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STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0469
A07-0614

Donna L. Anderson,
Respondent,

vs.

Alfred P. DeWitt, Jr.,
Appellant,

CUNA Mutual Mortgage Corporation,
a United States corporation, et al.,
Defendants.

Filed May 13, 2008
Affirmed in part, reversed in part, and remanded
Halbrooks, Judge

Carver County District Court
File No. 10-CV-05-1353

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Considered and decided by Halbrooks, Presiding Judge; Klaphake, Judge; and Schellhas, Judge.

U N P U B L I S H E D O P I N I O N

HALBROOKS, Judge

Appellant and respondent never married but lived together for a period of time in a home owned by appellant. When their relationship ended, respondent brought an action seeking to establish that she had a financial interest in the homestead based on her financial expenditures during the cohabitation. The district court ruled that Minnesota's anti-palimony statutes did not preclude respondent's claim and awarded her a judgment of $162,500. Appellant challenges both the district court's determination that respondent's claim is not precluded as a matter of law and the amount of the judgment. Because we conclude that the district court did not err in permitting respondent's claim to proceed, we affirm in part. But because we conclude that the amount of the judgment awarded respondent is not supported by the evidence, we reverse in part and remand.

FACTS

In 1986, appellant Alfred DeWitt purchased property in Carver County, with title in his name only, for $55,000. The property is legally described as: Lot 1, Block 1, Silver Creek Acres Addition (the Silver Creek property). Appellant used the only building site on the land to construct a house. Upon completion of this residence in 1991, appellant placed a $110,000 mortgage on the property.

Appellant and respondent became romantically involved some time later, and respondent began to reside with appellant on the Silver Creek property in mid-1993. At appellant's request, in November 1993 respondent began transferring monies to him in

the amount of $400-$500 per month. Respondent made consistent payments of this amount until 1997.

During this same time period, the parties repeatedly discussed their relationship and how they planned to use the proceeds from the sale of each of their respective properties to travel and enjoy themselves upon retirement. Respondent testified that she would not have made these monthly payments to appellant if she had not expected to enjoy the eventual financial rewards of the equity accruing in appellant's Silver Creek property. The district court determined that in 1995 the parties entered into an "implied oral agreement" that they would "share the equity" gained in the Silver Creek property from that date forward by paying down the existing debt on the property.

In 1997, the parties used the equity in the Silver Creek property to secure a loan for a new truck that was used primarily by respondent. Soon thereafter, they did the same thing to facilitate the purchase of a motorcycle for appellant. Upon the purchase of the truck, respondent increased the amount of her monthly payment to appellant to $800-$900 to more quickly pay off the mortgage on the Silver Creek property. Respondent subsequently increased her monthly payment to $1,000 when appellant purchased his motorcycle with the same purpose in mind.

Appellant provided no documentation regarding his personal expenditures for the parties' joint expenses from 1993 through 2000. But respondent established that she spent in excess of $20,000 on the parties' combined living expenses during this time. In February 2000, the parties opened a joint checking account for the purpose of paying household expenses. The mortgage on the Silver Creek property was paid from this joint

checking account until the account was closed in 2005. The district court found that from 2000–2005, appellant's net contribution to the joint checking account was $65,238.03 and that respondent's net contribution to the account was $49,887.87. The district court also found that respondent charged to her credit cards a total of $29,113.34 to cover the parties' joint expenses from 2000 to 2005 in addition to her contributions to the checking account, for a total of $79,001.21.

In January 2003, the parties refinanced the mortgage on the Silver Creek property in the amount of $100,000 and jointly completed a loan application. Before assuming this new mortgage, it was pointed out that respondent was agreeing to pay the mortgage without any record interest in the property; the title remained solely in appellant's name. To remedy this circumstance, at the same time the mortgage was signed, a quit-claim deed was executed that granted respondent an interest in the Silver Creek property in the form of a newly created joint tenancy with appellant.

Over the years, the value of the Silver Creek property increased substantially. The property was worth $200,000 in January 1993, $340,000 in March 2000, and $575,000 in May 2005. The district court determined that the property was worth $240,000 when the parties entered into their implied oral agreement in 1995 to "share the equity" in the property going forward.

The parties' relationship deteriorated in 2005, with respondent moving out in June of that year. In November 2005, respondent filed a complaint, requesting that the Silver Creek property be partitioned and sold and that she receive a portion of the proceeds. Respondent moved for partial summary judgment based on the fact that she held a

documented interest in the property pursuant to the 2003 quit-claim deed. The district court denied respondent's motion, finding that genuine issues of material fact existed concerning the extent of her interest in the Silver Creek property and whether the value of any determined interest should be offset based on appellant's financial expenditures made for her benefit. After a court trial, the district court determined that Minnesota law did not preclude respondent's claim regarding the property and awarded her judgment in the amount of $162,500. This appeal follows.

D E C I S I O N

I.

Appellant first argues that the district court erred in determining that Minn. Stat. §§ 513.075, .076 (2006)—Minnesota's anti-palimony statutes—do not preclude respondent's claim regarding an interest in the Silver Creek property.[1] Issues concerning the interpretation of case law and statutes are matters of law, which appellate courts review de novo. *Zurich Am. Ins. Co. v. Bjelland*, 710 N.W.2d 64, 68 (Minn. 2006).

Minn. Stat. §§ 513.075, .076 restrict one cohabitant's ability to claim another cohabitant's property. In short, these statutes state that contracts regarding the financial relations of unwed cohabitants "are enforceable only if in writing and . . . . [a]bsent such a [written] contract, Minnesota courts lack jurisdiction to hear one party's claims to the

[1] In her brief, respondent references but does not brief the fact that she has a record interest in the property as a result of the 2003 deed. It is not clear from our record how vigorously this theory was argued before the district court. But it was not a ground on which the district court relied, and respondent did not file a notice of review on this issue. Thus, the impact of that deed, if any, and the effect of the anti-palimony statutes, if any, on her deeded interest in the Silver Creek property is not before us, and we do not address those questions.

earnings or property of the other party." *Roatch v. Puera*, 534 N.W.2d 560, 564 (Minn. App. 1995) (citing Minn. Stat. §§ 513.075, .076).

But the supreme court, in the cases of *In re Estate of Eriksen*, 337 N.W.2d 671 (Minn. 1983), and *In re Estate of Palmen*, 588 N.W.2d 493 (Minn. 1999), created an exception to this general preclusion of claims by one cohabitant against property legally held by a separate cohabitant. In *Eriksen*, the supreme court held that the anti-palimony statutes do not prohibit claims between cohabitants related to their relationship when a "claimant does not seek to assert any rights in the property of a cohabitant but to preserve and protect [his or] her own property, which [was] acquired for cash consideration wholly independent of any service contract related to cohabitation." 337 N.W.2d at 673-74. The court stated that sections 513.075 and 513.076 only preclude claims "where the *sole* consideration for a contract between cohabiting parties is their contemplation of sexual relations . . . out of wedlock." *Id*. at 674 (quotation omitted).

Palmen was an appeal from summary judgment in which Schneider and Palmen, two unmarried cohabitants, orally agreed to build a log cabin on property owned solely by Palmen. 588 N.W.2d at 495. When Schneider claimed a personal interest in the cabin after Palmen's death, the district court concluded that the anti-palimony statutes precluded its exercise of jurisdiction over the matter. *Id*. at 494. But the supreme court disagreed, examining the interest that Schneider was seeking to protect and the application of Minn. Stat. §§ 513.075, .076:

> Here, Schneider's claim is based on her contributions to the construction of the log cabin on Palmen's real property, which is not the same as Schneider making a claim to

> Palmen's property. As we read Schneider's Statement of Claim, she is only seeking to recover the value of her direct contributions to the construction of the log cabin. She does not seek to recover the value of general contributions she made to the relationship she had with Palmen nor does she make any claim on Palmen's earnings or to his property. Further, because Schneider's claim seeks to recover her direct contributions to the construction of the log cabin, her claim is not based on her living together with Palmen "in contemplation of sexual relations . . . out of wedlock."
>
> Because we conclude that Schneider's claim seeks to recover her own contributions to the log cabin's construction and is not based solely on the fact that she and Palmen lived together in contemplation of sexual relations out of wedlock, Minn. Stat. §§ 513.075 and 513.076 do not bar her claim.

Id. at 496-97 (footnotes omitted). The supreme court concluded that Schneider was entitled to a trial on the issue of her claim of an interest in the cabin.

Appellant and respondent dispute whether the above-excerpted *Palmen* language establishes a "general" versus "direct" contributions test regarding what assets a cohabitant may recover in situations such as the present one. Contrary to appellant's claim, we do not read the above language to stand for the proposition that a cohabitant's general contributions made for the benefit of the cohabitation are never recoverable. Instead, the supreme court's narrow focus on the scope of Schneider's claim in *Palmen* effectively excludes from the holding the entire question of the recovery of a cohabitant's "general" contributions to the cohabitation.[2]

[2] We recognize that at least one unpublished case from this court has apparently interpreted *Palmen* differently. *See Kraemer v. Larson*, No. A03-984, 2004 WL 614616, *2 (Minn. App. Mar. 30, 2004) (citing *Palmen* for the proposition that a "cohabitant may not recover for general contributions made to the relationship, but may recover the value

The present dispute over general and direct contributions is, at its heart, a question over what degree of specificity a cohabitant-claimant needs to demonstrate a contribution made for the benefit of the cohabitation and that is used to acquire or create an interest in a particular asset that is utilized by both cohabitants during the cohabitation. Under the *Eriksen/Palmen* exception, a cohabitant must demonstrate that some identifiable interest in the claimed property was acquired, based on financial contributions, labor contributions to the property's creation, or otherwise. Ordinary financial and labor contributions inherent in day-to-day life generally do not establish that a cohabitant has acquired an identifiable interest in a particular piece of property to preserve and protect as their own should the cohabitation come to an end. As a result, such expenditures and contributions are generally not recoverable under the *Eriksen/Palmen* exception. *See Eriksen*, 337 N.W.2d at 673-74 (stating that the exception to the anti-palimony statutes applies only when a cohabitant "does not seek to assert any rights in the property of a cohabitant but to preserve and protect her own property which she acquired for cash consideration wholly independent of any service contract related to cohabitation"). Accordingly, the critical inquiry is whether a cohabitant's claim is asserted to his or her "own" property interest under *Eriksen/Palmen*, because such a claim is not based "solely" on the contemplation of sexual relations out of wedlock. *See id*. at 674.

Respondent contends that such an interpretation of *Eriksen* and *Palmen* will require a direct and unwavering paper trail of financial documents establishing

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of direct contributions to the property."). But, of course, this unpublished decision is not precedential. Minn. Stat. § 480A.08, subd. 3 (2006).

expenditures toward a particular piece of property to avoid application of the anti-palimony statutes. We disagree. For example, affidavits, testimony, or equivalent evidence, if credited by the fact-finder, establishing that a cohabitant's expenditures were used to make mortgage payments on a shared homestead would presumably suffice to avoid application of the anti-palimony statutes.[3] While financial documents would certainly assist in a cohabitant's task of demonstrating that he or she has acquired an individual interest in a particular asset, as well as the value of the acquired interest, they are not absolutely necessary, as respondent contends.

Regarding the present circumstances, the district court's order uses some general language when discussing the ways in which respondent's transfer of funds to appellant or her later deposits into the parties' joint checking account were utilized. For example, the district court noted that the parties' joint checking account was opened to pay for "household expenses" and that respondent's credit-card charges were for "joint" and "household" expenses. If this were the extent of the district court's findings, we agree that it would not be sufficient to connect respondent's financial expenditures to payment of the Silver Creek property's mortgage.

But the district court made additional factual findings concerning the specific use of the parties' payments of joint household expenses. The district court found that when respondent first started making the monthly $400-500 payments to appellant, the

[3] Given how evidence must be viewed in a summary-judgment motion, a cohabitant who produces such evidence may very well create an issue of material fact, resulting in a trial on the issue, as in *Palmen*. *See Palmen*, 588 N.W.2d at 495-96 (discussing how a cohabitant's claim to have expended more than 3,000 labor hours building shared cabin sufficed to avoid application of the anti-palimony statutes).

payments were used for "joint living expenses including real estate taxes, property insurance and utilities." Such payments made "in connection with" the purchase and maintenance of a home were singled out by the *Eriksen* court in allowing the cohabitant's claim to proceed because such expenditures helped establish the cohabitant's personal interest in the disputed homestead. *Eriksen*, 337 N.W.2d at 672, 674. The district court also found that respondent's increase to $800-$900 per month was "to reduce the debt on the property," in other words, to pay the property's mortgage. When respondent later increased her monthly payment to appellant to $1,000, the district court again found that this was done "to reduce the house debt." Other findings established that respondent made these monthly payments "to enjoy the financial rewards of equity growth" in the Silver Creek property upon retirement. Furthermore, when the parties opened their joint checking account in 2000, appellant's own testimony established that the mortgage on the Silver Creek property was paid out of the account.

In summarizing its findings regarding respondent's financial expenditures during the parties' cohabitation, the district court stated that respondent "contributed at least one-half of the joint living expenses" during the cohabitation "including the mortgage payments, real estate taxes, property insurance and utilities." Based on the district court's factual findings that recognize respondent's significant financial contributions to the homestead, the district court did not err in awarding judgment to respondent for her interest in the Silver Creek property.

II.

Appellant next contends that, even if the anti-palimony statutes do not preclude respondent's claim, the district court incorrectly calculated the amount that respondent is owed under the parties "implied oral agreement" to "share the equity" in the Silver Creek property from 1995 to the end of the parties' cohabitation in 2005. We agree.

The district court awarded respondent a $162,500 judgment, which is approximately one-half of the appreciation in value of the Silver Creek property between the parties' 1995 implied contract and the date that respondent moved out in 2005. Despite finding that the parties had an implied contract that would provide a legal remedy for its breach, the district court based its judgment on the equitable remedy of unjust enrichment. *See Zimmerman v. Lasky*, 374 N.W.2d 212, 214 (Minn. App. 1985) ("Equitable relief is granted only upon a showing of the inadequacy of any legal remedy."), *review denied* (Minn. Nov. 25, 1985). There is no dispute that the value of the Silver Creek property appreciated as a result of market forces. But utilizing an unjust-enrichment analysis, appellant was unfairly enriched at respondent's expense by retaining the benefit of the amount of the mortgage payments she made between 1995 and 2005, not the market-based appreciation of the property. *See Cooley v. Major Media Mgmt. Corp.*, 402 N.W.2d 815, 817 (Minn. App. 1987) (stating that unjust-enrichment damages can be calculated using the benefiting party's gain), *review denied* (Minn. May 20, 1987). Thus, awarding damages for the property's market-based appreciation would not be

proper under the equitable theory of unjust enrichment.[4] *See Anderson v. DeLisle*, 352 N.W.2d 794, 796 (Minn. App. 1984) (stating that recovery under an unjust-enrichment theory is "based upon what the person enriched has received [from the opposing party] rather than what the opposing party has lost"), *review denied* (Minn. Nov. 8, 1984).

But the implied contract found by the district court does provide respondent with a legal remedy that allows her to recover based on the appreciation in the Silver Creek property's value, although to a lesser extent. "The agreement necessary to form a contract need not be express, but may be implied from circumstances that clearly and unequivocally indicate the intention of the parties to enter into a contract." *Webb Bus. Promotions, Inc. v. Am. Elecs. & Entm't Corp.*, 617 N.W.2d 67, 75 (Minn. 2000); *see also Stubbs v. N. Memorial Med. Ctr.*, 448 N.W.2d 78, 82 (Minn. App. 1989) (stating that "courts have held that a contract implied in fact is in all respects a true contract"), *review denied* (Minn. Jan. 12, 1990). The existence of a contract implied in fact is a question for the trier of fact. *Roberge v. Cambridge Coop. Creamery*, 248 Minn. 184, 189, 79 N.W.2d 142, 146 (1956). The terms and construction of the contract are also to be determined by the fact-finder. *Bergstedt, Wahlberg, Berquist Assocs., Inc. v. Rothchild*, 302 Minn. 476, 480, 225 N.W.2d 261, 263 (1975). "No legal distinction results from a contract expressed in writing, verbally, through actions or by a combination of the three." *Georgens v. Fed. Deposit Ins. Corp.*, 406 N.W.2d 95, 97 (Minn. App. 1987) (citing

[4] The amount of the judgment—$162,500—tends to indicate that the district court sought to compensate respondent for more than just the value of monthly mortgage payments she remitted to appellant. While the district court did not explain its calculation, it reflects an equal division of the increase in market value from 1995-2005.

Rothchild, 302 Minn. at 479, 225 N.W.2d at 263). Accordingly, an "implied contract is a contract in the legal sense—an actual contract, which entitles a plaintiff to legal remedies." *Olson v. Synergistic Techs. Bus. Systems, Inc.*, 628 N.W.2d 142, 150 n.4 (Minn. 2001).

Here, the district court found that the parties had an implied contract to "share the equity" gained in the property from 1995 to 2005. Appellant's refusal to honor this implied contract provides respondent with a legal remedy: her expectation damages. These damages consist of the equity in the Silver Creek property due her under the terms of the implied contract as found by the district court. *See Logan v. Norwest Bank Minn., N.A.*, 603 N.W.2d 659, 663 (Minn. App. 1999) (defining expectation damages as "damages that attempt to place the plaintiff in the same position as if the breaching party had complied with the contract").

We conclude that the damages awarded here—$162,500—do not reflect the parties' agreement, as found by the district court, to "share the equity" gained in the property between 1995 and 2005. In calculating the portion of the equity that is due respondent based on the Silver Creek property's appreciation, the district court did not take into account the share of this appreciation that is based on the equity held solely by appellant before the parties entered into the implied contract in 1995.

Although we acknowledge that laws governing division of marital property are not binding in a nonmarital context, the *Schmitz* formula provides an illustrative guide to a method of calculating what share of the appreciation in value of the Silver Creek property is owed respondent. *See Schmitz v. Schmitz*, 309 N.W.2d 748, 750 (Minn. 1981).

Here, the date of the implied contract, 1995, is akin to the date of the marriage in applying the *Schmitz* formula. Application of this approach to calculate damages ensures that respondent receives her expectation damages, i.e., appreciation on the post-1995 equity shared between the parties pursuant to their implied contract, and also ensures that appellant is credited for the appreciation based on the pre-1995 equity in the Silver Creek property held solely by him.

Accordingly, we reverse and remand on the issue of the amount of the judgment to allow the district court, with its superior knowledge of the facts and circumstances of this case, to recalculate damages, taking into account appellant's share of the appreciation based on his equity in the property before the 1995 agreement with respondent. Whether or not to reopen the record on remand shall be discretionary with the district court.

Affirmed in part, reversed in part, and remanded.