

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 20, 2011

A. John Voelker
Acting Clerk of Court of Appeals

NOTICE

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

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2010AP965

Cir. Ct. No. 2009CV58

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

NICHOLAS ISAJIW,

PLAINTIFF-APPELLANT,

V.

SHAWN ISAJIW,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Forest County:
JAMES R. HABECK, Judge. *Affirmed.*

Before Vergeront, P.J., Sherman and Blanchard, JJ.

¶1 PER CURIAM. This case involves a dispute between a father and his son over a parcel of land. Nicholas Isajiw appeals from the judgment that dismissed his claims against his son, Shawn Isajiw. Nicholas argues that the circuit court erred when it granted Shawn's motion for summary judgment

because there were genuine issues of material fact that rendered summary judgment inappropriate. We conclude, however, that the circuit court properly granted judgment to Shawn. We therefore affirm.

¶2 The underlying facts are that Nicholas acquired the land in dispute in 1988. Through a series of events we discuss later in the opinion, the property was eventually put in Shawn's name. Eleven years later, Nicholas told Shawn that he wanted the property back and Shawn refused. Nicholas brought this action claiming that "[t]he property was placed in [Shawn's name] for personal reasons," and that "[i]t was understood [that Nicholas] was the true owner of the property, and entitled to have [his] name listed as the true owner at some time in the future." Nicholas alleged claims for a violation of a constructive trust and for unjust enrichment.

¶3 Shawn moved for summary judgment. In opposing the motion, Nicholas relied on his deposition testimony, which Shawn had filed. The court granted Shawn's motion. The court stated that Nicholas never directly transferred the property to Shawn, and that based on the facts presented, there was no legal theory under which Nicholas could recover.

¶4 On appeal, Nicholas argues that the circuit court should have imposed a constructive trust on the real estate and ordered Shawn to convey the property back to him. We review summary judgment decisions *de novo*, applying the same standards employed by the circuit court. *Smith v. Dodgeville Mut. Ins. Co.*, 212 Wis. 2d 226, 232, 568 N.W.2d 31 (Ct. App. 1997). When an essential element of a claim cannot be proven under any view of the facts, summary judgment is appropriate. *Id.* at 233.

¶5 Nicholas argues that summary judgment was inappropriate because there are material facts in dispute. We conclude that under any reasonable view of the submissions, Nicholas has not shown an essential element for either violation of a constructive trust or unjust enrichment.

¶6 We consider first Nicholas's claim that Shawn violated a constructive trust. A constructive trust "is an equitable device created by law to prevent unjust enrichment, which arises when one party receives a benefit, the retention of which is unjust to another." *Wilharms v. Wilharms*, 93 Wis. 2d 671, 678, 287 N.W.2d 779 (1980). A constructive trust will be imposed only when legal title is held by someone who "in equity and good conscience" is not entitled to "beneficial enjoyment." *Id.* at 678-79. The person also must have obtained title "by means of actual or constructive fraud, duress, abuse of a confidential relationship, mistake, commission of a wrong, or by any form of unconscionable conduct." *Id.* at 679.

¶7 By Nicholas's own admission, as well as the documents submitted in support of the summary judgment motion, Nicholas arranged for the disputed property to be given to Shawn. Nicholas assigned the land to his brother John. John then sold the land to a friend. Nicholas testified at his deposition that he did not dispute that the friend was the sole owner of the land at this time. When the friend died, the friend's estate sold the land to Nicholas's brother William. William paid for the land and then had the property deeded in Shawn's name. Because there is no evidence that Shawn obtained title to the property by fraud, duress, or any other form of unconscionable conduct, Nicholas cannot establish a claim for violation of a constructive trust.

¶8 As to Nicholas's claim for unjust enrichment, it is not clear whether he is asserting unjust enrichment as an element of a constructive trust or as a separate cause of action. Assuming Nicholas is asserting an independent equitable claim for unjust enrichment, that claim also must fail. One essential element of a claim for unjust enrichment is that there was a benefit conferred upon the defendant by the plaintiff. *Lawlis v. Thompson*, 137 Wis. 2d 490, 499 n.1, 405 N.W.2d 317 (1987).

¶9 Again by Nicholas's own admissions at his deposition, Nicholas did not confer the benefit of the land on Shawn. As we have discussed, the submissions show that Nicholas assigned the land to his brother John, who then sold it to a friend; the friend's estate then sold it to Nicholas's brother William, who then had the property deeded in Shawn's name. Based on these facts, the most that can be said is that Nicholas arranged for others to give the land to Shawn. Nicholas did not, however, confer a benefit on Shawn in the manner contemplated by the doctrine of unjust enrichment.

¶10 Because we have concluded that Nicholas did not establish a claim either for violation of a constructive trust or for unjust enrichment, we need not address the other arguments the parties raise in their briefs.

¶11 For the reasons stated, we affirm the judgment of the circuit court.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

