

COURT OF APPEALS  
ASHLAND COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

LORETTA BOREL	:	JUDGES:
Plaintiff-Appellee	:	Hon. W. Scott Gwin, P.J.
	:	Hon. Sheila G. Farmer, J.
	:	Hon. John W. Wise, J.
vs.	:	
	:	
ROBERT J. LAUBNER	:	Case No. 04COA051
Defendant-Appellant	:	
	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Appeal from the Municipal Court, Case No. 04CVE332

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: March 9, 2005

APPEARANCES:

For Plaintiff-Appellee

ERIN N. POPLAR  
930 Claremont Avenue  
P.O. Box 220  
Ashland, OH 44805

For Defendant-Appellant

JOSEPH P. KEARNS, JR.  
P.O. Box 345  
153 West Main Street  
Ashland, OH 44805

*Farmer, J.*

{¶1} Appellant, Robert Laubner, and appellee, Loretta Borel, began living together in 1990. In January of 1992, appellant purchased a farm in Ashland County. Just prior to the purchase, appellee had given appellant \$10,000.00.

{¶2} In December of 2003, appellee voluntarily left the farm after appellant became involved with another woman.

{¶3} On March 16, 2004, appellee filed a complaint against appellant for unjust enrichment regarding the \$10,000.00. A bench trial commenced on June 24, 2004. By judgment entry filed July 8, 2004, the trial court found in favor of appellee as against appellant in the amount of \$10,000.00 plus interest and court costs.

{¶4} Appellant filed an appeal and this matter is now before this court for consideration. Assignment of error is as follows:

I

{¶5} "THE TRIAL COURT ERRED WHEN IT GRANTED JUDGMENT IN FAVOR OF THE APPELLEE AND SAID FINDING WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

I

{¶6} Appellant claims the trial court's decision was against the manifest weight of the evidence. We disagree.

{¶7} A judgment supported by some competent, credible evidence will not be reversed by a reviewing court as against the manifest weight of the evidence. *C.E. Morris Co. v. Foley Construction Co.* (1978), 54 Ohio St.2d 279. A reviewing court must not substitute its judgment for that of the trial court where there exists some competent

and credible evidence supporting the judgment rendered by the trial court. *Myers v. Garson*, 66 Ohio St.3d 610, 1993-Ohio-9.

{¶8} Appellant claims the evidence presented was insufficient to permit appellee to recover under the theory of unjust enrichment. In *Hambleton v. Barry Corp.* (1984), 12 Ohio St.3d 179, 183, the Supreme Court of Ohio stated the following regarding unjust enrichment:

{¶9} "The court of appeals in this case listed the elements of quasi-contract as follows: '(1) a benefit conferred by a plaintiff upon a defendant; (2) knowledge by the defendant of the benefit; and (3) retention of the benefit by the defendant under circumstances where it would be unjust to do so without payment ("unjust enrichment")."

{¶10} The trial court based its decision in appellee's favor upon the "factual determinations and legal conclusions" set forth in "Plaintiff's proposed Findings of Fact and Conclusions of Law." See, Judgment Entry filed July 8, 2004. Appellant argues some of the facts therein are not contained in the record. Specifically, the facts that appellant brought a new female companion into the home and appellee was free to stay as a cook, and that appellee gave appellant \$10,000.00 under the implied inference she would have a place to live forever.

{¶11} Appellant admitted that appellee gave him \$10,000.00 at the time he purchased the farm in Ashland in 1992. T. at 8-10. Appellee testified the \$10,000.00 was applied to the down payment on the farm. T. at 19. During the next twelve years, appellant cohabitated with appellee, and appellee performed regular household chores and paid appellant \$140 to \$200 per month toward living expenses. T. at 11-13, 19.

When appellee incurred extraordinary medical expenses, appellant assisted her, but she repaid him. T. at 23.

{¶12} Appellant testified appellee moved out because of another woman. T. at 13. Appellee testified appellant "was mentally abusing me with his courtship of her." T. at 20.

{¶13} Appellee testified she was under "the impression that we were going to be forever in Ashland on a farm." T. at 19. Appellee gave appellant the money because "I wanted to have a place to live for the rest of my life." T. at 24.

{¶14} We concur the specific findings are not correct, but they are not totally incorrect. Appellee believed the \$10,000.00 secured her a residence for life, and appellant's "mental abuse" in the form of a new relationship caused her to leave. These facts are not pivotal to the conclusion that under the theory of unjust enrichment, appellee is entitled to recover her \$10,000.00.

{¶15} Appellant freely admitted to receiving the benefit of appellee's \$10,000.00, thereby satisfying the first and second prongs of unjust enrichment. Appellee contributed not only in household services for twelve years, but also paid \$140 to \$200 per month for living expenses. Clearly, the value of the farm has increased, and appellant received the benefit of the \$10,000.00 as a basis for the increased value.

{¶16} There is no evidence in the record to establish the \$10,000.00 was a gift to appellant; rather, it was a contribution by appellee to insure her future. Now, twelve years later, she is entitled to the return of her investment. Appellant will not suffer economic detriment given the farm's increased value.

{¶17} Upon review, we find sufficient credible evidence to support the trial court's decision.

{¶18} The sole assignment of error is denied.

{¶19} The judgment of the Municipal Court of Ashland County, Ohio is hereby affirmed.

By Farmer, J.

Gwin, P.J. and

Wise, J. concur.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

JUDGES

SGF/jp 0302

IN THE COURT OF APPEALS FOR ASHLAND COUNTY, OHIO

FIFTH APPELLATE DISTRICT

LORETTA BOREL

Plaintiff-Appellee

:  
:  
:

	:	JUDGMENT ENTRY
vs.	:	
	:	
ROBERT J. LAUBNER	:	
	:	
Defendant-Appellant	:	CASE NO. 04COA051

For the reasons stated in the Memorandum-Opinion on file, the judgment of the Municipal Court of Ashland County, Ohio is affirmed.

---

---

---

JUDGES