

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2001-394

FEBRUARY TERM, 2002

Lawrence H. Delisle	}	APPEALED FROM:
	}	
v.	}	Addison Superior Court
	}	
Viola Emmons	}	
	}	DOCKET NO. 28-2-01 Ancv
	}	
	}	Trial Judge: Mary Miles Teachout
	}	
	}	

In the above-entitled cause, the Clerk will enter:

Plaintiff appeals an Addison Superior Court judgment denying his petition to evict defendant, rejecting his claim for unpaid rent, and granting defendant \$12,480, inclusive of interest, on her counterclaim based on theories of constructive trust and unjust enrichment. We affirm the court's judgment on plaintiff's claims for eviction and unpaid rent, but reverse the judgment on defendant's counterclaim.

After a bench trial, the court found the following relevant facts. In January 1983, plaintiff's father, Leonard Delisle, moved to Lincoln, Vermont and bought a piece of property on which a small, older home was situated. Delisle arranged for the deed to specify that he and plaintiff held the property as joint tenants with the right of survivorship. In 1989, shortly after defendant's husband died, defendant moved into Delisle's home at his suggestion. In 1992, Delisle improved the property by adding a modular home. The home required foundation work and some site preparation so Delisle took out a \$34,000 mortgage to pay for the improvements, including the home. Plaintiff signed the mortgage deed, but not the promissory note.

The modular home was delivered, but it was the wrong model. Delisle decided not to wait for the correct model to arrive because he was not in good health and was waiting for surgery. Because the model differed from the original plan, additional work on the foundation was required. The additional work cost approximately \$6,000 which Delisle did not have. Consequently, defendant offered to take \$6,000 from her savings so the foundation could be modified and she and Delisle could move into the new home. The modular home was thereafter attached to the modified foundation and became part of the real estate.

After the new home was completed, defendant's relationship with Delisle continued to develop into a close and intimate domestic relationship. Both had health problems, and each took care of the other when one was sick. They lived together as husband and wife, although they were never married. Defendant also helped Delisle with the firewood business he operated from the property. Defendant and Delisle had an important, affectionate relationship with Delisle's cat, Midnight. Delisle and defendant had an understanding that if anything happened to Delisle, defendant would take care of Midnight. On June 30, 2000, Delisle died suddenly of a massive heart attack while working with his firewood. A memorial service was held in his honor approximately two weeks later.

Shortly after the memorial service, plaintiff approached defendant about paying rent to remain on the property temporarily while he reviewed his options with respect to the property, which was now his by virtue of his right of

survivorship. Defendant agreed to pay plaintiff \$250 per month in rent. Defendant paid rent for the next three months (July, August, and September 2000). On December 18, 2000, plaintiff wrote defendant stating that she missed her subsequent rental payments and asked her to vacate the property by January 15, 2001. On February 13, 2001, plaintiff filed the present action seeking to evict defendant for nonpayment of rent.

Defendant answered the complaint and asserted a counterclaim. The counterclaim alleged that defendant had made financial contributions to the expenses of the home she shared with Delisle, provided care and other support for Delisle, worked as Delisle's employee in his firewood business without receiving any compensation, and that she and Delisle agreed that she would occupy the home for as long as she desired to do so. She requested the court to allow her to remain in the premises for the remainder of her natural life and that she receive an award reflecting the value of the services she provided to Delisle.

On July 5, 2001, twelve days before trial, plaintiff moved for summary judgment. Defendant responded to the motion on the day of trial. Immediately before the trial commenced, the court informed the parties that it would not decide the case on summary judgment because plaintiff did not file the motion with sufficient time for defendant to respond to it and for the court to consider it before the trial date. Plaintiff did not object, and the parties proceeded to try the case before the court.

Following the bench trial, the court denied plaintiff's claim for unpaid rent because it determined that a preponderance of the evidence was lacking to support plaintiff's claim that defendant failed to pay rent. The court also denied plaintiff judgment on his request to evict defendant on the grounds that plaintiff's December 18, 2000 notice to quit did not conform to 9 V.S.A. 4467, because it was not sent by certified mail or served by a law enforcement officer. The court disposed of defendant's counterclaim by finding that the \$6,000 she gave to Delisle to modify the foundation was an investment in Delisle's property. The court concluded that plaintiff became unjustly enriched when title of the property passed to plaintiff upon Delisle's death, and defendant "was deprived of an interest in property that Leonard Delisle was holding for her benefit under the doctrine of constructive trust." To reflect the current value of defendant's equitable interest in the property, the court awarded defendant \$6,000 plus nine years worth of interest. In response to plaintiff's motion to reconsider, the court clarified its reasoning with respect to defendant's counterclaim, stating,

The constructive trust theory contributed to the reasoning of the Court in determining that Plaintiff would be unjustly enriched if Defendant's contribution to the property was not recognized, but in its judgment, the Court did not grant Defendant a property interest in the premises. Rather, the court simply granted judgment to Defendant in the amount of \$12,480.00 as of July 17, 2001, and explained its reasons for the judgment. As a result of the judgment, Plaintiff is the sole owner of the premises, and Defendant's only interest is as a tenant in possession. Defendant holds no other interest in the real estate.

Plaintiff then appealed the judgment to this Court.

Plaintiff first argues that the court erred by not granting his motion for summary judgment on his claims for unpaid rent and eviction. We note that plaintiff's brief on this point omits any analysis on the relevant law applicable to his claims. Nevertheless, we will review the motion using the same standard as the trial court. Wentworth v. Fletcher Allen Health Care, 171 Vt. 614, 616 (2000) (mem.). Summary judgment is appropriate only where no genuine issue of material fact exists and a party is entitled to judgment as a matter of law. V.R.C.P. 56(c). The rule's purpose is to avoid an unnecessary trial. Sykas v. Kearns, 135 Vt. 610, 612 (1978).

Plaintiff complains that the trial court should have addressed the merits of his motion because defendant's response to it did not aver specific facts demonstrating a genuine factual dispute existed for trial. The court declined to address plaintiff's motion because plaintiff filed it considerably less than thirty days prior to trial, giving both defendant and the court an inadequate opportunity to respond to it before the date set for trial. Plaintiff did not object to that ruling at the time the court made it. Instead, plaintiff waited until his post-trial motion to alter or amend the judgment to call the court's attention to its alleged error. Considering the purpose of summary judgment is to avoid a useless trial, we think plaintiff's decision to wait until he lost at trial to raise his objection to the court's ruling waived his claim of error on appeal. See Beyel v. Degan, 142 Vt. 617, 619 (1983) (party who fails to object to trial court ruling and proceeds to trial cannot later claim error in ruling on appeal).

Plaintiff next argues that the evidence was sufficient for the court to find that defendant failed to pay rent for three months. Plaintiff points to the record evidence supporting his claim and attacks defendant's credibility. We leave credibility and evidentiary weight determinations to the trial court, however, because it is in the best position to make those determinations. Kanaan v. Kanaan, 163 Vt. 402, 405 (1995). Moreover, we view the record in the light most favorable to the party prevailing below. Hoover v. Hoover, 171 Vt. 256, 258 (2000). The record reflects that the evidence on defendant's rental payments conflicted. Defendant testified that at some point she stopped making rental payments and instead paid the bank that held the mortgage on the property directly. The trial court resolved the evidentiary conflict, and we will not disturb its ruling on this issue on appeal. See Lockwood v. Bougher, 145 Vt. 329, 331 (1985) (court's ruling will stand if credible evidence supports it even if substantial evidence exists to the contrary).

Plaintiff also contests the court's conclusion that his notice to quit was invalid under 9 V.S.A. 4467(a). We agree that the court erred on this issue. Apparently relying on an old version of 4467, the court concluded that plaintiff's notice was inadequate because it was not served by certified mail or by a law enforcement officer. Section 4467 requires "actual notice" only, 9 V.S.A. 4467(a), which 4451 defines as "written notice hand-delivered or mailed to the last known address." Id. 4451. The court's erroneous application of the law was harmless, however, because plaintiff failed to prove that defendant did not pay rent. Reversal is therefore not required. V.R.C.P. 61.

Plaintiff next alleges that the court did not have subject matter jurisdiction over defendant's counterclaim. Defendant asserts that plaintiff waived this claim by failing to raise it in his responsive pleadings under V.R.C.P. 12(h). Defendant confuses subject matter jurisdiction with jurisdiction over the person, which is waived if a party does not raise the issue by timely motion or in a responsive pleading. V.R.C.P. 12(h)(1). It is hornbook law that subject matter jurisdiction is an issue that a party may raise at any time, including on appeal. See Poston v. Poston, 161 Vt. 591, 592 (1993) (mem.) (lack of subject matter jurisdiction may be raised at any time).

Plaintiff asserts that defendant's counterclaim should have been presented against Delisle's estate, and therefore the counterclaim was cognizable only in probate court because probate courts have exclusive jurisdiction over the settlement of decedents' estates. 4 V.S.A. 311; In re Fisher's Estate, 104 Vt. 37, 39 (1931). While it is true that defendant's legal theory appears to be based upon a claim against plaintiff's father's estate for services rendered by defendant to father and, as such, the claim is cognizable in probate court, here defendant sought an equitable life estate in property that was not in probate due to plaintiff's right of survivorship. Hence, the counterclaim was properly considered by the superior court.

Plaintiff contends that the court's findings and conclusions relating to defendant's counterclaim were erroneous and require reversal. The court grounded its judgment for defendant on theories of unjust enrichment and constructive trust. A constructive trust arises "whenever title [to property] is acquired through a confidence which has been abused." Legault v. Legault, 142 Vt. 525, 529 (1983); see also McGann v. Capital Savings Bank & Trust Co., 117 Vt. 179, 189 (1952) ("[A] trust is implied whenever circumstances are such, that the person taking the legal estate, whether by fraud or otherwise, cannot enjoy the beneficial interest without violating the rules of honesty and fair dealing."). A constructive trust allows equity to wrest from the wrongdoer the trust property. Legault, 142 Vt. at 529. Unjust enrichment is a similar principle. It prevents one party from enriching himself unjustly at another's expense. Id. The standard the court must use in deciding a claim of unjust enrichment is whether the person received a benefit for which the other should receive compensation. Ray Reilly's Tire Mart, Inc. v. F.P. Elnicki, Inc., 149 Vt. 37, 39 (1987). The court must look at the totality of the circumstances to determine whether "it is against equity and good conscience to allow [the person] to retain what is sought to be recovered." Legault, 142 Vt. at 531.

In this case, the record is devoid of any evidence to suggest that plaintiff was enriched unjustly by defendant's actions during her relationship with Delisle, including her decision to give Delisle \$6,000 to modify the modular home's foundation. We note first that the record contains no evidence that defendant intended the \$6,000 gift to Delisle be an investment in the property as the court found. The finding is therefore clearly erroneous. Bartley-Cruz v. McLeod, 144 Vt. 263, 264 (1984). The evidence establishes only that defendant gave Delisle the \$6,000 to allow her and Delisle to move into the property sooner than if they waited for the home Delisle ordered to be delivered, which would not have required any additional foundation work. The \$6,000 defendant gave Delisle thus satisfied their own needs rather than any need of plaintiff. Cf. Lafary v. Lafary, 522 N.E.2d 916, 918 (Ind. Ct. App. 1988) (son not entitled to recover from mother for improvements he made to property mother and father owned as tenants by the entireties where evidence

showed son acted on his own behalf and not mother's, and no agreement between mother and son existed regarding reimbursement for improvements). Further, there is no evidence that plaintiff even knew about the \$6,000 defendant gave to his father or that plaintiff agreed to reimburse defendant for the value of any improvements she helped fund to satisfy her and Delisle's wishes. Nor does defendant allege that any benefit plaintiff obtained by her actions resulted from plaintiff's wrongdoing or through plaintiff's abuse of a confidence between the parties. See Legault, 142 Vt. at 529; McGann, 117 Vt. at 189; In re Estate of Vangen, 370 N.W.2d 479, 480 (Ct. App. Minn. 1985) ("Unjust enrichment claims do not lie simply because one party benefits from the efforts or obligations of others, but instead it must be shown that a party was unjustly enriched in the sense that the term 'unjustly' could mean illegally or unlawfully."). In this case, neither the law nor the record supports defendant's theory that it would be inequitable for plaintiff to retain the Lincoln property without reimbursing defendant for the \$6,000 she gave to his father, without plaintiff's knowledge or apparent consent, to satisfy Delisle's and defendant's desire to move into the Lincoln home quickly. We must, therefore, reverse the court's judgment for defendant on her counterclaim.

Considering our disposition of this matter, we need not address plaintiff's other claims of error on appeal.

Judgment for defendant on plaintiff's claims for unpaid rent and eviction is affirmed. Judgment for defendant on her counterclaim is reversed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

John A. Dooley, Associate Justice

James L. Morse, Associate Justice