

STATE OF MICHIGAN
COURT OF APPEALS

BILLY L. WHITSON,

Plaintiff/Counter Defendant-
Appellee,

v

CAROL L. KALTZ,

Defendant/Counter Plaintiff-
Appellant.

UNPUBLISHED
September 20, 2002

No. 229289
St. Clair Circuit Court
LC No. 99-001907-CK

Before: Cooper, P.J., and Hoekstra and Markey, JJ.

HOEKSTRA, J., (*concurring in part, dissenting in part*).

I respectfully dissent from the part of the majority opinion that affirms the award of compensation to plaintiff for improvements to defendant's property that plaintiff paid for during their meretricious relationship. The majority correctly acknowledges that the trial court erred in relying on a theory of "unjust enrichment" or "quasi-contract" in making this award. However, the majority proceeds to affirm the award on the alternate ground that the evidence supports a finding that the parties entered into "an express agreement to accumulate the property (the modular home) in this case." I do not dispute that the evidence supports a finding that the parties agreed to make the improvements at issue here. However, the evidence does not support a finding that defendant's agreement with plaintiff to improve her property during the parties' relationship expressly included an obligation on her part to compensate plaintiff for his contribution to the improvement at some future time.

Compensation for these improvements to the property can be awarded, in my opinion, only if plaintiff can show a contract implied in fact. For a contract to be implied in fact here, there must be evidence that *at the time* the improvement was made, plaintiff expected compensation from defendant and defendant expected to pay plaintiff for the improvement. *In re Estate of Morris*, 193 Mich App 579, 582; 484 NW2d 755 (1992); *In re Lewis Estate*, 168 Mich App 70; 423 NW2d 600 (1988). Here, there is no such evidence. At most, the evidence shows that while involved in this relationship with defendant, plaintiff spent money to improve defendant's property without any thought concerning how or whether he would be paid if the relationship ended. At the time, apparently neither party anticipated an end to the relationship. Consequently, neither party considered what compensation, if any, defendant would be required to pay plaintiff in that event. Under these circumstances, no factual basis exists on which to find

a contract implied in fact. I would reverse the award made to plaintiff for improvements to defendant's property.

In all other respects, I join with the majority opinion.

/s/ Joel P. Hoekstra