

No. A06-1453

STATE OF MINNESOTA

IN COURT OF APPEALS

Jamie Michael Thompson,

Appellant,

vs.

Leah Marie Thompson,

Respondent.

APPELLANT'S BRIEF

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STATEMENT OF THE LEGAL ISSUES

- I. WHETHER IT WAS AN ABUSE OF DISCRETION FOR THE TRIAL COURT TO DENY APPELLANT AN EVIDENTIARY HEARING THAT WOULD BE BASED ON THE ISSUE OF WHETHER IT IS NO LONGER EQUITABLE THAT THE DIVORCE JUDGMENT AND DECEE SHOULD HAVE PROSPECTIVE APPLICATION?**

- II. WHETHER IT WAS AN ABUSE OF DISCRETION FOR THE TRIAL COURT, AFTER AN EVIDENTIARY HEARING, TO DENY APPELLANT'S MOTION TO VACATE AND RE-OPEN THE DEFAULT DIVORCE DECREE ON THE GROUNDS OF FRAUD ON THE COURT?**

STATEMENT OF THE CASE

On April 7th, 2006, the Honorable Galen Vaa, one of the judges of the Clay County District Court, heard arguments of counsel in regard to Respondent's motion for a judgment against Jamie in the amount of \$66,731.56 because Jamie did not respond to Respondent's discovery requests and because of property awarded to Respondent in the parties' default divorce judgment entered on January 3rd, 2005. Respondent was the petitioner in the divorce. The trial court took the matter under advisement.

Jamie made a motion to re-open the divorce judgment—along with a request for an evidentiary hearing—on two grounds: that Respondent had committed a fraud on the court in obtaining the default divorce judgment; and that it was no longer equitable that the judgment have prospective application.

On April 27th, 2006, the trial court heard arguments regarding Jamie's motion. On May 5th, 2006, by Order and Memorandum, the trial court granted Jamie an evidentiary hearing on the issue of whether Respondent committed a fraud on the court in obtaining the default divorce judgment. The trial court denied Jamie an evidentiary hearing on the issue of whether it was no longer equitable that the judgment have prospective application. The

trial court continued a decision on Respondent's motion for a judgment pending final resolution of Jamie's motion.

On June 16th, 2006, the evidentiary hearing was held. On July 19th, 2006, by Findings of Fact, Conclusions of Law, Order, and Memorandum, the trial court denied Jamie's motion to re-open the divorce judgment, granted Respondent's motion for a judgment in the amount of \$66,731.56, and ordered Jamie to deliver a snowmobile to Respondent.

Jamie appeals the Orders of April 27th, 2006, and July 19th, 2006.

STATEMENT OF FACTS

Jamie and Respondent were married on March 1st, 2003.¹ Jamie was served copies of the Summons and Petition for Dissolution of Marriage, along with discovery requests, on September 8th, 2004, at his residence in Barnesville, Minnesota, by the Clay County Sheriff's Department.² Pursuant to Respondent's request, the trial court entered a default judgment on January 3rd, 2005, because Jamie did not serve and file an answer or any other paper in this proceeding.³

There is a dispute as to whether Respondent led Jamie to believe she was putting the divorce on hold after he was served with the divorce papers.

Jamie testified as follows at the evidentiary hearing: He did not respond after being served with the divorce papers for the following reasons:

Numerous times after he was served with the divorce papers, he would ask Respondent what was going on with the divorce proceeding. Her answer was always that she was putting it off. Therefore, he thought the divorce was on hold and that he did not need to respond. He asked her this question numerous times during the 30 day period he had to respond and numerous

¹ App., p. 6.

² Id. at p. 1.

³ Id. at p. 2-18.

times after that. She was easily available to be asked this question because she was living with Jamie at the time he was served with the divorce papers, and she continued to live with him after that, including the 30 day period he had to respond. He believed that she was being truthful when she said that she was putting the divorce on hold. She did not move out of the house or demand that Respondent move out after she started the divorce proceeding. (In fact, Jamie was also in the Clay County jail from November 1st to November 14th of 2004; Respondent was living with him when he went to jail on November 1st, 2004, and she continued to reside with him when he got out on November 14th, 2004.)⁴

At the evidentiary hearing, Respondent testified that she did move back into the house several weeks after he was served with the divorce papers, that she did not demand that Jamie move out of the house when she moved back in, and that she was still living there when Jamie was in jail from November 1st to November 14th of 2004, and that she was still living there after he got out of jail on November 14th, 2004.⁵

⁴ Transcript of June 16th, 2006, hearing, p. 5-8 (Jamie's testimony).

⁵ Id. at p. 60-61 (Respondent's testimony).

At the evidentiary hearing, Respondent denied that she was living with Jamie at the time he was served with the divorce papers; denied that after he was served, that he asked her numerous what was going on with the divorce proceedings; and denied that she told him that she was putting the divorce on hold.⁶

The following was uncontroverted at the evidentiary hearing: Jamie was in the Clay County jail when the trial court entered a default judgment on January 3rd, 2005. He had been there since the end of November 2004. He did not receive any notice while he was in jail that Respondent had applied to the trial court for a default judgment until after the trial court had already granted and entered a default judgment. Respondent was still living with Jamie when he went to jail at the end of November 2004, and she was still living in the house when she was granted the default divorce on January 3rd, 2005.⁷

The following was undisputed at the evidentiary hearing: It was a very short marriage (a little less than 2 years). Respondent is young (28 years old at the time of the divorce). The parties had no children. Respondent was not a homemaker during the marriage; Respondent worked during the entire

⁶ Id. at p. 59-60 (Respondent's testimony).

⁷ Id. at p. 8-10 (Jamie's testimony); Id. at p. 61 (Respondent's testimony).

marriage as the manager of a supper-club. Respondent did have back surgery in May of 2004. She continued to receive a paycheck from her employer while she was out of work from the back surgery because her family owns the business (the Galaxy Supper Club in Barnesville, Minnesota). She worked right up until the time of her surgery, and she went back to work right after the surgery. Other than the time she was out of work, her alleged back problems have not prevented her from working. She has a high school diploma, and she has taken some college business courses; she is close to a college degree.⁸

Paragraph XI of the findings of fact of the divorce judgment makes it appear that all of the real estate was owned jointly by the parties.⁹ This is not true. Respondent admitted at the evidentiary hearing, that she knew that the real estate designated as tract A and tract B (the farmstead) was non-marital property owned only by Jamie that he brought to the marriage.¹⁰ Section 8 of the conclusions of law did award this farmstead to Jamie;¹¹

⁸ Id. at p. 10-15 (Jamie's testimony); Id. at p. 61-63 (Respondent's testimony).

⁹ App., p. 7-9.

¹⁰ Transcript of June 16th, 2006, hearing, p. 96 (Respondent's testimony).

¹¹ App., p. 12-14.

however, it should have been specifically designated as his non-martial property. Therefore, the property division appears fairer than it actually is by awarding the farmstead to Jamie

Section 4 of the conclusions of law of the divorce judgment is an itemized list of personal property awarded to Respondent.¹² It was uncontroverted at the evidentiary hearing, that Respondent knew at the time the divorce was granted, that the fourth item—a Polaris snowmobile—was non-martial property owned by Jamie that he brought to the marriage.¹³ This is the snowmobile that the trial court ordered that Jamie deliver to Respondent, in its Order dated July 19th, 2006,¹⁴ which Jamie is appealing.

The fifth item listed in section 4 of the conclusions of law of the divorce judgment awards Respondent all of her premarital furniture and furnishings.¹⁵ There is a dispute as to whether Respondent owned any

¹² App. at p. 10-11.

¹³ Transcript of June 16th, 2006, hearing, p. 18-19 (Jamie's testimony); Id. at p. 64 (Respondent's testimony).

¹⁴ App., p. 206.

¹⁵ Id. at p. 10.

premarital furniture and furnishings. Jamie testified at the evidentiary hearing that she did not; Respondent testified that she did.¹⁶

The eighth item listed in section 4 of the conclusions of law of the divorce judgment awards Respondent one-half of all of the bank accounts.¹⁷ It was uncontroverted at the evidentiary hearing, that Respondent knew at the time the divorce was granted, that many of the bank accounts were non-marital property owned by Jamie, that he brought to the marriage, and in which Respondent did not deposit any of her own money.¹⁸ This includes the bank accounts Respondent recovered—in the trial court's Order dated July 19th, 2006,¹⁹ which Jamie is appealing—by a judgment lien against Jamie's real property, as Respondent had requested in her amended motion.²⁰

- a. \$15,883.69 representing one-half of Jamie's Midwest Bank money market savings account at the time of separation.

¹⁶ Transcript of June 16th, 2006, hearing, p. 19-20 (Jamie's testimony); Id. at p. 64-65 (Respondent's testimony).

¹⁷ App., p. 10.

¹⁸ Transcript of June 16th, 2006, hearing, p. 20-25 (Jamie's testimony); Id. at p. 65-68 (Respondent's testimony).

¹⁹ App., p. 206.

²⁰ Id. at p. 59.

- b. \$5,574.95 representing one-half of Jamie's interest in the Midwest Bank money market savings account he had with his father at the time of separation.

* * * *

- e. \$19,050.77 representing Respondent's interest of the Whisky Creek Farms' Wells Fargo PMA accounts in which Jamie had an interest.

It was undisputed at the evidentiary hearing, that while they were married, the parties had no joint bank accounts; they kept their money separate.²¹

Jamie testified at the evidentiary hearing, that the above Whisky Creek Farm bank accounts are business accounts, where deposits are income that are off-set by checks written for expenses.²² Therefore, the money sitting in the accounts is not actually property to be divided but a reflection of gross income being off-set by expenses. Respondent was evasive at the evidentiary hearing, about whether she was aware of this, as the following colloquy shows:

Q Also in your amended motion you're trying to recover the Whisky Creek Farms - - you're trying to get an interest in the Whiskey Creek Farm's account, correct?

A Yeah.

Q And this - - you would agree that is the farm account,

²¹ Transcript of June 16th, 2006, hearing, p. 24 (Jamie's testimony); Id. at p. 65 (Respondent's testimony).

²² Id. at p. 23-24.

correct?

A I don't know. Yeah. I don't know. I don't know a lot about the accounts, I'm sorry, or how you want me to answer.

Q You would agree that it's a - - it would be described as a business - type farm account, correct?

A Not necessarily.

Q Well, your name was never on any of those - -

A Oh, no

Q - - farm accounts, right?

A No.

Q And you didn't bring any Whisky Creek Farm accounts to the marriage, did you?

A No.

Q You said you work as a manger of a supper club?

A Yep.

Q I take it part of your job is probably, has a businesses checking account?

A My family does.

Q Income deposits are made in the account, right?

A Well, I just write out checks to the liquor salesman, that's it, when they come in, but otherwise I'm just hiring, firing, cleaning.

Q But those checks you write basically are expenses that come off the business account, right?

MR. KREKELBERG: I'm going to object. This has no relevance to anything.

THE COURT: Sustained.²³

The tenth item listed in section 4 of the conclusions of law of the divorce judgment awards Respondent one-half of Jamie's interest in government payments, farm payments, grain, crops, accounts receivable, insurance proceeds or claims, and commodities.²⁴ This is one of the most egregious awards of the default judgment because it is awarding what the judgment calls "property," which in fact, is "farm gross income" that must be off-set by farm expenses. This includes the crop disaster payments Respondent recovered—in the trial court's Order dated July 19th, 2006,²⁵ which Jamie is appealing—by a judgment lien against Jamie's real property, as Respondent had requested in her amended motion.²⁶

c. \$13,282.16 representing one-half of crop disaster payments payable to Jamie in 2005 for crops grown in 2004.

d. \$12,940.00 representing one-half of crop disaster payment payable to Jamie in 2004 for crops grown in 2003.

²³ Id. at p. 66-68.

²⁴ App., p. 10-11.

²⁵ Id. at p. 206.

²⁶ Id. at p. 59.

Jamie testified at the evidentiary hearing, that the crop disaster payments are “farm gross income” that must be off-set by farm expenses and that Respondent was aware of this at the time the divorce was granted, about the payments payable to Jamie in 2004 for crops grown in 2003.²⁷ Respondent admitted at the evidentiary hearing and in a response affidavit in support of her amended motion, that she was aware the payments received for crop insurance were reported as income. It would appear, however, from her testimony at the evidentiary hearing and her response affidavit, that Respondent’s position is that she first became aware of this during the post-judgment discovery she conducted—a deposition her attorney took of Jamie’s uncle and her subpoenaing of Jamie’s bank records. Her relevant testimony at the evidentiary hearing:

Q (BY MR. LESTER) Miss Thompson, my last question was isn’t it true that in a prior affidavit you admitted that you were aware that the crop disaster insurance payments were reported as income? I think your answer was you couldn’t recall.

A Okay. I understand the question now. Yes, I did. I’m sorry. I was getting it all confused.²⁸

The relevant portion of her response affidavit:

²⁷ Transcript of June 16th, 2006, hearing, p. 25-28 (Jamie’s testimony).

²⁸ Transcript of June 16th, 2006, hearing, p. 70 (Respondent’s testimony).

15. Again, because the Respondent [Jamie] failed to answer the Summons and Petition and discovery, I was forced to do more discovery to find out what I was entitled to in accordance with the Judgment and Decree. I subpoenaed the Respondent's bank records. I had the deposition of the Respondent's uncle, Steve Thompson taken. From this discovery, I obtained documents and information I used as a basis for the Motion pending before this Court. Please see my Supplemental Affidavit for the documents and information I discovered and to which I am entitled.

16. I also discovered that we were supposed to receive significant sums of money from crop insurance payments payable to the Respondent. It is my understanding that the checks representing payments to the Respondent for crop insurance were signed for and taken by the Respondent's uncle, Steve Thompson. Although we reported these amounts as income, we never saw this money. It was never placed in our bank accounts. Contrary to the statements made by the Respondent, I was unaware of the farm operations and financial status. I had to do further discovery after the Judgment and Decree was entered in order to find out to what I was entitled. These crop insurance payments were payable to the Respondent, and I believe I am entitled to half of these payments.²⁹

As stated above, Respondent recovered by a judgment lien against Jamie's real property, one-half of the crop disaster payments payable to Jamie in 2005 for crops grown in 2004; Jamie, however, testified at the evidentiary hearing, that this program did not even exist at the time the divorce was granted.³⁰ Obviously, since this program did not exist at the time the divorce was granted, Jamie is not making any argument that Respondent was aware

²⁹ App., p. 112-113.

³⁰ Transcript of June 16th, 2006, hearing, p. 27-28 (Jamie's testimony).

at the time the divorce was granted, that this particular crop disaster payment was "farm gross income" that must be off-set by farm expenses.

Section 5 of the conclusions of law of the divorce judgment is an itemized list of personal property awarded to Jamie. Respondent admitted at the evidentiary hearing that she knew that the fifth item was non-marital property owned only by Jamie that he brought to the marriage (2002 Polaris Sportsman 700 four-wheeler).³¹ This property should have been specifically designated non-marital; therefore, the property division appears fairer than it actually is by awarding this property to Jamie.

In her motion to amend the divorce decree, Respondent asked to be awarded the 2002 Chevrolet pickup and that Jamie be awarded the 2003 Chevrolet Crew Cab pickup.³² In support of this motion to amend the divorce decree, Respondent claims she did not know there was debt on the 2003 Chevrolet Crew Cab pickup at the time the divorce was granted.³³ At

³¹ Id. at p.70-71.

³² App., p. 19-20.

³³ Id. at p. 22.

the evidentiary hearing, however, she admitted that she was the one who made the payments on this vehicle.³⁴

ARGUMENT

Standard of Review

A trial court's decision refusing to reopen a judgment will not be disturbed absent an abuse of discretion.³⁵

Burden of Proof for Trial Court to Order an Evidentiary Hearing

Rule 303.03 (d) of the Minnesota Rules of General Practice provides, in relevant part, that in family cases, non-contempt motions are decided without an evidentiary hearing, "...unless otherwise ordered by the court for good cause shown."³⁶ The precise definition of "good cause" under rule 303.03 (d) has yet to be articulated.³⁷ Black's Law Dictionary defines "prima facie evidence" as, "[e]vidence good and sufficient on its face; such evidence as, in the judgment of the law, is sufficient to establish a given fact, or the group or chain of facts constituting the party's claim or defense, and

³⁴ Transcript of June 16th, 2006, hearing, p. 71-72 (Respondent's testimony).

³⁵ *Harding v. Harding*, 620 N.W. 2d 920, 921 (Minn. App. 2001).

³⁶ MINN. R. GEN. PRACT. 303.03 (d).

³⁷ *Doering v. Doering*, 629 N.W. 2d 124,130 (Minn. App. 2001).

which if not rebutted or contradicted, will remain sufficient.”³⁸ A trial court, in deciding whether to grant a moving party an evidentiary hearing to reopen a divorce judgment, must view the evidence in the light most favorable to the moving party.³⁹

³⁸ 1071 (5th ed. 1979). (Emphasis added.)

³⁹ Doering, *supra*, at 130:

...[A] motion to reopen under Minn.Stat. Sec. 518.145, subd. 2, is an alternative to an independent action to relieve a party from a judgment. Therefore, the district court should treat such a motion as it would a complaint in a separate action alleging fraud. The district court does not have authority to dispose of such a motion summarily, simply because the motion is ancillary to the dissolution proceeding.

A district court may summarily dispose of a fraud claim (i.e. grant summary judgment) only where there is no genuine issue of material fact in dispute and where a determination of the applicable law will resolve the controversy. When presented with a motion for summary judgment, the district court may not weigh the evidence. Instead, the district court must view the evidence in the light most favorable to the nonmoving party. (Citations and quotation marks omitted.)

Id. Because Respondent resisted Jamie’s request for an evidentiary hearing on his fraud claim and his claim that it was no longer equitable that the divorce judgment should have prospective application, she, in effect, moved the trial court for summary judgment. Therefore, the trial court was required to view the evidence in the light most favorable to Jamie in deciding whether to grant him an evidentiary hearing.

Section 518.145, Subd. 2

Minnesota Statutes Annotated Section 518.145, subd. 2, states, in relevant part:

Reopening. On motion and upon terms as are just, the court may relieve a party from a judgment and decree, order, or proceeding under this chapter, except for provisions dissolving the bonds of marriage, annulling the marriage, or directing that the parties are legally separated, and may order a new trial or grant other relief as may be just for the following reasons:

....

(5) ...it is no longer equitable that the judgment and decree or order should have prospective application.

The motion must be made within a reasonable time, and for a reason under clause (1), (2), or (3), not more than one year after the judgment and decree, order, or proceeding was entered or taken. A motion under this subdivision does not affect the finality of a judgment and decree or order or suspend its operation. This subdivision does not limit the power of a court to entertain an independent action to relieve a party from a judgment and decree, order, or proceeding or to grant relief to a part not actually personally notified as provided in the rules of civil procedure, or to set aside a judgment for fraud upon the court. (Emphasis added.)

MINN. STAT. ANN. SEC. 518.145, SUBD. 2.

I. IT WAS AN ABUSE OF DISCRETION FOR THE TRIAL COURT TO DENY JAMIE AN EVIDENTIARY HEARING THAT WOULD BE BASED ON THE ISSUE OF WHETHER IT IS NO LONGER EQUITABLE THAT THE DIVORCE JUDGMENT AND DECEE SHOULD HAVE PROSPECTIVE APPLICATION.

The factual basis for Jamie's motion for an evidentiary hearing on the issue of whether it was no longer equitable that the divorce judgment should have prospective application was that it was only after the divorce judgment was filed, that Respondent became aware of the true nature of certain farm bank accounts and crop disaster payments, which factual basis Jamie set out in his brief in support of the motion:

Because Petitioner denies she committed fraud on the Court, Jamie makes the alternative argument that there is an injustice in the prospective application of the divorce decree that is due to the development of circumstances substantially altering the information on the topics that were accepted earlier by Petitioner, when the subjects were addressed in the proceedings to obtain a default judgment. Two examples, not meant to be inclusive, of the application of this argument to Jamie's case are as follows:

- Petitioner did not become aware until the post-judgment discovery she conducted (the deposition of Jamie's uncle), that the farm bank accounts she is attempting to recover in her pending amended motion are not actually property to be divided but a reflection of gross income being off-set by expenses.
- Petitioner did not become aware until the post-judgment discovery she conducted (the deposition of Jamie's uncle), that the crop disaster payments she is attempting to recover in her pending amended motion are not actually property to be divided but a reflection of farm gross income being off-set by farm expenses —also, the crop disaster payments payable to Jamie in 2005 for crops grown in 2004 are from a farm program that did not even exist at the time the divorce was granted, and the payment was not received until July of 2005.⁴⁰

⁴⁰ App., p. 169-170.

The trial court denied Jamie an evidentiary hearing on this issue because Jamie did not show or allege a mutual mistake by the parties.⁴¹ The trial court cited the case of *Harding v. Harding*⁴² in support of its decision.⁴³ This Court recognized in *Harding*, that trial courts are allowed to re-open divorce judgments by reason of mutual mistake by the parties when they enter into settlements.⁴⁴ Obviously, there was no settlement in Jamie's case because the divorce was granted by default. There is, however, nothing in *Harding* or Minnesota Statutes Annotated Section 518.145, subd. 2, which restricts re-opening divorce judgments when it is no longer equitable that the judgment should have prospective application to only divorce cases where there was a settlement and a mutual mistake by the parties when they entered into the settlement. There is nothing in *Harding* or Section 518.145, subd. 2, that would prevent this Court from imposing a quasi contract by law in order to prevent unjust enrichment in a default divorce case.

Although quasi contract is imposed by law regardless of the parties' intentions, it is used only when the failure to do so would result in unjust

⁴¹ *Id.* at 196-197.

⁴² 620 N.W. 2d 920 (Minn. App. 2001).

⁴³ *App.*, p. 196-197.

⁴⁴ *Harding*, *supra*, at 923-924.

enrichment.⁴⁵ Unjust enrichment claims do not lie simply because one party benefits from the efforts or obligations of others; it must be shown that the party was unjustly enriched in the sense that the term unjustly could mean illegally or unlawfully.⁴⁶ The exercise of a legal right cannot render a party liable for unjust enrichment to a person who has not been wronged thereby.⁴⁷ Quasi contracts may have their origin in a record; in duty, whether statutory, official, or customary; or in the fundamental principle of justice that no one should be unjustly enriched at the expense of another.⁴⁸ Recovery on the

⁴⁵ *Stemmer v. Sarazin's Estate*, 362 N.W. 2d 406 (Minn. App. 1985).

⁴⁶ *First Nat'l Bank v. Ramier*, 311 N.W. 2d 502 (Minn. 1981). See *Johnson v. Blue Cross & Blue Shield*, 329 N.W. 2d 49 (Minn. 1983) (principles of fairness and equity did not require that health insurer that benefited from employee's attorney's efforts in workers' compensation proceedings should pay part of employee's attorney's fees, even though health insurer would not have been entitled to reimbursement in absence of those efforts due to its failure to intervene in proceedings; attorney was doing nothing more than representing his client, and risk of nonintervention by insurer was on insurer); *Iverson v. Fjoslien*, 213 N.W. 2d 627 (Minn. 1973).

⁴⁷ *Pelser v. Gingold*, 8 N.W. 2d 36 (Minn. 1943) (release of vendees under contract for deed by defendants, as assignees thereof, from liability to pay balances that vendees had agreed to pay under contract did not render defendants liable to plaintiffs, as vendors, in quasi contract for payment of same).

⁴⁸ See *Klass v. Twin City Fed Sav & Loan Ass'n*, 190 N.W. 2d 493 (Minn. 1971) (when lease required tenant to pay real estate taxes on premises in addition to base rental, refund to the lessor of those taxes in subsequent condemnation proceedings, imposed on lessor liability to tenant under principles of unjust enrichment or money had and received); *Pfuhl v.*

theory of quasi contract is permitted where there is no actual contract, express or implied in fact, and where it would be unjust to permit the defendant to receive the benefit of the plaintiff's services without compensating him for them, or where there has been such a breach of a contract by one party that the other may choose to rescind and recover in quasi contract.⁴⁹ Enforceability is not necessarily predicated on intent, promise, or privity,⁵⁰ but rather on the principle of preventing unjust enrichment or the unjust retention of a benefit that represents a loss to another under circumstances that violate equity and good conscience.⁵¹

Sabrowsky, 1 N.W. 2d 421 (Minn. 1941) (recovery by plaintiffs for ouster from farm that they had been induced to inhabit and operate was based on theory of quasi contract for services rendered less benefits received); Williams v. National Contracting Co., 199 N.W. 919 (Minn. 1924) (recovery is based largely on necessity and is not to be restricted by narrow, technical rules); Mascall v. Reitmeier, 176 N.W. 486 (Minn. 1920) (recovery on basis of performance even though other party was prevented from performing his contractual obligations); Manthey v. Schueler, 147 N.W. 824 (Minn. 1914) (statutory obligation to support pauper relatives); Anderson v. Amidon, 130 N.W. 1002 (Minn. 1911) (payment of club dues and assessments as provided in articles of association); Conlon v. Holste, 110 N.W. 2 (Minn. 1906) (obligation to pay official fees resulted in unjust enrichment).

⁴⁹ Roberge v. Cambridge Co-op Creamery Co., 79 N.W. 2d 142 (Minn. 1956); Cf. Maple Island Farm, Inc. v. Bitterling, 209 F. 2d 867 (8th Cir. 1954), cert. denied 348 U.S. 882 (1954).

⁵⁰ Town of Balkan v. Village of Buhl, 197 N.W. 266 (Minn. 1924).

⁵¹ Mehl v. Norton, 275 N.W. 843 (Minn. 1937).

Fraud and mistake are not the only grounds for recovery under the theory of unjust enrichment.⁵² An action for unjust enrichment may be based on a failure of consideration, fraud, mistake, and situations where it would be morally wrong for one party to enrich himself at the expense of another.⁵³ The exercise of a legal right cannot subject a party to liability for unjust enrichment to one who has not been wronged thereby.⁵⁴ One is not unjustly enriched by retaining benefits involuntarily acquired that law and equity give him absolutely without any obligation on his part to make restitution or payment.⁵⁵

The failure to impose a quasi contract in Jamie's case would result in the unjust enrichment of Respondent in the sense that the division of the marital

⁵² Anderson v. DeLisle, 352 N.W. 2d 794 (Minn. App. 1984).

⁵³ Cady v. Bush, 166 N.W. 2d 358 (Minn. 1969); Fort Dodd Partnership v. Trooien, 392 N.W. 2d 46 (Minn. App. 1986); Anderson v. DeLisle, 352 N.W. 2d 794 (Minn. App. 1984); See Hesselgrave v. Harrison, 435 N.W. 2d 861 (Minn. App. 1989) (where mortgagee failed to provide notice as required but subsequently negotiated settlement with internal revenue service rather than attempting second foreclosure proceeding, mortgagee was not entitled to recover in unjust enrichment action amount paid in settlement from mortgagor who was source of tax delinquencies and tax liens).

⁵⁴ Pelser v. Gingold, 8 N.W. 36 (Minn. 1943).

⁵⁵ Mehl v. Norton, 275 N.W. 843 (Minn. 1937).

property was not, "...just and equitable....," as required by Minnesota law.⁵⁶

Therefore, the division of the marital property was unlawful and Jamie has been wronged thereby. The division of the marital property was unjust and inequitable because the true nature of certain farm bank accounts and crop disaster payments was that they were not actually property to be divided but a reflection of gross income being off-set by expenses and that one of the crop disaster payments was from a farm program that did not even exist the time the divorce was granted. Respondent, then, received property in the divorce that actually was not property and was awarded something that did not even exist at the time the divorce was granted. She did not become aware of this until after the divorce was granted.

This seems to have been subsequently born out at the evidentiary hearing, about the farm bank accounts, where, as shown, Respondent was evasive about whether she knew whether the \$19,050.77 she was awarded—in the divorce decree and enforced by a subsequent lien against Jamie's real property—as her interest in the Whiskey Creek Farm's Fargo PMA accounts, was not actually property to be divided but a reflection of gross

⁵⁶ Minnesota Statutes Annotated § 518.58, Subd. 1, provides, in part, that in a dissolution of marriage proceeding, a trial court, "...shall make a just and equitable division of the marital property of the parties...."

income being off-set by expenses.⁵⁷ This also seems to have been subsequently born out from Respondent's testimony at the evidentiary hearing and from one of her post-divorce judgment response affidavits, about the crop disaster payments, where, as shown, Respondent's position is that it was not until she conducted post-judgment discovery, that she became aware that the payments received for crop insurance were reported as income.⁵⁸ As shown, Respondent was awarded \$26,222.16—the total of the two crop disaster payments—in the divorce decree and enforced by a subsequent lien against Jamie's real property—as her interest in the two crop disaster payments. Also, as shown, the crop disaster payment payable to Jamie in 2005 for crops grown in 2004 are from a farm program that did not even exist at the time the divorce was granted.

The portion of the farm bank accounts and crop disaster payment awarded to Respondent—and enforced by a subsequent lien against Jamie's real property—in the divorce judgment totals \$45,272.93 (19,050.77 + 26,222.16). Though there was no actual agreement between the parties—no privity—about the division of marital property, it is a fundamental principle of justice that Respondent should not become unjustly enriched at the

⁵⁷ Transcript of June 16th, 2006, hearing, p. 66-68 (Respondent's testimony).

⁵⁸ Id. at p. 70 (Respondent's testimony); App., p. 112-113.

expense of Jamie for such a large amount. Such an award under these circumstances violates equity and good conscience. The trial court did not look at Jamie's evidence in the most favorable light when it denied him an evidentiary hearing on the issue of whether it was equitable for the divorce judgment to have prospective application.

II. IT WAS AN ABUSE OF DISCRETION FOR THE TRIAL COURT, AFTER AN EVIDENTIARY HEARING, TO DENY APPELLANT'S MOTION TO VACATE AND RE-OPEN THE DEFAULT DIVORCE DECREE ON THE GROUNDS OF FRAUD ON THE COURT.

The following facts support Jamie's position that it was abuse of discretion for the trial court, after an evidentiary hearing, to deny him his motion to reopen the divorce decree on the ground of fraud on the court by Respondent:

Jamie testified as follows at the evidentiary hearing: He did not respond after being served with the divorce papers for the following reasons:

Numerous times after he was served with the divorce papers, he would ask Respondent what was going on with the divorce proceeding. Her answer was always that she was putting it off. Therefore, he thought the divorce was on hold and that he did not need to respond. He asked her this question numerous times during the 30 day period he had to respond and numerous times after that. She was easily available to be asked this question because

she was living with Jamie at the time he was served with the divorce papers, and she continued to live with him after that, including the 30 day period he had to respond. He believed that she was being truthful when she said that she was putting the divorce on hold. She did not move out of the house or demand that Respondent move out after she started the divorce proceeding. (In fact, Jamie was also in the Clay County jail from November 1st to November 14th of 2004; Respondent was living with him when he went to jail on November 1st, 2004, and she continued to reside with him when he got out on November 14th, 2004.)⁵⁹

The following was uncontroverted at the evidentiary hearing: Jamie was in the Clay County jail when the trial court entered a default judgment on January 3rd, 2005. He had been there since the end of November 2004. He did not receive any notice while he was in jail that Respondent had applied to the trial court for a default judgment until after the trial court had already granted and entered a default judgment. Respondent was still living with Jamie when he went to jail at the end of November 2004, and she was still living in the house when she was granted the default divorce on January 3rd, 2005.⁶⁰ Respondent took advantage of the fact he was in jail.

⁵⁹ Transcript of June 16th, 2006, hearing, p. 5-8 (Jamie's testimony).

⁶⁰ Id. at p. 8-10 (Jamie's testimony); Id. at p. 61 (Respondent's testimony).

The following was undisputed at the evidentiary hearing: It was a very short marriage (a little less than 2 years). Respondent is young (28 years old at the time of the divorce). The parties had no children. Respondent was not a homemaker during the marriage; Respondent worked during the entire marriage as the manager of a supper-club. Respondent did have back surgery in May of 2004. She continued to receive a paycheck from her employer while she was out of work from the back surgery because her family owns the business (the Galaxy Supper Club in Barnesville, Minnesota). She worked right up until the time of her surgery, and she went back to work right after the surgery. Other than the time she was out of work, her alleged back problems have not prevented her from working. She has a high school diploma, and she has taken some college business courses; she is close to a college degree.⁶¹ Therefore, Respondent committed fraud on the court in receiving permanent alimony by not disclosing all this to the court.

Paragraph XI of the findings of fact of the divorce judgment makes it appear that all of the real estate was owned jointly by the parties.⁶² This is

⁶¹ Id. at p. 10-15 (Jamie's testimony); Id. at p. 61-63 (Respondent's testimony).

⁶² App., p. 7-9.

not true. Respondent admitted at the evidentiary hearing, that she knew that the real estate designated as tract A and tract B (the farmstead) was non-marital property owned only by Jamie that he brought to the marriage.⁶³ Section 8 of the conclusions of law did award this farmstead to Jamie;⁶⁴ however, it should have been specifically designated as his non-martial property. Therefore, the property division appears fairer than it actually is by awarding the farmstead to Jamie

Section 4 of the conclusions of law of the divorce judgment is an itemized list of personal property awarded to Respondent.⁶⁵ It was uncontroverted at the evidentiary hearing, that Respondent knew at the time the divorce was granted, that the fourth item—a Polaris snowmobile—was non-martial property owned by Jamie that he brought to the marriage.⁶⁶ This is the snowmobile that the trial court ordered that Jamie deliver to Respondent, in its Order dated July 19th, 2006,⁶⁷ which Jamie is appealing.

⁶³ Transcript of June 16th, 2006, hearing, p. 96 (Respondent's testimony).

⁶⁴ App., p. 12-14.

⁶⁵ App. at p. 10-11.

⁶⁶ Transcript of June 16th, 2006, hearing, p. 18-19 (Jamie's testimony); Id. at p. 64 (Respondent's testimony).

⁶⁷ App., p. 206.

The eighth item listed in section 4 of the conclusions of law of the divorce judgment awards Respondent one-half of all of the bank accounts.⁶⁸ It was uncontroverted at the evidentiary hearing, that Respondent knew at the time the divorce was granted, that many of the bank accounts were non-marital property owned by Jamie, that he brought to the marriage, and in which Respondent did not deposit any of her own money.⁶⁹ This includes the bank accounts Respondent recovered—in the trial court's Order dated July 19th, 2006,⁷⁰ which Jamie is appealing—by a judgment lien against Jamie's real property, as Respondent had requested in her amended motion:⁷¹

- a. \$15,883.69 representing one-half of Jamie's Midwest Bank money market savings account at the time of separation.
- b. \$5,574.95 representing one-half of Jamie's interest in the Midwest Bank money market savings account he had with his father at the time of separation.

* * * *

⁶⁸ App., p. 10.

⁶⁹ Transcript of June 16th, 2006, hearing, p. 20-25 (Jamie's testimony); Id. at p. 65-68 (Respondent's testimony).

⁷⁰ App., p. 206.

⁷¹ Id. at p. 59.

- c. \$19,050.77 representing Respondent's interest of the Whisky Creek Farms' Wells Fargo PMA accounts in which Jamie had an interest.

It was undisputed at the evidentiary hearing, that while they were married, the parties had no joint bank accounts; they kept their money separate.⁷²

Section 5 of the conclusions of law of the divorce judgment is an itemized list of personal property awarded to Jamie. Respondent admitted at the evidentiary hearing that she knew that the fifth item was non-marital property owned only by Jamie that he brought to the marriage (2002 Polaris Sportsman 700 four-wheeler).⁷³ This property should have been specifically designated non-marital; therefore, the property division appears fairer than it actually is by awarding this property to Jamie.

In her motion to amend the divorce decree, Respondent asked to be awarded the 2002 Chevrolet pickup and that Jamie be awarded the 2003 Chevrolet Crew Cab pickup.⁷⁴ In support of this motion to amend the divorce decree, Respondent claims she did not know there was debt on the

⁷² Transcript of June 16th, 2006, hearing, p. 24 (Jamie's testimony); Id. at p. 65 (Respondent's testimony).

⁷³ Id. at p.70-71.

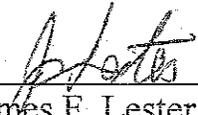
⁷⁴ App., p. 19-20.

2003 Chevrolet Crew Cab pickup at the time the divorce was granted.⁷⁵ At the evidentiary hearing, however, she admitted that she was the one who made the payments on this vehicle.⁷⁶

CONCLUSION

This Court should vacate the orders of the trial court dated May 5th, 2006, and July 19th, 2006.

Dated this 13th day of February 2007.



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⁷⁵ Id. at p. 22.

⁷⁶ Transcript of June 16th, 2006, hearing, p. 71-72 (Respondent's testimony).

I, James F. Lester, attorney for Appellant, hereby state that Appellant's Brief complies with both the typeface requirements and word count limitations as set forth in Minn. Rule of Civil Procedure 132 Sub. 3(a).

Dated this 13th day of February 2007.



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