

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JEAN H. PAK, N/K/A JEAN H. YOUN,
AN INDIVIDUAL,
Appellant,
vs.
HWAIJU KIM, AN INDIVIDUAL,
Respondent.

No. 84539-COA

FILED

MAR 19 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Jean H. Pak appeals from a district court final judgment following a bench trial in a real property and contract action. Eighth Judicial District Court, Clark County; Nadia Krall, Judge.

Pak met respondent Hwaiju Kim, a South Korean citizen, in early 2007 when she was working at Wynn Las Vegas. Kim and Pak began a romantic relationship and held themselves out as engaged to be married, and Kim began visiting Las Vegas fairly frequently. Shortly thereafter the parties sought to purchase a home in Summerlin (the Narra property), and they ultimately closed on the home in July 2007. Kim brought cash during his trips to Las Vegas, which was used for the down payment. But, while Kim paid the entirety of the downpayment and closing costs, only Pak was listed on the title and mortgage for the property.

Following the closing, Pak moved to the Narra property. The parties ended their romantic relationship in November 2007, although they remained amicable and continued to communicate about the property. Due to the downturn in the real estate market, they decided to wait to sell the

property and Pak continued to reside there and made the mortgage payments beginning in 2011. Around 2015, after the real estate market began to recover, Kim wanted to sell the property, and the relationship between the parties began to deteriorate. By March 2019, Pak told Kim that she was married and asked that he no longer contact her.

In July 2019, Kim initiated the underlying proceedings, alleging Pak would be unjustly enriched if she kept the Narra property and sought a constructive trust over the property. Kim claimed that he paid for the down payment, four years of mortgage payments, and repair costs, but that the parties agreed to have the title and mortgage placed in Pak's name due to Kim's status as a non-citizen. Pak filed an answer, asserting, in pertinent part, that the statute of frauds and the statute of limitations barred Kim's claims.

Following a three-day bench trial, the district court entered judgment in favor of Kim on his unjust enrichment claim and awarded him \$240,000 in damages but declined to impose a constructive trust. The court rejected Pak's statute of limitations defense, concluding that the limitations period commenced in March 2019 when Kim was put on constructive notice of his potential claims when he learned that Pak had no intention of selling the Narra property nor compensating him for his investments, and that he filed his complaint four months later. This appeal followed.

This court reviews a district court's legal conclusions following a bench trial de novo, but we will not disturb the district court's factual findings "unless they are clearly erroneous or not supported by substantial evidence." *Wells Fargo Bank, N.A. v. Radecki*, 134 Nev. 619, 621, 426 P.3d 593, 596 (2018). "Substantial evidence is evidence that a reasonable mind

might accept as adequate to support a conclusion.” *Winchell v. Schiff*, 124 Nev. 938, 944, 193 P.3d 946, 950 (2008) (internal quotation marks omitted).

Pak first makes a summary argument, without analysis or explanation, that Kim could have discovered the facts giving rise to his unjust enrichment claim much earlier, or alternatively, that no facts support that the statute of limitations began to run in 2019. Because Pak failed to cogently argue this claim, including supporting her contention with any explanation or pointing to any facts in the record to show that the statute of limitations should have started accruing at an earlier date, we need not consider this issue. *See Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider an appellant’s argument that is not cogently argued).

Pak next contends that the district court erred by rejecting her statute of frauds defense, which she asserts should have precluded the award of damages. In response, Kim argues that the statute of frauds defense was rendered moot when the district court denied his constructive trust claim and that the writing requirement set forth in the statute of frauds is inapplicable to an unjust enrichment claim, which do not require a writing. Pak does not respond to Kim’s arguments in her reply brief.

The transfer of an interest in real property is subject to Nevada’s statute of frauds, which generally requires a conveyance of real property to be set forth in a properly executed written instrument. *See* NRS 111.205(1) (generally providing that “[n]o estate or interest in lands . . . shall be created, granted, assigned, surrendered or declared . . . unless by act or operation of law, or by deed or conveyance, in

writing”); *Occhiuto v. Occhiuto*, 97 Nev. 143, 147, 625 P.2d 568, 570 (1981) (stating the same).

Here, it was undisputed that there was no written agreement between the parties regarding their respective interests in the Narra property. It was similarly undisputed that the title and mortgage were in Pak’s name only. But the district court awarded Kim damages for unjust enrichment based on his financial contributions towards the property’s purchase and upkeep, not title and ownership to the property itself. On appeal, Pak presents no cogent arguments or authority to support the proposition that the statute of frauds bars recovery under an unjust enrichment claim. Indeed, no discussion or mention of this proposition is made in Pak’s briefing. Instead, she simply points to authority regarding exceptions to the statute of frauds and asserts that Kim has not shown these exceptions apply. Under these circumstances, where Pak has failed to provide any cogent argument or authority showing that the statute of frauds applies to bar recovery on Kim’s unjust enrichment claim, we conclude Pak has not demonstrated that she is entitled to relief on this issue. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38. While Kim likewise has not supported his appellate contentions with relevant authority, as the appellant, Pak bore the burden of proving she is entitled to relief on appeal. *See id.*; *see also* NRAP 28(a) (stating the general requirement that an appellant’s opening brief include citations to relevant legal authority).

Regardless, contrary to Pak’s position, the statute of frauds does not preclude the pursuit of a claim for unjust enrichment. *See e.g.*, 66 Am. Jur. 2d Restitution and Implied Contracts § 72 (providing that “[a]

person who renders performance under an agreement that cannot be enforced against the recipient by reason of . . . the failure to satisfy an extrinsic requirement of enforceability such as the Statute of Frauds, has a claim in restitution against the recipient as necessary to prevent unjust enrichment.”); see also Restatement (Third) of Restitution and Unjust Enrichment § 31 (2011) (stating the same).

Finally, Pak contends that the district court erred by finding in Kim’s favor on his unjust enrichment claim. As a preliminary matter, we note that Pak has again failed to develop any cogent argument on this claim. *Id.* However, even considering this claim, we discern no error. To recover for unjust enrichment, a plaintiff must show that he conferred a benefit on the defendant, that the defendant appreciated the benefit, and that the defendant accepted and retained the benefit under circumstances where it would be inequitable for the defendant not to reimburse the plaintiff. *Certified Fire Prot., Inc. v. Precision Constr., Inc.*, 128 Nev. 371, 381, 283 P.3d 250, 257 (2012). This doctrine is applicable “where there is no legal contract but where the person sought to be charged is in possession of money or property which in good conscience and justice he should not retain but should deliver to another or should pay for.” *Leasepartners Corp. v. Robert L. Brooks Tr. Dated Nov. 12, 1975*, 113 Nev. 747, 756, 942 P.2d 182, 187 (1997) (internal quotation marks and brackets omitted).

Here, the district court concluded that Kim proved his unjust enrichment claim because he conferred the title to the Narra property to Pak and allowed her to use approximately \$70,000 of his money for mortgage payments and other property-related expenses, that Pak appreciated the benefit of the Narra property by taking exclusive possession

of and residing in it and later being allowed to pay the mortgage in lieu of paying rent on the Narra property. Finally, the court further found that it would be inequitable for Pak to keep the value of Kim's investment because she knew or should have known that Kim had a reasonable expectation that either the property or his investment would be returned to him.

Based on our review of the record, we conclude that substantial evidence supported the district court's determination. *See Wells Fargo Bank, N.A.*, 134 Nev. at 621, 426 P.3d at 596. In particular, Kim testified that he provided the money for the down payment, four years of mortgage payments, and certain repairs to the property and intended to purchase it as an investment. Kim further testified that, following their breakup, he permitted Pak to continue living at the Narra property during the real estate decline, but that the parties were in frequent contact regarding the property. Kim's testimony was corroborated by the parties' realtor, who testified that Kim was his client and that he had advised Kim to put the title to the Narra property in Pak's name to avoid certain tax implications for non-citizens purchasing property. The realtor further advised that, after Kim paid off the mortgage, he could put his name on the title. Kim testified that, as a result of that advice, the parties agreed to put the title in Pak's name and Pak was the sole borrower on the mortgage.

Pak acknowledged that she received the money for the down payment on the Narra property from Kim, which rebuts her claim that there was no evidence that Kim tendered funds for her benefit. *See Certified Fire Prot., Inc.*, 128 Nev. at 381, 283 P.3d at 257. Pak also testified that she lived in the Narra property following the closing and was still living there at the time of trial in 2022 and acknowledged that Kim provided the money

for the down payment in anticipation of marriage, which never occurred, demonstrating she appreciated the benefit conferred on her by Kim and that it would be inequitable for her to not reimburse him for the amounts contributed. *See id.* While Pak claimed the money was a gift, disputes the nature of the parties' agreement concerning the property, and further argues that the several thousand dollars in cash she withdrew from Kim's credit card was for "personal expenses" from September 2007 through December 2007, rather than mortgage payments or expenses related to the property, the district court was responsible for weighing conflicting evidence and was not required to accept her version of events. *See Quintero v. McDonald*, 116 Nev. 1181, 1184, 14 P.3d 522, 524 (2000) (stating that "[t]he credibility of witnesses and the weight to be given their testimony is within the sole province of the trier of fact").

Additionally, Pak claims in her reply brief that the evidence was insufficient because Kim failed to provide documentary evidence regarding the money. It is undisputed that Kim gave Pak money for the downpayment. It is likewise undisputed that Kim provided additional funds to Pak, although the parties dispute what those funds were to be used for. On these points, both parties provided only testimonial evidence to support their assertions. On appeal, Pak fails to cite to any authority requiring documentary evidence, as opposed to just testimonial evidence, to support an unjust enrichment claim under circumstances such as the ones presented here. Thus, we need not consider this issue. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38 (explaining that this court need not consider an appellant's argument that is not supported by relevant authority).

Thus, for the reasons set forth above, we affirm the district court's judgment in favor of Kim on the unjust enrichment claim.¹

It is so ORDERED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Nadia Krall, District Judge
James Kwon, LLC
Denton Cho
Eighth District Court Clerk

¹Insofar as Pak raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.