COURT OF APPEALS
DECISION
DATED AND RELEASED

June 15, 1995

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, 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. 94-3083-FT

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

DENNIS STENSAAS
AND KATHY STENSAAS,

Plaintiffs-Appellants,

v.

JEFFERY BECKER,

Defendant-Respondent.

APPEAL from a judgment of the circuit court for Dodge County: JOSEPH E. SCHULTZ, Judge. *Affirmed*.

Before Eich, C.J., Dykman and Sundby, JJ.

PER CURIAM. Plaintiffs Dennis Stensaas and his wife, Kathy Stensaas, appeal from a summary judgment granted defendant Jeffery Becker. The trial court concluded that the Stensaases did not have an unjust enrichment claim against Becker. We agree and affirm the judgment.

From 1974, the Stensaases leased 115 acres adjacent to their farm from Martin and Lester Berndt. In July 1992, the Berndts sold the northern forty-five acres to Julie Moore. In July or August 1992, Moore asked the Stensaases whether they would continue to lease the land they had farmed since 1974. The Stensaases believed that they would be continuing to lease the land from Moore. In their complaint, they allege that they plowed twenty-two acres in preparation for spring planting in 1993, relying on conversations with Moore. The Stensaases also seeded twelve acres in the spring of 1993. In addition to this newly-seeded land, the Stensaases had planted eleven acres of hay on the leased land from 1990 to 1992.

The Stensaases further allege that while they were negotiating the lease with Moore in the second week of March 1993, Moore informed them that she would be leasing the land to defendant Jeffery Becker.

The Stensaases allege that Moore received the benefit of twelve acres of alfalfa and other grasses, eleven acres of hay and twenty-two acres which they "chisel-plowed" in preparation for seeding. On April 1, 1993, the Stensaases demanded that Moore pay them the value of these benefits. She refused. They allege that it would be inequitable to allow Moore to retain the crops or the value thereof without compensating them. They allege, upon information and belief, that Jeffery Becker sold the twelve newly-seeded acres of alfalfa and the eleven acres of hay to a third party in May 1993. However, they do not allege that Becker has been unjustly enriched by their efforts.

By stipulation and order for dismissal, the trial court dismissed the Stensaases action against Moore on April 5, 1994. The trial court noted this fact in its memorandum decision and apparently assumed that the Stensaases were claiming that they had enriched Jeffery Becker. Becker's brief assumes that the Stensaases have alleged that they enriched him by their efforts. However, Becker asserts that any cause of action for unjust enrichment that the Stensaases may have is only against Moore. Again, we agree.

The elements of unjust enrichment are: "(1) a benefit conferred on the defendant by the plaintiff, (2) appreciation or knowledge by the defendant of the benefit, and (3) acceptance or retention of the benefit by the defendant under circumstances making it inequitable for the defendant to retain the

benefit." ***Watts v. Watts***, 137 Wis.2d 506, 531, 405 N.W.2d 303, 313 (1987). Becker argues that the Stensaases could not have conferred a benefit on him because all of the work which they performed on the land occurred when the land was owned by Moore. Becker did not lease the property until March 10, 1993. The lease did not protect any interest of the Stensaases.

The Stensaases argue, however, that they had a year-to-year farm lease which Moore could not terminate without a ninety-day written notice. *See* § 704.19(3), STATS. (agricultural tenancies from year-to-year require ninety days' notice to terminate). They claim therefore that even if Becker could have some right to the crops grown on the land, his lease could not have been effective until June 1993 when the Stensaases' lease could be terminated. They assert that in May of 1993, when Becker sold the hay and alfalfa, those crops still belonged to the Stensaases. Becker responds that if Moore breached the lease agreement with the Stensaases, any cause of action the Stensaases might have for that breach would be against Moore. We express no opinion as to what action the Stensaases could have taken to enforce their lease agreement when Moore leased the land to Becker. They chose to assert a claim of unjust enrichment against Moore. Paragraph thirteen of their complaint alleges: "It would be inequitable to allow Julie Moore to retain the crops or value thereof without compensating plaintiffs therefor." It is clear, however, that the Stensaases do not state a claim for unjust enrichment against Jeffery Becker.

We agree with Becker. Moore may have breached the lease that she had with the Stensaases, but if she did, the Stensaases' cause of action is against Moore, not Becker. Becker did not breach any lease.

The reason why the Stensaases cannot recover from Becker is that they cannot satisfy the first element of unjust enrichment. While plowing and seeding land for another is certainly a benefit, that benefit was conferred upon Moore, not Becker. Moore was not obligated to lease to anyone unless, as the Stensaases argue, § 704.19(3), STATS., required Moore to lease to them. The benefit that the Stensaases conferred was upon Moore because she was the owner of the land. She had the right to the crop in the absence of any obligation she owed the Stensaases; that she later leased the land to Becker does not create a relationship between the Stensaases and Becker. The Stensaases did not, as required by ***Watts***, confer a benefit upon Becker. We therefore conclude that the trial court did not err by dismissing their claim against him.

By the Court.--Judgment affirmed.

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