

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

January 8, 1997

**NOTICE**

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

**No. 96-0279**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

**LARRY TAYLOR,**

**Plaintiff-Appellant,**

**v.**

**ROBERT A. NUZZO,**

**Defendant-Respondent.**

APPEAL from an order of the circuit court for Kenosha County:  
DAVID M. BASTIANELLI, Judge. *Affirmed.*

Before Brown, Nettesheim and Anderson, JJ.

PER CURIAM. Larry Taylor appeals from an order dismissing his unjust enrichment claim against Robert A. Nuzzo on the grounds that Nuzzo did not appreciate the benefit Taylor conferred upon him by supporting Nuzzo's biological child born to Taylor's wife during their marriage. Because we agree that the elements of unjust enrichment were not satisfied, we affirm.

The facts are undisputed. A child was born to Debra Taylor in August 1988, while she was married to Larry Taylor. In his affidavit in support

of summary judgment, Nuzzo stated that he first learned he fathered the child in May 1994 and began making child support payments in July 1994. Nuzzo denied paternity from February 1992, when Taylor called to advise him that he was the biological father, to May 1994 when Nuzzo was adjudicated the father in an Illinois proceeding.

Taylor's affidavit indicates that he learned that he was not the biological father in February 1992. The Taylors commenced divorce proceedings in May 1992 and were divorced in February 1994. Taylor sued Nuzzo in April 1995 claiming unjust enrichment because Taylor supported the child when support was Nuzzo's legal obligation as the biological father.

At the hearing on Nuzzo's summary judgment motion, Taylor stated that his claim was for unjust enrichment and restitution to recover the cost of supporting the child until Nuzzo's paternity was determined. The trial court considered the parties' affidavits on summary judgment in the context of Taylor's unjust enrichment claim. The trial court concluded that the second element of unjust enrichment—appreciation or knowledge by Nuzzo of the benefit conferred—was not satisfied because Nuzzo denied paternity until he was adjudicated the father in May 1994. The trial court concluded that it was undisputed that Nuzzo had no appreciation of the support benefit while it was being conferred by Taylor. The trial court found no material factual dispute and ruled that there were insufficient facts to support the appreciation or knowledge element of Taylor's unjust enrichment claim.

We review decisions on summary judgment by applying the same methodology as the trial court. *M & I First Nat'l Bank v. Episcopal Homes Management, Inc.*, 195 Wis.2d 485, 496, 536 N.W.2d 175, 182 (Ct. App. 1995); see § 802.08(2), STATS. That methodology has been recited often and we need not repeat it here except to observe that summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. See *M & I First Nat'l Bank*, 195 Wis.2d at 496-97, 537 N.W.2d at 182.

On appeal, Taylor argues that satisfaction of the second element of unjust enrichment—knowledge or appreciation of the benefit conferred—was unnecessary in order to maintain his cause of action and to seek restitution. The

elements of unjust enrichment are: (1) a benefit conferred upon the defendant by the plaintiff; (2) an appreciation or knowledge by the defendant of the benefit; and (3) acceptance or retention by the defendant of the benefit under circumstances making it inequitable for the defendant to retain the benefit without payment of its value. *Puttkammer v. Minth*, 83 Wis.2d 686, 688-89, 266 N.W.2d 361, 363 (1978). Restitution is the recovery for unjust enrichment. *Management Computer Servs., Inc. v. Hawkins, Ash, Baptie & Co.*, 196 Wis.2d 578, 599-600, 539 N.W.2d 111, 120 (Ct. App. 1995), *aff'd in part, rev'd in part* by No. 93-0140 (Wis. Dec. 20, 1996). The trial court found that it was undisputed that Nuzzo had no appreciation that he was the biological father until his paternity was adjudicated in a May 1994 Illinois proceeding. Accordingly, he could not have appreciated the benefit Taylor conferred upon him by supporting his child.<sup>1</sup>

The elements of unjust enrichment are clear. The trial court did not err in granting Nuzzo summary judgment on the undisputed facts.

*By the Court.* – Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.

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<sup>1</sup> We assume for purposes of this opinion that supporting a nonbiological child confers a benefit on the biological parent. However, we do not decide this issue.