STATE OF MINNESOTA

IN SUPREME COURT

A21-1427

Court of Appeals — Hudson, J.

Paul Herlache,

Appellant,

vs.

Filed: May 17, 2023
Office of Appellate Courts

Amy Rucks,

Respondent.

Thomas H. Boyd, Kyle J. Kroll, Andrew S. Escher, Winthrop & Weinstine, P.A., Minneapolis, Minnesota; and

Daniel S. McGrath, Steingart & McGrath, P.A., Edina, Minnesota, for appellant.

Susan Dickel Minsberg, Susan Minsberg Law Office, Saint Paul, Minnesota, for respondent.

S Y L L A B U S

1. Cash payments by a plaintiff directly to or on behalf of a defendant serve as an appropriate measure of relief in an unjust enrichment action involving purported investments to real property.

2. The district court did not clearly err in its award to plaintiff.

Reversed.

O P I N I O N

HUDSON, Justice.

This dispute arises out of a romantic relationship between appellant Paul Herlache and respondent Amy Rucks. Over the course of their relationship, Herlache made $282,736.02 in net cash payments directly to and on behalf of Rucks to renovate Rucks's home. After the pair ended their relationship, Rucks sold her home for $1.2 million, and Herlache sued Rucks for the amount of money that he contributed to renovate the home. The district court concluded that Rucks had been unjustly enriched by Herlache's financial contributions and awarded Herlache $282,736.02 for Herlache's contributions to improve Rucks's home. On appeal, a divided court of appeals concluded that Herlache could not recover on his unjust enrichment claim because the claim involved "investments in real estate," which required Herlache to prove the increase in value to Rucks's home attributable to his financial contributions. Because Herlache did not do so before the district court, the court of appeals majority reversed Herlache's $282,736.02 unjust enrichment award.

We hold that on these facts, Herlache does not need to prove the increase in value to Rucks's home attributable to his financial contributions. Rather, we conclude that the net amount of money that Herlache contributed directly to and on behalf of Rucks is an appropriate measure of relief for unjust enrichment. We further conclude that the district court did not clearly err in its award to Herlache. We therefore reverse the decision of the court of appeals.

FACTS

Herlache and Rucks met in February 2012 and began dating soon after. Rucks was the sole owner of a home in Sunfish Lake, which she purchased in February 2010 with the intention of renovating it. Herlache moved into Rucks's home in October 2012 and began paying Rucks $1,000 per month for rent.

After purchasing the home, Rucks discovered problems with the home's well and septic system. In September 2012, Herlache gave Rucks a cashier's check for $30,750 to cover the cost of replacing the well. Herlache also deposited $4,500 with a well drilling company. The well was replaced in late 2012, which resolved the plumbing issues at Rucks's home. After paying for the well, Rucks used some of the remaining money that Herlache had given her to purchase an elliptical machine, which Rucks still possesses.

Rucks also intended to complete additional renovations on her home. After the well was repaired, Herlache and Rucks began interviewing contractors for another renovation project. Rucks hired Kressman Homes to complete the project, and Herlache agreed to assist Rucks as a project manager. Herlache helped prepare a contract for Kressman's services and paid Kressman $15,000 as a down payment. Rucks signed the construction contract in July 2014, and although Herlache did not sign the contract, he was identified as an owner of the Sunfish Lake home in the contract.

Shortly thereafter, Herlache and Rucks opened a joint checking account to fund the renovation project. Herlache deposited $150,500 into the joint account, and by the end of 2014, Rucks had also deposited $100,000 into the joint account. Rucks maintained control of the joint account, writing 61 of the 64 checks written from the joint account. In addition

to using the joint account to pay for the renovation project, Rucks also used some of the funds in the joint account to pay for a new furnace, IT expenses, and legal fees.

In addition to his deposits to the joint account, Herlache also directly gave Rucks $114,881.81 over a 5-year period. Herlache also made direct payments totaling $46,608.85 to the vendors and contractors working at the property.

As Kressman worked on the renovation project, Herlache and Rucks noticed problems with the quality of Kressman's labor and materials. They eventually hired another contractor to finish the project and proceeded to arbitration against Kressman. Herlache paid $495.40 as a deposit with a law firm that represented Herlache and Rucks in the arbitration. Herlache and Rucks were awarded over $100,000 in damages from the arbitration, but the award was uncollectable. Rucks filed an application for funds under the Minnesota Department of Labor and Industry Contractor Recovery Fund and received $43,764.18 in November 2018. She also received a refund of $2,125 from the American Arbitration Association in August 2018. Rucks did not share with Herlache any of these funds that she received.

For both the well repair and the renovation project, Herlache asked Rucks to memorialize the financial contributions that he was making on Rucks's behalf in writing. Rucks refused, but she assured Herlache that she would pay him back. Herlache also inquired about being added to the title of the home; Rucks did not do so.

The relationship between Herlache and Rucks began to falter, and in the summer of 2017, Rucks asked Herlache to move out of the Sunfish Lake home. In October 2017, Herlache decided to take a job in Colorado; the day before moving to Colorado, Herlache

approached Rucks about repayment for his contributions to the renovations. Rucks wrote Herlache a check for $1,500. The relationship ended in December 2018.

On August 12, 2019, Herlache sued Rucks for unjust enrichment, constructive trust, replevin, and quantum meruit.[1] Herlache alleged that he was entitled to reimbursement for the cash, labor, and materials that he contributed to renovate the home. While the case was pending, Rucks sold the Sunfish Lake home for $1.2 million in April 2020. Herlache then amended his complaint, dismissing the constructive trust claim and adding a claim for money had and received, based in part on the proceeds Rucks received from the sale of the home, the refund from the American Arbitration Association, and the payment from the Contractor Recovery Fund.

Both parties agreed to a bench trial, after which the district court found that Herlache had made financial contributions "directly to or on behalf of Rucks" in the following amounts:

Cashier's check for well repair:	$30,750.00
Deposits to joint checking account:	$150,500.00
Direct payments to Rucks:	$114,881.81
Payments made to vendors and contractors:	$46,608.85
Deposit to law firm for arbitration:	$495.40
Total:	**$343,236.06**

The district court concluded that Rucks would be unjustly enriched if she retained the benefits of Herlache's financial contributions because Herlache "contributed substantial

[1] Only the unjust enrichment claim is before us. Herlache withdrew his constructive trust and quantum meruit claims before the district court. And no petition for review was filed concerning the replevin claim, which was decided by the district court and reviewed by the court of appeals.

sums of money which inured to [Rucks's] benefit" by improving Rucks's property "during the time she lived in the home and improv[ing] the resale value once the home was sold." The district court also noted that Herlache was not involved in and had no input in the sale of the Sunfish Lake home. Thus, after reducing Herlache's contributions by $59,000 (Herlache's rent payments, which were included in the category of direct payments to Rucks) and $1,500 (the amount of the check Rucks wrote Herlache in October 2017), the district court concluded that Rucks owed Herlache $282,736.02.[2]

Rucks appealed, renewing an argument she made before the district court: to establish a claim for unjust enrichment involving improvements to real property, the plaintiff must prove that his contributions increased the value of the property, as well as the amount of that increase. Because Herlache did not offer evidence regarding how his contributions increased the value of the Sunfish Lake home, Rucks argued that Herlache could not recover on an unjust enrichment theory. Rucks further argued that the district court made factual errors in calculating Herlache's unjust enrichment award.

In a split decision, the court of appeals reversed on the unjust enrichment claim. *Herlache v. Rucks*, No. A21-1427, 2022 WL 2439154, at *1 (Minn. App. July 5, 2022). Although noting that "Rucks does not contest the district court's determination that she was unjustly enriched," the court of appeals majority held that for unjust enrichment claims involving investments to real property, a plaintiff must present evidence that the plaintiff's investments added value to the land. *Id.* at *3–4. The majority relied on two court of

[2] This amount appears to be a calculation error; $343,236.06 minus $60,500.00 is $282,736.06. Neither party challenges the 4-cent difference.

appeals decisions for this proposition: *Marking v. Marking*, 366 N.W.2d 386 (Minn. App. 1985) and *Neilands v. Perry*, No. A19-1487, 2020 WL 1983312 (Minn. App. Apr. 27, 2020). *See Herlache*, 2022 WL 2439154, at *3–4. The majority therefore concluded that the correct measure for Herlache's unjust enrichment claim was not the amount of his financial contributions to or on behalf of Rucks, but the increase in value of Rucks's Sunfish Lake home due to his contributions. *Id.* at *4. Because Herlache had not provided evidence that his improvements increased the value of the home in an amount exceeding the amount of his contributions, or the extent to which any increase in value was attributable to his contributions, the majority reversed the district court's unjust enrichment award. *Id.*

The dissenting judge distinguished *Marking*, noting that in that case, the plaintiffs made improvements directly to the owner's property and "did not give money to the owners for the owners to make those improvements." *Id.* at *8 (Smith, J., dissenting). In this case, the dissent noted that Rucks "accepted and used money from Herlache to pay for renovations and other expenses associated with her home, and she agreed to his making some payments directly to vendors and subcontractors." *Id.* Therefore, the dissent explained that it was "reasonable to find that the benefit conferred on Rucks was that she did not need to spend her own money to make her desired renovations to her home." *Id.* Moreover, the dissent concluded that "it is reasonable to measure that benefit by the amount of money that Herlache contributed to Rucks and that Rucks spent for that purpose." *Id.*

We granted Herlache's petition for review to determine whether unjust enrichment claims involving investments to real property require a plaintiff to present evidence of the property's increase in value resulting from the plaintiff's contributions.[3]

ANALYSIS

The proper measurement of an award for a claim of unjust enrichment is a legal question, which we review de novo. *Dykes v. Sukup Mfg. Co.*, 781 N.W.2d 578, 581 (Minn. 2010). We review the district court's ultimate decision to grant equitable relief for abuse of discretion, however. *Dakota Cnty. HRA v. Blackwell*, 602 N.W.2d 243, 244 (Minn. 1999).[4]

I.

"Unjust enrichment is an equitable doctrine that allows a plaintiff to recover a benefit conferred upon a defendant when retention of the benefit is not legally justifiable."

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[3] As an initial matter, Rucks argues that Herlache forfeited review of the issue presented by failing to "dispute the validity and application of *Marking* and *Neilands* at trial or in his brief to the court of appeals." But Herlache was the respondent before the court of appeals, and because the district court did not decide any issue adversely to him, he did not have the burden of preserving an issue for appeal. *See Day Masonry v. Indep. Sch. Dist. 347*, 781 N.W.2d 321, 331–32 (Minn. 2010) (explaining that a respondent only needs to file a notice of review when an issue is decided adversely to the respondent). Herlache therefore did not forfeit review of an issue that he was not required to preserve.

[4] A different standard of review applies to the district court's equitable determinations if those determinations were made as a matter of law on summary judgment. *See SCI Minn. Funeral Servs., Inc. v. Washburn-McReavy Funeral Corp.*, 795 N.W.2d 855, 860–61 (Minn. 2011). In such a case, the district court's equitable determinations are reviewed de novo. *Id.* at 861. However, because the district court in this case weighed the equities and made its decision based on disputed factual findings after a court trial, we review the district court's equitable determinations for abuse of discretion. *See Melrose Gates, LLC v. Chor Moua*, 875 N.W.2d 814, 821–22 (Minn. 2016).

Caldas v. Affordable Granite & Stone, Inc., 820 N.W.2d 826, 838 (Minn. 2012). Claims for unjust enrichment "do not lie simply because one party benefits from the efforts or obligations of others." *First Nat'l Bank of St. Paul v. Ramier*, 311 N.W.2d 502, 504 (Minn. 1981). Rather, the plaintiff must show that the defendant was enriched "illegally or unlawfully," *id.*, or in a manner that is morally wrong, *Klass v. Twin City Fed. Sav. & Loan Ass'n*, 190 N.W.2d 493, 495 (Minn. 1971). The measure of relief for an unjust enrichment claim "is based on what the person allegedly enriched has received, not on what the opposing party has lost." *Georgopolis v. George*, 54 N.W.2d 137, 142 (Minn. 1952).

Rucks observes that $282,736.02 is the net amount of money that Herlache has lost, which is not the measure of relief for an unjust enrichment claim. This assertion is undoubtedly true, but it is equally true that $282,736.02 is the net amount of money that Rucks received from Herlache (paid directly to her or on her behalf)—and the benefit that the defendant received *is* the measure of relief for an unjust enrichment claim. *Id.* Thus, a straightforward application of *Georgopolis* supports Herlache's argument that $282,736.02 is the proper award amount in his unjust enrichment claim against Rucks.

In fact, Herlache's claim is a classic case of unjust enrichment's historical, common-law antecedent: money had and received. *See Iconco v. Jensen Constr. Co.*, 622 F.2d 1291, 1295 (8th Cir. 1980) (explaining that the equitable remedy of unjust enrichment developed from the common-law cause of action "money had and received"); *see also Cady v. Bush*, 166 N.W.2d 358, 361 (Minn. 1969) (referring to "unjust enrichment" and "money had and received" interchangeably). We recognized the "money had and received" cause of action soon after statehood and explained that the action could

"be maintained whenever one [person] has received or obtained the possession of the money of another, which [they] ought in equity and good conscience to pay over." *Brand & Co. v. Williams*, 13 N.W. 42, 42 (Minn. 1882).

Here, the district court found that Rucks received or obtained the possession of $282,736.02 of Herlache's money. And the district court concluded that Rucks ought in equity and good conscience to pay over that money to Herlache. The district court's treatment of the direct cash payments from Herlache to or on behalf of Rucks is in accord with our treatment of claims for money had and received involving cash payments from a plaintiff to a defendant. *See Grand Lodge, A.O.U.W. of Minn. v. Towne*, 161 N.W. 403, 405 (Minn. 1917) (concluding that defendant was not entitled to money that plaintiff paid defendant by mistake); *see also Valentine v. City of St. Paul*, 26 N.W. 457, 458 (Minn. 1886) (holding that defendant could not in equity retain money that plaintiff paid defendant for project, which defendant then abandoned); *Borough of Henderson v. Bd. of Cnty. Comm'rs of the Cnty. of Sibley*, 11 N.W. 91, 93–94 (Minn. 1881) (holding that defendant was not entitled to money that plaintiff paid defendant for project, when defendant was not authorized to undertake the project and defendant failed to deliver).

Moreover, because unjust enrichment is an equitable doctrine, the district court has "broad discretion in fashioning remedies." *City of Cloquet v. Cloquet Sand & Gravel, Inc.*, 251 N.W.2d 642, 644 (Minn. 1977); *see State v. Minn. Sch. of Bus., Inc.*, 935 N.W.2d 124, 138 (Minn. 2019). Indeed, a court of equity "has the power to adapt its decree to the exigencies of each particular case so as to accomplish justice." *Clark v. Clark*, 288 N.W.2d 1, 11 (Minn. 1979) (internal quotation marks omitted) (quoting *Beliveau v. Beliveau*,

14 N.W.2d 360, 366 (Minn. 1944)). We have specifically cautioned against restricting the broad scope of the unjust enrichment remedy, given that the whole point of the action was "to relieve against the too narrow procedure of the law." *Seastrand v. D.A. Foley & Co.*, 175 N.W. 117, 119 (Minn. 1919). We explained over a century ago that "[g]reat benefit arises from a liberal extension of the [unjust enrichment] action . . . because the charge and defense in this kind of action are both governed by the true equity and conscience of the case." *Heywood v. N. Assurance Co. of Detroit, Mich.*, 158 N.W. 632, 633 (Minn. 1916) (citation omitted) (internal quotation marks omitted).

It is true in one sense, as Rucks protests, that the benefit she received from Herlache can be measured by the increase in the value of her home. But as described above, Herlache also proved that Rucks "received" the net amount of $282,736.02 in direct cash payments to or on behalf of her. The district court has broad discretion in fashioning equitable remedies, *see City of Cloquet*, 251 N.W.2d at 644, and is empowered "to adapt its decree to the exigencies of each particular case so as to accomplish justice," *Clark*, 288 N.W.2d at 11 (internal quotation marks omitted) (quoting *Beliveau*, 14 N.W.2d at 366). After Herlache proved that $282,736.02 fell within the definition of "what the person allegedly enriched has received," *Georgopolis*, 54 N.W.2d at 142, the district court was within its discretion to award that measure of relief, even if another measure would have been appropriate.

Despite our precedent supporting Herlache's right to relief, the court of appeals majority felt bound by its own precedent to require a plaintiff in an unjust enrichment action involving investments to real property to prove an increase in the value of the property

because of the plaintiff's contributions. Although we are not bound by the precedent of the court of appeals, *see Goodyear Tire & Rubber Co. v. Dynamic Air, Inc.*, 702 N.W.2d 237, 245 (Minn. 2005), in any event, the precedent cited by the court of appeals majority does not dictate the result that it reached.

The court of appeals majority relied on *Marking v. Marking*, 366 N.W.2d 386 (Minn. App. 1985). In *Marking*, the plaintiffs moved their mobile home onto land owned by the defendants. *Id.* at 387. The plaintiffs constructed a basement under the mobile home and made some other improvements near the mobile home based on a representation by the defendants that the plaintiffs would be able to purchase the land in the future. *Id.* However, the defendants sold the land to someone else; the plaintiffs moved their mobile home off the land and sued for the amount they expended on the basement and other improvements. *Id.* The court of appeals affirmed the district court's grant of summary judgment to the defendants, concluding that by only proving the expenses they had incurred in making the improvements, the plaintiffs did not meet their burden of showing that a benefit was conferred on the defendants. *Id.* The court of appeals explained that "[w]hen dealing with investments to real property, a plaintiff must present evidence that the investments added to the value of the land." *Id.*

The facts of *Marking* are materially different than the facts of this case. In *Marking*, the plaintiffs made the improvements directly to the property; the defendants received no direct payments of cash at all. *Id.* Thus, the only provable measure of what the person allegedly enriched had received was the improvement in value to the land, and the only way for the plaintiffs to recover was to show the increase in value of the land (which they

did not do).[5] In this case, however, Herlache made direct cash payments to and on behalf of Rucks, such that every dollar contributed by Herlache was a dollar that Rucks did not have to contribute. Here, there are therefore two measures of what the person allegedly enriched had received: (1) the cash contributions Herlache made directly to and on behalf of Rucks and (2) any improvement in the value of the property.[6] The district court was within its broad discretion to select the former as the measure of Herlache's relief. *See Clark*, 288 N.W.2d at 11.

Finally, we note that the practical consequence of the court of appeals' majority decision is that a plaintiff may have no remedy against a defendant who has been unjustly enriched. Indeed, the court of appeals majority candidly recognized that the result it reached was "harsh to Herlache." *Herlache*, 2022 WL 2439154, at *4. But the "focus on fairness and flexibility is the hallmark of equity." *United Prairie Bank-Mountain Lake v. Haugen Nutrition & Equip., LLC*, 813 N.W.2d 49, 66 (Minn. 2012) (Dietzen, J., dissenting). That is why a court sitting in equity possesses broad powers to order relief "upon such terms and conditions as may be necessary to do complete justice." *Engel v. Swenson*, 254 N.W. 2, 3 (Minn. 1934). Because the rule applied by the court of appeals would do incomplete justice in this case, we reverse its decision.

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[5] We clarify that *Marking* should not be read to establish a special bright-line rule for unjust enrichment cases involving so-called "investments to real property."

[6] The second case cited by the court of appeals is similarly distinguishable. *See Herlache*, 2022 WL 2439154, at *3 (citing *Neilands v. Perry*, No. A19-1487, 2020 WL 1983312, at *1 (Minn. App. Apr. 27, 2020) (concluding that the only benefit that plaintiff could demonstrate that defendant received was the increase in value to the property when plaintiff made improvements directly to the property)).

II.

Because the court of appeals agreed with Rucks on her legal argument, it did not reach her factual challenges to Herlache's award. Although we could remand to the court of appeals to address Rucks's factual challenges, both parties discussed the factual challenges in their briefs and at oral argument, and the record is sufficient for us to examine them. In the interest of judicial economy, we therefore address Rucks's factual challenges to Herlache's award. *See Frazier v. Burlington N. Santa Fe Corp.*, 811 N.W.2d 618, 628–29 (Minn. 2012) (addressing in the interest of judicial economy issues not reached by the court of appeals).

We review the district court's factual findings for clear error. *See Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 797 (Minn. 2013). We therefore examine the record in the light most favorable to the verdict to determine if we are "left with the definite and firm conviction that a mistake has been made." *Rogers v. Moore*, 603 N.W.2d 650, 656 (Minn. 1999) (citation omitted) (internal quotation marks omitted).

Rucks argues that the district court should not have awarded Herlache some of the financial contributions that he made to or on behalf of Rucks. We are not persuaded by Rucks's attempt to retry this case on appeal.

First, Rucks claims that the district court erred by awarding Herlache relief for his contributions to legal fees. But Rucks fails to note that the legal fees went toward the arbitration against Kressman, the first contractor hired to renovate Rucks's home. And the result of that arbitration was a judgment in Rucks's favor, which allowed Rucks to collect $45,889.18 from the American Arbitration Association and the Contractor Recovery Fund,

none of which she shared with Herlache. Given that the record establishes that Herlache's contributions to funding the arbitration benefited Rucks, the district court did not clearly err in awarding Herlache his contributions to legal fees and arbitration expenses.

Second, Rucks claims that the district court awarded Herlache relief for items that he retained after the end of his and Rucks's relationship. It is plain that Herlache cannot recover in unjust enrichment against Rucks for benefits that Rucks returned to Herlache. *See Brand*, 13 N.W. at 42 (noting that the benefit conferred must be retained by the defendant for a plaintiff to recover for unjust enrichment). But the record reflects that at trial, Herlache moved to strike the expenses for those items that Rucks did not retain. It does not appear that the district court included those figures in its award, and we therefore discern no clear error by the district court.

Third, Rucks complains that the district court erred by awarding Herlache a "bonus" that he gave to his friend who was working on the renovation project at Rucks's home. Herlache explained at trial, however, that the "bonus" was not a gratuity; it was for additional hours that Herlache's friend spent working on the renovation project. Because that work benefited Rucks, the district court did not clearly err in awarding Herlache the payment to his friend.

Fourth, Rucks contends that the district court erred in awarding Herlache money that he paid for a storage unit. But Herlache testified at trial that he paid to store Rucks's items during the renovation, and even Rucks admitted that some of her items were stored in the storage unit. Based on this testimony, the district court could reasonably conclude that the storage costs benefited Rucks and comprised part of Herlache's relief.

Fifth, Rucks claims the district court erroneously awarded Herlache expenses for "routine maintenance" to Rucks's home. But Rucks certainly benefited from Herlache's expenditures to maintain her home, and every dollar that Herlache contributed toward the maintenance of Rucks's home was a dollar that Rucks did not need to spend. The district court therefore did not clearly err in including these routine maintenance expenses in Herlache's award.

Finally, Rucks argues that there was no evidence that Herlache gave her a cashier's check for $30,750 to repair her home's well. But the record shows that Herlache initiated a counter withdrawal for $30,750, and Herlache asserted at trial that the amount of the cashier's check was $30,750. Viewing the record in the light most favorable to the verdict, as we must, we conclude the district court did not clearly err in awarding Herlache $30,750 for the cashier's check.

In sum, we are not left with a "definite and firm conviction" that the district court made factual errors in awarding Herlache $282,736.02. *Rogers*, 603 N.W.2d at 656 (citation omitted) (internal quotation marks omitted).

CONCLUSION

For the foregoing reasons, we reverse the decision of the court of appeals.

Reversed.