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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-567**

Robert G. Nyberg,
Appellant,

vs.

Janet Wettlaufer,
Respondent.

**Filed October 26, 2010
Affirmed
Klaphake, Judge**

St. Louis County District Court
File No. 69DU-CV-09-597

Timothy A. Costley, The Costley Law Firm, Two Harbors, Minnesota (for appellant)

Matthew H. Hanka, Duluth, Minnesota (for respondent)

Considered and decided by Klaphake, Presiding Judge; Shumaker, Judge; and
Worke, Judge.

UNPUBLISHED OPINION

KLAPHAKE, Judge

Appellant Robert G. Nyberg challenges the district court's denial of his claim that respondent Janet Wettlaufer was unjustly enriched by \$21,722, which he paid for improvements to respondent's home while the parties were engaged to be married. Appellant argues that the district court abused its discretion by not imposing a

constructive trust on the proceeds of the sale of respondent's home to secure repayment to him of the \$21,722, and by improperly denying his unjust enrichment claim in order to permit respondent to effectively recoup \$17,500 in unpaid rent for the time he lived in respondent's home. We affirm because (1) the district court did not abuse its discretion by denying appellant's unjust enrichment claim when the underlying facts did not establish that respondent was enriched because of her illegal, unlawful, or unconscionable conduct, and (2) the court's denial of appellant's unjust enrichment claim bore no improper connection to its findings regarding any nonpayment of rent by appellant.

DECISION

This court reviews a denial of an unjust enrichment claim, which is an equitable remedy, for an abuse of discretion. *City of Cloquet v. Cloquet Sand & Gravel, Inc.*, 312 Minn. 277, 279, 251 N.W.2d 642, 644 (1977); *In re Estate of Savich*, 671 N.W.2d 746, 751 (Minn. App. 2003). The remedy of unjust enrichment is merited when there is clear and convincing proof that (1) a person received something of value, (2) the recipient was not entitled to the thing of value, and (3) it would be unjust under the circumstances to allow the recipient to retain the benefit. *Schumacher v. Schumacher*, 627 N.W.2d 725, 729 (Minn. App. 2001). A person claiming unjust enrichment must show "that a party was unjustly enriched in the sense that the term 'unjustly' could mean illegally or unlawfully." *First Nat'l Bank of St. Paul, v. Ramier*, 311 N.W.2d 502, 504 (Minn. 1981); see *Park-Lake Car Wash, Inc. v. Springer*, 394 N.W.2d 505, 514 (Minn. App. 1986) (stating that "unjust" can also mean "unconscionable by reason of a bad motive").

Here, the district court found that “[t]here was never an agreement or discussion between the parties concerning either party being owed or paid if and when [appellant] moved out of [respondent’s] house.” The court also found that with regard to their financial dealings, neither party “intentionally or recklessly misled the other party.” Ultimately, the district court found that “[t]he parties simply failed to communicate, and both parties are equally responsible for that failure.” These findings are supported by the evidence and are not clearly erroneous. Because appellant failed to show that any enrichment to respondent occasioned by appellant’s payment of home improvements was due to her illegal, unlawful, or unconscionable conduct, we conclude that appellant did not establish a prima facie case of unjust enrichment, and the district court did not abuse its discretion in denying his claim.

Appellant cites *In re Palmen’s Estate*, 588 N.W.2d 493 (Minn. 1999), and *Obert v. Dahl*, 574 N.W.2d 747, 749 (Minn. App. 1998), *aff’d* 587 N.W.2d 844 (Minn. 1999), as controlling this case. We disagree. Those cases concern application of the anti-palimony statutes, Minn. Stat. §§ 518.075, .076 (1996, 1998), to claims involving cohabitating couples. Other than including statements of general law to the effect that cohabitating couples may sue each other to “recover, preserve, or protect” their own property, the cases are not on point and do not alter the law of unjust enrichment. *Palmen*, 588 N.W.2d at 495; *see Obert*, 574 N.W.2d at 749 (“cohabitating parties may maintain actions against each other regarding their own earnings or property, based on equitable theories such as constructive trust or unjust enrichment”). Further, neither *Palmen* nor *Obert* addresses an unjust enrichment claim on the merits, because both cases involve

grants of summary judgment by the district court. *Palmen*, 588 N.W.2d at 494; *Obert*, 574 N.W.2d at 748.

Appellant further claims that the district court abused its discretion by effectively, requiring him to pay rent for the period he lived in respondent's home and refusing to allow him to recoup the amount he paid for improvements to her home. While the district court did make findings that considered the fact that appellant was permitted to live in respondent's home without paying rent for most of the time he lived there, the court used that information only to evaluate the parties' dealings with each other in light of their whole history and to reach its conclusion that any enrichment of either party was voluntarily made, and not made under "unjust" circumstances. The district court specifically rejected either party's claim of unjust enrichment and awarded no damages for unjust enrichment. Under these circumstances, appellant's argument misinterprets the district court's findings.

Affirmed.