COURT OF APPEALS
DECISION
DATED AND FILED

May 27, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

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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.

No. 97-2798

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

SHARON M. HARTMAN,

PETITIONER-RESPONDENT,

V.

LYNN A. MCDONOUGH,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Chippewa County: RODERICK A. CAMERON, Judge. *Affirmed.*

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

PER CURIAM. Lynn A. McDonough appeals a judgment awarding Sharon Hartman $87,241 on the basis of implied contract and unjust enrichment. Hartman sought a share of the value of a residence and two restaurants McDonough acquired during the parties' nine and one-half year relationship and cohabitation. McDonough argues that the record does not support the trial court's

findings that McDonough acquired a residence and two restaurants with substantial help from Hartman and that Hartman paid McDonough $250 every month. He also argues that the trial court failed to consider McDonough's contributions and the benefits Hartman derived from living in the residence. Finally, he argues that Hartman failed to establish an implied contract as a matter of law because she presented no evidence of a joint enterprise and that she failed to establish unjust enrichment because the services she rendered cannot be linked to any increased value in the assets. We reject these arguments and affirm the judgment.

The trial court did not make specific findings on all of the conflicting evidence. This court will assume that the missing findings were determined in favor of or in support of the judgment. *See* ***Sohns v. Jensen***, 11 Wis.2d 449, 453, 105 N.W.2d 818, 820 (1960). This court will search the record for evidence to support the trial court's findings of fact. ***Estate of Becker***, 76 Wis.2d 336, 347, 251 N.W.2d 431, 435 (1977).

Before McDonough purchased the residence, he and Hartman had developed a romantic relationship and had looked at houses for sale for approximately one year. They discussed buying the house McDonough eventually bought, noting that it would need a lot of work. Before they moved into the home, Hartman spent at least four weeks remodeling it, stripping the woodwork, restaining and varnishing, painting all of the rooms and furnishing the house with draperies and carpeting. Hartman contributed funds she received from a divorce settlement, approximately $1,700, to the remodeling efforts. The residence was bought in McDonough's name only with money he borrowed from friends and lending institutions. The purchase price was $37,000. Hartman contributed $250

per month for approximately half of the time she and her two children lived in the residence.

During the course of the parties' relationship, McDonough also purchased Connell's Supper Club. McDonough consulted with Hartman about whether to purchase the supper club. After he purchased it in his own name, Hartman worked there every day for the first nine months of its operation in addition to her fulltime job. She testified that she averaged six to eight hours per night at the supper club and was not paid for most of her work. Thereafter, she continued to work at Connell's at the busiest times, Friday and Saturday nights and Sunday noon. When Connell's was remodeled to add a dining room, she did considerable sanding and staining for no pay. Hartman testified that she was willing to put in long hours at Connell's, often without pay, because she believed based on her conversations with McDonough that they were building a future together. Connell's was purchased with borrowed money for $105,000 and was valued at $161,575 at the time the parties separated.

During the course of their relationship, McDonough also purchased the Spring Street Cafe. McDonough again consulted with Hartman regarding purchase of the cafe. He asked her to quit her full-time job to run the cafe. He initially agreed to pay her $10 per hour, but ultimately put her on salary of $500 every two weeks. She averaged between 50 and 70 hours per week at the Spring Street Cafe, had a lower hourly wage than at her previous job, and was required to pay her own health insurance at the rate of $160 per month. Before the cafe opened, Hartman did considerable work renovating the establishment, sanding, staining and varnishing the woodwork and cleaning up after other construction workers. She was never reimbursed for this work. When the cafe opened, Hartman was responsible for managing the staff, maintaining the inventory, doing

the banking, cleaning, waitressing, cooking, dishwashing and any other chores that needed to be done. She testified that she gave up her prior employment and worked extremely long hours for minimal pay at the cafe because she believed, based on her conversations with McDonough, that she was building something for the couples' future. The cafe was purchased for $35,000 of mostly borrowed money. It had a net value of $52,500 at the time the parties' relationship ended.

On the basis of this evidence, the trial court awarded Hartman one half the value of the residence, twenty percent of the value of Connell's, and one half the value of the Spring Street Cafe. The court found that Hartman and McDonough had an implied contract to share in the profit of their mutual efforts in acquiring these properties. It also found that McDonough was unjustly enriched by Hartman's uncompensated work in promoting and preserving McDonough's home and businesses.

McDonough argues that the trial court erroneously found that McDonough acquired the residence and two restaurants with substantial help from Hartman. This argument is based on too literal a definition of the term "acquired." While Hartman had some input in the selection of the buildings, a factor that tends to show that she was not merely McDonough's tenant and employee, it is true that she had a very limited role in the acquisition of the buildings. The process of acquiring a home or business, however, is not limited to signing contracts and loan documents. The point of the trial court's finding was that Hartman participated in the creation and development of the businesses as well as the selection and maintenance of the residence. The fact that the buildings were purchased and the purchase was funded by loans taken only in McDonough's name, while relevant to the question of an implied contract, is not central to the trial court's reasoning. The finding that Hartman substantially helped in acquiring the house and

restaurants is not clearly erroneous if the term "acquiring" is defined to include her advice, uncompensated labor and her efforts to promote and preserve the value of the residence and the restaurant businesses.

McDonough argues that the finding Hartman paid $250 every month is clearly erroneous. The record shows that Hartman began paying $250 per month after the first four months of the cohabitation and ceased making payments when she quit her previous job and began working at the Spring Street Cafe for substantially less pay than McDonough initially promised her. The trial court might reasonably have found that Hartman's decision to forego the $10 per hour initially agreed upon for managing the Spring Street Cafe constituted a form of house payment by her. In addition, the precise amount of the payments was not used by the trial court in finding the existence of an implied contract or unjust enrichment. The payments were significant in that Hartman's $250 contribution toward the $350 monthly mortgage, along with her other expenditures and remodeling and housekeeping work, tend to demonstrate a substantial commitment that allows the inference of an implied contract. The fact that she discontinued payment without any repercussions tends to show that she was not merely McDonough's tenant. Rather, it underscores the cooperative joint venture upon which the finding of implied contract rests. While the trial court overstated the number of months in which a payment was made, the total amount Hartman paid during the course of the cohabitation was undisputed and the ultimate finding of an implied contract does not depend on the correct number of months in which a payment was made.

McDonough argues that the trial court failed to consider his contributions and failed to recognize the benefits Hartman got out of the house. McDonough's contributions were not at issue. Therefore, the trial court was not

required to make specific findings about them. From the fact that the court awarded McDonough half of the residence and the Spring Street Cafe, and eighty percent of Connell's, it can be inferred that the trial court recognized his contributions.

Hartman received substantial benefits from living in the residence with her two children. Enjoying the benefits of the residence is not inconsistent with the finding that the parties implicitly agreed to share in the gains created by their joint enterprises. McDonough's argument is a continuation of his attempt to describe Hartman as a rent-paying tenant who deserved nothing more after subtracting the value of living in the rented house. If she is viewed instead as a partner in the creation of equity pursuant to the parties' implied agreement to build their future together, the benefits Hartman enjoyed during the relationship do not preclude her from sharing in the additional equity created in part by her cash contributions and her efforts toward improving and preserving the property.

McDonough argues that the facts do not establish an implied contract. He argues that, despite the holding in ***Kramer v. City of Hayward***, 57 Wis.2d 302, 305, 203 N.W.2d 871, 873 (1973), the existence of an implied contract is a question of law. This court would reach the same conclusion regardless of whether deference to the trial court is required. While the facts of this case differ from those in ***Watts v. Watts***, 137 Wis.2d 506, 405 N.W.2d 303 (1987), in which the supreme court acknowledged the right to seek recovery based on implied contract arising out of cohabitation relationships, the facts as presented by Hartman are sufficient to establish the existence of an implied contract arising out of the parties' cohabitation. ***Watts*** does not require proof that the parties held themselves out to be husband and wife, filed joint income tax returns or maintained joint bank accounts. The parties' long-term cohabitation, Hartman's

quitting her job to work long hours at a lower hourly wage and her uncompensated labor constitute an adequate basis for concluding that an implied contract existed. ***Id.*** at 514, 528, 405 N.W.2d at 312. In addition, McDonough had told Hartman that if he died, he would leave everything to her rather than his own children because "This is something we have worked for." McDonough was named the beneficiary in Hartman's life insurance policy and agreed that he would take care of her children if she died. The parties had a joint safety deposit box and used each other's vehicles as the need arose. Under all of these circumstances, the parties indicated by their words and conduct an agreement to share their accumulated assets. Because we affirm the recovery based on the theory of implied contract, we need not review the finding that McDonough was unjustly enriched by Hartman's uncompensated labor.

By the Court.—Judgment affirmed.

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