IN THE COURT OF APPEALS
OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD INDIAN RESERVATION

ROBERT LULOW, Plaintiff and Appellant, vs. DELORES "LORI" MARIE SHOURDS PETERSON, Defendant and Appellee.	)	Cause No. AP 94-089-CV OPINION

Argued October 30 1995

Decided May 14, 1996

Keith W. McCurdy, McCurdy Law Firm, P.C., P.O. Box 1172, Polson, Montana 59860, for plaintiff and appellant.

Paul T. Ryan, Datsopoulos, MacDonald & Lind, P.C., 201 West Main, Suite 201, Missoula, Montana 59802, for defendant and appellee.

Appeal from the Tribal Court of the Confederated Salish and Kootenai Tribes, Stephen A. Lozar, Tribal Judge, Presiding.

Before: BROWN, GAUTHIER, and WHEELIS, Associate Justices.

WHEELIS, Justice:

INTRODUCTION

Plaintiff Robert Lulow appeals the order of the Tribal Court granting summary judgment in favor of the defendant.

The issues before the Court of Appeals are:

1. Was the Tribal Court's reliance on Montana case law relating to gratuitous services in a domestic relationship appropriate in this cause?

2. Did the Tribal Court correctly determine that summary judgment should have been granted?

We reverse.

Delores "Lori" Peterson, a member of the Confederated Salish and Kootenai Tribes, and Lulow, who is not a tribal member, lived together from 1985 to 1991, in Peterson's house near Ronan, on the Flathead Reservation. The house was built between 1980 and 1982, and Peterson had assumed ownership of it after her divorce, which occurred before her domestic relationship with Lulow commenced. In addition to the five-acre plot on which the house was located, Peterson also managed an adjacent seventy-five acres, which, under the terms of her divorce, belonged to the three children of that marriage.

Lulow and Peterson did not marry, but they provided a family environment for themselves, for Peterson's three children, and, for some of the six years they were together, for Lulow's children. Lulow owned and operated Bob's Auto Mart in Ronan, and Peterson worked there as a bookkeeper during the years they lived together. Peterson earned a salary for her work—at first $500.00 a month, and, later, $600.00 a month. The record shows that in addition to those funds and other personal income, Peterson at times (with Lulow's knowledge and acquiescence) drew on Auto Mart business funds for household and other expenses for both herself and Lulow.

At Peterson's house, each of the parties worked to achieve a home environment and to maintain and improve the property. Peterson assumed primary responsibility for handling leases on the adjacent acreage, cooking, and cleaning. Lulow planned and expended labor and funds on projects that added structurally to the property and that improved the surrounding acreage, including the construction of a garage and deck, landscaping, fencing, and the installation of an irrigation system. In addition to living in the house, Lulow kept equipment and vehicles on the property.

After living together for approximately six years and sharing household responsibilities, Peterson and Lulow ended their relationship late in 1991. In 1993, Peterson sold the house and the surrounding five acres for $150,000.00 and the adjacent seventy-five acres for $75,000.00, with proceeds from that land going to her children.

DISCUSSION

Lulow filed a complaint on February 25, 1994, in Tribal Court, seeking compensation from Peterson. In the three counts of his complaint, Lulow asked for the following relief:

1. For $40,000.00, a claim based upon Peterson's express or implied contract to repay that amount because of Lulow's alleged expenditure of time, money, and expertise improving Peterson's real property;

2. For, alternatively, $60,000.00, a claim based upon the equitable concept of unjust enrichment of Peterson from Lulow's alleged improvements to her real property;

3. For $52,500.00, an amount allegedly expended by Lulow for the "use, benefit and enjoyment of the defendant and her children."

In her answer, Peterson denied any liability to Lulow. She denied the existence of any contractual relationship between the parties with respect to the matters alleged in Lulow's complaint, and she asserted that the tasks performed by Lulow, the materials he supplied, and the expenses he incurred were done of his own volition, without expectation of compensation or return. She further asserted that by accepting household services, shelter, food, and other items of value, Lulow had received full payment for and discharge of any claims based on an alleged express or implied contract or alleged unjust enrichment.

In a counterclaim, Peterson sought $107,692.00, a claim based on the alleged value of the work, labor, and services she performed during the period in which the parties lived together. She alleged she provided bookkeeping services, housing for Lulow and his children, housekeeping, storage, and various materials, as well as undertaking tasks that benefited members of Lulow's family.

In answering the counterclaim, Lulow asserted that Peterson had been fully compensated by her wages and by other sums she received for her employment at Bob's Auto Mart, and that there was no agreement, either express or implied, for any payment

by him for tasks performed by Peterson in the household. Those tasks, in Lulow's view, had been undertaken for the mutual benefit of the two parties and their children. Additionally, he asserted that he had been the source of substantially all of the monies that were expended.

After discovery, including depositions of both parties, Peterson filed a motion for summary judgment. Central to the motion and its supporting brief was the argument that throughout their relationship Peterson and Lulow had an agreement that they would help each other out of affection and mutual respect without expectation of monetary reimbursement. The tasks and projects that Lulow undertook were performed willingly, without Peterson's request and without any terms concerning performance or compensation. Similarly, in their partnership arrangement, Peterson maintained that there was never an understanding or agreement that Peterson would charge Lulow for housekeeping expenses and the household tasks that she performed. Citing pertinent passages from the depositions of each of the parties, Peterson asserted that no genuine issues of material fact existed in the case and that she was entitled to judgment as a matter of law.

In his brief in opposition to the motion for summary judgment, Lulow primarily argued that issues of material fact remained and that therefore summary judgment was improper. He quoted deposition passages that he argued supported the existence of both an express and an implied contract for the payment to Lulow for his expenditure of money and labor for improvements to Peterson's real property and for his expenditure of funds for land and mortgage payments, irrigation charges, and house insurance. Lulow also asserted that he had facilitated the sale of the property with the expectation that he would be paid $40,000.00 on its sale. Only a full trial, in his view, could determine whether there was an agreement that he would be paid for his contributions to the enhanced value of the real property, or whether Peterson would be unjustly enriched as a result of those contributions.

Without hearing oral argument, the Tribal Court granted summary judgment on March 21, 1995, dismissing both the complaint and the counterclaim.

At the outset of its Summary Judgment and Order, the Tribal Court cited with approval Montana Supreme Court decisions bearing on situations from which claims have arisen for compensation for services provided within the context of family relationships or which were motivated by friendship, kindness, or some other significant relationship between the parties. As summarized by the Tribal Court, Montana law provides that "[w]here the parties live in the same household and enjoy a domestic relationship, the providing of labor, financial contributions, or a home environment are presumed to be gratuitous and imply no obligation of payment unless there is clear evidence of a contract, either express or implied between the parties existing at the time of the labor, financial contribution, or home environment was provided. If such are provided without any expectation of remuneration, they cannot afterwards be converted into an obligation to pay their reasonable value under the theory of an implied contract. Further, if such are provided for the mutual enjoyment of household members living in a domestic relationship, there is no unjust enrichment." Tribal Court Summary Judgment and Order, page 4, citing *San Antonio v. Spencer*, 82 Mont. 9, 264 P. 944 (1928), and *Ziegler v. Kramer*, 175 Mont. 236, 573 P.2d 644 (1978).

In a section of its Summary Judgment and Order denominated "findings of fact," the Tribal Court set forth the basic circumstances of the parties' relationship as it pertained to their cohabitation in Peterson's home, Peterson's employment at Lulow's place of business, and her utilization of his checking account to pay for groceries and household items.

The Tribal Court found that during their relationship, Lulow and Peterson "enjoyed the common benefits of a helping and sharing relationship like that commonly found in domestic relationships." The Court further found that the parties had agreed to help one another and did in fact help one another. Peterson had provided a home and

worked as a homemaker, benefiting Lulow and his children. The Court stated that "Plaintiff and Defendant worked on Defendant's house and property contributing labor and materials in: rebuilding a fence, farming for weed control, building a deck on the house, landscaping and installing an irrigation system for the landscaping, and building a garage."

In treating the issue of the existence of any agreement between the parties, the Tribal Court found that they had not discussed a monetary exchange for what each provided the other in labor or financial expenditure in relation to the home environment. Further, the Court found that there was no contract between them concerning Lulow's work on Peterson's property or concerning Peterson's provision of a home for Lulow and his children. Finally, the Court found that neither intended or expected payment to or from the other at the time each provided the other labor or financial expenditures in relation to their home environment. For Lulow's work and expenditures on Peterson's property, it found that Peterson orally stated that Lulow would be repaid only "both shortly before and after their relationship had ended."

In its conclusions of law, the Tribal Court first summarized the provisions of Chapter II, Section 3, Law and Order Code of the Confederated Salish and Kootenai Tribes of the Flathead Reservation. That section instructs the Tribal Court to apply first the relevant laws, ordinances, customs, and usages of the Tribes, and then the appropriate laws of the United States and pertinent regulations of the Department of the Interior. Any matter not covered by Tribal Ordinances or customs and usages of the Tribes, or by applicable federal statutes and regulations, "may be decided by the Court according to the laws of the State of Montana."

The Tribal Court found the reasoning of *San Antonio v. Spencer*, *supra*, and *Ziegler v. Kramer*, *supra*, "persuasive on the issue presented in this case." For the Court, the facts in this case indicated two things: no contract, either express or implied, existed between the parties concerning the providing of labor, financial contribution, or home

environment; and neither party was unjustly enriched by the other party providing labor, financial contribution, or home environment.

The Tribal Court concluded that Peterson was entitled to judgment as a matter of law, and her counterclaim was found without merit, because in the view of the Tribal Court "[t]here are no material facts at issue in this case." The plaintiff had presented no convincing legal basis allowing recovery for his labor and financial contributions, and, similarly, the defendant had shown no basis for recovery for her labor, financial contributions, or the plaintiff's use of her home.

In its Summary Judgment and Order, the Tribal Court extinguished all three counts of Lulow's complaint and Peterson's counterclaim. Lulow limits his appeal to the propriety of the dismissal of his claim on express or implied contract, or, in the alternative, unjust enrichment, restricting his claim to only the labor and funds he provided for the improvements to Peterson's real property. We frame our discussion accordingly.

This Court's review of a grant of summary judgment is *de novo* both as to legal questions and to the Tribal Court's determination of the existence of disputed material facts. *Spain-Morrow Ranch, Inc.*, v. West, 264 Mont. 441, 444, 872 P.2d 330, 331-32 (1994).

We find no error in the Tribal Court's drawing upon Montana law. It is not uncommon for this Court or the Tribal Court to look to Montana law for guidance in the development of case law on the Flathead Reservation. In this instance, Montana has developed reasonable, fair principles to apply to the domestic situation before the Court.

The Montana Supreme Court has held:

> "It is certainly true that where services are rendered by one person for another, which are knowingly and voluntarily accepted, without more, the law presumes that such services were given and rendered in the expectation of being paid for and will imply a promise to pay what they are reasonably worth." (28 R. C. L., p. 668.) To this rule there is a generally acknowledged exception

> which is stated in 40 Cyc., page 2815, in these words: "In the case of near relatives or members of the same family, living together as one household, the law regards personal services rendered, and board or lodging or other necessaries and comforts furnished, as gratuitous, and in the absence of an express agreement to pay for the same or facts and circumstances from which such an agreement can be inferred, there can be no recovery therefor. Where, however, it appears that the parties, at the time the services were rendered or the board and the like furnished, contemplated and intended pecuniary compensation, a recovery may be had."
> *San Antonio v. Spencer*, 82 Mont. 9, 13, 264 P. 944, 945 (1928).

Subsequently, in *Ziegler v. Kramer*, 175 Mont. 236, 239, 573 P.2d 644, 645 (1978), the Montana Supreme Court adopting the following language from a California decision:

> If at the time the services were originally rendered they were intended to be gratuitous or as an accommodation, motivated by friendship, kindness, or some other significant relationship existing between the parties, and were tendered without any expectation of remuneration, they cannot afterwards be converted into an obligation to pay their reasonable value under the theory of an implied contract.

In 1988, in a case cited by the Tribal Court, the Montana Supreme Court restated the rule and found it applicable where services are provided "by family members or through some other significant relationship." *Neumann v. Rogstad*, 232 Mont. 24, 757 P.2d 761, 764 (1988).

We now turn to a more general discussion of the requirements for granting a motion for summary judgment. Summary judgment is proper when, under the law that applies to a case, there remain no material facts in dispute. *Miller v. Western Board of Adjusters*, 427 F.2d 175 (9th Cir. 1970). There is no hard and fast rule defining the term "material fact," but, generally, under the appropriate legal doctrines that a court must apply to the dispute before it, a material fact is one that will contribute significantly to the resolution of an issue a court must decide. A fact is material if its existence or non-existence matters to the result of the case. When summary judgment is granted, a court has concluded that any facts in dispute are not important under the applicable law. A court should not make any findings of fact except by noting those that are both material

and clearly not in dispute. "[A]ll too often a set of unnecessary findings of fact is the telltale flag that points the way to a discovery that summary judgment should not have been granted." *Trowler v. Phillips*, 260 F.2d 924 (9th Cir. 1958). The Montana Supreme Court has said:

> Summary judgment, "[W]as not intended nor can it be used as a substitute for existing methods in the trial of issues of fact ..." *Kober and Kyris v. Billings Deaconess Hospital* (1966), 148 Mont. 117 at 122, 417 P.2d 476 at 479. The purpose of a motion for summary judgment is to determine whether any issues of material fact exist, and whether the moving party is entitled to judgment as a matter of law. Rule 56(c) M.R.Civ.P., and *Cereck v. Albertson's, Inc.* (1981), 195 Mont. 409, 637 P.2d 509.

> There are several important unanswered questions which remain in this case, especially concerning the validity of the security interests held by the Canadian creditors. Though Hull and McAlpine did not rest their case on any supposed failure of the security interests to attach, the trial court's memorandum implied such a possibility and it obviously weighed on the decision below. The trial court also decided several issues of fact, which is improper on a motion for summary judgment. The trial court found that the "Presumption that Irvin and Trochu were [the] owners of units 3 through 9 [is] not overcome by the evidence." This is obviously an issue which is properly left to the trier of fact.
> *Hull v. D. Irvin Transport Ltd.*, 213 Mont. 75, 81, 690 P.2d 414 (1984).

The Tribal Court must determine the existence or non-existence of disputed material facts at a trial on the merits. The party who moves for summary judgment has the burden of demonstrating that no material facts remain in dispute, rendering a trial unnecessary. *Downs v. Smyk*, 185 Mont. 16, 20, 604 P.2d 307, 310 (1979). A hearing on whether summary judgment should be granted is not equivalent to a trial, because all the party opposing summary judgment must do is show, through affidavits or otherwise, that there is evidence—as opposed to mere beliefs, conjectures, or suspicions—placing the existence of a material fact in dispute. *Morales v. Tuomi*, 214 Mont. 419, 693 P.2d 532 (1985). Whether a party opposing a motion for summary

judgment will actually prevail at trial is not relevant to the motion, since the decision on the motion for summary judgment cannot be based on the credibility of the evidence.

In the instant case, *Ziegler* and the cases of similar import establish a presumption that the ordinary exchanges of money, materials, and labor among people in a "significant relationship" are accomplished without the expectation of payment, absent evidence showing a contrary intent. It is a sensible rule, and we adopt it. Although the relationship between the parties was clearly "significant," the record discloses much that argues against the propriety of a summary judgment in either party's favor. For example, where funds, materials, and labor are expended on projects having sizable monetary consequences, the trier of fact should hesitate to rely solely on the *Ziegler* presumption, which was created in part to dispose of disputes concerning household chores and domestic expenses. That capital improvements were made does not of itself negate the presumption that no repayment was expected, but the magnitude of the expenditures as measured against the parties' other holdings and income should weigh heavily in assessing whether repayment was expected, even if only through an implied agreement or under a doctrine of equity.

Although it is possible that the *Ziegler* presumption may govern the outcome of this cause, that conclusion should await a trial on the merits. The appellant produced evidence of a possible agreement for repayment upon sale of the house, and that requires the Tribal Court to determine at trial whether, indeed, Lulow invested in Peterson's property in reasonable expectation of compensation for his capital investments in her property when it was sold to some third party. Whether his expectation existed when he made the expenditures and whether, if he had that expectation, he acquired it reasonably, through, for example, the statements, acts, or failure to act by Peterson are some of the material facts that remain in dispute in this cause.

On remand, the Tribal Court is not to take our discussion as either a complete outline or listing of all the material facts that remain to be decided, or, more importantly, a direction as to *how* this cause shall be resolved. A further quote from *Hull* is useful:

> In short, numerous issues of fact remain which must be resolved and applied to the appropriate law. The above is by no means a complete list of the outstanding questions of fact. Counsel for both parties and the District Court Judge are properly left the task of framing the issues, as the important facts are not completely before this Court, but remain to be uncovered. Without sufficient facts before us, it would be unwise to risk misguiding the lower court and counsel by attempting to list all remaining material issues of fact.
> *Hull*, 213 Mont., at 82.

For reasons of judicial economy, this Court does not require that every claim in this litigation be reopened. The Tribal Court correctly found that there was not substantial controversy related to several material facts, and they were properly deemed established. The parties lived together for six years, sharing household responsibilities, each contributing labor and funds to the maintenance of a household and a family environment. No evidence in the record below indicated that there was an express contract for the exchange of household services or an accounting for those services. The single issue to be tried on remand is whether an agreement existed, can be implied, or should be imposed in equity to the effect that, if Peterson's property were sold to a third party, the plaintiff would be compensated for his labor, material, and expenses related to capital improvements on that property .

REVERSED AND REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION.

IT IS SO ORDERED THIS 14th DAY OF MAY, 1996.

James Wheelis
Associate Justice

We concur:

Margery Brown
Associate Justice

Robert Gauthier
Associate Justice

CERTIFICATE OF MAILING

I, Abigail Dupuis, Appellate Court Administrator, do hereby certify that I mailed true and correct copies of the **OPINION** to the persons first named therein at the addresses shown below by depositing same in the U.S. Mail, postage prepaid at Pablo, Montana, or hand-delivered this 22nd day of May, 1996.

Keith W. McCurdy
McCurdy Law Firm, P.C.
Post Office Box 1172
Polson, Montana 59860

Paul T. Ryan
Datsopoulos, MacDonald & Lind, P.C.
201 West Main, Suite 201
Missoula, Montana 59802

Clerk of Court
Tribal Court

Abigail Dupuis

Abigail Dupuis
Appellate Court Administrator