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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1487**

Vilnis Neilands,
Appellant,

vs.

Elizabeth Perry,
Respondent.

**Filed April 27, 2020
Affirmed
Florey, Judge**

Cook County District Court
File No. 16-CV-17-175

Erik F. Hansen, Elizabeth M. Cadem., Burns & Hansen, P.A., Minneapolis, Minnesota (for appellant)

Scott A. Witty, Leah L. Fisher, Hanft Fride, P.A., Duluth, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Worke, Judge; and Florey, Judge.

UNPUBLISHED OPINION

FLOREY, Judge

Appellant challenges the district court's grant of summary judgment on his unjust-enrichment claim, arguing that it erred in determining that there was no evidence to support the damages element. We affirm.

FACTS

Vilnis Neilands and Elizabeth Perry met in 1992 while they were both residing in New York. They developed a romantic relationship shortly thereafter and began cohabiting, but they never got married. The parties dispute how each understood their relationship.

Since before meeting Neilands, Perry operated a business wherein she made and engraved signs and other craft projects to sell to the public, a business she would later name “E.R. Perry Signs & Engraving” (the business). In 1996 or 1997, the parties moved to Grand Marais, Minnesota, and began residing on a plot of undeveloped real property referred to as “the farm” in this litigation. Perry initially purchased the farm with her own assets; and while Neilands was included as a joint owner for a time, the parties agreed to transfer it back to Perry for tax purposes in 2002, and the farm has remained solely in her name since.

In 2016, the parties’ relationship broke down, and they ceased cohabitating. Over the period between their moving to Minnesota and the conclusion of their relationship, they had, in relevant part, (1) acquired the farm and transferred or altered title to it on more than one occasion; (2) acquired a building in which the business could be operated; (3) caused some of the land on of the farm to undergo certain developments; (4) had a Quonset building erected; and (5) grown the business to a considerably larger scale.

The parties vigorously contest many aspects of the causes and effects of these accomplishments, such as the extent to which either party dedicated his or her own labor or resources to them, the understanding they had with respect to them, and the way in which

they were actually done. Each party brought claims against the other, alleging that the other was unjustly enriched by the claimant's own labor and resources. The procedural history relevant to appeal concerns Perry's motion for partial summary judgment. The district court granted it and dismissed Neilands's requests for constructive trusts over both the farm and the business. It did so because it also granted Perry summary judgment on Neilands's unjust-enrichment claim, which was the foundation of the constructive-trust requests. The district court also found that it did not have personal jurisdiction over the business, as it was not a party to the action. Neilands requested leave to amend his complaint to include the business, but the district court denied it, concluding that such an amendment would be futile given the summary judgment entered on his prerequisite unjust-enrichment claim. Neilands appealed.

D E C I S I O N

The court shall grant summary judgment if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law. . . .

A party asserting that there is no genuine issue as to any material fact must support that assertion by: (1) citing to particular parts of materials in the record, . . . or (2) showing that the materials cited do not establish the absence or presence of a genuine issue for trial, or that an adverse party cannot produce admissible evidence to support the fact.

Minn. R. Civ. P. 56.01, .03(a). "On review of summary judgment, we view the evidence in the light most favorable to the party against whom summary judgment was rendered." *Gunderson v. Harrington*, 632 N.W.2d 695, 701 (Minn. 2001). The nonmoving party may avoid summary judgment by establishing an issue of material fact with "substantial

evidence;” which includes evidence from which reasonable persons might draw different conclusions, but excludes mere speculation that lacks any “concrete” evidence. *Osborne v. Twin Town Bowl, Inc.*, 749 N.W.2d 367, 371 (Minn. 2008) (quotations omitted). The “substantial” in “substantial evidence” refers “to legal sufficiency and not quantum.” *DLH, Inc. v. Russ*, 566 N.W.2d 60, 70 (Minn. 1997). “In a typical case, when the material facts are not in dispute, an appellate court will review the district court’s grant of summary judgment de novo.” *Melrose Gates, LLC v. Moua*, 875 N.W.2d 814, 819 (Minn. 2016).

“In order to establish a claim for unjust enrichment, the claimant must show that another party knowingly received something of value to which he was not entitled, and that the circumstances are such that it would be unjust for that person to retain the benefit.” *Schumacher v. Schumacher*, 627 N.W.2d 725, 729 (Minn. App. 2001). Additionally, “it must be shown that a party was unjustly enriched in the sense that the term ‘unjustly’ could mean illegally or unlawfully,” which has since “been extended to also apply where . . . the defendants’ conduct in retaining the benefit is morally wrong.” *Id.* The measure of recovery for a successful unjust-enrichment claim is generally the extent of the benefit unjustly retained by the opposing party and not the extent of the claimant’s expenditure or loss. *Anderson v. DeLisle*, 352 N.W.2d 794, 796 (Minn. App. 1984), *review denied* (Minn. Nov. 8, 1984).

Despite the district court finding there to be a number of issues of fact in this case, it granted Perry’s motion for summary judgment. It did so on the basis that Neilands failed to substantiate his claimed damages and that a lack of evidence in the record prevented him from making such a showing with any specificity. *See Wick v. Widdell*, 149 N.W.2d 20,

22 (Minn. 1967) (“In an ordinary civil action the plaintiff has the burden of proving every essential element of his case, including damages by a fair preponderance of the evidence.”). Referencing several items in the record, Neilands argues that he has proven the measure of his damages—at least to an extent sufficient to preclude summary judgment. We agree with the district court that Neilands cannot sufficiently show his damages on this record.

First, Neilands attempts to establish damages by recounting, from affidavits, the cost of the many products and services he obtained in furtherance of the farm’s development. The sum of these, he argues, as well as the value of his own labor, ought to be the measurement of damages. However, as stated above, it is well-established that recovery in unjust enrichment is limited to the amount by which the other party was enriched—not the amount of the claimant’s loss. Neilands contends that this court’s holding in *Anderson v. DeLisle* allows for divergence from this rule where equity so requires. *Anderson*, 352 N.W.2d 796. Specifically, Neilands argues that the district court erred in not considering his expenditures as damages in light of our language in *Anderson* that this rule “cannot be applied mechanically” and our modification of the jury award in that case to match the claimant’s expenditures. *Id.* We reject this contorted reading of *Anderson*.

In *Anderson*, the jury awarded the plaintiff nearly twice as much as he had expended to enrich the defendant. *Id.* at 795. This court reduced the award to the amount of plaintiff’s expenditures, recognizing that unjust enrichment is an equitable remedy and that “[e]quity cuts both ways.” *Id.* at 796. Neilands is correct that the *Anderson* opinion states that the enrichment rule of damages “cannot be applied mechanically,” but he fails to take notice of the remainder of that sentence: “to situations where the alleged value of

improvement exceeds their cost.” *Id.* Here, the issue is not that Neilands has been awarded so much as to implicate equity concerns; it is that he has not produced evidence to support a proper measure of damages—a necessary element of his claim. *See Wick*, 149 N.W.2d at 20.

The only evidence even related to potential benefits to Perry is a 2016 market analysis of the farm, which showed that the value of the property had increased by a factor of six since its purchase. We agree with the district court that this too is insufficient to substantiate the damages element of Neilands’s unjust-enrichment claim because he has not presented any evidence to (1) support that his labor and investment was at all responsible for the increase and, if so (2) identify any amount of that increase for which he was responsible. Any number of factors could have influenced the increased value of the farm, including the plethora of factors underlying market fluctuations, increases in the value of real estate generally, and the investments Perry made herself. With nothing in the record with which the district court could have even estimated a potential range of damages, Neilands’s claim that his investments increased the property value is no more than a conclusory assertion. The same is true with respect to the business—Neilands only provides evidence of his expenditures, not their relation, if any, to Perry’s enrichment.

There is plenty of evidence in the record that Neilands invested in the development of the farm and business and that Perry, as the owner, has more now than she did at the time of purchase; but there is nothing that connects those two sets of facts—much less indicates the degree to which they are causally connected. Neilands had ample opportunity during discovery to gather any evidence to support the damages element of his claim but

did not. We therefore affirm the district court's grant of summary judgment and need not address the issue regarding personal jurisdiction over the business.

Affirmed.