

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 7, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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 § 808.10 and RULE 809.62, STATS.

No. 97-2812-FT

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT III

ELIZABETH SCHULTZ,

PLAINTIFF-APPELLANT,

v.

WILLIAM KELLY,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Pierce County:
ROBERT W. WING, Judge. *Affirmed.*

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

MYSE, J. Elizabeth Schultz appeals an order¹ denying her unjust enrichment claim to recover benefits bestowed on William Kelly during their

¹ This is an expedited appeal under RULE 809.17, STATS

eighteen-year cohabitation.² The trial court rejected this claim after finding that the benefits conferred by Schultz on Kelly were offset by the benefits she received from him. Schultz contends that the trial court erred by requiring her to prove the existence of several factors she believes are not required in a cohabitational unjust enrichment claim. Because we conclude that the trial court did not require her to prove those factors, we affirm.

Schultz and Kelly began living together in 1975. The parties lived on a farm titled in Kelly's name, but only Kelly made payments on the farm mortgage. The purchase price of the farm was \$80,000. Schultz and Kelly became engaged in 1979, but never married.

In 1982, Schultz and Kelly began operating a produce business together, a partnership that lasted until the commencement of this lawsuit. The proceeds from that partnership were kept separate from the other farm income as well as from the separate accounts each party maintained for their own use. The farm mortgage was paid off in 1992, and Schultz and Kelly's relationship ended the next year. Schultz remained on the farm until she was evicted by Kelly, at which time she commenced this action. At that time, the approximate value of the farm had increased to \$200,000.

This action was tried to the court, and both parties testified about the details of their relationship. Schultz testified that she conferred a benefit on Kelly by supplying services that permitted him to make farm payments with assets he otherwise would not have had. Schultz testified that, among other things, she paid

² Schultz also raised a claim of breach of express or implied contract, also denied by the trial court, but does not appeal that part of the order.

the grocery, phone, and electricity bills. She also testified to performing many years of chores and farm work, for which she received no compensation.

Schultz acknowledged that she received several benefits from Kelly. First, she never paid rent or heating bills during the entire eighteen-year relationship, a value the trial court concluded was between \$350 and \$400 per month. Second, except for a brief period at the beginning of their relationship, Schultz boarded horses on the farm rent-free, a value that the trial court concluded was between \$100 and \$400 per month. Schultz also testified that the money she earned from selling horses was not shared with Kelly. Finally, it was established that Schultz never paid Kelly half the rental value for the land used in their joint produce business, the profits of which were evenly divided.

The trial court rejected Schultz's unjust enrichment claim, finding that the benefit conferred on Kelly was offset by the benefits she received. The trial court stated that Schultz:

simply has not shown that she gave more than she got such as would make it unfair for defendant to retain any benefits that plaintiff may have conferred on him. The court would also note that the plaintiff did not prove that the increase in value of the farm from the time the parties commenced living together to the current time was due in any way to her efforts rather than unrelated economic circumstances. Therefore, plaintiff did not prove that she conferred any benefit on the defendant that it would be unjust for him to retain.

Schultz argues that the trial court erroneously applied *Watts v. Watts*, 137 Wis.2d 506, 405 N.W.2d 303 (1987), to her claim. In *Watts*, the supreme court held that unmarried cohabitants may raise claims of unjust enrichment where one party attempts to retain an unreasonable amount of the property acquired through the efforts of both. *Id.* at 532-33, 405 N.W.2d at 314.

In order to prove unjust enrichment under those circumstances, the party must prove three elements: (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. *Id.* at 531, 405 N.W.2d at 313. It is not disputed that Schultz proved the first two elements.

A determination of unjust enrichment involves a mixed question of fact and law. *See Waage v. Borer*, 188 Wis.2d 324, 328, 525 N.W.2d 96, 97-98 (Ct. App. 1994). The trial court's factual determinations will be upheld unless they are clearly erroneous. Section 805.17(2), STATS. The application of these facts to the legal standard for unjust enrichment, however, presents a question of law we review de novo. *Waage*, 188 Wis.2d at 328, 525 N.W.2d at 98.

The trial court found that the benefits Schultz conferred on Kelly were offset by the benefits she received from him. Schultz does not contend that this finding is clearly erroneous. Rather, Schultz argues that the trial court "seems to have attempted to distinguish this case from *Watts* on factual matters that are frankly a distinction without a difference." Schultz faults the trial court for relying on the following differences from *Watts*: she and Kelly had no children; she did not change her surname to Kelly; she and Kelly did not file joint tax returns; she was not carried on Kelly's insurance; and hers and Kelly's property was titled individually rather than jointly. Schultz believes that the trial court improperly denied her claim because it concluded that at least some of these factors were necessary.

While we agree that a rejection of Schultz's claims would have been erroneous if based solely on the absence of these factors, we do not believe that

the trial court so limited itself. By distinguishing the factors involved in Schultz's cohabitation with those involved in *Watts*, the trial court was not concluding that the *Watts* factors must exist. Rather, the court was explaining why its decision was not controlled by that case. The fact that the court went on to weigh the benefits conferred and received by Schultz further belies the claim that the trial court based its decision solely on factual differences with *Watts*.

After weighing the benefits conferred and received by Schultz, the trial court concluded that she failed to show "she gave more than she got." This is a sufficient basis for rejecting her unjust enrichment claim. The third element of unjust enrichment required Schultz to prove that Kelly retained a benefit under circumstances making it inequitable for him to do so. Because the trial court determined that the weight of the benefits was not in Schultz's favor, it could properly conclude that it was not inequitable for Kelly to retain the benefits conferred on him. Thus, the court could properly conclude that Schultz failed to establish the necessary elements in her unjust enrichment claim.

By the Court.—Order affirmed.

Not recommended for publication in the official reports.

