

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 13, 2018

Diane M. Fremgen
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. 2017AP1426

Cir. Ct. No. 2017SC585

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

RONALD COLLISON,

PLAINTIFF-RESPONDENT,

v.

ANDREW WYDERKA,

**DEFENDANT-THIRD-PARTY
PLAINTIFF-APPELLANT,**

v.

ALISSA COLLISON,

THIRD-PARTY DEFENDANT.

APPEAL from a judgment of the circuit court for Milwaukee County: ELLEN R. BROSTROM, Judge. *Affirmed.*

¶1 BRASH, J.¹ Andrew Wyderka appeals from a judgment awarding \$2593.00 to Ronald Collison. Ronald had paid the money towards the balance on a credit card belonging to Andrew and Andrew's former wife, Alissa Collison, who is Ronald's daughter.

¶2 The trial court made this determination based on the theory of unjust enrichment. On appeal, Andrew argues three issues: (1) that the statute of frauds was violated because there was no written agreement regarding repayment to Ronald; (2) that unjust enrichment was not pled in this case, and Wisconsin's pleading requirements require that Andrew be afforded the opportunity to rebut this claim; and (3) that there is insufficient evidence to support the judgment, in particular the absence of a signed agreement regarding repayment to Ronald. We affirm.

BACKGROUND

¶3 Andrew and Alissa were married in 2001. During their marriage, Alissa charged over \$24,000.00 to a Chase Bank USA credit card that was in Andrew's name. Alissa claims that this debt was incurred in the interest of their family, which included four daughters.

¶4 The Chase credit card account became delinquent and was sent to collections. After arguing with Andrew over the debt, Alissa requested assistance from Ronald to pay the debt. Ronald negotiated the debt with the collection agency down to \$7500.00 and paid it in full. Alissa contends that Andrew

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

promised to repay Ronald that \$7500.00. Additionally, Alissa made several partial payments to her father.

¶5 Andrew filed for divorce in April 2013. During the divorce proceedings, the family court indicated that repayment to Ronald should be resolved outside of those proceedings.

¶6 While Andrew and Alissa's divorce was pending, Ronald sent a letter demanding payment from Andrew. The matter was not resolved and Ronald filed this action against Andrew in small claims court in January 2017. He sought \$4799.20, representing the balance remaining after the partial payments were made. Andrew filed a third-party complaint against Alissa for contribution. Alissa then filed a counterclaim against Andrew alleging that he had promised to repay Ronald.

¶7 There was a court trial on this matter in May 2017, and the trial court ultimately determined that Andrew was liable for half of the amount that remained due and owing to Ronald. This appeal follows.

DISCUSSION

¶8 In our review of a court trial decision, the trial court's findings of fact "may not be disturbed unless they are 'clearly erroneous.'" *State v. Benton*, 2001 WI App 81, ¶5, 243 Wis. 2d 54, 625 N.W.2d 923 (citation omitted). "[A] finding of fact is clearly erroneous when 'it is against the great weight and clear preponderance of the evidence.'" *Phelps v. Physicians Ins. Co. of Wis.*, 2009 WI 74, ¶39, 319 Wis. 2d 1, 768 N.W.2d 615 (citation omitted). Questions of law, on the other hand, are reviewed independently "with no deference to the conclusions

reached by the trial court.” *Levy v. Levy*, 130 Wis. 2d 523, 529, 388 N.W.2d 170 (1986).

¶9 Here, the trial court applied the theory of unjust enrichment in its finding that Andrew was liable for half of the debt. “Unjust enrichment is an equitable doctrine, and the trial court’s decision to grant or deny a remedy is reviewed for erroneous exercise of discretion.” *Ludyjan v. Cont’l Cas. Co.*, 2008 WI App 41, ¶6, 308 Wis. 2d 398, 747 N.W.2d 745. We uphold discretionary decisions of the trial court if it “examined the relevant facts, applied a proper standard of law, and using a rational process, reached a conclusion that a reasonable judge could reach.” *See id.*

Statute of Frauds

¶10 Andrew first argues that because there was no written agreement between Andrew and Ronald for repayment to Ronald, any oral agreement between or among Ronald, Andrew, and Alissa violates the statute of frauds. “A statute of frauds defense is only appropriate or necessary when there is an oral contract and the oral contract is unenforceable unless there is compliance with the statute of frauds.” *Nat’l Steel Serv. Ctr., Inc. v. Wollin Silos & Equip., Inc.*, 92 Wis. 2d 133, 139, 284 N.W.2d 606 (1979).

¶11 To the contrary, the trial court found that this was not a statute of frauds issue. Instead, the court determined that the agreement regarding repayment to Ronald was not a contract but a quasi-contract, primarily between Alissa and Ronald: Andrew and Alissa argued over the credit card balance, and Alissa sought assistance for paying the debt from her father. Nevertheless, the court also recognized that not only Alissa, but also Andrew, had benefitted from

the negotiation of the credit card debt from over \$24,000 to \$7500, and the payment in full of that negotiated balance.

¶12 Based on those facts, together with the supporting evidence presented at the court trial, the trial court determined that unjust enrichment was the proper theory upon which to base its decision. The elements of unjust enrichment are: (1) a benefit that is conferred on the defendant by the plaintiff; (2) the defendant having knowledge or appreciation of that benefit; and (3) the defendant accepting the benefit under circumstances that would render it inequitable for the defendant to retain the benefit without paying for its reasonable value. WIS JI—CIVIL 3028.

¶13 In its analysis, the trial court found that the credit card debt was a “community debt” that had been incurred during the marriage, and thus was a benefit that was conferred to both Alissa and Andrew. It further found that Andrew recognized, before he filed for divorce, that he was receiving a benefit in having this community debt reduced and paid by Ronald. The court then concluded that it would be inequitable for Andrew to retain that benefit of having the credit card balance reduced and paid off without paying his share.

¶14 We find that the trial court, in applying the remedy of unjust enrichment, examined the relevant facts, applied the proper standard of law, and used a rational process in reaching that conclusion. *See Ludyjan*, 308 Wis. 2d 398, ¶6. Therefore, we conclude that the trial court did not erroneously exercise its discretion.

Pleading Requirements

¶15 In a similar vein, Andrew argues that no claim of unjust enrichment was pled by Ronald, and he therefore was never afforded the opportunity to respond to that claim. As a result, Andrew contends that the pleading requirements were not met, and thus the trial court’s decision was erroneous.

¶16 In its oral decision of this case, the trial court acknowledged that unjust enrichment had not been pled. Indeed, the court pointed out that no specific causes of action had been pled in this case because Ronald had initially filed this action in small claims court using the standard form summons and complaint form. The court determined this lack of specific pleading did not preclude its application of unjust enrichment, however, citing *Burbank Grease Servs., LLC v. Sokolowski*, 2006 WI 103, 294 Wis. 2d 274, 717 N.W.2d 781. In *Burbank Grease*, the court held that “a civil pleading need not define issues or state detailed facts; only ‘fair notice’ ... of what the claim is and the grounds upon which it rests are required.” *Id.*, ¶45 (citation and one set of internal quotation marks omitted; ellipses in original).

¶17 The trial court found that the narrative included in the small claims complaint was “certainly sufficient” to put Andrew on notice of the claims being alleged by Ronald. We agree. The narrative included information regarding the nature of the debt, the amount negotiated and paid by Ronald, and that Ronald claimed that Andrew had promised to repay him. As such, the trial court did not err in finding that the pleading requirements had been met in this case.

Burden of Proof

¶18 Andrew’s final argument is that Ronald failed to meet his burden of proof because he did not have a signed agreement from Andrew regarding repayment, and thus the evidence is not sufficient to support the trial court’s decision.

¶19 “It is exclusively within the trier of fact’s province to decide which evidence is worthy of belief, which is not, and to resolve any conflicts in the evidence.” *State v. Below*, 2011 WI App 64, ¶4, 333 Wis. 2d 690, 799 N.W.2d 95. Furthermore, if “more than one inference can reasonably be drawn from the evidence, the inference which supports the trier of fact’s verdict must be the one followed on review unless the evidence is incredible as a matter of law.” *Id.*

¶20 We have already found that the trial court properly considered the facts of the case and weighed the evidence presented at trial in making its determination that unjust enrichment was the appropriate theory to apply here; accordingly, that was a reasonable exercise of the trial court’s discretion. The theory of unjust enrichment does not necessarily involve or require a written agreement.

¶21 Furthermore, we reject Andrew’s argument that the evidence he presented challenging Ronald’s claim should have been accorded greater weight, inasmuch as the evidence considered by the trial court in making its determination was not incredible as a matter of law. We are thus compelled to support its decision. *See id.*

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT.
RULE 809.23(1)(b)4

