MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Kendra G. Gjerdingen
Patrick A. Ziepolt
Bloomington, Indiana

ATTORNEY FOR APPELLEE

Jackie Clowers
Applegate Fifer Pulliam LLC
Jeffersonville, Indiana

IN THE COURT OF APPEALS OF INDIANA

Rick Scott,
Appellant-Plaintiff,

v.

Nicholas McQuiddy,
Appellee-Defendant,

October 28, 2021

Court of Appeals Case No. 21A-PL-773

Appeal from the Clark Circuit Court

The Honorable William A. Dawkins, Magistrate

Trial Court Cause No. 10C02-2001-PL-2

Robb, Judge.

Case Summary and Issue

[1] Rick Scott filed a complaint against Nicholas McQuiddy claiming he had established a purchase money resulting trust in property owned by McQuiddy. At trial, Scott made a verbal motion to amend his pleadings to include a claim for unjust enrichment. The trial court took the motion under advisement, and when the trial court issued findings of facts and conclusions of law in favor of McQuiddy, it found that an unjust enrichment claim did not afford Scott any relief.

[2] Scott now appeals, raising two issues for our review which we consolidate and restate as: whether the trial court erred in determining Scott could not recover under a theory of unjust enrichment. Concluding that the trial court did not err, we affirm.

Facts and Procedural History

[3] In November 2013, McQuiddy purchased property in Floyd County (the "Property"). McQuiddy purchased the Property subject to the terms of any existing written lease for the real estate. At the time of purchase, Lauren Meredith and Scott were tenants on the Property. McQuiddy gave Meredith and Scott an updated lease agreement that stipulated their rent would be $500 per month and that contained an "Option to Purchase" the Property for $43,500. Exhibits, Volume Three at 29, 35. The lease agreement was never returned to McQuiddy; however, Scott paid McQuiddy $500 per month in cash

and the parties verbally agreed that these payments were both rent payments and payments toward the purchase price of the Property. *See* Transcript, Volume Two at 15, 36.

[4] In 2017, Scott was incarcerated for a year; however, his mother continued to make rental payments on his behalf with money he had set aside. During Scott's incarceration, a fire occurred at the Property making it untenantable.[1] The Property was subsequently condemned by the Floyd County Building Commissioner. In December 2017, Scott was released from prison. In May 2019, McQuiddy gave Scott an amended lease agreement which adjusted the "Option to Purchase" from the original price of $43,500 to $18,500. Ex., Vol. Three at 15. McQuiddy also offered to sell the Property to Scott right then for $10,000. *See* Tr., Vol. Two at 31. However, Scott never responded to McQuiddy's offer and never returned a signed copy of the new lease to McQuiddy. Scott continued to make $500 monthly payments, and although Scott was unable to live on the Property after the fire, McQuiddy continued to accept Scott's payments because "[Scott] wanted to buy the property. He was buying it[.]" *Id.* at 32.

[5] Scott testified that McQuiddy promised to restore the Property; however, McQuiddy denied making such a statement. The Property is located in a flood zone and McQuiddy determined, after consulting with the Floyd County

[1] The record is unclear about exactly how much of the Property's structure remained after the fire.

Building and Health Departments and the Indiana Department of Natural Resources, that it was "almost impossible to be able to rebuild there." *Id.* at 31. McQuiddy left the remains of the house up for so long "because there is a slight loop hole that if you can repair it for less than half of its value" you are allowed to do so. *Id.* In November 2019, Scott stopped making his monthly payments because no improvements had been made to the Property and his original intent was "buying a property with a house," which was no longer feasible. *Id.* at 23. Scott testified that McQuiddy never represented to him that he would be reimbursed for the monthly payments.

[6] On January 9, 2020, Scott filed a complaint against McQuiddy. Scott claimed that he had "a purchase money resulting trust in the property." Appellant's Appendix, Volume 2 at 12. Subsequently, McQuiddy had the Property demolished, on the advice of Floyd County, because the Property was not repairable. Scott filed a pre-trial brief which provided the definition for various legal terms including Unjust Enrichment, defined as follows:

> Unjust Enrichment is also referred to as Quantum Meruit . . . Unjust Enrichment permits recovery "Where the circumstances are such that under the law of natural and immutable justice there should be a recovery . . ."

Id. at 18 (citation omitted). Scott's pre-trial brief also presented the following issues for the trial court:

> Did [McQuiddy] know that Scott was paying him[?]

> Did the fire make the home untenantable?
>
> Did [McQuiddy] promise to repair the house?
>
> Should Scott be awarded 23 months of rent which he paid after the fire?

Id. at 18-19.

[7] On September 2, 2020, the trial court held a bench trial during which Scott moved to amend his complaint, over objection, to include an unjust enrichment theory of recovery. The trial court took Scott's motion under advisement.

[8] The trial court later entered Findings of Fact, Conclusions of Law, and Judgment finding, in relevant part:

> Scott argued at trial that this court should apply quasi contract principles such as unjust enrichment or quantum meruit, and should use its equitable powers in awarding him money. Although McQuiddy objected at trial, any such application of quasi contract fails to afford Scott any relief[.]

Appealed Order at 5. Scott now appeals.[2]

Discussion and Decision

[2] The trial court also ruled against Scott regarding his purchase money trust claim; however, Scott only appeals the trial court's determination that unjust enrichment afforded him no relief.

I. Standard of Review

[9] Upon appeal of a trial court's special findings of fact and conclusions of law entered pursuant to Indiana Trial Rule 52(A), we follow a two-part standard of review. *Fischer v. Heymann*, 943 N.E.2d 896, 900 (Ind. Ct. App. 2011), *trans. denied*. We determine first whether the evidence supports the findings, and second whether the findings support the judgment. *Angelone v. Chang,* 761 N.E.2d 426, 429 (Ind. Ct. App. 2001). We will reverse only if the findings or judgment are clearly erroneous. *Id.* "Findings of fact are clearly erroneous when the record lacks any evidence or reasonable inferences from the evidence to support them. A judgment is clearly erroneous when a review of the record leaves us with a firm conviction that a mistake has been made." *Id.* (internal citation omitted). We do not reweigh the evidence or assess the credibility of witnesses, and "consider only the evidence and the inferences flowing therefrom that are most favorable to the judgment." *Id.*

II. Unjust Enrichment

[10] Scott argues that "[t]he undisputed facts show that [he] received no benefit. Equity therefore requires that he recover the money he paid" to McQuiddy.[3]

[3] At trial, Scott moved to amend his complaint to include a claim for unjust enrichment pursuant to Indiana Trial Rule 15(B). The trial court did not explicitly grant or deny this motion. McQuiddy argues that "Scott failed to plead sufficient operative facts to support a claim for unjust enrichment[.]" Brief of Appellee at 22. Under Indiana Trial Rule 8(A)(1), pleadings need only contain "a short and plain statement of the claim showing that the pleader is entitled to relief[.]" Scott's original complaint pleaded facts alleging that the Property was destroyed on December 20, 2017, and that Scott continued to make payments until November 2019. These facts are the basis of Scott's unjust enrichment claim; therefore, he pleaded sufficient facts. *See*

Appellant's Brief of Rick Scott at 11 ("Appellant's Br."). Specifically, Scott contends that the equitable principle of unjust enrichment affords him relief. *See id.* at 12.

[11] In Indiana, unjust enrichment is a label given to so-called "constructive contracts," which are not actually contracts at all; such "contracts" are also called quantum meruit, contracts implied-in-law, or quasi contracts. *Zoeller v. E. Chi. Second Century, Inc.,* 904 N.E.2d 213, 220-21 (Ind. 2009). Our supreme court has described unjust enrichment as

> a legal fiction invented by the common-law courts in order to permit a recovery . . . where, in fact, there is no contract, but where the circumstances are such that under the law of natural and immutable justice there should be a recovery as though there had been a promise.

Bayh v. Sonnenburg, 573 N.E.2d 398, 408 (Ind. 1991) (citation omitted).

[12] Generally, a 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." *Kohl's Ind., L.P. v. Owens*, 979 N.E.2d 159, 167 (Ind. Ct. App. 2012) (emphasis added). Scott argues the $500 per month he paid to McQuiddy after the fire constitutes a

---

Trail v. Boys & Girls Club of Nw. Ind., 845 N.E.2d 130, 135 (Ind. 2006) (stating plaintiffs need not "set out in precise detail the facts upon which the claim is based, [but they] must still plead the operative facts necessary to set forth an actionable claim").

measurable benefit and McQuiddy's retention of these payments would be unjust. *See* Appellant's Br. at 13.

[13] Indiana courts articulate three elements for an unjust enrichment claim. Scott must show that: (1) he conferred a benefit upon another at the express or implied consent of such other party; (2) allowing the other party to retain the benefit without restitution would be unjust; and (3) he *expected payment. Woodruff v. Ind. Fam. & Soc. Servs. Admin.,* 964 N.E.2d 784, 791 (Ind. 2012), *cert. denied*, 568 U.S. 825 (2012).

[14] Scott and McQuiddy both testified that Scott's $500 monthly payments were in fulfillment of a verbal rent-to-own agreement.[4] *See* Tr., Vol. Two at 15, 36. After the fire, Scott continued to make payments to McQuiddy, and both parties believed that these payments continued to go toward the purchase price of the Property. McQuiddy testified that he continued to accept Scott's payments because "[Scott] wanted to buy the property. He was buying it[.]" *Id.* at 32. When asked if he expected to be able to buy the Property even after the fire, Scott answered in the affirmative. *See id.* at 18. Scott's monetary progress toward purchasing the Property is also exemplified by the reduction of the

[4] This agreement is unenforceable. The Indiana Statute of Frauds requires that contracts for the sale of real property be in writing and "signed by the party against whom the action is brought[.]" Ind. Code § 32-21-1-1(b). However, the verbal agreement highlights Scott's "expected payment." *Woodruff*, 964 N.E.2d at 791. Scott's only expectation when making the $500 payments to McQuiddy after the fire was that he would receive the Property if he made all payments required under the verbal agreement.

Option to Purchase from $43,500 to $18,500 in the new lease agreement McQuiddy provided to Scott in May 2019.

[15] In November 2019, Scott stopped making payments toward the Property because repairs were not being made and he only wanted to purchase the Property if there was a house on it.[5] *See id.* at 23. But Scott testified that he was never told by McQuiddy that he would be reimbursed for the $500 monthly payments. *See id.* at 24-25. To recover under a theory of unjust enrichment, Scott must have "expected payment." *Woodruff*, 964 N.E.2d at 791. Scott failed to meet his burden to establish he had an expectation of recouping the money paid to McQuiddy toward the purchase of the Property; therefore, his unjust enrichment claim must fail.

Conclusion

[16] We conclude the trial court did not err in determining Scott could not recover under a theory of unjust enrichment. Accordingly, we affirm.

[17] Affirmed.

Bradford, C.J., and Altice, J., concur.

---

[5] Scott testified at trial that he no longer wishes to purchase the Property. *See* Tr., Vol. Two at 36.