



OFFICE OF THE CLERK  
**WISCONSIN COURT OF APPEALS**

110 EAST MAIN STREET, SUITE 215

P.O. BOX 1688

MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880

TTY: (800) 947-3529

Facsimile (608) 267-0640

Web Site: [www.wicourts.gov](http://www.wicourts.gov)

**DISTRICT III**

November 5, 2024

*To:*

Hon. Kelly J. Thimm  
Circuit Court Judge  
Electronic Notice

Robert A. Kennedy Jr.  
Electronic Notice

Michele Wick  
Clerk of Circuit Court  
Douglas County Courthouse  
Electronic Notice

Wendy Zeise  
12760 Wiskow Road  
Cecil, WI 54111-9617

You are hereby notified that the Court has entered the following opinion and order:

---

2023AP1594

Jed Flannery v. Wendy Zeise (L. C. No. 2022CV91)

Before Stark, P.J., Hruz and Gill, JJ.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Jed Flannery appeals from an order dismissing his breach of contract claim against Wendy Zeise. Flannery contends that the circuit court erred by granting summary judgment without providing him a full twenty days' notice under WIS. STAT. § 802.08(2) (2021-22).<sup>1</sup> Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We affirm on the ground of harmless error.

---

<sup>1</sup> All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

The relevant facts are undisputed. Flannery filed a complaint raising a single claim of breach of contract against Zeise. As grounds, Flannery alleged that he had deposited funds from an inheritance into a joint account with Zeise, which Zeise then used to purchase a parcel of real estate in her own name. Flannery further alleged that the parties had an oral understanding that Zeise would convey the property to Flannery upon his request, but she subsequently refused to do so. As relief, Flannery sought conveyance of the title to the parcel.

The circuit court issued a scheduling order, stating that dispositive motions needed to be filed by May 15, 2023, and would be heard on June 5, 2023. After obtaining counsel, Zeise filed an amended answer raising the statute of frauds as a defense and, on May 9, 2023, moved for summary judgment on that basis. The notice attached to the motion for summary judgment set a new hearing date of May 30, 2023. Flannery asserts, however, that the notice and motion for summary judgment were never served upon him as a pro se paper party and that he was not consulted about the change made to the scheduling order. In Flannery's absence, the court granted summary judgment on the revised hearing date—nineteen days after the summary judgment notice and motion had been filed.<sup>2</sup> The summary judgment order did not state that the dismissal was with prejudice.

Flannery contends that the circuit court violated his statutory right under WIS. STAT. § 802.08(2) to have twenty days' notice of the summary judgment hearing. We will assume

---

<sup>2</sup> The transcript of the summary judgment hearing contains an obvious error, stating that the hearing was held on February 19, 2018, years before the action was filed. Docket entries show that the hearing was held on May 30, 2023, as stated in the notice.

without deciding that the statute was violated. We conclude, however, that any such violation was harmless error.

Under the harmless error rule, this court will not reverse a judgment or order “for error as to any matter of ... procedure” unless, “after an examination of the entire action or proceeding, it shall appear that the error complained of has affected the substantial rights of the party seeking to reverse or set aside the judgment, or to secure a new trial.” WIS. STAT. § 805.18(2). The test, in both civil and criminal cases, is whether “it appears ‘beyond a reasonable doubt that the error complained of did not contribute to the [outcome of the proceeding].’” *Allsop Venture Partners III v. Murphy Desmond S.C.*, 2023 WI 43, ¶39, 407 Wis. 2d 387, 991 N.W.2d 320 (citation omitted). This court will independently determine, as a question of law, whether an error is harmless. *State v. Beamon*, 2011 WI App 131, ¶7, 336 Wis. 2d 438, 804 N.W.2d 706.

Here, Zeise filed an amended answer to the complaint asserting an affirmative defense that the relief Flannery sought—i.e., conveyance of title to real property based on the parties’ alleged oral understanding—was barred by the statute of frauds. Under the statute of frauds, a contract for the conveyance of any interest in real estate must be in writing, set forth its essential terms with particularity, and be signed by all parties to the transaction. WIS. STAT. §§ 706.001(1), 706.02(1). An oral contract for the conveyance of an interest in land is void and unenforceable unless there is a memorandum that conforms to the statute of frauds. *Trimble v. Wisconsin Builders, Inc.*, 72 Wis. 2d 435, 441, 241 N.W.2d 409 (1976).

Flannery did not allege in his complaint, nor has he asserted on appeal, that there was ever any written contract between Zeise and himself or any written memorandum memorializing a prior oral contract. Instead, Flannery contends that his complaint should have survived

summary judgment because the facts alleged therein could have supported a claim for unjust enrichment, with a constructive trust for a remedy. See *Tikalsky v. Friedman*, 2019 WI 56, ¶14, 386 Wis. 2d 757, 928 N.W.2d 502 (a court looks to factual allegations, not labels given to causes of action, to determine whether a complaint states a claim upon which relief could be granted).

We are not persuaded that the facts in Flannery's complaint establish a prima facie case of unjust enrichment. A claim for unjust enrichment requires proof of 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. *Ward v. Jahnke*, 220 Wis. 2d 539, 545-46, 583 N.W.2d 656 (Ct. App. 1998). Flannery's complaint provides no explanation as to why he arranged for Zeise to purchase the real estate rather than doing so himself. Therefore, there is no factual basis from which to conclude that the circumstances make Zeise's retention of the real estate inequitable.

Because the allegations in Flannery's complaint were inadequate to state a claim for unjust enrichment and because the claim for breach of contract was barred by the statute of frauds, we conclude the complaint would have been dismissed regardless of whether Flannery had notice of the summary judgment motion. We therefore affirm the order dismissing Flannery's action. We take no position on whether Flannery might file a new action seeking compensation for unjust enrichment.

Upon the foregoing,

IT IS ORDERED that the order is summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

---

*Samuel A. Christensen*  
*Clerk of Court of Appeals*