

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

THOMAS HEINZ KOEBKE, SR.,
Appellant,
vs.
CYNTHIA ELLEN KOEBKE,
Respondent.

No. 80014-COA

FILED

NOV 25 2020

ORDER OF AFFIRMANCE

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

Thomas Heinz Koebke, Sr., appeals from a decree of divorce. Eighth Judicial District Court, Family Court Division, Clark County; T. Arthur Ritchie, Jr., Judge.

In 2011, Thomas and Cynthia Koebke learned that the house on Flowering Meadows Avenue,¹ across the street from their Las Vegas home, went into foreclosure.² The couple contacted their friend and realtor, Benjawan Munson, to purchase it. They wanted an investment property and a home for Thomas's mother, Margaret, to live in. Margaret was recently diagnosed with Parkinson's disease and they wanted her to move to Las Vegas from Maryland so they could help with her day-to-day care.

The Koebkes sought financing to purchase the property. The lender required that Cynthia execute a quitclaim deed to Thomas for the Flowering Meadows property to secure financing due to Cynthia's adverse credit history. During preliminary conversations with the realtor, the

¹The district court's order refers to this property as "Flowering Meadow," but the closing sale documents indicate that the correct street name of the residence is "Flowering Meadows Avenue." We use the latter name for purposes of this order.

²We do not recount the facts except as necessary for our disposition.

couple discussed ways in which Cynthia's name could be added to the title after financing was secured, and the purchase was completed.

Community funds were used as a down payment for the property and to pay the monthly mortgage and other expenses. Thomas claimed that his mother reimbursed him for all mortgage payments and expenses related to the Flowering Meadows property, but he offered only a self-made spreadsheet of these payments as evidence. Cynthia offered a statement from their joint bank account as evidence that showed a portion of the down payment coming from this account. Several years later, Thomas sent Munson a text message asking how he could add his wife to the title. Thomas never added Cynthia's name to the Flowering Meadows title.

In 2018, Cynthia filed for divorce. Thomas conveyed the property to his mother by quitclaim deed two days after Cynthia filed for divorce. In her amended complaint, Cynthia asserted that the conveyance to Thomas's mother resulted in Thomas being unjustly enriched. At the conclusion of the divorce trial, the district court found that Thomas was unjustly enriched when Cynthia executed the quitclaim deed to Thomas for the Flowering Meadows property because the property had substantially increased in value, and Thomas would later solely inherit the property and realize the appreciation in value. The district court credited \$65,000 to Cynthia in the property division, which was one-half of the net equity that accumulated exclusively from the passive increase in value of the property during the years Thomas held title.

Thomas appeals that decision, claiming, among other things,³ that there was not substantial evidence admitted at trial to find unjust enrichment. We disagree.

³Thomas makes several other arguments on appeal that we need not address in detail. He claims that the court verbally misidentified and misapplied the wrong elements of a claim for unjust enrichment at the conclusion of the trial. However, the court correctly set forth the proper elements in its decree of divorce.

Thomas next argues that the district court erroneously applied statutory and common law presumptions from Nevada community property doctrine. See NRS 123.220 (presumption that property acquired during a lawful marriage is community property); *Kerley v. Kerley*, 112 Nev. 36, 37, 910 P.2d 279, 280 (1996) (a spouse-to-spouse conveyance of title to real property presumes a gift of separate property). Our review of the record reveals that the court correctly applied the relevant presumptions.

Thomas also argues that the district court violated Margaret's property interest in violation of the Due Process clause of the Fourteenth Amendment. Thomas lacks standing to assert a due process claim because Margaret's interest is the one allegedly affected, and Margaret was not a party to this litigation. See *Elley v. Stephens*, 104 Nev. 413, 416, 760 P.2d 768, 770 (1988) (a requirement of standing is that a litigant personally suffer injury). Furthermore, the district court did not take any action against the real property or Margaret's interests.

Thomas also argues that the district court erred in granting a quasi-contract remedy in favor of Cynthia. A valid remedy for an unjust enrichment claim could include a quasi-contract for the value of the benefit conferred, which in this case was Cynthia's community share. See *Certified Fire Prot. Inc. v. Precision Constr. Inc.*, 128 Nev. 371, 380-81, 283 P.3d 250, 257 ("Where unjust enrichment is found, the law implies a quasi-contract which requires the defendant to pay to plaintiff the value of the benefit conferred. In other words, the defendant makes restitution to the plaintiff in *quantum meruit*." (internal quotations omitted)). Thus, the district court's decision to award Cynthia one-half of the passive increase in value in the Flowering Meadows property was not erroneous.

We review findings of fact for abuse of discretion, and we will not set aside those findings unless they are not supported by substantial evidence. *Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009). The district court must apply the correct legal standard in reaching its decision, and we owe no deference to legal error. *See Davis v. Ewalefo*, 131 Nev. 445, 450, 352 P.3d 1139, 1142 (2015). “Substantial evidence is that which a reasonable mind might accept as adequate to support a conclusion.” *Asphalt Prods. Corp. v. All Star Ready Mix, Inc.*, 111 Nev. 799, 802, 898 P.2d 699, 701 (1995) (internal quotations omitted). Decisions made in a divorce decree are generally reviewed for an abuse of discretion, including the district court’s division of property in a divorce trial. *Schwartz v. Schwartz*, 126 Nev. 87, 90, 225 P.3d 1273, 1275 (2010). This court will affirm those decisions if they are supported by substantial evidence. *Devries v. Gallio*, 128 Nev. 706, 709, 290 P.3d 260, 263 (2012).

Unjust enrichment exists when (1) the plaintiff confers a benefit on the defendant, (2) the defendant appreciates the benefit, and (3) there is acceptance and retention by the defendant of the benefit under circumstances where it would be inequitable for him to retain it without payment. *Certified Fire*, 128 Nev. at 381, 283 P.3d at 257. Nevada jurisprudence relies on the First and Third Restatements of Restitution and Unjust Enrichment for guidance. *Id.* at 380, 283 P.3d at 256-57 (citing Restatement (Third) of Restitution and Unjust Enrichment § 1 (Am. Law Inst. 2011) and Restatement (First) of Restitution § 1 (Am. Law Inst. 1937)).

Lastly, Thomas asserts that granting unjust enrichment for Cynthia abrogates NRS 123.070 and NRS 123.080. We disagree. NRS 123.070 and NRS 123.080 authorize spouses to make agreements and the district courts to enforce them.

Here, the district court found that Thomas was unjustly enriched when Cynthia executed a quitclaim deed that enabled Thomas to purchase the Flowering Meadows home. The district court specifically found there was unjust enrichment because Thomas would inherit the home, along with all of the net equity, from his mother.

First, a “benefit” for unjust enrichment purposes includes giving another person “possession of or some other interest in money [or] land, . . . or [taking an action that] in any way adds to the other’s security or advantage.” Restatement (First) of Restitution § 1 cmt. b (Am. Law Inst. 1937) (emphasis added). The Nevada Supreme Court has construed “benefit” as a broad term encompassing almost “any form of advantage.” *Certified Fire*, 128 Nev. at 382, 283 P.3d at 257 (internal quotations omitted).

Cynthia gave up a legal right when she executed the quitclaim deed enabling Thomas to purchase the house; accordingly, she conferred a benefit to him. There is a presumption that any property acquired during a lawful marriage is community property. NRS 123.220. Community property is divided equally upon divorce. NRS 125.150(1)(b). Cynthia forfeiting the right to receive an equal share in what would be considered a community asset is an “advantage” in favor of Thomas. *See Certified Fire*, 128 Nev. at 382, 283 P.3d at 257. Thomas does not explain how this is not a benefit in his favor.

Second, the district court found that Thomas appreciated the benefit conferred because he will realize the appreciation in value of the home when he inherits it from his mother as her only beneficiary. Both Thomas and his mother testified that they both intended for him to receive the property as his mother’s sole beneficiary, and the district court relied on


this evidence in finding that Thomas appreciated the benefit. It is of no import that the benefit was derived from market forces, because any advantage is sufficient to prove that a party was benefited. *See Certified Fire*, 128 Nev. at 382, 283 P.3d at 257. To appreciate a benefit, the party must have knowledge of the benefit. *Dragt v. Dragt/DeTray, LLC*, 161 P.3d 473, 482 (Wash. Ct. App. 2007). Thomas does not provide any argument as to why he did not appreciate the benefit conferred upon him. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (noting that if a matter is not raised on appeal, it is considered waived).


Third, for an enrichment to be inequitable to retain, the person conferring the benefit must have a reasonable expectation of payment and the circumstances are such that equity and good conscience require payment for the conferred benefit. *Id.* at 381, 283 P.3d at 257. Here, Cynthia executed the quitclaim deed with the expectation that she and Thomas would equally own the Flowering Meadows property as an investment. This was corroborated at trial by Munson, who testified that she understood there to be an oral agreement between the parties and that Thomas would add Cynthia's name to the title after the purchase was completed. Further, she explained the demands from the lender for the quitclaim deed. Munson also later received a text message from Thomas inquiring how to add Cynthia to the title. Therefore, there was substantial evidence for the district court to find that Cynthia expected to receive a reciprocal ownership benefit in the Flowering Meadows home with Thomas as an investment, and it would be inequitable for him to retain the entire benefit.

Although Thomas generally denied that there was an agreement, his deposition testimony indicated that, at some point, he intended to add Cynthia's name to the title. The district court could find that Thomas's testimony was inconsistent and less credible than Cynthia's or Munson's. *Ellis v. Carucci*, 123 Nev. 145, 152, 162 P.3d 239, 244 (2007) (noting that it is the prerogative of the trial court to determine the credibility of witnesses); *Quintero v. McDonald*, 116 Nev. 1181, 1183, 14 P.3d 522, 523 (2000) (noting that this court will not reweigh evidence on appeal). Based on these facts, it was not an abuse of discretion for the district court to determine that it would be inequitable for Thomas to retain the full benefit of the appreciation of value. *See also* NRS 125.150(1)(b) (the district court may make an unequal distribution of community property as it deems just if there is a compelling reason to do so). Therefore, because substantial evidence supports the district court's findings, it did not abuse its discretion in granting Cynthia's unjust enrichment claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. T. Arthur Ritchie, Jr., District Judge, Family Court Division
Denton Cho
Valarie I. Fujii & Associates
Eighth District Court Clerk