

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2007-128

OCTOBER TERM, 2007

Peter Clark	}	APPEALED FROM:
	}	
v.	}	Chittenden Superior Court
	}	
Michelle Witte	}	DOCKET NO. 1403-06 Cncv

Trial Judge: Matthew I. Katz

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

Michelle Witte appeals pro se from the trial court's order denying her claim for restitution and granting plaintiff Peter Clark a writ of possession. She argues that the trial court erred in concluding that she had not acquired a financial interest in Mr. Clark's home. We affirm.

The trial court found as follows. Ms. Witte and Mr. Clark began dating in 1998. Shortly thereafter, Ms. Witte asked to move into Mr. Clark's home, and after initially rejecting the idea, Mr. Clark later agreed. At the time, Mr. Clark was in the process of a divorce and needed to obtain mortgage financing to pay off a debt. Ms. Witte helped in the search for financing. Financing was successfully obtained, and the house was titled in Mr. Clark's name alone. The court found that both parties understood that the house belonged solely to Mr. Clark. Mr. Clark always paid the mortgage and the monthly utilities. Ms. Witte paid \$400 per month to Mr. Clark toward the cost of housing, slightly more than Mr. Clark's previous tenant. Mr. Clark apparently reduced Ms. Witte's rent to \$350 at some point as consideration for her assistance in finding a mortgage lender. Ms. Witte also paid other household expenses, such as grocery bills or veterinarian bills, on an ad hoc basis, and she purchased flowers for a flower garden. Ms. Witte was not regularly employed, and her annual income never exceeded \$5000.

Throughout the parties' nine-year relationship, Mr. Clark made clear that he did not want to marry Ms. Witte, and the parties never held themselves out as married. The relationship eventually ended, and in late August 2006, Mr. Clark's attorney sent Ms. Witte a letter, indicating her understanding that Ms. Witte had an oral month-to-month tenancy. The attorney provided Ms. Witte thirty days notice of Mr. Clark's intent to evict her, and indicated that she needed to vacate the premises by the end of September. Shortly thereafter, Mr. Clark told Ms.

Witte that he would be moving out until she vacated the premises. Ms. Witte took Mr. Clark's car keys and refused to give them back. Mr. Clark apparently tried to get the keys back, possibly bruising Ms. Witte in the process. The court found that whatever the fault or injuries suffered in this fracas, it resulted in Ms. Witte obtaining a relief-from-abuse order against Mr. Clark, pursuant to which she had had exclusive use and occupancy of the home from early September until approximately April 2007. During this time, she made only a few rental payments to Mr. Clark. Mr. Clark continued to pay the full mortgage, taxes, and insurance on the property while he stayed with various friends.

Based on these and other findings, the court rejected Ms. Witte's claim that she was entitled to an equitable distribution of the house held in Mr. Clark's name. The court found no evidence that there was an unjust enrichment that would entitle her to restitution. As it explained, Ms. Witte did not assert that she expected to gain equity in the property when she moved in, and there was no claim of a tacit understanding to this effect, let alone an express agreement. Instead, the court concluded, the facts suggested an implied agreement that the payments made by Ms. Witte constituted month-to-month rental payments. As support for this conclusion, the court found that Ms. Witte made her payments to Mr. Clark, not the mortgage company, and Mr. Clark had had a tenant before Ms. Witte moved in, which suggested that her payments to Mr. Clark were intended to serve the same purpose. The court found that it would be unfair to allow Ms. Witte to now impose a different expectation than the parties had at the time the arrangement began.

The court also noted additional deficiencies in Ms. Witte's claim. It found, for example, that it would be impossible for Ms. Witte to return to Mr. Clark what she had received in exchange for her payments, i.e., shelter, and there was nothing in the parties' arrangement to suggest that Ms. Witte should get a full refund of her expenses simply because the relationship ended. Moreover, the court found, Ms. Witte made the payments voluntarily with full knowledge of the circumstances, and it would be inequitable to allow her to rewrite the bargain after the fact. In other words, the court explained, there was no evidence to suggest that Ms. Witte expected to receive anything other than housing for her payments, and therefore she could not now have the payments returned because she had not received something more. The court also rejected Ms. Witte's assertion that she was entitled to recover for her work on the flower gardens or her research into mortgage-financing options. The court found no evidence that Ms. Witte expected to be paid for such services, and found that these were the type of services freely given for mutual benefit between partners in committed relationships. They did not entitle Ms. Witte to an ownership interest in the home. The court thus concluded that Ms. Witte was not entitled to any portion of the real estate held by Mr. Clark, nor was she entitled to any other type of settlement or payment. Indeed, the court continued, even if the law were to suggest such an entitlement, Ms. Witte's exclusive occupancy of Mr. Clark's house for more than seven months would have a value greater than any such award. The court therefore awarded exclusive possession of the house to Mr. Clark, free of any interest of Ms. Witte. Ms. Witte appealed.

On appeal, Ms. Witte reiterates her claim that she is entitled to restitution for services rendered. She argues that the trial court's decision effectively bars recovery where the claim for compensation arises out of the dissolution of a cohabitation arrangement, as opposed to the dissolution of a marriage. According to Ms. Witte, the facts in this case demonstrate that Mr.

Clark received a benefit from cohabitating with her, and it is unjust to allow him to retain that benefit.

These arguments are without merit. Contrary to Ms. Witte's assertion, the trial court did not decide that the absence of a marriage between the parties was fatal to Ms. Witte's claim for restitution. To the contrary, the court analyzed in depth whether she had an equitable claim to Mr. Clark's property notwithstanding the fact that the parties were unmarried.

Ms. Witte's challenge to the court's denial of her claim for restitution is equally without merit. As we have explained, claims for quasi-contract, like the one raised by Ms. Witte, "are based on an implied promise to pay when a party receives a benefit and the retention of the benefit would be inequitable." DJ Painting, Inc. v. Baraw Enters., 172 Vt. 239, 242 (2001) (citation omitted); see also Center v. Mad River Corp., 151 Vt. 408, 410 n.2 (1989) (noting that term "quasi-contract" is used interchangeably with theory of recovery known as "unjust enrichment" or "restitution"). To prevail on her claim, Ms. Witte needed to show that (1) a benefit was conferred on Mr. Clark; (2) Mr. Clark accepted the benefit; and (3) Mr. Clark retained the benefit under such circumstances that it would be inequitable for him not to compensate Ms. Witte for its value. Id. at 412; see also Baraw Enters., 172 Vt. at 242 (stating that most significant requirement for recovery on quasi-contract is that enrichment to defendant is unjust, and "proper inquiry is whether, in light of the totality of circumstances, it is against equity and good conscience to allow defendant to retain what is sought to be recovered" (quotation and citation omitted)).

In this case, the trial court found no evidence that Mr. Clark had been unjustly enriched, and its decision is supported by the record. See Rubin v. Sterling Enters., 164 Vt. 582, 588 (1996) (on appeal, Supreme Court views trial court's factual findings in light most favorable to prevailing party, disregarding modifying evidence, and findings will stand unless there is no credible evidence to support them; where trial court has applied proper legal standard, Supreme Court will uphold its conclusions if they are reasonably supported by its findings (citations omitted)). Essentially, Ms. Witte sought the return of what the trial court found were rental payments, notwithstanding the fact that she received exactly what was bargained for—housing—in exchange for the payments. The court found no evidence that the parties intended that Ms. Witte would obtain an equitable interest in the property by paying rent. Indeed, it found that Ms. Witte did not even assert that there was a tacit understanding to this effect. The court similarly found that Ms. Witte was not entitled to restitution for activities such as planting a flower garden or helping to research mortgage refinancing, finding that these were the types of services commonly performed for a romantic partner with no expectation of payment. The court's findings are supported by the record, and they amply support its rejection of the unjust-enrichment claim.

While Ms. Witte urges us to draw a contrary conclusion from the evidence, this we will not do. It is for the trial court, not this Court, to assess the weight and credibility of the evidence. Harman v. Rogers, 147 Vt. 11, 16 (1986) Where, as here, the court's findings are supported by the record, and the findings support the court's conclusion, its decision must stand on appeal. Given our conclusion, we need not address Ms. Witte's challenges to the court's statement that

even if the law suggested that she was entitled to some compensation, her exclusive occupation of Mr. Clark's home for more than seven months, while he continued to pay the mortgage, had a much greater value than any award to which Ms. Witte would be entitled.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Marilyn S. Skoglund, Associate Justice