr. p. 4. Shue said that according to their initial agreement, "we would both pay the loan off every month. I would pay half the balance due every month and he would pay the other half." *Id.* at 3-4. Miller, however, never paid anything toward the loan. Shue also testified that after their relationship ended, Miller "kept . . . promis[ing]" her that he would pay her back the $3600, which he never did. *Id.* at 8, 9. Thus, according to Shue, there are at least two agreements for Miller to pay his portion of the loan. When Miller was asked at the hearing if he agreed to pay for his $3600 portion of the loan, he responded, "No I did not. That point in time we were engaged to be married so my assumption was it would be the entire amount of this loan not just thirty six hundred." *Id.* at 11. The discussion continued:

> Q Didn't you just testify that you thought you would both be responsible?
> A Basically we did not come up with a set agreement as she has stated that we would pay half of each of this loan payment our money was joint and who paid what was not determined.
> Q Ok but it was your understanding that you would be paying part of this agreement?
> A As a joint, as a, both husband and wife if you were.

Id. at 12.

While Shue contends that an oral agreement between her and Miller existed, we do not find that it amounts to an enforceable oral contract. For an oral contract to exist, parties have to agree to all terms of the contract. *Fox Dev., Inc. v. England*, 837 N.E.2d

161, 165 (Ind. Ct. App. 2005). Importantly, Miller denies the existence of *any* agreement between the parties for his portion of the loan. In addition, Shue referenced at least two different agreements that Miller allegedly made regarding his portion of the loan. Because we do not find that there is one complete oral contract between the parties which gives Shue a remedy at law, Shue may be entitled to relief under quantum meruit.

The evidence shows that Miller's $3600 loan on his Dakota was paid off and rolled into Shue and Miller's loan on Shue's Vibe. Miller then bought back his truck for $1.00 but had the benefit of having no loan on it. The evidence also shows that Miller has made no contribution toward his $3600 portion of the loan. Shue has established that a measurable benefit has been conferred on Miller under such circumstances that Miller's retention of the benefit without payment would be unjust. We therefore affirm the small claims court.

As a final matter, Shue requests appellate attorney's fees pursuant to Indiana Appellate Rule 66(E). Rule 66(E) provides, in pertinent part, that "[t]he Court may assess damages if an appeal . . . is frivolous or in bad faith. Damages shall be in the Court's discretion and may include attorneys' fees." Although Rule 66(E) provides us with discretionary authority to award damages on appeal, we must use extreme restraint when exercising this power in light of the potential chilling effect on the exercise of the right to appeal. *In re Estate of Carnes*, 866 N.E.2d 260, 267 (Ind. Ct. App. 2007). Our discretion to award attorney's fees under Rule 66(E) is limited to "instances when an appeal is permeated with meritlessness, bad faith, frivolity, harassment, vexatiousness, or purpose of delay." *Thacker v. Wentzel*, 797 N.E.2d 342, 346 (Ind. Ct. App. 2003). A

strong showing is required to support an award of appellate damages, and we impose such sanctions not to punish mere lack of merit but something more egregious. *Manous v. Manousogianakis*, 824 N.E.2d 756, 768 (Ind. Ct. App. 2005).

Indiana appellate courts have categorized claims for appellate attorney's fees into two categories: "procedural" and "substantive" bad faith claims. *Id.* Here, Shue argues both procedural and substantive bad faith.

To prevail on a procedural bad faith claim, a party must show that the appellant has flagrantly disregarded the form and content requirements of the rules of procedure, omitted or misstated relevant facts, and filed briefs written in a manner calculated to require the maximum expenditure of time by the opposing party and reviewing court. *Thacker*, 797 N.E.2d at 346-47. Appellant's conduct need not be "deliberate or by design" to support a procedural bad faith claim. *Id.* at 347 (quoting *Boczar v. Meridian St. Found.*, 749 N.E.2d 87, 95 (Ind. Ct. App. 2001)). Shue argues that Miller is guilty of procedural bad faith because he violated our appellate rules, specifically Indiana Appellate Rule 46(A)(5) and (6), concerning the Statement of the Case and Statement of Facts. While it is true that Miller has not fully complied with these rules, we do not find that it amounts to procedural bad faith.

To prevail on a substantive bad faith claim, a party must show that the appellant's contentions are "utterly devoid of all plausibility." *Potter v. Houston*, 847 N.E.2d 241, 249 (Ind. Ct. App. 2006) (quoting *Thacker*, 797 N.E.2d at 346). Shue argues that Miller is guilty of substantive bad faith because he chose on appeal "to ignore entirely the pleaded basis for relief set forth in Shue's small claim, unjust enrichment." Appellee's

Br. p. 10. Miller's arguments on appeal are that no agreement exists between the parties, but even if one does, the statute of frauds precludes its enforcement. Although Shue pled unjust enrichment in her small claims action and the parties and the small claims court spent a significant amount of time discussing this equitable doctrine at the hearing, Miller does not mention unjust enrichment on appeal or attempt to convince us that it does not apply. The bottom line is that Miller signed on a car loan for which he has made no payments but received his truck free and clear. Shue was awarded $3600 in small claims court. Miller now seeks this appeal, forcing Shue to respond by securing appellate counsel. Miller, however, has chosen to ignore unjust enrichment, which was not only Shue's basis for recovery but by all indications was the basis for the small claims court's judgment as well. We conclude that Miller's contentions are so utterly lacking in plausibility as to warrant damages for substantive bad faith. We therefore remand to the small claims court for a determination of the amount of appellate attorney's fees and costs to which Shue is entitled.

Affirmed and remanded.

MAY, J., and ROBB, J., concur.