

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 28, 2001

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

No. 00-2940

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

LINDA M. PEDERSON,

PLAINTIFF-RESPONDENT,

V.

JERRY ANIBAS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dunn County:
ROD W. SMELTZER, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Jerry Anibas appeals a judgment awarding Linda Pederson \$39,500 on her unjust enrichment claim. He argues that the trial court's findings were clearly erroneous. He further argues that the trial court erroneously included certain assets and refused to address his claim for offset, replevin and

conversion. Because the record supports the court's determination, we reject his arguments and affirm the judgment.¹

¶2 The parties lived together without the benefit of marriage from 1977 to 1998. Initially, Jerry and Linda lived in rental premises and owned no real estate. After a few years, Jerry entered into a land contract to buy a few acres of land with a mobile home. After the parties lived in the mobile home for ten years, the land contract was paid off. In 1989, Jerry built a log home on the mobile home's foundation, with the help of friends and relatives.

¶3 Not long after Linda moved out, Jerry sold the log home for \$89,000 and used the proceeds to purchase another home for \$82,000. Linda started this action for unjust enrichment, alleging that she should share in the proceeds of the sale of the log home.

¶4 At trial, Linda testified that Jerry made the payments on the mobile home and land purchase, and used proceeds from the sale of the mobile home to help pay for the log home. Linda also testified that when the parties built their log home, she helped grind logs, ran errands and made meals for Jerry and others who were working on the home. She produced as an exhibit a photograph of herself grinding the logs. She testified that she helped decorate the interior, and cleaned and maintained the home since 1989, when they moved in. She conceded that Jerry never promised to pay her one-half the proceeds of the home, but contended that he told her the home was as much hers as his.

¹ We need not address Jerry's contention that Linda failed to meet her burden of proof for an implied contract claim, because we sustain Linda's unjust enrichment claim. *See Sweet v. Berge*, 113 Wis. 2d 61, 67, 334 N.W.2d 559 (Ct. App. 1983).

¶5 Linda further testified that she has worked at Target for the last fourteen years and now earns \$8.20 per hour. Currently, her assets consist of a \$500 bank account, household furnishings, and a 1986 Buick. She testified that while the parties lived together, she paid for utilities, groceries and a portion of the real estate taxes. When she received a worker's compensation settlement, she gave \$3,000 to Jerry. Linda claimed to have performed the majority of household chores.

¶6 Jerry disputed Linda's testimony to some degree. He claimed that he received little assistance from Linda when he built the log home with help from friends and relatives. He testified that he purchased all the materials with his life savings and took out a \$10,000 loan to finish the job. Title to the real estate was solely in Jerry's name. Jerry testified that while the two lived together, household and outdoor chores were shared equally and that he did cooking and laundry once in a while. He also claimed that when Linda moved out, she took many of the parties' household furnishings.

¶7 The trial court found that the parties began their twenty-one-year relationship with basically nothing. It held that not to permit Linda to share in the proceeds from the sale of the home would result in unjust enrichment to Jerry. The court ruled that Linda was entitled to a \$39,500 payment from Jerry and ordered that each party may keep the personal property in his or her possession.

¶8 An unjust enrichment action sounds in equity. *General Split Corp. v. P & V Atlas Corp.*, 91 Wis. 2d 119, 124, 280 N.W.2d 765 (1979). The ultimate determination whether to grant equitable relief is addressed to the trial court's discretion. See *Hoffman v. Red Owl Stores*, 26 Wis. 2d 683, 698, 133 N.W.2d 267 (1965). Discretionary decisions are sustained if the trial court "examined the

relevant facts, applied a proper standard of law, and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach.” *Loy v. Bunderson*, 107 Wis. 2d 400, 414-15, 320 N.W. 2d 175 (1982).

¶9 Underlying a court’s discretionary decision in equitable actions are mixed questions of fact and law. *Waage v. Borer*, 188 Wis. 2d 324, 328, 525 N.W.2d 96 (Ct. App. 1994). We apply a “clearly erroneous” standard to the trial court’s factual findings and review questions of law independently. See WIS. STAT. § 805.17(2); *Waage*, 188 Wis. 2d at 328.

¶10 Jerry argues that the finding of unjust enrichment is against the great weight and clear preponderance of the evidence. We disagree. “[A] claim of unjust enrichment does not arise out of an agreement entered into by the parties. Rather, an action for recovery based upon unjust enrichment is grounded on the moral principle that one who has received a benefit has a duty to make restitution where retaining such a benefit would be unjust.” *Watts v. Watts*, 137 Wis. 2d 506, 530, 405 N.W.2d 303 (1987). Unjust enrichment requires proof of three elements: (1) a benefit conferred on the defendant by the plaintiff, (2) appreciation or knowledge by the defendant of the benefit, and (3) acceptance or retention of the benefit by the defendant under circumstances making it inequitable for the defendant to retain the benefit. *Id.* at 531. *Watts* held that “unmarried cohabitants may raise claims based upon unjust enrichment following the termination of their relationships where one of the parties attempts to retain an unreasonable amount of the property acquired through the efforts of both.” *Id.* at 532-33.

¶11 The trial court, not the appellate court, judges the credibility of witnesses and the weight of their testimony. WIS. STAT. § 805.17(2). Appellate courts search the record for evidence to support findings reached by the trial court,

not for evidence to support findings the trial court did not but could have reached. *In re Estate of Dejmal*, 95 Wis. 2d 141, 154, 289 N.W.2d 813 (1980). Appellate court deference considers that the trial court, not the appellate court, has the opportunity to observe the demeanor of witnesses and thereby gauge the persuasiveness of their testimony. *Id.* at 151-52.

¶12 The record reflects that the trial court was persuaded by Linda's testimony. The trial court was entitled to believe that Linda paid utilities, groceries, a portion of the annual real estate taxes and \$3,000 to Jerry. The court could have believed that her payments benefited Jerry in that it freed up his earnings to pay land contract and loan obligations. The court could also have believed Linda performed the majority of cooking, laundry and household chores, thus freeing up time for Jerry to spend working and building the home. The court also could have found credible Linda's testimony that she helped build the house by grinding logs, running errands and providing food to Jerry and others working on the home.

¶13 Based on Linda's testimony, the court reasonably could conclude that her efforts conferred benefits to Jerry that led to the accumulation of wealth in the form of equity in the log home. The court reasonably could have found that Jerry knew of Linda's efforts, retained their benefits and, under the circumstances, it would be inequitable for Jerry to retain all the sale proceeds of the log home sale.

¶14 Jerry argues, nonetheless, that the record is devoid of any proof of a benefit to him. He claims that any household furnishings Linda contributed she took with her when she moved. He argues that she did very little work on the home and produced no proof of any payments she claimed to have made to Jerry.

He further argues that he never charged her any rent and that she bases her claim “solely on the fact that she cooked and cleaned and did housework for the Defendant for approximately twenty years.” He contends that care of the home, however, was shared equally.

¶15 Jerry’s argument essentially recasts the testimony in a light most favorable to his position. This argument neglects our standard of review. It is the trial court, not this court, which assesses weight and credibility to the evidence. WIS. STAT. § 805.17(2). The court accepted Linda’s version of the facts. Because the court’s findings of fact are not clearly erroneous, we do not overturn its decision on appeal.

¶16 Jerry argues that Linda’s claim should be rejected, however, because a similar claim was rejected in *Waage*. In *Waage*, the unmarried parties lived in a rental unit for their eight-year relationship. *Id.* at 326. When the girlfriend broke off the relationship, taking engagement and wedding rings with her, the boyfriend sued for conversion of the rings. *Id.* at 327. The former girlfriend counterclaimed for her calculation of the value of her domestic services, which she calculated to be \$3,000 per year for eight years, for a total of approximately \$25,000. *Id.* The trial court accepted her theory of recovery. *Id.* The court of appeals reversed, concluding that the evidence was insufficient to support her claim: “[The girlfriend] presented absolutely no evidence of assets accumulated during their relationship. ... *Watts* does not recognize recompense for housekeeping or other services unless the services are linked to an accumulation of wealth or assets during the relationship.” *Id.* at 330.

¶17 There is no doubt that the case before us contrasts with *Waage*. Unlike the parties in *Waage*, here it is undisputed that the parties accumulated

assets during their relationship, the most valuable being the home that Jerry built with help from relatives and friends, including Linda. Based on this distinction, the result in *Waage* does not control.

¶18 Jerry implies that because the title to the land was held in his name, Linda cannot claim any interest in the accumulated value. We disagree. Wisconsin has long recognized relief in equity to prevent unjust enrichment, in the form of an equitable lien or a constructive trust. See *Lewis v. Banking Comm'n*, 225 Wis. 606, 612, 275 N.W. 429 (1937); see also 1 DAN B. DOBBS, LAW OF REMEDIES, § 4.3, at 587 (2d ed. 1993). Jerry's name on the title to the property is no bar to a claim for unjust enrichment.

¶19 Next, Jerry argues that the court erred when it failed to consider and apply an offset to Linda's unjust enrichment claim. He argues that Linda lived rent free in the mobile home and the log home. Because he claims a reasonable rental value to Linda of \$387.50 per month, he concludes that she received a benefit of \$39,525 over a period of approximately eight years. He contends that the court's failure to address this \$39,525 offset warrants reversal.

¶20 We are not persuaded. From the court's comments, it is apparent the court believed that the accumulation of assets was by virtue of joint effort. Accordingly, the court determined that equity dictated that the parties be treated equally. The court no doubt concluded that it would be unfair to charge Linda with the rental value of the home.

¶21 Although the court did not explicitly make findings on Jerry's offset claim, it is evident that the court rejected it. "[A] remand directing the trial court to make an explicit finding where it has already made unmistakable but implicit findings to the same effect would be both superfluous and a waste of judicial

resources.” *Englewood Apts. v. Grant & Co.*, 119 Wis. 2d 34, 39 n.3, 349 N.W.2d 716 (Ct. App. 1984). As a result, we conclude that Jerry has not demonstrated reversible error.

¶22 Jerry also argues that the court erroneously considered other assets he acquired during the parties’ relationship. The court mentioned Jerry’s guns, a truck with a plow, other vehicles, and a travel van, concluding that there was a lot of property acquired during the relationship. Because Linda stated that she was not seeking any share in these assets, Jerry contends that the court erred by including them in its discussion. We disagree. Under *Watts*, the court is required to determine what is equitable under the parties’ circumstances. *Id.* at 531. The parties’ personal property is part of their financial circumstances that the court was entitled to consider when making an equitable determination. We conclude that the court’s consideration of these assets was not error.

¶23 Finally, Jerry argues that the court erred by not specifically addressing his claims for replevin and conversion, as well as breach of contract. Initially, we note that Jerry fails to accompany this argument with record citation. This failure is in itself fatal. *See* WIS. STAT. RULE 809.19(1)(e); *see also Lechner v. Scharrer*, 145 Wis. 2d 667, 676, 429 N.W.2d 491 (Ct. App. 1988) (We need not consider an argument unsupported by references to the record.). However, in this case, we do not resolve Jerry’s contention on this ground alone.

¶24 We conclude that the record supports the court’s implicit rejection of Jerry’s claims. Because the court was persuaded by Linda’s testimony, it apparently believed that the household goods and furnishings she took with her when she moved reflected the value of goods and furnishings that she contributed when the parties initiated their relationship and, in any event, were of significantly

less value than the personalty retained by Jerry. Linda's testimony provides support for the court's rejection of Jerry's claim. Because this argument relies on what is essentially a credibility contest, it does not provide grounds for reversal. WIS. STAT. § 805.17(2).

¶25 We conclude that the record provides adequate support for the trial court's discretionary determination that Linda has demonstrated an unjust enrichment claim. Jerry has not established that the court committed any error of law. Because the court's decision has a rational basis, we do not disturb it on appeal.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.25(1)(5).

