

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
April 23, 2014 Session

IN RE ESTATE OF JANE KATHRYN ROSS ET AL.

**Appeal from the Probate Court for Davidson County
No. 10P-1253 Randy Kennedy, Judge**

No. M2013-02218-COA-R3-CV - Filed June 30, 2014

This is the second appeal of an action to recover, under either the theory of unjust enrichment or a resulting trust, the value of improvements paid by the plaintiff for a house constructed on her son's property. The plaintiff paid the construction costs to build a new home on her son's land for both of them to reside. This action was commenced when the son refused to put his mother's name on the deed after the house was constructed. Following the first trial, the trial court found that the plaintiff never intended to convey an inter vivos gift to her son, and, after considering the plaintiff's alternative claims for relief, the court established a resulting trust in favor of the plaintiff in the amount of \$417,000. In the first appeal, we ruled that a resulting trust was not an available remedy and remanded for further proceedings. On remand, the trial court awarded the estate a judgment against the son based on unjust enrichment. The son appeals again, this time contending the estate waived its unjust enrichment claim in the first appeal and that the estate did not prove the value of the improvements. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Probate Court Affirmed

FRANK G. CLEMENT, JR., P.J., M.S., delivered the opinion of the Court, in which ANDY D. BENNETT, J., and J. MARK ROGERS, SP. J., joined.

James G. Stranch, III, and Michael J. Wall, Nashville, Tennessee, for the appellants, Paul T. Sorace and David G. Rogers.

Eugene N. Bulso, Jr., and Paul Joseph Krog, Nashville, Tennessee, for the appellees, Estate of Jane Kathryn Ross and Joan Wildasin.

OPINION

Paul Sorace is one of two children of the decedent, Jane Kathryn Ross, who died in 2010 while this action was pending. Joan Wildasin, who commenced this action on behalf of her mother when she was incapacitated, is the other child.

In 1991, Mr. Sorace purchased a modest two bedroom home on seven acres of land off of Old Charlotte Pike in Pegram, Tennessee, for \$57,400. Mr. Sorace was single when he purchased the property. His mother, Ms. Ross, who was a widow, lived alone in her home on Golf Club Lane in Nashville, Tennessee. Ms. Wildasin resided in California.

In 2004, Mr. Sorace and Ms. Ross, who was 68 years old at the time, began discussing the possibility of constructing a substantial home to be built on her son's land so they could live together. Pursuant to a very informal understanding, Ms. Ross and Mr. Sorace signed a construction contract on July 6, 2005, to build the new home on his property.

Ms. Ross paid the vast majority of the construction costs, and, upon completion in June 2006, Ms. Ross' payments totaled approximately \$433,000; Mr. Sorace's contribution totaled approximately \$16,000. Mr. Sorace and Ms. Ross then moved into the new home in July 2006 at which time Mr. Sorace demolished his former home.

Mr. Sorace and his mother were the only ones residing in the new home until January 2007, when Mr. Sorace married, and his new wife moved in to live with her husband and his mother. Soon thereafter, however, friction began to develop, partially due to Ms. Ross' advancing dementia.

By July 2008, Ms. Ross' health had significantly deteriorated. Believing their mother would soon require a more secure facility with professional care and realizing their mother had few liquid assets, Ms. Wildasin asked her brother to sell the home Ms. Ross had paid for in order to pay for her future care. When Mr. Sorace refused, Ms. Wildasin filed this action on behalf of her mother for, *inter alia*, a resulting trust, or, in the alternative, a monetary judgment for unjust enrichment. When Ms. Ross died in 2010, her estate was substituted as plaintiff.

Following a three-day bench trial in August 2012, the court entered a Decree of Resulting Trust that awarded the Estate equitable title to Mr. Sorace's real estate; the judgment was based upon the finding that "the house and all of its improvements currently on the property . . . were erected and paid for by [Ms. Ross] to the extent of \$417,000 upon land belonging to [Mr. Sorace]." Mr. Sorace then initiated the first appeal.

In that appeal, we reversed the award of a resulting trust in Mr. Sorace's separately owned real estate upon the realization that "our courts have generally denied resulting trusts based upon improvements to real property." *In re Estate of Ross*, No. M2012-02228-COA-R3CV, 2013 WL 3346717, at *7 (Tenn. Ct. App. June 27, 2013) (citing *In re Estate of Jones*, 183 S.W.3d 372, 379 (Tenn. Ct. App. 2005); *Estate of Queener v. Helton*, 119 S.W.3d 682, 687 (Tenn. Ct. App. 2003) (other citations omitted)). More importantly, our decision was not based on the merits of the Estate's claims, it was limited to the remedy she was or was not entitled to receive. Accordingly, the case was remanded. On remand, the Estate moved to set aside the clerk's deed by which the resulting trust was memorialized and recorded, and to alternatively enter judgment for unjust enrichment. Over the objection of Mr. Sorace, the trial court set aside the clerk's deed and entered judgment in favor of the Estate for unjust enrichment in the amount of \$417,000. Mr. Sorace again appeals.

STANDARD OF REVIEW

Our review of the trial court's findings of fact is de novo with a presumption of correctness unless the preponderance of the evidence is otherwise. Tenn. R. App. P. 13(d). We review questions of law de novo with no presumption of correctness. *Nelson v. Wal-Mart Stores, Inc.*, 8 S.W.3d 625, 628 (Tenn. 1999).

ANALYSIS

Mr. Sorace raises three issues on appeal: (1) whether the Estate waived its unjust enrichment claim on the first appeal; (2) whether the trial court erred in concluding that it would be unjust for Mr. Sorace to keep the improvements to his property without paying for them; and (3) whether the trial court applied the wrong measure of damages, and, if so, did the Estate present enough evidence to support a damages award. We shall address each issue in turn.

I. WAIVER OF THE UNJUST ENRICHMENT CLAIM

Mr. Sorace argues the Estate waived its unjust enrichment claim by failing to raise that as an issue in the first appeal. We find no merit to this contention.

Although an issue not raised on appeal may be considered waived by this court, *Melton v. Melton*, No. M2003-01420- COA-R10-CV, 2004 WL 63437, at *2-3 (Tenn. Ct. App. Jan. 13, 2004), an appellee is only required to raise as issues what it believes to have been *errors* committed by the trial court as issues for which the appellee seeks *relief* from the judgment. *Parker v. Shelby Cnty. Gov't Civil Serv. Merit Bd.*, 392 S.W.3d 603, 615 (Tenn. Ct. App. 2012) (citing Tenn. R. App. P. 27(b) (requiring the appellee to raise issues

only if he or she is “requesting relief from the judgment”). Moreover, “a litigant may not appeal from a judgment, order or decree in his favor” absent an error therein prejudicial to him. *Covington Truck Co. v. Int’l Broth. of Teamsters, Chauffeurs, Warehousemen & Helpers of Am. Local 667*, 298 S.W.2d 561, 564 (Tenn. Ct. App. 1956) (citing *Massengill v. Massengill*, 255 S.W.2d 1018 (Tenn. Ct. App. 1952)). This logical protocol increases judicial efficiency because “forcing appellees to put forth every conceivable alternative ground for affirmance might increase the complexity and scope of appeals more than it would streamline the progress of the litigation.” *Crocker v. Piedmont Aviation, Inc.*, 49 F.3d 735, 740 (D.C. Cir. 1995).

In its petition, the Estate sought alternative relief, and, during the trial, the judge correctly commented from the bench that the Estate could be awarded either an award for unjust enrichment or create a resulting trust, but the Estate could not be awarded both. At the conclusion of the trial, the court granted relief to the Estate in the form of a resulting trust. The Estate, which prevailed in the trial court, found no *error* with the decision, and it had no reason to seek *relief* from that judgment. *See Parker*, 392 S.W.3d at 615; *see also* Tenn. R. App. P. 27(b). Therefore, the Estate had no duty to raise its alternative argument as an appellee. *See Parker*, 392 S.W.3d at 615; *Covington Truck Co.*, 298 S.W.2d at 564.

We also note that the cases relied upon by Mr. Sorace deal with appellees who failed to raise an issue when the trial court’s judgment was adverse to them. *See Clark v. Clark*, No. M2006-00934-COA-R3-CV, 2007 WL 1462226 (Tenn. Ct. App. May 18, 2007); *Melton v. Melton*, No. M2003-01420-COA-R10-CV, 2004 WL 63437 (Tenn. Ct. App. Jan. 13, 2004); *Lineberry v. State*, No. 89-260-II, 1990 WL 16313 (Tenn. Ct. App. Feb. 23, 1990). The only seemingly applicable case Mr. Sorace cites, *Knox Cnty. ex rel. Kessell v. Knox Cnty. Personnel Bd.*, C.A. 1279, 1989 WL 83275 (Tenn. Ct. App. July 28, 1989), is inapposite to the facts here.

Based on the foregoing discussion, the Estate did not waive its claim of unjust enrichment argument in the first appeal.

II. UNJUST ENRICHMENT

Mr. Sorace contends it was not unjust for him to keep the improvements to his property because he did not engage in misconduct and made major sacrifices for the new house, while Ms. Ross made an informed decision to construct a home on his property.

Unjust enrichment is a quasi-contractual theory or an equitable substitute for a contract claim in which a court may impose a contractual obligation where one does not exist. *Whitehaven Cmty. Baptist Church v. Holloway*, 973 S.W.2d 592, 596 (Tenn. 1998)

(citing *Paschall's Inc. v. Dozier*, 407 S.W.2d 150, 154-55 (Tenn. 1966)). Courts may impose a contractual obligation under an unjust enrichment theory if there is no contract between the parties or the contract has become unenforceable or invalid, and the defendant will be unjustly enriched unless the court imposes an obligation. *Paschall's*, 407 S.W.2d at 154.

A party who has provided goods and services to another may recover the reasonable value of these goods and services when the following five circumstances exist:

- (1) there must be no existing, enforceable contract between the parties covering the same subject matter,
- (2) the party seeking recovery must prove that it provided valuable goods and services,
- (3) the party to be charged must have received the goods and services,
- (4) the circumstances must indicate that the parties involved in the transaction should have reasonably understood that the person providing the goods or services expected to be compensated, and
- (5) the circumstances must also demonstrate that it would be unjust for the party benefitting from the goods or services to retain them without paying for them.

Forrest Constr. Co. LLC v. Laughlin, 337 S.W.3d 211, 227 (Tenn. Ct. App. 2009) (citing *Castelli v. Lien*, 910 S.W.2d 420, 427 (Tenn. Ct. App. 1995)).

All five circumstances listed in *Forrest Construction* are present in this case. First, the parties do not dispute that there is no existing, enforceable contract between Ms. Ross and Mr. Sorace. Second, Ms. Ross provided valuable goods and services by paying for the majority of the construction of the new house. Third, Mr. Sorace's name alone is on the deed to the property. Next, several witnesses testified that Ms. Ross believed the house to be hers and that she expected to be on the deed. In fact, she became distraught upon learning that her name was not on the deed, and eventually met with an attorney. Last, Ms. Ross spent over \$433,000 on the construction of a new home with the hopes that she and her son could live there. Moreover, Ms. Ross did not effectuate an inter vivos gift; thus, we find it would be unjust for Mr. Sorace to retain the benefit of a new home without payment,¹ and we hold the

¹ The facts of this case are similar to those in *Simpson v. Davis*, W1999-00689-COA-R3-CV, 2000 (continued...)

circumstances in this case justify the imposition of a quasi-contract for the construction of the home.

III. DAMAGES

For his final issue, Mr. Sorace contends the trial court applied an incorrect measure of damages; he also contends the Estate did not carry its burden of proving the enhancement in value of the property.

A party may recover damages in equity based upon the doctrine of unjust enrichment if there exists a contract implied in law. *Metro. Gov't of Nashville & Davidson Cnty. v. Cigna Healthcare of Tennessee, Inc.*, 195 S.W.3d 28, 32 (Tenn. Ct. App. 2005). Liability based on quasi-contract or quantum meruit liability “is based on a legally implied promise to pay a reasonable amount for goods or services received.” *Castelli*, 910 S.W.2d at 427 (citing *John J. Heirigs Constr. Co. v. Exide*, 709 S.W.2d 604, 607 (Tenn. Ct. App. 1986)).

The amount a plaintiff may recover for unjust enrichment for improvements made to another’s land is the “amount by which the improvements enhance the value of the land.” *Kuderewski v. Estate of Hobbs*, No. E2000-02515-COA-R3-CV, 2001 WL 862618, at *5 (Tenn. Ct. App. July 30, 2001) (quoting *Simpson v. Davis*, No. W1999-00689-COA-R3-CV, 2000 WL 1346609, at *4 (Tenn. Ct. App. Sept. 15, 2000)). One’s entitlement to a recovery under quantum meruit is limited to “the value of the goods or services, and not their contract price.” *Forrest Constr. Co.*, 337 S.W.3d at 227 (citations omitted). Courts will not award a recovery for unjust enrichment if the plaintiff does not submit proof of the “reasonable value of the goods or services” provided. *Doe v. HCA Health Serv. of Tennessee, Inc.*, 46 S.W.3d 191, 198 (Tenn. 2001).

The record shows the construction of the new house on Mr. Sorace’s land greatly enhanced the value of his property. When Mr. Sorace purchased the property, the warranty deed recited that “the actual consideration or value, whichever is greater” is \$57,400. After the new house was constructed, Mr. Sorace and his wife entered into an Antenuptial Agreement, which they signed on April 20, 2007. The agreement, which was introduced into evidence, revealed that Mr. Sorace valued his “residential real estate” at \$600,000. This represented an increase in value of \$542,600 even though Mr. Sorace demolished the original

¹(...continued)

WL 1346609 (Tenn. Ct. App. Sept. 15, 2000), in which Davis was unjustly enriched by Simpson’s construction of a residence upon her land. We mentioned that “unjust enrichment does not require bad faith or improper behavior on the part of the enriched party,” and “while Davis may not have intended to benefit from Simpson’s act, she is still accountable to Simpson for the enhanced value of her property.” *Id.* at *4.

house in 2006 upon completion of the new house. The record also reveals that Ms. Ross contributed \$433,064 to construct the new house, while Mr. Sorace only contributed \$15,979.

Considering the evidence in this record, we have determined the evidence does not preponderate against the trial court's finding that Ms. Ross' contributions to the construction of the new house enhanced the value of Mr. Sorace's property by \$417,000; accordingly, we affirm the award.

IN CONCLUSION

The judgment of the trial court is affirmed, and this matter is remanded with costs of appeal assessed against Appellants.

FRANK G. CLEMENT, JR., JUDGE