[Cite as *Messer-Bailey v. Bailey*, 2015-Ohio-1195.]

COURT OF APPEALS
KNOX COUNTY, OHIO
FIFTH APPELLATE DISTRICT

		JUDGES:
REBECCA MESSER-BAILEY	:	Hon. W.Scott Gwin, P.J.
	:	Hon. Patricia A. Delaney, J.
Plaintiff-Appellant	:	Hon. Craig R. Baldwin, J.
	:	
-vs-	:	
	:	Case No. 14CA21
JOHN P. BAILEY	:	
	:	
Defendant-Appellee	:	O P I N I O N

CHARACTER OF PROCEEDING:	Civil appeal from the Knox County Court of Common Pleas, Case No. 13DC06-0103
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	March 30, 2015

APPEARANCES:

For Plaintiff-Appellant	For Defendant-Appellee
JAY NIXON NOEL ALDEN 121 E. High Street Mount Vernon, OH 43050	JOHN KLEIN 101 Heather Lane Powell, OH 43065

Gwin, P.J.

{¶1} Appellant appeals the September 12, 2014 judgment entry of the Knox County Court of Common Pleas sustaining a portion of appellee's objections to the magistrate's decision and finding appellant failed to provide sufficient evidence to sustain her claim for additional sums under the theory of quantum meruit.

Facts & Procedural History

{¶2} On June 5, 2013, appellant Rebecca Messer-Bailey filed a complaint for divorce against appellee John P. Bailey based upon the theory of common law marriage. Appellee filed an answer, denying a marriage existed. On November 12, 2013, appellant filed an alternative motion in equity and quantum meruit and stated that if no common law marriage existed between the parties, she sought an equitable amount for services rendered. On April 30, 2014, appellant withdrew her complaint for divorce and elected to proceed with her alternate motion in equity and quantum meruit.

{¶3} A hearing was conducted by the magistrate on appellant's quantum meruit claim on June 19, 2014. The following individuals testified at the hearing: appellant, appellee, Rochelle Hill, appellant's sister, and David Messer, appellant's son.

{¶4} Appellant and appellee began a romantic relationship in 1988 when appellant was widowed with two children. Appellant received Social Security benefits for herself and her two children. Appellee testified that he asked appellant to marry him, but she refused because she would lose the Social Security benefits. Life insurance policies, a personal injury settlement for loss of consortium, bank statements, hospital admissions, and deeds reflect that the parties held themselves out as husband and wife. The parties had two children together, who are both now emancipated. Prior to

2005, the parties paid their bills out of an account that they both put money in, including appellee's paycheck and appellant's Social Security funds. Appellee testified that appellant worked outside the home for 2 to 3 years during the relationship and appellant testified that her employment outside the home was at most 5 years during the relationship. Appellee worked full-time during the parties' relationship.

{¶5} In 2003 and 2005, appellant was injured in two auto accidents. Appellant testified that she could not work after these accidents due to dizzy spells, severe headaches, and cognitive problems. Appellant stated that in 2005, she lost all the Social Security benefits she was receiving. Although the parties resided in the same residence, they slept in separate bedrooms from approximately 2007 to when appellee left the home in 2013. Appellant testified that the parties last engaged in sexual relations in October of 2012.

{¶6} In 2005, appellee opened a checking account that appellant did not have access to and stated he had to refinance the house because appellant ran up a substantial amount of credit card debt using his name without his consent. Appellant denied running up $50,000 in credit card debt without appellee's knowledge and estimated the parties jointly had approximately $20,000 in credit card debt in 2005. Appellee testified that, after 2005, he paid the mortgage, electricity, trash pickup, property taxes, purchased groceries, purchased clothing for the children, paid for auto maintenance, and purchased the parties' vehicles. Appellee further stated that after 2006, he gave appellant money whenever she needed it for whatever she needed it for. Appellee testified that appellant did most of the grocery shopping, but he would shop approximately once per month. Appellee admitted that appellant did cook and clean

and do the bulk of the household chores from 2005 to 2013, but that he paid for the utilities, mortgage, and groceries during this time period. On cross-examination, appellee admitted that he did not purchase appellant's most recent vehicle, as it came from her accident insurance payment. David Messer, appellant's son and appellee's step-son, testified that appellee worked full-time to provide for him and his siblings, and appellant took care of the house for him and his siblings.

{¶7} Appellant testified that from 2006 to 2013, appellee paid the mortgage and utility bills. Appellant testified that while appellee bought some groceries and paid the mortgage and utilities, she had to beg him for additional money for food and clothing for the children. Appellant stated that she provided the bulk of the household duties to keep the household running including cooking, cleaning, and laundry, though appellee did his own laundry starting in 2011. Appellant stated that appellee benefited from these services she completed. When asked how much money per hour she could have made providing domestic services, appellant testified that she did not know, but thought $8.00 per hour might be on the low side. Appellant requested that the court award her payment for cooking, cleaning, bill paying, and laundry.

{¶8} On June 23, 2014, the parties submitted, and the trial court approved, a memorandum of agreement regarding the division of the real and personal property of the parties. The parties agreed that each would receive half of the real property as appraised, they divided the personal property items, and appellant kept the $13,500 in spousal support she was paid pursuant to the temporary orders issued during the case. The magistrate issued her proposed decision on July 2, 2014. The magistrate first noted that the division of the assets as agreed to by the parties was that appellant

received $63,781 and appellee received $68,254. The magistrate further issued a decision regarding appellant's quantum meruit claim for additional sums. The magistrate concluded that the parties resided together from 2005 to 2013 without being engaged in a romantic relationship and that appellant provided appellee valuable services which appellee accepted and appellee was reasonably notified that he should have been charged for those services. The magistrate further found appellant was entitled to $7.95 per hour for 20 hours per week from 2005 to 2013 for domestic services she performed for appellant, for a total of $57,019.24.

{¶9} Appellee filed objections to the magistrate's decision on July 14, 2014. Appellee's objections were as follows: (1) the evidence presented at the hearing was insufficient to establish that appellant's doing household work resulted in the unjust enrichment of appellee because appellee paid the mortgage and living expenses of the parties during that time, and both parties contributed equally to shared life; (2) Ohio law on cohabitation does not recognize compensation for services performed during cohabitation; (3) Ohio does not recognize palimony claims; and (4) there was no finding or evidence that appellant worked twenty hours per week from 2005 to 2013. Appellant filed her response to appellee's objections on July 23, 2014. The trial court issued a judgment entry on September 12, 2014. The trial court found that appellee's first objection was well-taken as appellant failed to provide sufficient evidence to sustain her claim for additional sums under the theory of quantum meruit. The trial court further overruled the remainder of appellee's objections as moot based upon its finding as to the first objection.

{¶10} Appellant appeals the September 12, 2014 judgment entry of the Knox County Common Pleas Court and assigns the following as error:

{¶11} "I. THE TRIAL COURT ERRED IN OVERRULING THE MAGISTRATE'S PROPOSED DECISION AND RULING THAT APPELLANT FAILED TO PROVIDE SUFFICIENT EVIDENCE TO SUSTAIN HER CLAIM FOR ADDITIONAL SUMS UNDER THE THEORY OF QUANTUM MERUIT."

{¶12} Appellant argues the trial court abused its discretion in finding that appellant failed to provide sufficient evidence to sustain her claim for additional sums under the theory of quantum meruit.

{¶13} As an appellate court, we neither weigh the evidence nor judge the credibility of the witnesses. Our role is to determine whether there is relevant, competent, and credible evidence upon which the fact finder could base its judgment. *Cross Truck Equip. Co. v The Joseph A. Jeffries Co.*, 5th Dist. No. Stark No. CA5758, 1982 WL 2911 (Feb. 10, 1982). Accordingly, judgments supported by competent, credible evidence going to all the essential elements of the case will not be reversed as being against the manifest weight of the evidence. *C.E. Morris Co. v. Foley Constr.*, 54 Ohio St.2d 279, 376 N.E.2d 578 (1978).

{¶14} Unjust enrichment operates in the absence of an express contract. *Delicom Sweet Goods of Ohio, Inc. v. Mt. Perry Foods, Inc.*, 5th Dist. Perry No. 04 CA 4, 2005-Ohio-979. The doctrine of unjust enrichment or quantum meruit is generally applied when one party confers a benefit upon another without receiving just compensation for the reasonable value of the services rendered. *Aultman Hosp. Assn. v. Community Mut. Ins. Co.*, 46 Ohio St.3d 51, 544 N.E.2d 920 (1989).

{¶15} Quantum meruit is "an equitable remedy giving rise to obligations imposed by law, irrespective of the intentions of the parties, in order to prevent an injustice when one party retains a benefit from another's labors." *In re Suchodolski*, 9th Dist. Lorain No. 10CA009833, 2011-Ohio-6333. To prevail on a claim of quantum meruit, a plaintiff is required to show by a preponderance of the evidence: (1) a benefit has been conferred by the plaintiff upon the defendant; (2) the defendant had knowledge of the benefit; and (3) the defendant retained the benefit under circumstances where it would be unjust to do so without payment. *Hambleton v. R.G. Barry Corp.,* 12 Ohio St.3d 179, 465 N.E.2d 1298 (1984). In addition, unjust enrichment entitles a party only to restitution of the reasonable value of the benefit conferred. *St. Vincent Medical Ctr. v. Sader*, 100 Ohio App.3d 379, 654 N.E.2d 144 (6th Dist. 1995). Thus, appellant also has to "prove the reasonable value of the services rendered." *Watterson v. King*, 166 Ohio App.3d 740, 2006-Ohio-2305, 852 N.E.2d 1278 (5th Dist.).

{¶16} Appellant argues she proved, by a preponderance of the evidence, that she conferred a benefit on appellee, that appellee had knowledge of the benefit, and that the retention of such benefit is unjust without payment. We disagree.

{¶17} In this case, while appellee admitted that appellant did the bulk of the household duties from 2005 to 2013, the evidentiary materials indicate that appellee never promised or indicated that appellant would be paid for completing these household duties. In addition, the retention of benefits would not be unjust or unconscionable because appellant lived in the home from 2005 to 2013 while appellee paid the mortgage, utilities, and purchased groceries. Both parties benefited from the relationship as appellant did the household chores and appellee worked to pay the

mortgage, utilities, and for groceries for the household. Each party provided services and retained benefits. Accordingly, the evidence does not indicate that appellee was unjustly enriched by the benefit appellant provided because he provided a similar benefit to appellant in that she lived rent-free and did not having to pay the utilities or for groceries. See *Tarry v. Stewar*t, 98 Ohio App.3d 533, 649 N.E.2d 1 (9th Dist. 1994); see also *Seward v. Mentrup*, 87 Ohio App.3d 601, 622 N.E.2d 756 (12th Dist. 1993). There is competent and credible evidence to support the trial court's determination that appellant failed to prove, by a preponderance of the evidence, the elements of quantum meruit.

{¶18} In addition, appellant failed to present evidence that the services she provided should be valued at $7.95 per hour as she testified that she did not know how much per hour she should be compensated for the domestic services she provided. There is no evidence as to the actual amount of hours appellant spent each week performing the household duties. Appellant thus failed to prove the reasonable value of the services rendered by a preponderance of the evidence.

{¶19} Appellant further contends that this case is analogous to our decision in *Hartley v. Hartley*, 5th Dist. Licking No. 96CA132, 1997 Ohio App.LEXIS 3315 (May 22, 1997). In *Hartley*, the appellant and appellee divorced and, subsequent to the divorce, the appellee assisted the appellant in cleaning the house, buying groceries and in paying the bills. *Id.* The trial court found appellant was entitled to payment for these services based upon the theory of quantum meruit and this Court found there was competent and credible evidence to support the trial court's decision. *Id.* However, we find *Hartley* distinguishable from the instant case. In *Hartley*, the appellee testified that

the appellant promised he would pay her for her services and that she would not have performed these services without securing his promise to pay. *Id.* In addition, the appellee testified that she worked a 10-hour day, 7 days per week and estimated the value of her services at $6.00 per hour. *Id.* In this case, there is no evidence that in 2005 appellee made a promise to pay appellant for her to stay in the home and perform the bulk of the household duties. There was no testimony by appellant that she expected payment to perform the household services or that she secured a promise to pay from appellee prior to performing the services. Additionally, appellant did not testify to the number of hours she worked per week and did not know the value of the services she performed.

{¶20} Based on the foregoing, appellant's assignment of error is overruled. The September 12, 2014 judgment entry of the Knox County Court of Common Pleas is affirmed.

By Gwin, P.J.,

Delaney, J., and

Baldwin, J., concur