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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1187**

James C. Holmes,
Respondent,

vs.

Wanda J. Palo,
Appellant,

John Doe, et al.,
Defendants.

**Filed July 2, 2018
Affirmed
Jesson, Judge**

St. Louis County District Court
File No. 69VI-CV-14-604

Benjamin B. Bohnsack, Anna K.B. Finstrom, Rinke Noonan, St. Cloud, Minnesota (for appellant)

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Considered and decided by Peterson, Presiding Judge; Kirk, Judge; and Jesson, Judge.

UNPUBLISHED OPINION

JESSON, Judge

Following a 23-year romantic relationship, but no marriage, respondent James Holmes and appellant Wanda Palo were left with a problem: who owns what. This problem was complicated by the fact that the couple ran almost a dozen businesses together, had ten parcels of land implicated by the relationship, possessed a large amount of personal property, and commingled their assets. The couple turned to the district court to resolve the issue, but the court's hands were mostly tied due to a lack of record-keeping. The court determined that outside of select personal property it could decide ownership of, each party would retain the personal property in their possession. It also found that the key piece of property in this dispute, a farmstead titled only to Holmes, belonged solely to Holmes as it was purchased with his assets and he ran the farm. Finally it determined that, because Palo contributed substantially to the farming operations throughout the relationship, in order to avoid unjust enrichment to Holmes, she deserved the value of the parcels that were either jointly titled or were purchased with commingled assets. Both parties appeal the district court's order. We affirm.

FACTS

In the spring of 1964, respondent James Holmes bought a five-parcel, 120-acre cattle farm in Buhl and married later that year. In 1977, Holmes built a house on the property, along with a meat-processing plant that he began to operate. Holmes shut the meat plant down in 1988, however, when the legal entity he created for the business filed

for bankruptcy. Holmes and his wife dissolved their marriage later that year. Following the divorce, Holmes was unemployed and financially devastated.

Soon afterwards, in 1989, Holmes was introduced to a horse-riding bartender, appellant Wanda Palo. At the time, Holmes was 45 and Palo was 21. Palo agreed to help Holmes with his farming operations, and a short time later, the two began a sexual relationship. By 1990, Palo had moved in with Holmes. The two never married, and stayed together until 2013, when Palo moved out following abuse allegations.

With the end of the relationship, a new issue arose: who was the proper owner of the couple's real and personal property? After 23 years together, the couple's finances and contributions towards property were deeply intertwined, and there was inadequate record-keeping to look to for answers. The issue was further complicated by two facts: the couple had a large amount of property and they ran numerous businesses.

At the time of separation, there were ten parcels of land implicated by the relationship. One of the primary pieces of property in dispute is a five-parcel farmstead that Holmes purchased in the 1960s. Following the divorce between Holmes and his ex-wife, he was awarded the farmstead. The farmstead is currently encumbered by an \$84,000 mortgage, and the taxable market value of the farmstead is \$324,900. There are also two different parcels that Holmes acquired during the relationship with Palo. While titled solely in Holmes's name, they were purchased with commingled assets. The taxable market value of these two parcels is \$18,300. Lastly, there are three parcels that Palo and

Holmes acquired together and had titled in both of their names. The taxable market value of these three parcels is \$76,800.¹

In addition to possessing these ten pieces of real property, the couple engaged in nearly a dozen business ventures. These businesses included: an adult-foster-care home; a meat-processing plant; buying and selling horses; a pony ring; a feeder-cattle operation; raising stock cows; raising pasture cattle; an equipment restoration business; raising chickens; and selling heifers and breeding bulls. And beyond these specific business ventures, there were also general farming operations. Holmes's and Palo's individual involvement with each business varied. For example, while Palo was the primary contributor to the pony ring and horse selling business, Holmes primarily worked the general farming operations, and both parties were involved in the meat-processing plant. The income streams from the businesses were eventually commingled and put toward furthering their business operations.

After Palo moved onto the farm, she began spending money and investing in the farming operations, believing that she was earning equity. She did not receive a salary for her work on the farm. Instead, according to Palo, Holmes told her that the farm would be hers one day. More specifically, she believed that if Holmes passed away, she would acquire the joint assets, and if they separated, she would get an unspecified "split."

¹ While the district court correctly described the values of each of the three parcels in its order, it adds them up to an incorrect number – \$78,000. This mistake is inconsequential though, as it orders these properties sold with direction as to what to do with the "proceeds," not the valued amounts.

When the couple separated they were unable to resolve the issue of what property belonged to whom and turned to the judicial system for a resolution. In September 2014, Holmes filed a lawsuit against Palo setting forth three counts: conversion, replevin, and judicial sale. The complaint alleged that Palo unlawfully had numerous items belonging to Holmes and that joint property between the parties could not be divided through partition and needed to be sold. Palo filed counterclaims of unjust enrichment and breach of contract.² Palo requested that Holmes's assets be placed in a constructive trust for her benefit, or in the alternative, money damages. Palo later filed a motion to amend the complaint to add claims for civil assault, battery, and intentional infliction of emotional distress. This motion was denied.

The case proceeded to a three-day trial. Both parties testified in addition to several of their acquaintances and family members, and an appraiser. At trial, Palo introduced numerous exhibits that showed she contributed to the farming operations, including evidence that she took out loans to finance farm-related costs.³ The parties provided testimony as to what income they earned and what property they believed was theirs. There was testimony regarding an agreement that Palo and Holmes would each get a third of the profits from farming operations, but the parties provided conflicting testimony as to what business ventures this agreement applied to.

² The contract refers to the alleged oral contract that Holmes told Palo the farmstead would eventually belong to her. Holmes disputes this contract existed.

³ Holmes disputed this at trial and argued he was the one that gave her cash to make the payments made in her name.

Following trial, the district court found that Palo took out at least \$170,000 in loans to help pay for farming expenses and that both parties contributed to paying off debt. Similarly, the court found that Palo used profits from her horse business to pay farming expenses. Importantly, the court found that the parties' profits from their farming operations were substantially commingled, resulting in difficulty in tracing the exact source of many funds. The court determined that Holmes's argument that he was the source of the funds used to pay off debts and farming expenses was not supported by evidence.

With these findings, the district court determined that Palo was "entitled to recoup the value of her direct contributions to the profits and growth of the business operations," and that "failure to compensate her for the direct and substantial contributions would result in unjust enrichment of [Holmes]." It noted since the relationship began, Holmes's equity in the farmstead increased from \$0 to \$240,900. To compensate Palo, the court determined that the three parcels of land held in both parties' names—valued at \$76,800—should be sold and proceeds given to Palo. Additionally, the court entered a judgment of \$18,300 in favor of Palo, which was the market value of the two parcels held solely in Holmes's name. The court determined that the farmstead belonged solely to Holmes because he ran the farming operations. As for personal property, the court determined that each party was entitled to the personal property that was currently in their possession, unless specified otherwise, as much of it was acquired through commingled assets and there was insufficient evidence to determine exact ownership.⁴

⁴ The district court did award specific pieces of property to each party, but did not explicitly account for all the personal property mentioned in the parties' pleadings.

Both parties filed motions for amended findings, but outside of a few adjustments to personal property, the motions were denied. The motions included Palo's request for a new trial to reconsider amending her complaint to add intentional tort claims, and Holmes's motion to supplement the record.

Both Holmes and Palo appeal.

D E C I S I O N

On appeal, both parties contend that the district court erred in how it distributed the couple's property. But before we address those arguments, we must first determine a threshold issue of jurisdiction. Holmes argues that the district court lacked jurisdiction under the anti-palimony statutes to hear Palo's claims. We therefore first address whether the district court had jurisdiction to reach the issue of property, and then consider whether the district court erred in its property determinations.

I. The district court properly heard the case on the merits because the anti-palimony statutes did not apply.

Holmes contends that the district court erred when it determined the anti-palimony statutes did not bar it from hearing Palo's claims. Minnesota's anti-palimony⁵ statutes are composed of Minnesota Statutes sections 513.075-.076 (2016). Minnesota Statutes section 513.075 states that contracts between unmarried parties, when sexual relations are contemplated, are only enforceable if the contract is signed. And Minnesota Statutes

⁵ The term "palimony" was coined by a Los Angeles divorce attorney, Marvin Mitchelson, presumably by combining the words pal and alimony. See Ashley Frankel, *The Right to Palimony: Why New York Should Change Its Law to Enforce Claims Between Unmarried Cohabitants*, 20 Cardozo J.L. & Gender 173, 175 (2013).

section 513.076 states that absent that contract, courts are without jurisdiction to hear claims by an individual “to the earnings or property of another individual if the claim is based on the fact that the individuals lived together in contemplation of sexual relations.”

The Minnesota Supreme Court explained that the anti-palimony statutes “prevent an unmarried couple living together in ‘contemplation of sexual relations’ from receiving the legal rights conferred upon married couples.” *In re Estate of Palmen*, 588 N.W.2d 493, 496 (Minn. 1999) (citation omitted). In contrast, a married couple is entitled to certain rights regarding property distribution upon a marriage dissolution. See Minn. Stat. § 518.58 (2016). But by living together in contemplation of sexual relations, neither cohabitant obtains an ownership interest to the other individual’s property.⁶ *Id.* However, the statutes do “not apply where one party is merely seeking to ‘preserve and protect [his or] her own property’ and is not ‘seek[ing] to assert any rights in the property of a cohabitant.’” *Id.* at 495 (citing *In re Estate of Eriksen*, 337 N.W.2d 671, 674 (Minn. 1983)).

In cases where the anti-palimony statutes precluded claimants from receiving property, they failed to either show that they had a contract that gave them the right to the property or that they made contributions towards that property that would provide grounds for an unjust-enrichment claim. For example, in *Roatch v. Puera*, the district court determined the anti-palimony statutes did not apply and awarded the claimant one-third of

⁶ This principal is consistent with the Minnesota legislature’s explicit prohibition of common-law marriages. Minn. Stat. § 517.01 (2016); see also *Baker v. Baker*, 222 Minn. 169, 171, 23 N.W.2d 582, 583 (1946). Imposing certain obligations and rights unique to marriages, such as support obligations, to unmarried couples would “contravene the legislative prohibition of common-law marriage.” *Abbott v. Abbott*, 282 N.W.2d 561, 566 (Minn. 1979).

the cohabiter's net worth in the form of a lien on the cohabiter's home and the cohabiter's car. 534 N.W.2d 560, 564 (Minn. App. 1995). This court reversed because the claimant did not contribute financially to the car or real estate titled in the cohabiter's name, and only contributed "minimally" to the cohabiter's business. *Id.* Similarly, in *Mechura v. McQuillan*, the plaintiff sought an interest in real estate purchased during her relationship with defendant, even though she did not contribute financially to the purchase of the real estate in question, and instead only made contributions to joint living expenses. 419 N.W.2d 855, 857-58 (Minn. App. 1988). This court affirmed the district court's determination that the anti-palimony statutes barred her claim. *Id.* at 859.

These cases are distinct, however, from when courts have determined the anti-palimony statutes do not apply because the claimant made significant contributions towards the property in dispute. In *In re Estate of Eriksen*, an unmarried couple, Potvin and Eriksen, purchased a home together and split all of the associated costs equally, but titled it solely in Eriksen's name. 337 N.W.2d at 672. No contract was ever signed between the two. *Id.* A few years later Eriksen passed away, and Potvin sought a one half interest in the home, which the district court awarded. *Id.* The Minnesota Supreme Court determined the anti-palimony statutes did not apply because even though the couple lived together out of wedlock in contemplation of sexual relations, the sexual relationship was not the sole consideration underscoring Potvin's claim to the home as she made equal contributions toward the property. *Id.* at 674. Similarly in *In re Estate of Palmen*, the Minnesota Supreme Court determined that the anti-palimony statutes did not prevent a claimant from recovering her own direct contributions to property, as she was not seeking to recover the

value of general contributions she made in the relationship, nor was she making a claim to her cohabitant's earnings or property. 588 N.W.2d at 496-97.

We discern that the relationship between Holmes and Palo is aligned with the facts of *Eriksen* and *Palmen*, as Palo is seeking to recover her own direct contributions under a theory of unjust enrichment. As the district court noted, because Palo's unjust-enrichment claim was based on the recovery of substantial contributions she made toward Holmes's farming operations and debts, it was not based merely on cohabiting in contemplation of sexual relations. In short, Palo's claim was not seeking the rights of a married couple. And the fact that she lived with Holmes does not preclude her from seeking a common-law claim of unjust enrichment. See *In re Estate of Palmen*, 588 N.W.2d at 496 (“[T]he statutes do not operate to automatically divest unmarried couples living together of all legal remedies.”). Therefore, the district court correctly determined that the anti-palimony statutes did not apply.

Holmes concedes that unmarried parties can recover their own direct contributions to avoid unjust enrichment, as the court found was the case here. However, he argues that there must be “some kind of agreement between the parties as to the disposition of the property or money” for an unmarried couple to fall outside of the anti-palimony statutes. Holmes does not cite to any language in the statutes or caselaw to support this requirement. Nor do we find any. Additionally, this argument conflicts with *In re Estate of Eriksen*, where the couple failed to create any contract detailing their financial agreement. 337 N.W.2d at 672. While Holmes does cite to cases where there was no written agreement and the court found a cohabiter's claim failed for other reasons, this does not support his

inference that an agreement is a prerequisite to a claim of unjust enrichment for unmarried couples.

II. The district court's property determinations and equitable relief were within its wide discretion.

We now turn to the case on the merits and address whether the district court erred in how it ordered relief for the parties. As discussed above, unlike marriage dissolutions, there is no statute to govern property distribution in this situation. Therefore, when the district court was tasked with dividing property between the parties, it was in the realm of fashioning equitable relief. District courts have broad discretion when fashioning an equitable remedy. *State ex rel. Swan Lake Area Wildlife Ass'n v. Nicollet Cty. Bd. of Cty. Comm'rs*, 799 N.W.2d 619, 625 (Minn. App. 2011). And the district court's equitable determinations are only overturned for an abuse of discretion. *City of N. Oaks v. Sarpal*, 797 N.W.2d 18, 23 (Minn. 2011). However, legal issues relating to property distribution are reviewed de novo. *See Drewitz v. Motorwerks, Inc.*, 867 N.W.2d 197, 204 n.2 (Minn. App. 2015), *review denied* (Minn. Sept. 15, 2015). Before addressing the parties' numerous arguments, we first determine whether the district court's equitable remedy was an abuse of discretion. We then address the parties' contentions that the district court erred by improperly distributing the property, failing to take into account the parties' expenses, declining to impose a constructive trust, applying the incorrect standard, and denying the parties' post-trial motions.

Without the principles of marriage dissolution to guide it, the district court faced a difficult issue that was two-fold. First, it had to ascertain the true owner of the disputed

real and personal property in light of Holmes's conversion and replevin claims and Palo's breach-of-contract claim. Second, it had to determine what relief, if any, would satisfy Palo's claim of unjust enrichment due to her contributions towards the farming operations and Holmes's debts.

With respect to personal property, the district court was only able to ascertain the owner of some of the property because much of it was either purchased with commingled assets or there was no evidence documenting the correct owner. For the personal property where it could not determine ownership, the court held that the parties were to retain the personal property in their possession. This was not an abuse of discretion as the district court only redistributed property that a party established ownership of.

In regard to the farmstead titled solely in Holmes's name, the district court noted that Holmes ran the farm without the aid of Palo, and as a result, she failed to gain a property interest in the land. This too was not an abuse of discretion as we are not aware of any legal authority, nor do the parties direct our attention to any, that suggests Palo gained an interest in the farmstead by financially contributing to the farming operations.

Moving beyond the personal property and the farmstead, the district court addressed Palo's claim for unjust enrichment. To prevail on an unjust-enrichment claim, the party must show: (1) a benefit conferred; (2) the defendant's appreciation and knowing acceptance of the benefit; and (3) the defendant's acceptance and retention of the benefit under such circumstances that it would be inequitable for him to retain it without paying for it. *Acton Constr. Co. v. State*, 383 N.W.2d 416, 417 (Minn. App. 1986), *review denied* (Minn. May 22, 1986). The district court determined that Palo provided the benefit of

contributing toward Holmes's farming operations and debts, and that it would be unjust for her not to recoup the value of her contributions. This was not an abuse of discretion as the record establishes Palo contributed a significant amount of money that benefited Holmes, Holmes was aware of this benefit and accepted it, and it would be unjust for Palo not to recoup any of her contributions, especially in light of the district court's determination that she did not gain any interest in the farmstead.

Palo contends that while the district court was correct when it determined that she is "entitled to recoup the value of her direct contributions," it did not actually award her the value of her direct contributions. Palo notes that the district court awarded her the value of five parcels, approximately \$95,000, but that Holmes received the five-parcel farmstead worth \$240,900. She contends that because she contributed more than \$95,000, she should have received more value or an interest in the farmstead. However, Palo does not provide any legal authorities suggesting the relief granted for unjust enrichment must mirror the amount of contributions made. And such a rigid requirement would conflict with the long-understood principle that district courts have broad discretion when fashioning an equitable remedy.⁷ *See State ex rel. Swan Lake Area Wildlife Ass'n*, 799 N.W.2d at 625. Because the district court carefully reviewed all of the assets between the parties and meticulously

⁷ We note that this argument is contrary to what Palo sought at trial, as her counsel stated: "I want to make very clear and I'll admit right now that we are not alleging that every dollar that got paid towards debt needs to be repaid to my client." Additionally, Palo concedes that if she were awarded the full value of her contributions, it may exceed the total existing assets between the parties. This further supports our determination that the district court did not abuse its discretion in its choice for relief, as awarding all assets to Palo, and none to Holmes, would be an extreme form of relief.

determined which party should receive what, it was not an abuse of discretion for the district court to determine the value of the five parcels satisfied Palo's claim for unjust enrichment.⁸

Holmes argues that the district court erred because it did not consider the expenses Palo incurred from the businesses, when it made the finding that Palo used the assets from those business to pay debts and expenses relating to the farming operation. In other words, Holmes contends that, by neglecting to take into account expenses and only looking at the income, the district court failed to see that there was no significant net profit available for reinvestment. We disagree. The district court's findings of fact stated that profits, not income, from those businesses were used to pay off debts. And by referring to the source of Palo's contributions as profits, it is implicit that the court took into account both income and expenses. Furthermore, the district court declining to explicitly break down the business's expenses and revenues does not mean its determination that Palo's contributions came from profits was clearly erroneous. We therefore reject Holmes's argument that the district court erred by only considering Palo's income from her businesses.

⁸ Palo also contends that it was an abuse of discretion for the district court to order a forced sale of the three parcels of land awarded to her, but not the farmstead awarded to Holmes. We disagree. The three parcels of land awarded to Palo are different than the farmstead awarded to Holmes, as the three parcels were titled jointly to both parties while the farmstead was titled solely to Holmes. And the court's determination to force a sale of the three parcels was well-reasoned—it did so because the contentious relationship between the parties made partition an unappealing option. Furthermore, the court here did not award Palo any equity in the farmstead, so it is unclear what legal principal would suggest the district court erred by failing to force the sale of the farm. The district court's decision to force the sale of the parcels of land awarded to Palo, but not the farmstead awarded to Holmes, was not an abuse of discretion.

Both parties make arguments regarding the role a constructive trust should play in the equitable relief. A constructive trust is a judicially created equitable remedy to prevent unjust enrichment, and the Minnesota Supreme Court has held that it is an appropriate remedy when “legal title to property is obtained through fraud, oppression, duress, undue influence, force, crime, or similar means.” *Wright v. Wright*, 311 N.W.2d 484, 485 (Minn. 1981). And like all equitable remedies, granting a constructive trust is within the sound discretion of the district court. See *In re Estate of Savich*, 671 N.W.2d 746, 751 (Minn. App. 2003) (stating a constructive trust is an equitable remedy); *Nadeau v. Ramsey County*, 277 N.W.2d 520, 524 (Minn. 1979) (stating that granting equitable remedies is within the sound discretion of district courts, and only clear abuse of the discretion warrants reversal).

Palo argues the district court should have imposed a constructive trust and that awarding her only the value of five parcels of land was an abuse of discretion.⁹ But Palo fails to cite to any legal authority suggesting it is an abuse of discretion for the district court to not impose a constructive trust when it fashioned other relief it deemed appropriate to avoid unjust enrichment. Nor do we discern any reason why this would be the case. Holmes on the other hand contends the district court did impose a constructive trust, and

⁹ In Palo’s pleadings, she requested that the district court impose a constructive trust encompassing all the assets for her benefit, based on Holmes’s abusive conduct. In the district court’s order, it acknowledged this request, but instead elected to provide Palo the value of five parcels of land to compensate her for contributions towards Holmes’s farming operation and debts. We note that because the district court acknowledged this constructive-trust argument and then did not explicitly reject it, but instead provided other relief, this court can assume it rejected the argument. See *Hogenson v. Hogenson*, 852 N.W.2d 266, 275 (Minn. App. 2014) (“Because this argument was presented to the district court, but the district court did not issue a ruling on it, we assume the argument was implicitly rejected when the district court granted [opponent]’s motion.”).

in doing so, it applied the wrong standard—the default standard of preponderance of the evidence instead of a clear-and-convincing-evidence standard. He reasons that under *In re Estate of Eriksen*, district courts may only impose a constructive trust once it is “persuaded by clear and convincing evidence that the imposition of a constructive trust is justified to prevent unjust enrichment.” 337 N.W.2d 671, 674 (Minn. 1983). And that here, the clear-and-convincing standard was not met as the district court did not trace Palo’s contributions. But as Palo’s argument illustrates, a constructive trust was not applied here. Because the district court properly exercised its discretion in declining to impose a constructive trust, both Palo’s and Holmes’s arguments are unpersuasive.

Palo and Holmes also argue the district court abused its discretion in denying their respective post-trial motions—Palo’s motion for a new trial and Holmes’s motion to supplement the record. We address each party’s argument in turn.

Before trial, Palo filed a motion—which was denied—to amend her complaint to add intentional tort claims related to physical and sexual abuse she claimed she suffered from Holmes. During trial, Palo testified that she was abused throughout the relationship. And after trial, she filed a motion for a new trial arguing this testimony was newly discovered evidence—instead of being based on a single domestic-abuse incident, now the claims would be based on long-term abuse. The district court denied the motion. On appeal, Palo argues it was an abuse of discretion to deny her new-trial motion based on newly discovered evidence. We disagree. Under Minnesota Rule of Civil Procedure 59.01, a new trial may be granted based on “[m]aterial evidence newly discovered, which with reasonable diligence could not have been found and produced at the trial.” Palo’s trial

testimony that she was abused throughout the relationship does not satisfy the requirement of “newly discovered” evidence because while the extent of the abuse asserted may have been new to Palo’s counsel, it was not new to Palo. The standard is not evidence newly discovered by a parties’ counsel, but rather evidence that could not have been found and produced at trial with reasonable diligence. Because Palo’s testimony cannot serve as newly discovered evidence, the district court did not abuse its discretion by denying the new-trial motion.

Holmes argues the district court should have granted his post-trial motion to supplement the record with evidence that Palo purchased a piece of property during the relationship. He argues that not taking into account this additional evidence is akin to marriage dissolution cases where marital property was excluded from the court’s analysis. But this was not a marriage dissolution case. The court did not make findings as to the assets and financial status of the two parties. It instead determined that Palo was entitled to the direct contributions she made or Holmes would have been unjustly enriched. Therefore, the district court did not err by declining to supplement the record to accept evidence of additional assets Palo may have had.

In sum, the district court’s well-reasoned and detailed order setting forth the equitable remedy for unjust enrichment—the proceeds of the sale of three parcels and the monetary value of two other parcels—was not an abuse of discretion. Its factual findings were supported by the record, and despite the parties’ numerous challenges, it did not misapply any law. *See Pechovnik v. Pechovnik*, 765 N.W.2d 94, 98 (Minn. App. 2009)

(stating a district court abuses its discretion if its findings are unsupported by the record or if it misapplies the law).

Affirmed.