

STATE OF MICHIGAN
COURT OF APPEALS

NADINE CRANDALL,

Plaintiff-Appellant,

v

HENRIETTA NORFLEET,

Defendant-Appellee,

and

LISA MCCREIGHT AND HOWARD N.
NORFLEET, Personal Representatives of the Estate
of HOWARD NORFLEET, Deceased,

Defendants.

UNPUBLISHED
December 9, 2004

No. 249336
Wayne Circuit Court
LC No. 02-225986-CZ

Before: Markey, P.J., and Fitzgerald and Owens, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendant Henrietta Norfleet's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant Henrietta Norfleet, the former wife of the deceased, received various monies owed to the deceased by his employer upon the deceased's death. The distribution of certain of those funds to defendant was directly contrary to the terms of the Norfleets' judgment of divorce. Plaintiff, the decedent's former girlfriend and a hopeful legatee, filed this action for damages. Defendant filed a motion for summary disposition which was denied. The court sua sponte reconsidered its ruling and granted the motion for failure to state a claim.

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). When reviewing a motion decided under MCR 2.116(C)(8), the Court accepts as true all factual allegations and any reasonable inferences drawn from them in support of the claim. Summary disposition for failure to state a claim should be upheld only when the claim is so clearly unenforceable as a matter of law that no

factual development could establish the claim and thus justify recovery. *Stott v Wayne Co*, 224 Mich App 422, 426; 569 NW2d 633 (1997), *aff'd* 459 Mich 999 (1999).

“In order to sustain a claim of unjust enrichment, plaintiff must establish (1) the receipt of a benefit by defendant from plaintiff, and (2) an inequity resulting to plaintiff because of the retention of the benefit by defendant.” *Belle Isle Grill Corp v Detroit*, 256 Mich App 463, 478; 666 NW2d 271 (2003). When such elements exist, “the law operates to imply a contract in order to prevent unjust enrichment.” *Barber v SMH (US), Inc*, 202 Mich App 366, 375; 509 NW2d 791 (1993).

Plaintiff did not allege that defendant received a benefit from her which it would be inequitable for defendant to retain. Rather, she alleged that defendant received a benefit from the decedent through his employer and because those benefits rightfully belong to plaintiff, it would be inequitable for defendant to retain them. Therefore, plaintiff failed to state a claim for unjust enrichment.

A constructive trust is not a trust but “a judicial remedy to which resort is had after the fact and arises by operation of law.” *Grasman v Jelsema*, 70 Mich App 745, 752; 246 NW2d 322 (1976). It is something “imposed as a remedy to prevent unjust enrichment.” *Kammer Asphalt Paving Co, Inc v East China Twp Sch*, 443 Mich 176, 200; 504 NW2d 635 (1993). Because plaintiff has not stated a claim for unjust enrichment, she is not entitled to relief in the form of a constructive trust. *Id.* at 200-201.

The trial court did not err in dismissing plaintiff’s claim for breach of implied contract. A contract implied in law “is not a contract at all but an obligation imposed by law to do justice even though it is clear that no promise was ever made or intended. A contract may be implied in law where there is a receipt of a benefit by a defendant from a plaintiff and retention of the benefit is inequitable, absent reasonable compensation.” *In re Lewis Estate*, 168 Mich App 70, 75; 423 NW2d 600 (1988) (citations omitted). In other words, it is a claim for unjust enrichment which, as noted above, was properly dismissed.

A contract may be implied in fact when one person renders services to another with the expectation of receiving payment therefor and the recipient expects to pay for them. *Id.* at 76. Plaintiff alleged that an implied contract in fact existed which was breached by the deceased, thereby causing her damages. She did not allege that an implied contract in fact arose between herself and defendant or allege the elements of such a claim against defendant. Therefore, the trial court properly dismissed plaintiff’s breach of contract claim.

Plaintiff claims that the trial court erred in dismissing her claims for statutory conversion, MCL 600.2919a, and for fraud/misrepresentation. Because plaintiff has not adequately briefed the merits of these issues, they are deemed abandoned. *FMB-First Michigan Bank v Bailey*, 232 Mich App 711, 717; 591 NW2d 676 (1998).

Plaintiff next contends that the trial court erred in entering the order granting defendant’s motion because it was not properly submitted for entry under MCR 2.602(B)(3). Assuming without deciding that the order was not properly entered, the appropriate remedy would be to vacate the order and remand the case for settlement of order. When plaintiff filed late objections to the order, she requested just such a hearing which the trial court later held. Given that, plus

the fact that plaintiff has not shown any impropriety in the results of that hearing, plaintiff has already received her relief.

Affirmed.

/s/ Jane E. Markey

/s/ E. Thomas Fitzgerald

/s/ Donald S. Owens