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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-170

NOVEMBER TERM, 2006

Gerald L. Kitonis	}	APPEALED FROM:
	}	
v.	}	Lamoille Superior Court
	}	
Sonya Fee-Doran	}	
	}	DOCKET NO. 143-7-02 Lecv

Trial Judge: Dennis R. Pearson

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

Defendant Sonya Fee-Doran appeals pro se from the trial court=s distribution of certain escrowed funds. We affirm.

As an initial matter, we note that Ms. Fee-Doran raises numerous arguments that do not directly relate to the March 2006 order from which she appeals. Instead, she attempts to relitigate the merits of several underlying orders, none of which were timely appealed. We do not consider these arguments, nor do we consider any evidence that was not presented to the trial court below. See Lerman v. Lerman, 148 Vt. 629, 629 (1987) (mem.) (AA party who has litigated, or who has had an opportunity to litigate, a matter in a former action in a court of competent jurisdiction should not be permitted to relitigate the issue against the same

adversary.@); see also Hoover v. Hoover, 171 Vt. 256, 258 (2000) (Supreme Court cannot consider facts not in the record). We deny Ms. Fee-Doran=s request that we reverse all of the decisions in her case so that they can be reheard, and we deny her requests for a jury trial and for monetary compensation. Our review in this case is limited to the specific order being appealed, and we thus turn to the court=s March 2006 decision.

The trial court made the following findings. Gerald L. Kitonis and Ms. Fee-Doran were in a romantic relationship that soured, and they turned to the court to disentangle their shared financial and property interests. They reached a settlement agreement, which was incorporated in a June 2004 final order. Pursuant to the agreement, Ms. Fee-Doran was to sell a partially-finished log home that sat on 10.3 acres within a much larger parcel of real property owned by Mr. Kitonis. Upon the sale of the property, Mr. Kitonis was to receive $40,000, and Ms. Fee-Doran was to receive the balance of the net proceeds. Notwithstanding their agreement, the parties continued to file numerous pleadings with the court, and Ms. Fee-Doran continued to live in the log home pending its sale. The property was finally sold in October 2005 for $100,000, and the court found both parties at fault for the lengthy delay. Mr. Kitonis received more than the agreed-upon $40,000, which included reimbursement for a generator as well as an unspecified $5195.81 credit, for a total of $47,870. Ms. Fee-Doran received $43,811.88. Five hundred dollars went to pay off delinquent electric charges, and the remaining funds from the saleC$7833.75Cwere placed in an escrow account. The distribution of these funds is the subject of the parties= current dispute.

At a hearing in January 2006, at which both parties were represented by counsel, Mr. Kitonis claimed that he was entitled to a portion of the escrowed funds because he had been forced to pay Ms. Fee-Doran=s share of the 2004-2005 property taxes (the portion attributable to the 10.3 acre parcel and log home) to avoid the tax sale of his surrounding property. Ms. Fee-Doran lived in the log home between June 2004 and October 2005, and Mr. Kitonis testified that she had paid her share of the taxes in the past. The court agreed that, either under the doctrine of unjust enrichment or based upon an implied agreement created by Ms. Fee-Doran=s conduct, she must reimburse Mr. Kitonis for her share of the tax bill. It thus awarded Mr. Kitonis $3632.79, to be paid out of the escrow fund, and Ms. Fee-Doran received the $4200.96 balance.

The court noted that, whether or not the June 2004 settlement agreement was a good bargain for either side, it had been thoroughly negotiated by the parties, who were both represented by counsel. The parties could have addressed the issues of taxes, closing costs, and expenses for delay, but they failed to do so. The bottom line of the agreement was that Mr. Kitonis would net $40,000 from the sale of the property and Ms. Fee-Doran would receive the rest. The court found that, solely on an equitable basis, its decision allowed Mr. Kitonis to do better than the agreement contemplated. Likewise, the court explained, Ms. Fee-Doran gained some additional compensation even though she was primarily, if not solely responsible, for most of the additional court filings between October 2004 and November 2005. The court thus concluded that while both parties were likely to complain, neither had a legitimate basis for doing so.

We agree. The court=s distribution was equitable and we find no error in its decision. AUnder a quasi-contract theory of unjust enrichment, the law implies a promise to pay when a party receives a benefit and retention of the benefit would be inequitable.@ Brookside Mem=ls, Inc. v. Barre City, 167 Vt. 558, 559 (1997) (mem.). AUnjust enrichment applies if in light of the totality of the circumstances, equity and good conscience demand that the benefitted party return that which was given.@ Gallipo v. City of Rutland, 2005 VT 83, & 41, 178 Vt. 244. We are unpersuaded by Ms. Fee-Doran=s assertion that the court=s decision was unjust and that she should not have to pay any taxes because, under the settlement agreement, the land on which she was living was not really Ahers.@ As the trial court explained, the parties, who were both represented by counsel, agreed to sell the property and share the proceeds. Due to the recalcitrance of both parties, the sale was delayed for over one year. During this period, Ms. Fee-Doran continued to live on the property. The record shows that Ms. Fee-Doran paid her share of property taxes in the past, and it is certainly fair that she pay the portion of the 2004-2005 tax bill attributable to the log cabin and its surrounding acreage, rather than requiring Mr. Kitonis, who was not living there, to pay it on her behalf. We have considered all of the arguments raised by Ms. Fee-Doran that are relevant to this appeal and discernable from her brief, and we find them all without merit.

Affirmed.

BY THE COURT:

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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Brian L. Burgess, Associate Justice