

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

November 5, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62(1), STATS.

NOTICE

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

No. 96-1121

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

ANGELINE BOLES,

Plaintiff-Respondent,

v.

**PATRICK WINNIE AND
MARY JO WINNIE,**

Defendants-Appellants.

APPEAL from a judgment of the circuit court for Marathon County: RAYMOND F. THUMS, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Patrick Winnie and Mary Jo Winnie appeal a judgment ordering them to pay principal for \$60,000 and interest that was transferred to Mary Jo Winnie from Angeline Boles. The Winnies contend that the trial court's finding that these transfers were not gifts is clearly erroneous. Because we conclude there is substantial evidence in the record to support the trial court's finding, the judgment is affirmed.

The record shows the following facts. Angeline Boles, who is ninety-four years old at the time of this appeal, is the great aunt to Mary Jo Winnie. During an approximately two-year period from 1990 to 1992, Boles wrote eight checks to Mary Jo Winnie totalling \$60,000. The method for obtaining these checks was the same in each case. Winnie would go to Boles' house and proceed to cry and state that she needed money to keep her family together. Boles would then write her a check. These encounters would last approximately ten minutes and no discussion was made regarding whether these checks were gifts or loans. Patrick Winnie, Mary Jo's husband, only knew about the last \$35,000 which was given to build an apartment addition onto the Winnies' house, ostensibly for Boles but this is contested.

At trial, Boles asserted that these funds were loans or, in the alternative, the court should apply the doctrine of unjust enrichment. The Winnies maintained that the funds constituted a gift and no repayment is necessary. The trial court, as the finder of fact, ordered the funds to be repaid under several theories including undue influence, that these were loans, and quasi-contract unjust enrichment.

Appellate courts will not reverse trial court findings of fact unless they are clearly erroneous. *Fryer v. Conant*, 159 Wis.2d 739, 744, 465 N.W.2d 517, 519-20 (Ct. App. 1990); *see also* § 805.17(2), STATS. If more than one reasonable inference may be drawn from the evidence, we must accept the inference that the trial court chose to draw. *Cogswell v. Robertshaw Controls Co.*, 87 Wis.2d 243, 250, 274 N.W.2d 647, 650 (1979); *see also C.R. v. American Std. Ins. Co.*, 113 Wis.2d 12, 15, 334 N.W.2d 121, 123 (Ct. App. 1983). We review whether the inferences the trial courts draw are reasonable. *See Hennekens v. Hoerl*, 160 Wis.2d 144, 162, 465 N.W.2d 812, 820 (1991).

Appellate courts search the record for evidence to support the findings that the trial court made, not for findings that the trial court could have but did not make. *Estate of Becker*, 76 Wis.2d 336, 347, 251 N.W.2d 431, 435 (1977). Whenever witnesses give contradictory versions of the facts, the trier of fact has the duty of choosing the true version. *Fuller v. Riedel*, 159 Wis.2d 323, 332, 464 N.W.2d 97, 101 (Ct. App. 1990). In other words, trial courts, not appellate courts, judge the credibility of witnesses and the weight of their testimony. *Estate of Wolf v. Weston Town Bd.*, 156 Wis.2d 588, 598, 457 N.W.2d 510, 513-14 (Ct. App. 1990); *Appleton Chinese Food Serv., Inc. v.*

Murken Ins., Inc., 185 Wis.2d 791, 800, 519 N.W.2d 674, 676 (Ct. App. 1994). Decisions in equity are reviewed for an erroneous exercise of discretion. *Consumer's Co-op v. Olsen*, 142 Wis.2d 465, 472, 419 N.W.2d 211, 213 (1988). The decision must be the product of a rational mental process by which the facts of record and law relied upon are considered together for the purpose of achieving a reasoned and reasonable determination. *Hartung v. Hartung*, 102 Wis.2d 58, 66, 306 N.W.2d 16, 20 (1981).

Under the facts of this case, neither party could prove their contention as to whether the funds were gifts or loans. Boles could not prove the funds were a loan as no agreement, expressed or implied, could be shown. The Winnies similarly could not prove the funds were a gift as Boles repeatedly testified that she never intended to make a gift of the money. The record does support the trial court's use of the quasi-contract unjust enrichment theory.

The well-settled elements of quasi-contract entitling one to judgment for unjust enrichment are:

1. A benefit conferred upon the defendant by the plaintiff;
2. Appreciation by the defendant of the fact of such benefit;
3. Acceptance and retention by the defendant of such benefit, under circumstances such that it would be inequitable to retain the benefit without payment of the value thereof.

Lawlis v. Thompson, 137 Wis.2d 490, 497, 405 N.W.2d 317, 319 (1987) (quoting *Nelson v. Preston*, 262 Wis. 547, 550, 55 N.W.2d 918, 920 (1952)). Even though there is no contract in fact, a quasi contract will treat the parties as if there had been a contract. *Arjay Investment Co. v. Kohlmetz*, 9 Wis.2d 535, 539, 101 N.W.2d 700, 702 (1960). "[A] quasi-contract is a legal obligation, not based upon agreement, enforced either specifically or by compelling the obligor to restore the value of that by which he was unjustly enriched." *Estate of Stromsted v. St. Michael Hospital*, 99 Wis.2d 136, 139 n.1, 299 N.W.2d 226, 228 n.1 (1980) (quoting Corbin, *Quasi-Contractual Obligations*, 21 YALE L.J. 533, 550 (1912)). These actions are governed by equitable principles and no promise of repayment need be shown. See *Arjay*, 9 Wis.2d at 539, 101 N.W.2d at 702.

In this case, Boles repeatedly stated that she "expected" the money to be paid back. Mary Jo Winnie professed she believed the money was a gift. Discussions surrounding the transfers focused only on Mary Jo Winnie's financial problems and the need to pay certain bills to preserve marital harmony. No discussions were had regarding whether these transfers were gifts or loans.

The trial court heard all the testimony and concluded that it would be inequitable for the Winnies to retain the benefit of these transfers. The record sufficiently supports this conclusion. Boles conferred a benefit onto the defendant in the amount of \$60,000. Mary Jo Winnie certainly knew she was receiving something of value. Retention by the defendant of the benefit under these circumstances would be inequitable because there was no mutual understanding as to the nature of the transfer. One party believed the transfer to be a loan, the other believed it to be a gift. Under these circumstances, it would be inequitable to allow Boles to retain the money.

The record sufficiently supports the trial court's finding that Boles obtained the money by undue influence. This finding fulfills the requirement of unjust enrichment that retaining the benefit would be inequitable. The evidence discloses that Boles would approach this ninety-year-old member of her family pleading that she needed the money to preserve her marriage. Boles exhibited signs of extreme emotional distress and represented that dire consequences would result for her family if the money was not forthcoming. This satisfies all the required elements for recovery under unjust enrichment. See *Lawlis*, 137 Wis.2d at 497, 405 N.W.2d at 319.

The Winnies argue that the trial court ignored the presumption of a gift under *Hanus v. Jankowski*, 256 Wis. 187, 40 N.W.2d 573 (1949). Boles' repudiation of donative intent, however, negates any presumption of a gift in this case. We, therefore, find unjust enrichment to be properly applied under a quasi-contract theory.

By the Court. – Judgment affirmed.

This opinion will not be published. RULE 809.23(1)(b)5, STATS.