

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 3, 2006

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

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

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

Appeal No. 2005AP1357

Cir. Ct. No. 2003CV73

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

BILL YOUA SUE VANG A/K/A CHANG Y. VANG AND IA T. VANG,

PLAINTIFFS-APPELLANTS,

v.

MAI Y. VANG,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Waushara County:
LEWIS MURACH, Judge. *Affirmed.*

Before Lundsten, P.J., Deininger and Higginbotham, JJ.

¶1 PER CURIAM. Chang Vang and Ia Vang appeal a judgment ordering them to pay Mai Vang \$55,000 on a theory of unjust enrichment. We affirm.

¶2 This action was started by Chang and Ia, a married couple. The defendant was Mai Vang. Chang and Ia sought rescission of a deed conveying certain real estate at N633 County Highway XX from them to Chang and Mai. In the alternative, they sought a partition and sale of that real estate. Mai counterclaimed for sole ownership of that real estate, and also for a determination of her interest in real estate titled in Chang's and Ia's names at N629 County Highway XX, and for other relief on a theory of unjust enrichment.

¶3 After a trial, the circuit court found that Chang, while legally married to Ia, "married" Mai as a "second wife" in 1992; that the three parties lived together and combined their efforts at providing income to their joint enterprise; that the real estate at N629 was purchased in 1994 by the parties to further their financial interests; that the parties' relationship began to change in 1998, at which time one acre was detached from the N629 property and titled in Chang's and Mai's names, which became the N633 property; and that the joint venture of the parties ended in October 2002. The court concluded that Chang and Ia had retained an unreasonable amount of the accumulated assets, and that each party was entitled to a one-third share of the joint venture's assets, with certain credits, leading to a payment to Mai of approximately \$55,000.

¶4 On appeal, the parties do not appear to dispute that the applicable law is found in *Ulrich v. Zemke*, 2002 WI App 246, ¶¶10-11, 258 Wis. 2d 180, 654 N.W.2d 458 (citations omitted):

Unmarried cohabitants may raise a claim based upon unjust enrichment following the termination of their relationship where one party attempts to retain an unreasonable amount of the property acquired through the efforts of both. Such a claim is "grounded on the moral principle that one who has received a benefit has a duty to make restitution where retaining such a benefit would be unjust." An unjust enrichment action requires "proof of

three elements: (1) a benefit conferred on the defendant by the plaintiff, (2) appreciation or knowledge by the defendant of the benefit, and (3) acceptance or retention of the benefit by the defendant under circumstances making it inequitable for the defendant to retain the benefit.”

In nonmarital cohabitation actions, proof of the above three elements is demonstrated by showing: (1) an accumulation of assets, (2) acquired through the efforts of the claimant and the other party, and (3) retained by the other party in an unreasonable amount. Or stated succinctly, the party claiming unjust enrichment must show that the parties engaged in a joint enterprise or mutual undertaking to accumulate assets. Once a party demonstrates the existence of a joint enterprise, equity principles demand that the parties be treated fairly and all assets accumulated as part of the joint enterprise be divided accordingly. A division of property otherwise would allow one party to benefit by retaining an unreasonable amount of property acquired through the efforts of both.

¶5 We review the court’s factual findings using the clearly erroneous standard. *Id.*, ¶8. The circuit court’s decision to grant equitable relief in an unjust enrichment action is reviewed for erroneous exercise of discretion. *Id.*

¶6 Chang and Ia first argue that Chang’s invalid second marriage to Mai is not, by itself, a basis for concluding that there was a joint enterprise, or for dividing their property. This argument is irrelevant because the court’s decision was not based solely, or even primarily, on that “marriage.” The court’s decision was based primarily on the economic and financial actions of the parties. In their reply brief, Chang and Ia appear to adjust their argument to state that the court erred by giving any consideration at all to the “marriage” in its consideration of the totality of the circumstances. We disagree. The fact of the second marriage provides context that helps explain the circumstances and actions of the parties during the relevant period.

¶7 Chang and Ia next argue that not all the elements of unjust enrichment were established. They argue that there was insufficient evidence of a joint enterprise to accumulate assets. We conclude, however, that the court's finding on this point was not clearly erroneous. The court found that the parties pooled their earnings and expenses, that Ia and Mai gave their income to Chang, who managed the money for the parties, and that Mai's contributions were in the form of AFDC benefits and food stamps that were used by all members of the household, and her butchering and shoe-making work. It was not clearly erroneous for the court to find that Mai's contributions rose to a level sufficient to establish a joint enterprise.

¶8 Chang and Ia also argue that, even if a joint enterprise existed, the court made no finding that Chang and Ia retained an unreasonable amount of the assets accumulated by the enterprise. This statement is factually inaccurate. The court made such a finding in its original memorandum decision at page 8, and again in its final judgment at page 3. They also argue that any such finding was not accompanied by sufficient explanation of why it would be unreasonable for them to keep the entirety of the value of the N629 property. Although the court may not have provided a detailed discussion on this point, it is evident from the court's decision that the court regarded the assets that accumulated as products of the joint effort of the parties. The court also noted that "[t]ransactions during the joint venture were so thoroughly commingled that tracing of 'personal' funds and property is impossible." In the absence of evidence that would allow a more specific assessment of each party's contribution, it was reasonable for the court to order an equal division.

¶9 Finally, Chang and Ia argue that only the N633 property should be subject to division, because of Mai's greater contribution with respect to that

property. This argument is not appropriate in the context of a joint enterprise. It is not necessary for each item of property in the enterprise to be divided in accord with each participant's contribution to that specific item. The court properly viewed the assets of the enterprise as a whole, and divided them accordingly.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

