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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0916**

In re the Estate of: Donald H. Richter, deceased
Gerald Donald Richter,
Appellant,

vs.

Larry A. Richter,
Trustee of Donald H. Richter Revocable Living Trust
dated March 31, 2011 as amended, et al.,
Respondents.

**Filed March 5, 2018
Affirmed
Reilly, Judge**

Otter Tail County District Court
File Nos. 56-PR-14-2259, 56-CV-15-2864

Gerald Donald Richter, Wadena, Minnesota (pro se appellant)

Robert G. Manly, Andrew D. Smith, Vogel Law Firm, Fargo, North Dakota (for respondents)

Considered and decided by Halbrooks, Presiding Judge; Connolly, Judge; and
Reilly, Judge.

UNPUBLISHED OPINION

REILLY, Judge

After a bench trial, appellant Gerald Richter challenges the district court's determination that there was no constructive trust that would entitle him to the Richter

Farm and that decedent's estate was not unjustly enriched. Appellant also raises a number of fact issues and arguments not raised at the district court or not properly raised before this court. Because the district court did not err by declining to construe a constructive trust in favor of appellant, we affirm.

FACTS

Donald H. Richter (decedent) owned a dairy farm in Otter Tail County (Richter Farm). He had nine children. Beginning in 1978, decedent's son Gerald Richter (appellant) began performing work at the Richter Farm in exchange for a percentage of the farm's milk revenue. Appellant lived in the Richter Farm's farmhouse until 1980 or 1981, when appellant installed a prefabricated home for himself on the property at decedent's request. In 1983, appellant's brother Leon Richter joined him on the farm performing milking and other chores. Over the years, as he participated more in local politics and his religious organization, decedent spent less time on day-to-day farm activities. Because of this, decedent, appellant, and Leon Richter agreed to have appellant and Leon Richter receive a larger portion of the milk revenue, as well as two calves each year and the calves' future offspring. By 1988, appellant and Leon Richter each received 15% of the milk revenue. In 1998, Leon sold the 52 head of cattle he had accumulated under their arrangement and left the farm. Appellant remained working on the farm with his accumulated herd and decedent's remaining milk cows.

In 1999, appellant considered purchasing a nearby farm. Appellant's brother, Randall Richter, and decedent accompanied appellant to inspect it. On their return trip, decedent dissuaded appellant from purchasing the farm, instead offering to sell the Richter

Farm to appellant. Under his offer, decedent would continue to receive 70% of the milk revenue, but would apply any remaining revenue after expenses toward appellant's purchase of the farm. Appellant agreed to pay more of the farm expenses from his 30% share of milk revenue to purchase the farm even sooner. The market value of the Richter Farm at the time was \$220,000. The parties did not determine how long it would take to pay for the farm under this arrangement. Between 2004 and 2014, appellant asked decedent for an accounting of expenses paid so he could determine how much he still owed for the Richter Farm. Decedent did not provide an accounting to appellant. In fact, between 1999 and 2013, appellant paid approximately \$647,688 (36.4%) of the Richter Farm's expenses and decedent paid \$1,131,789 (63.6%), which was substantially consistent with their agreement.¹

In February 2010, decedent purchased two annuities and listed each of his nine children as beneficiaries. For both annuities, appellant was given a 0% share with the notation "farm land" written next to it. The district court found this confirmed that decedent intended to sell the farm to appellant.

On March 31, 2011, decedent executed a living trust that granted appellant the Richter Farm upon decedent's death. In the spring of 2013, decedent approached Randall Richter, his son, and asked him to persuade appellant to purchase seed and begin planting that season's corn crop. Randall Richter asked decedent to give the Richter Farm's financials to appellant or to immediately convey the Richter Farm to appellant. Decedent

¹ These figures were calculated considering operating expenses paid and depreciation on capital contributed to the farming operation.

replied that appellant would receive the Richter Farm upon his death. Appellant then told decedent that he would not plant the corn crop, because decedent would not provide the Richter Farm's financials or convey the property to him. Decedent described the interaction with appellant as explosive. On August 8, 2013, decedent executed an amendment to the living trust, which divided the Richter Farm equally between his nine children and provided that appellant would receive one acre of land, all farming equipment, and all animals. Decedent told his son Larry Richter that he amended the trust because he was upset with appellant over their disagreement about planting the corn crop.

In January 2014, decedent died. Larry Richter became trustee of the living trust and informed his siblings that decedent wished to divide the Richter Farm equally between them. Despite this, appellant continued to use the farm as a dairy farm between 2014 and 2016. Since March 2014, appellant has received 100% of the farm's milk revenue but has not made any tax or utility payments. Instead, the trust made tax and utility payments totaling \$28,135.41.

In September 2014, appellant filed a probate action and a separate action in district court claiming express contract, implied contract, constructive trust, and unjust enrichment. Appellant later withdrew his claims for express and implied contract, and respondents filed a counterclaim for money damages. Appellant's probate and contract actions were consolidated for trial. Following a bench trial, the district court made extensive findings of fact and conclusions of law and determined that the estate was not unjustly enriched and that appellant was not entitled to a constructive trust conveying him the entire Richter

Farm. The district court awarded respondents \$28,135.41 for expenses related to the Richter Farm between 2014 and 2016.

This appeal followed.

DECISION

I. The district court did not err by declining to construe a constructive trust in appellant's favor and finding that decedent's estate was not unjustly enriched.

The existence of a constructive trust is a question of fact for the trial court. *Freundschuh v. Freundschuh*, 559 N.W.2d 706, 711 (Minn. App. 1997), *review denied* (Minn. Apr. 24, 1997). A constructive trust is an equitable remedy designed to prevent a party from benefiting from unjust enrichment. *Id.* “A constructive trust may be imposed where [appellant] shows the existence of a fiduciary relation and the abuse by [decedent] of confidence and trust bestowed under it to [appellant's] harm.” *Id.* (quotation omitted). Unjust enrichment occurs where one party knowingly receives something of value to which they are not entitled, and the circumstances suggest it would be unjust for the person to retain that benefit. *Schumacher v. Schumacher*, 627 N.W.2d 725, 729 (Minn. App. 2001). It is not enough to show that one party benefited from the efforts of another, the benefit must be unjust in the sense that it is illegal or morally wrong. *Id.* Recovery under unjust enrichment is an equitable remedy. *Southtown Plumbing, Inc. v. Har-Ned Lumber Co., Inc.*, 493 N.W.2d 137, 140 (Minn. App. 1992).

“In an appeal from a bench trial, we do not reconcile conflicting evidence.” *Porch v. Gen. Motors Acceptance Corp.*, 642 N.W.2d 473, 477 (Minn. App. 2002), *review denied* (Minn. June 26, 2002). “We give the district court's factual findings great deference and

do not set them aside unless clearly erroneous.” *Id.* “However, we are not bound by and need not give deference to the district court’s decision on a purely legal issue.” *Id.* “When reviewing mixed questions of law and fact, we correct erroneous applications of law, but accord the [district] court discretion in its ultimate conclusions and review such conclusions under an abuse of discretion standard. *Id.* (alteration in original).

A. Rental Valuation and Purchase Price Calculation

Appellant argues that the district court erred in its calculation of the money paid by appellant toward the purchase price of the Richter Farm. The district court determined that, in 1999, decedent agreed to sell the Richter Farm to appellant and that decedent would apply his share of the milk revenue after expenses to the purchase price. The parties agreed that the Richter Farm’s 1999 purchase price was \$220,000. In determining whether decedent’s actions were morally intolerable such that he might have been unjustly enriched, the court sought to determine if appellant had ever fully paid the purchase price of the Richter Farm using the combined milk revenue. That is, it sought to define whether “[appellant] gave so much purchase money to [decedent] above fair market terms that [appellant] is entitled to receive the entire Richter Farm even absent a written agreement.” The district court observed that a father’s decision to let his son use farmland rent-free to generate income to be used to purchase the farm constitutes a gift, and gifts are not binding. The district court chose to apply a fair market rent to the farm and subtracted that from the net milk revenue. The court reasoned that, though decedent allowed appellant to use the farm without paying rent, the fair market value of the rent should be considered, because appellant used decedent’s own assets “to generate the revenue he now wishes to use toward

[the Richter Farm].” The district court calculated how much money had been attributed to the purchase price using revenue between 1999 (the date the agreement was formed) and 2013 (the date the trust was amended, which showed a clear intent to deprive appellant of full ownership of the Richter Farm).

The district court determined that the fair rental value of the farmland was \$6,630 per year. This finding was based on appellant’s testimony regarding the actual rent paid to adjacent landowners for similar land under similar use. The fair rental value of the farm’s buildings was deemed to be \$24,000 per year, which was based on respondents’ witness’s uncontroverted testimony regarding United States Department of Agriculture data. The total fair rental value of the farm, then, was \$30,630 per year. Between 1999 and the amendment of the trust in 2013, appellant benefited from approximately \$444,135 in total forgiven rental costs. This figure does not include any accrued interest.

The district court then calculated that decedent’s net income in excess of \$444,135 was \$90,507, which falls short of the agreed-upon purchase price of \$220,000. The district court noted that this figure would be further reduced by the fair rental value of decedent’s livestock used by appellant in milk production. The district court’s analysis is based on facts in the record and we see no error of law. *See Porch*, 642 N.W.2d at 477.

B. Rent Values Not Clearly Erroneous

Appellant argues that the rent values used by the district court are clearly erroneous because the district court effectively applied 2014 rents to past years (1999-2013). Appellant did not submit evidence rebutting the determination of rents and the district court

even relied on appellant's own evidence in construing the rent values, at least for the land. The district court's determination of rent value was not clearly erroneous. *Id.*

C. Application of Appellant's Share of Annuity to Purchase Price

Appellant argues that a proportional share of the annuities should have been applied to the purchase price of the farm, since decedent excluded appellant from the annuity contracts under the assumption that appellant would receive the farm. Though there was evidence that decedent might have envisioned that appellant was to receive the farm in lieu of benefiting from the annuity payments, decedent also amended that will to divest appellant of the Richter Farm. Appellant and decedent's agreement regarding the purchase of the Richter Farm did not include any promise regarding the annuity or attributing its proceeds to the purchase. Because its decision not to include the annuities in its equitable determination was based on reasonable evidence in the record, the district court did not err. *Id.*

D. Soybean Proceeds to Pay Principal

Appellant argues the district court erred in calculating how much of the farm's proceeds went toward paying the principal between 1993 and 2013. Specifically, appellant argues that the district court included the expenses for raising the soybean crop, but did not include revenue generated by the soybean crop. Appellant's testimony described how appellant and decedent agreed that all of decedent's milk revenue after expenses would be applied to the purchase price of the Richter Farm. There was no testimony about allocating expenses and revenue for the soybean crops. Because the agreement did not specify what expenses were to be included, the district court interpreted this to mean it included all farm

expenses. Because the district court's finding was based on reasonable evidence in the record, its finding was not clearly erroneous. *Id.*

E. Farm Expenses Reduced Milk Revenue to Be Applied to Purchase Price

Appellant argues that farm expenses between 1993 and 2013 should not have reduced the amount of milk revenue applied to the purchase price of the farm. Appellant also argues that he only agreed to share in some of the expenses in order to purchase the farm sooner. The farm's expenses had to be paid in any case. Whether they were paid by appellant or decedent still reduced the total of the milk revenue by the same amount, and the amount applied to the purchase price would remain the same. The district court did not err when it calculated the amount to be applied to the purchase price.

F. Capital Contributions

Appellant argues that his capital contributions to the farm were erroneously excluded from the district court's equity determination. Appellant claims the home he purchased and installed, the machine sheds he constructed, and the upkeep of the property he performed should have been included in the calculation of unjust enrichment. Appellant did not provide evidence about how these improvements impacted the value of the Richter Farm or whether the improvements even remain on the farm. Because appellant did not submit evidence to support these figures, the district court's decision to exclude them from its order is not erroneous. *Id.*

G. Associated Milk Producers Incorporated Equity Account

Appellant argues that an Associated Milk Producers Incorporated (AMPI) equity account (totaling \$10,965), which generated its value from milk revenue, should have been

attributed to the purchase price. The district court noted that the exhibit submitted to support this argument included only a year's worth of accounting. The exhibit did not show that the equity account had accrued its entire value during the relevant time period, and, therefore, the district court could not rule with certainty that it should be wholly attributed to the purchase price. Because the district court based its determination on reasonable evidence in the record, excluding the AMPI equity balance from the purchase price was not clearly erroneous.

H. Appellant's Labor

Appellant argues that decedent was unjustly enriched by appellant's labor. Appellant argues that, if, as the court found, he received \$927,667 in milk revenue minus \$647,688 in expenses, he would have received only \$279,979 in net income over 15 years. This equates to \$18,665 per year, which appellant claims is an amount so low as to show he has been morally wronged. Taken as true, this income is very low for a person working full time on a farm. Nevertheless, it is not this court's role to reweigh evidence that was considered by the district court. *In re Estate of Riggle*, 654 N.W.2d 710, 714 (Minn. App. 2002). The district court's weighing of equities is supported by reasonable evidence in the record and does not misapply the law. The district court's decision is not clearly erroneous or an abuse of discretion. We affirm the district court's decision finding no unjust enrichment and that there was no constructive trust.

II. The factual findings are not clearly erroneous.

Number and Value of Cattle

Appellant argues that the district court erroneously determined the number and value of the cattle obtained through his arrangement with decedent. This court reviews findings of fact for clear error. Minn. R. Civ. P. 52.01. If there is reasonable evidence in the record to support the court's findings, there is no error. *See Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 797 (Minn. 2013). We view the evidence in a light most favorable to the verdict. *Id.* The district court determined that appellant had around 52 cattle and decedent had around 30 cattle. The district court reached this conclusion from appellant's own testimony. Because the district court based this conclusion on reasonable evidence in the record, the decision was not clearly erroneous. *Id.*

III. Appellant failed to properly brief issues on appeal.

Appellant raises a number of issues without providing adequate analysis or citation to the record. Although appellant is a pro se litigant, this court generally holds pro se litigants to the same standard as attorneys, *see Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001), and arguments unsupported by authorities or argument are "not [] considered on appeal unless prejudicial error is obvious on mere inspection," *Schoepke v. Alexander Smith & Sons Carpet Co.*, 290 Minn. 518, 519-20, 187 N.W.2d 133, 135 (1971). Even so, we will address these issues.

A. Discovery Requests

Appellant alleges that the district court improperly refused to compel respondents to comply with discovery requests made on February 1, 2016. Appellant did not have an

attorney during portions of the discovery process. Following appellant's filing of the action in September 2014, discovery was to conclude by January 8, 2016, and trial was scheduled to start on February 16, 2016. Complicating matters, appellant's attorney withdrew from representation on December 31, 2015. Appellant does not provide citations to caselaw or the record showing how respondents improperly obstructed the discovery process, or on what grounds the district court should have compelled discovery. We note that over a year had passed between appellant's complaint and the end of discovery, and that appellant's discovery request was made after the date discovery was to be completed. We see no basis for appellant's appeal regarding discovery.

B. District Court Malice and Trial Transcript Inaccuracy

Appellant claims the transcript does not accurately reflect what happened at the court trial and argues that the district court treated him with malice. Appellant does not offer evidence to support these claims, and, therefore, we are unable to review his accusations. We do note, however, that our review of the district court records shows that the district court treated appellant respectfully.

C. 2014 Milk Revenue

Appellant argues that the district court's finding that appellant claimed 100% of the Richter Farm's milk revenue during 2014 was clearly erroneous. Appellant also argues that the district court erred by failing to impose sanctions against respondents, arguing that respondents knew their pleading to be false when they claimed that appellant received 100% of the milk revenue for 2014. Appellant is relitigating an issue resolved in his favor by his motion for amended findings. There, the court determined that appellant did not

receive 100% of the milk revenue for 2014, instead finding that the estate collected revenue during the months of January through March. Appellant provides no rationale why this court should reconsider this issue or how respondents knew their pleadings to be false.

D. Cross-Examination of Larry Richter

Appellant argues that the district court erred by refusing to allow him to cross-examine Larry Richter at the January 3, 2017 hearing on the motion to amend findings. Appellant was not denied the opportunity to cross-examine Larry Richter at the hearing—Larry Richter never testified. In fact, the district court seemed to indicate that it was bending the rules in favor of equity by allowing appellant to testify at the hearing in the first place. Appellant claims he has a due-process right to confront an accuser, but appellant is not on trial, nor is Larry Richter an accuser.

E. Utility Payments

Appellant argues the electric utility payments were erroneously added to the expenses incurred by decedent between 1993 and 2013. Appellant claims he paid those utility payments, and that they should not have been deducted from the money that was to go toward the purchase price of the Richter Farm. Appellant does not cite to evidence in the record to support this claim. Therefore, we cannot review this claim.

F. The 70% Agreement

Appellant argues the district court erred by stating that appellant and decedent had an agreement whereby decedent would receive 70% of the milk revenue and cover 70% of the expenses. Appellant cites the alleged fact that decedent had no capital interest in the farm equipment as proof for his argument. Appellant cites his own testimony as proof the

farming equipment was improperly appropriated to the trust by decedent. Appellant does not argue how this evidence shows how the parties did not have an agreement to share the revenue and expenses at 70% and 30%. Therefore, we cannot review this claim.

G. Docketing of Judgment

Appellant argues that opposing counsel acted improperly by docketing a judgment three days after a hearing, apparently directed by ex parte instruction of the district court. Appellant provides record of a judgment entered on October 21, 2016, that was docketed on January 6, 2017, and provides no further evidence or analysis of his claim. We cannot review this claim.

H. Appellant's Attorney

Appellant argues that his attorney did not present arguments to the court to his satisfaction, and that the only reason he used an attorney in the first place was because the district court judge earlier said that his request for a continuance would not be “considered seriously” if he was not represented by counsel. Appellant offers no legal authority to support this assertion and does not specify what relief he is seeking. We cannot review this claim.

I. District Court Consideration of Appellant's Late Response to Posttrial Motion

Appellant argues that the district court claimed it would consider his late motion response and later reneged on its promise. Though appellant's response to respondents' motion to amend the judgment was not timely, the district court did consider appellant's

response in crafting its order, contrary to appellant's claims. Appellant does not specify what relief he is seeking by making this argument and we cannot review it.

J. Requiring Appellant to Pay Richter Farm Expenses Between 2014 and 2016

Appellant argues the district court erred by requiring him to pay the Richter Farm's expenses between 2014 and 2016. Appellant operated the Richter Farm for the years following decedent's death, and kept 100% of the milk revenue from March 2014 until trial. The district court declined to require appellant to pay rent to decedent's estate, since he had a rent-free agreement with the estate. The district court then explained that appellant could not expect the estate to pay for the utility bills while he was reaping the sole benefit from the farm. Appellant does not identify evidence in the record explaining why he should profit from the Richter Farm while not paying its operating costs.

Because these issues are not supported by either authorities or evidence, and error is not obvious on mere inspection of the record, we decline to address them. *Id.*

IV. Appellant raises issues not properly preserved for appeal.

On appeal, appellant raises a number of arguments not presented to the district court. Appellant initially filed separate probate and contract actions in the district court. The actions were consolidated, but, at trial, appellant only presented the issues of constructive trust and unjust enrichment. Appellant's probate arguments were not presented to the district court, and issues surrounding the administration of the trust were not argued. Appellant claims that he requested that certain issues be presented, but that his attorney did not present them at trial. Even so, this court will not consider issues that were not raised

in the district court, because those issues are not properly preserved for appeal. *See Oanes v. Allstate Ins. Co.*, 617 N.W.2d 401, 403 (Minn. 2000). This is in part because addressing an issue accompanied by an incomplete record often leads to distorted analysis. *See Schmuckler v. Creurer*, 585 N.W.2d 425, 429 (Minn. App. 1998), *review denied* (Minn. Dec. 22, 1998).

We note that appellant raised a number of the following issues in his response to respondents' motion to amend the judgment and findings. We are cognizant of the fact that appellant's attorney withdrew from representation following trial, and appellant responded to respondents' posttrial motions pro se. Being without counsel, appellant presented issues his former attorneys declined to argue before the district court. In fact, many of the issues raised in his response were raised for the first time. Generally, a party may not raise an issue for the first time in a posttrial motion. *Kitchar v. Kitchar*, 553 N.W.2d 97, 100 (Minn. App. 1996) (providing an exception where a party who learns of a new underlying fact during trial may preserve the issue for appeal by raising it in a posttrial motion), *review denied* (Minn. Oct. 29, 1996). Accordingly, the following issues were not properly preserved for appeal.

On appeal, appellant argues that the district court erred when it declined to construe decedent's annuity contracts as satisfying the Statute of Frauds for the purpose of creating a contract between appellant and decedent. This argument is offered to show an express or implied contract, but appellant withdrew both of those claims before trial.

Appellant argues that the district court erred by refusing to award the value of decedent's machinery to appellant, which was contrary to the trust documents. This

argument relates to appellant's probate claims, which were not properly preserved for appeal. Appellant did not raise his probate issues at trial, even though he had an opportunity to do so.²

Appellant argues the district court erred by refusing to adjudicate the value of the precious metals kept in decedent's safe or to order discovery on the issue. Appellant claims this is relevant because of his share of decedent's estate. Appellant also argues that the district court erred by refusing to grant him the farm equipment and plot of land promised to him in the amended trust. These arguments relate to appellant's probate case. Appellant did not raise any of his probate issues at trial, and they are not preserved for appeal.

Because these issues were not raised below, we will not consider them now. *See Oanes*, 617 N.W.2d at 403 (holding that issues not raised below are not considered on appeal).

Affirmed.

² The parties waived opening statements in lieu of posttrial motions and proposed orders. Appellant referenced the pour-over will in his posttrial motion, but only to the extent that it protected appellant from rent or reimbursement claims by respondents and that appellant was entitled to further milk revenue. He did not claim he was entitled to residue of the estate under the pour-over will.