

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROGER MAYWEATHER,
Appellant,
vs.
CHARLOTTE CUTRIGHT,
Respondent.

No. 42700
No. 43020

FILED

FEB 15 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Bloom*
CHIEF DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING

This is an appeal from a judgment for respondent on a bench trial. Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Judge.

Appellant Roger Mayweather filed a complaint in the district court for breach of contract and unjust enrichment, claiming respondent Charlotte Cutright orally agreed to convey to Mayweather a one-half interest in her home in exchange for payments he made towards her mortgage. The district court, in a bench trial, rejected Mayweather's breach of contract claim, entered judgment for Cutright and awarded attorney fees and costs to Cutright.

Mayweather argues on appeal that the district court denied him a jury trial, that substantial evidence does not support the district court's findings that the parties did not have an express or implied agreement, that the district court failed to address his unjust enrichment claim, and that the district court erred in making an award of attorney fees and costs.

Jury trial

The district court granted Mayweather's untimely demand for a jury trial. Nevertheless, the district court later, and without

explanation, set the case for a bench trial. However, Mayweather failed to object to the district court's order setting the case for a bench trial and made no objection during the trial that he was being deprived of his right to a jury trial. The failure to object at trial precludes appellate review.¹

Express or implied contract to convey

Following a review of the record, we conclude that substantial evidence supports the district court's finding that the parties did not have an express or implied agreement to convey a one-half interest in Cutright's home to Mayweather. "[T]he question of whether a contract exists is one of fact, requiring this court to defer to the district court's findings unless they are clearly erroneous or not based on substantial evidence."² Whether unmarried persons living together lawfully contracted with each other regarding their property must be assessed by the district court on a case-by-case basis, with "consideration given to the purpose, duration and stability of the relationship and the expectations of the parties."³

While co-habiting at Cutright's home, Mayweather made payments on the mortgage, paid for improvements to the residence and bought Cutright furniture, appliances, jewelry, and vehicles. Mayweather acknowledges that the personal property was a gift to Cutright, but claims the parties had an oral agreement that Cutright would convey a one-half

¹Old Aztec Mine, Inc., v. Brown, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981); see also Matter of Parental Rights as to T.M.C., 118 Nev. 563, 569, 52 P.3d 934, 938 (2002) (stating that failure to object at trial precludes appellate review).

²May v. Anderson, 121 Nev. ___, ___, 119 P.3d 1254, 1257 (2005).

³Hay v. Hay, 100 Nev. 196, 199, 678 P.2d 672, 674 (1984) (discussing and agreeing with Marvin v. Marvin, 557 P.2d 106 (Cal. 1976)).

interest in the home in exchange for the mortgage payments. However, Cutright denied the existence of any agreement, and in various letters by Mayweather to Cutright, he admitted that the payments and gifts were made because Cutright had given birth to the parties' daughter. The district court's finding that the parties did not agree to a conveyance in exchange for the payments must be affirmed.⁴

Unjust enrichment

The district court did not address Mayweather's claim for unjust enrichment. In his complaint and pre-trial memorandum, Mayweather sought alternative relief for unjust enrichment.

'The essential elements of quasi contract are a benefit conferred on the defendant by the plaintiff, appreciation by the defendant of such benefit, and acceptance and retention by the defendant of such benefit under circumstances such that it would be inequitable for him to retain the benefit without payment of the value thereof.'⁵

While evidence at trial was presented which would have enabled the district court to make a determination on Mayweather's unjust enrichment claim,⁶ neither the district court's oral pronouncement from the bench nor its written order addressed the issue. The district

⁴Given our conclusion on this issue, we need not address Mayweather's other assignments of error concerning the alleged agreement.

⁵Unionamerica Mtg. v. McDonald, 97 Nev. 210, 212, 626 P.2d 1272, 1273 (1981) (quoting Dass v. Epplen, 424 P.2d 779, 780 (Colo. 1967)).

⁶For instance, at trial, Mayweather read letters he had written to Cutright, which stated that he made the mortgage payments because Cutright was the mother of his child.

court's order failed to make findings of fact regarding the unjust enrichment claim, and its only conclusions of law stated that Mayweather's contract claim was barred by the Statute of Frauds and that there was no express or implied agreement between the parties. Therefore, the judgment must be reversed in part, and the matter remanded for a new bench trial on the unjust enrichment claim.⁷

Accordingly, we

⁷Because we reverse the district court's order with respect to Mayweather's unjust enrichment claim, we likewise must reverse the district court's award of attorney fees and costs to Cutright. Nonetheless, we note that the district court's award of attorney fees and costs was deficient in several respects. Cutright's motion for attorney fees and costs was based on NRS 18.010(2)(a), (b), and NRS 18.020(1). The district court's order granting Cutright's request for attorney fees and costs failed to articulate any basis for its award. Moreover, the district court's order failed to segregate what part of its award was for costs and what part was for attorney fees. Lastly, the district court failed to conduct an analysis under Brunzell v. Golden Gate National Bank, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969). Thus, we remind the district court that when awarding attorney fees, the factors set forth in Brunzell must be evaluated, a legal basis for the fees must be articulated, and the awarded fees must be segregated from any costs also awarded.

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

cc: Hon. Kathy A. Hardcastle, District Judge
Salas & McQuigg
Agwara & Associates
Clark County Clerk