

MEMORANDUM DECISION

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ATTORNEYS FOR APPELLANTS

Michael L. Carmin
Daniel M. Cyr
CarminParker, PC
Bloomington, Indiana

ATTORNEY FOR APPELLEES

Paul J. Watts
Watts Law Office, P.C.
Spencer, Indiana

IN THE COURT OF APPEALS OF INDIANA

Angela Hendrix and Ryan
Hendrix,
Appellants-Defendants,

v.

Pamela Campbell, Donald
Campbell, and Stacy Zehr,
Appellees-Plaintiffs,

October 25, 2022

Court of Appeals Case No.
22A-PL-422

Appeal from the Owen Circuit
Court

The Honorable Kelsey B. Hanlon,
Judge

Trial Court Cause No.
60C02-2007-PL-250

Robb, Judge.

Case Summary and Issues

[1] Pamela Campbell (“Pamela”) and Donald Campbell (“Donald”) (together, “the Campbells”) loaned money at no interest to Pamela’s daughter, Angela Hendrix (“Angela”), and son-in-law, Ryan Hendrix (“Ryan”) (together, “the Hendrixes”), so the Hendrixes, who already owned a home, could purchase a new home more suitable to Angela’s physical needs. The Hendrixes orally agreed to repay the loan in monthly installments over ten years and transfer ownership of their old house to the Campbells. But shortly after the Hendrixes purchased their new home, a dispute arose, and the Campbells threatened to sue to recover the loan amount as well as the nearly \$24,000.00 the Campbells spent to repair the Hendrixes’ old home and restore it to a habitable condition. Faced with a potential lawsuit, the Hendrixes made no payments on the loan and disputed that they owed the Campbells for the repair costs. The Campbells sued, and the trial court ruled the Hendrixes had been unjustly enriched but had not committed theft by deception. The court ordered the Hendrixes to pay the Campbells a lump-sum total of \$114,796.49, for the loan and the repair costs, with interest to accrue at 8% per year until the amount was paid in full.

[2] The Hendrixes appeal, raising three issues for our review that we restate as: 1) whether the trial court should have found an enforceable contract; 2) whether the evidence was sufficient to support the trial court’s determination that the Hendrixes were unjustly enriched by the repairs and the Campbells were entitled to restitution in the amount of the repairs; and 3) whether the trial court erred when it ordered the Hendrixes to repay the loan with interest until the

amount is fully repaid. The Campbells cross-appeal, challenging the trial court's determination that their claim against the Hendrixes for theft by deception was not supported by the evidence. Concluding there was no enforceable contract between the parties, the evidence supports the court's determination that the Campbells were entitled to restitution for the repair costs, the court did not err in ordering the loan payment repaid as a lump sum with interest, and the court properly found the Hendrixes did not commit theft by deception, we affirm.

Facts and Procedural History

[3] In August 2019, the Hendrixes were living in a home in Gosport, Indiana ("the Gosport house"), which they had owned since 1997. That fall, Pamela asked her daughter Angela if she would be interested in moving to a new house that was more conducive to Angela's physical needs. Around that time, Pamela had been searching for a new home for Stacy Zehr ("Stacy"), Pamela's stepdaughter and Angela's stepsister. Stacy needed to move to a new home because the home she had been living in became infested with black mold.

[4] Pamela learned that a home in Spencer, Indiana ("the Spencer house") was for sale, and she proposed that Angela buy the Spencer house and allow Stacy to buy the Gosport house. When the Hendrixes told Pamela that they could not afford the Spencer house unless they sold the Gosport house, Pamela told them that she and Donald would lend them money to purchase the home.

[5] The Campbells and the Hendrixes verbally agreed that the Campbells would loan the Hendrixes \$96,500.00 from their retirement savings. The parties also initially agreed that:

- The interest-free loan would be repaid over ten years.
- The Campbells would take ownership of the Gosport house and apply a \$50,000.00 credit against the loan amount.
- Stacy would then purchase the Gosport house.

See Amended [Appealed] Order at 2-3. However, other parts of the agreement were not specified, and the parties offered numerous conflicting versions. For example:

- The Campbells would pay the \$20,000.00 mortgage balance for the Gosport house and immediately take ownership of the house.
- The Hendrixes would pay the mortgage balance for the Gosport house and make monthly payments to the Campbells to repay the \$96,500.00 loan.
- The Hendrixes' loan payments would be reduced until the Gosport house mortgage was paid off.
- Stacy would live temporarily on the second floor of the Spencer house and assist the Hendrixes with the utility costs.

- The Hendrixes would have six months to move from the Gosport house to the Spencer house and would not owe any loan payments to the Campbells for six months.
- After the Hendrixes satisfied the Gosport mortgage, title to the house would go to either the Campbells or Stacy.
- The balance on the loan was either \$61,000.00 or \$65,000.00, after the credit for the Gosport house was applied.
- The loan payment amount that the Hendrixes were supposed to pay to the Campbells was either \$297.00 or \$262.00 per month.
- Stacy was responsible for any costs associated with the Gosport house that exceeded the \$353.00 mortgage payment.

See id.

[6] On November 19, the Campbells transferred \$96,500.00 to the Hendrixes' bank account. The Hendrixes purchased the Spencer house for \$91,500.00 and immediately returned to the Campbells \$6,103.07.¹ When Pamela asked about the condition of the Gosport house, Angela told her the carpets needed to be cleaned and the walls painted. But Pamela soon discovered the Gosport house

¹ Because the Spencer house sold for less than \$96,500.00, after the closing, the Hendrixes returned to the Campbells \$5,000.00 in unused funds plus an additional \$1,103.07 that consisted of the \$500.00 earnest money Pamela had provided as well as \$603.07 that the Hendrixes had received from the sellers to cover what the Hendrixes would owe in future property taxes.

was in deplorable condition, was uninhabitable, and would need substantial cleaning and repairs.²

- [7] The Hendrixes moved into the Spencer house. And, although the Hendrixes retained title to the Gosport house, Pamela spent \$23,899.56 to clean and repair the Gosport house and make it habitable for Stacy. The Hendrixes continued to pay the Gosport house mortgage but did not make any monthly payments to the Campbells toward satisfaction of the loan.
- [8] In March 2020, the Campbells had an attorney send a letter to the Hendrixes, demanding that they either pay the outstanding loan balance or arrange to make payments on the loan. The Hendrixes' attorney sent a letter in response, stating the parties did not have an agreement; the Hendrixes did not agree to any of the repair work Pamela undertook; the Campbells were responsible for paying off the Gosport house mortgage, and, once they did so, the Hendrixes would transfer the title to the Campbells; and Stacy would be responsible for the property taxes, insurance, utilities, and maintenance for the Gosport house.
- [9] In July, the Campbells filed a complaint against the Hendrixes, alleging breach of contract, specific performance, unjust enrichment, and theft by deception, and the Hendrixes filed their answer. In January 2021, both parties filed motions for partial summary judgment, and, in March, the parties participated

² The Gosport house was filled with trash, the carpets and the Hendrixes' belongings were covered with mouse droppings, and the laundry room addition was filled with black mold and had become detached from the home.

in mediation, which ended in an impasse. The trial court denied the summary judgment motions, a bench trial was held on July 14, and the trial court issued findings of fact, conclusions of law, and judgment on October 28 in favor of the Hendrixes on the claims of breach of contract, specific performance, and theft by deception, and in favor of the Campbells on the claim of unjust enrichment. The Hendrixes filed a motion to correct error, and, after entering an order extending the time to rule on the motion, the trial court, on February 1, 2022, entered an amended order that incorporated the Hendrixes' motion to correct error and the Campbells' statement in opposition thereto, concluding in relevant part:

Breach of Contract & Specific Performance

* * *

6. An enforceable contract does not exist in this case. There was no meeting of the minds as required for contract formation. The Parties did not have a mutual understanding or agreement regarding essential terms of their agreement. Moreover, even if there was a meeting of the minds, the agreement is unenforceable under [the Statute of Frauds³] as it was not reduced to writing and executed by the Parties.

³ The Statute of Frauds, codified under Indiana Code section 32-21-1-1, provides, in relevant part:

A person may not bring any of the following actions unless the promise, contract, or agreement on which the action is based, or a memorandum or note describing the promise, contract, or

7. Because no contract between the Parties exists, specific performance is foreclosed as a remedy.

* * *

Unjust Enrichment

* * *

14. The Campbells provided [the] Hendrixes with a measurable benefit—\$96,500.00 to purchase the Spencer residence. The Hendrixes cooperated with the Campbells and Stacy in furtherance of the agreement and accepted the money with an understanding—albeit an incomplete understanding—that the money was to be repaid. Accordingly, the loan was accepted despite their opportunity to decline the benefit. All Parties agree that the Campbells expected repayment. Allowing [the] Hendrixes to retain the benefit of receiving \$96,500.00 from the Campbells’ retirement funds without restitution would be unjust.
15. Because no enforceable contract exists, the Hendrixes will continue to own the Gosport residence and will receive the benefit of the repairs completed by the Campbells to make it safe and habitable in the amount of \$23,899.56. Those repairs constitute a measurable benefit provided to the

agreement on which the action is based, is in writing and signed by the party against whom the action is brought or by the party’s authorized agent:

* * *

(4) An action involving any contract for the sale of land.

(5) An action involving any agreement that is not to be performed within one (1) year from the making of the agreement.

Hendrixes, and the Hendrixes acquiesced in receiving this benefit. The Hendrixes had the opportunity to decline the benefit and did not do so. The repairs were made as the Parties attempted to meet the obligations of their failed agreement and were not a gift to the Hendrixes.

16. The [Hendrixes] have been unjustly enriched in the following amounts:
 - a. \$90,896.93[,]
 - b. \$23,899.56 for repairs to the Gosport house.

Theft by Deception

* * *

20. . . . While the Hendrixes did not make payments after they were unable to agree with the Campbells regarding the specific amount of the monthly payments, there has been no showing that the Hendrixes entered into the agreement with the intention to convert, steal, or exercise unauthorized control over the Campbells' funds or that the Hendrixes induced the Campbells to fund any part of the agreement through false statements. . . .

Amended [Appealed] Order at 5-8. The trial court found in favor of the Hendrixes on the claims of breach of contract, specific performance, and theft by deception. Regarding the claim of unjust enrichment, the trial court found in favor of the Campbells. The court ordered the Hendrixes to pay the Campbells \$114,796.49 with interest to accrue at eight percent per annum until

the balance was paid in full. The court ordered each party to be responsible for the costs of their own attorney fees. *See id.* at 8. The Hendrixes now appeal. Additional facts will be provided as necessary.

Discussion and Decision

I. Standard of Review

[10] Upon appeal of a trial court’s special findings of fact and conclusions of law entered pursuant to Indiana Trial Rule 52, we follow a two-part standard of review. *Fischer v. Heymann*, 943 N.E.2d 896, 900 (Ind. Ct. App. 2011), *trans. denied*. We determine first whether the evidence supports the findings, and second whether the findings support the judgment. *Angelone v. Chang*, 761 N.E.2d 426, 429 (Ind. Ct. App. 2001). We will reverse only if the findings or judgment are clearly erroneous. *Id.* “Findings of fact are clearly erroneous when the record lacks any evidence or reasonable inferences from the evidence to support them. A judgment is clearly erroneous when a review of the record leaves us with a firm conviction that a mistake has been made.” *Id.* (internal citation omitted). We do not reweigh the evidence or assess the credibility of witnesses, and “consider only the evidence and the inferences flowing therefrom that are most favorable to the judgment.” *Id.* However, where a pure question of law is involved, our standard of review is *de novo*. *S.C. Nestel, Inc. v. Future Constr., Inc.*, 836 N.E.2d 445, 449 (Ind. Ct. App. 2005).

II. Enforceable Contract

[11] First, the Hendrixes contend the trial court erred by entering judgment in favor of the Campbells on grounds there was no enforceable contract. A “contract is established by evidence of an offer, acceptance, consideration, and a manifestation of a mutual assent.” *Troutwine Estates Dev. Co., LLC v. Comsub Design and Eng’g, Inc.*, 854 N.E.2d 890, 897 (Ind. Ct. App. 2006), *trans. denied*. As stated in *Troutwine*:

To bring a contract into existence, an offer must be extended and the offeree must accept it, the communication of acceptance being crucial. Thus, a meeting of the minds between the contracting parties is essential to the formation of a contract. This meeting of the minds must extend to all essential elements or terms for a contract to be binding. Likewise, for an oral contract to exist, parties have to agree to all terms of the contract. If a party cannot demonstrate agreement on one essential term of the contract, then there is no mutual assent and no contract is formed.

854 N.E.2d at 897 (internal citations and quotations omitted). Whether a contract exists is a question of law. *Conwell v. Gray Loon Outdoor Mktg. Grp., Inc.*, 906 N.E.2d 805, 813 (Ind. 2009).

[12] The Hendrixes claim a contract existed because there was a meeting of the minds on the following essential terms:

- Pamela would take possession of the Gosport house.
- The loan would be repaid over ten years at no interest.

- A \$50,000.00 credit would be applied toward the repayment of the loan.
- The Hendrixes would pay off the Gosport house mortgage.

The Hendrixes maintain that the parties agreed to these essential terms and, relying on those terms, the parties performed. And the parties' subsequent deviations from and disagreements over the original terms and conditions of the contract were just that and did not negate the meeting of the minds and the existence of a contract. So, according to the Hendrixes, the trial court should have found a formal contract existed and, per the terms of that contract, ordered that the Hendrixes were obligated to repay the loan over ten years at no interest; the Hendrixes would pay \$262.00 per month until the Gosport house was paid off, then \$615.00 per month until the loan was repaid; and, either Stacy or Pamela was obligated to pay any increases in property taxes and insurance for the Gosport house.

[13] The Hendrixes believe their case is analogous to *Conwell*, which involved a lawsuit between Piece of America ("POA"), a business enterprise for which Conwell was the contact person, and Gray Loon, the marketing firm that created and hosted POA's website. The Hendrixes cite *Conwell* for the proposition that an existing contract is not invalidated by a party seeking to change the terms of the contract. The Hendrixes' reliance on *Conwell*, however, is misplaced.

[14] In *Conwell*, it was undisputed that both parties fulfilled their obligations under the original agreement for the creation of the website. However, POA subsequently requested changes to the website, and Gray Loon – without reducing the change request to a writing that was presented to POA and without agreeing to a price for the changes – made the changes. POA later decided it did not want the changes, and POA did not pay Gray Loon for the changes that were made. POA argued it did not have a contract with Gray Loon for the changes to the website. Our supreme court upheld the trial court’s determination that an enforceable agreement did exist between the parties for the website changes, despite the fact that Gray Loon had not provided a cost-estimate for the changes. *Conwell*, 906 N.E.2d at 813. The case before us is quite different from *Conwell*.

[15] Here, it is clear from the record that the parties could not agree on the essential terms of their contract and that there was no meeting of the minds – just a parent’s desire to help her children. The record reflects that the parties agreed the Campbells would loan the Hendrixes money to purchase the Spencer house, and the Hendrixes would repay the loan. But beyond those terms, the parties had differing understandings regarding when the Hendrixes would vacate the Gosport house and move to the Spencer house; when the Hendrixes would begin repaying on the loan; the monthly payment amount for the loan; which party was responsible for paying off the Gosport house mortgage; the amount that was to be credited against the loan based on the equity in the Gosport house; which party was responsible for the costs of cleaning and repairing the

Gosport house; whether Stacy would live temporarily at the Spencer house before moving into the Gosport house and help pay the Spencer house utilities and maintenance costs; whether Stacy would be responsible for property taxes, insurance, utilities, and maintenance for the Gosport house; and, whether Pamela or Stacy would receive title to the Gosport house once the mortgage had been paid. Thus, the details of the agreement were never resolved, and there was no meeting of the minds as to the essential terms of the agreement. The trial court did not err in concluding that an enforceable contract does not exist in this case.

III. Unjust Enrichment

[16] Next, the Hendrixes argue that there is insufficient evidence to support a judgment against them on grounds of unjust enrichment for the nearly \$24,000.00 that Pamela spent to clean and repair the Gosport house. In other words, the Hendrixes contend the evidence does not support the trial court's determination that they were unjustly enriched by the cost of the repairs and that Pamela was entitled to restitution in the amount of the repairs.

[17] To prevail on a claim of unjust enrichment, a plaintiff must establish that a measurable benefit has been conferred on the defendant under circumstances in which the defendant's retention of the benefit without payment would be unjust. *Encore Hotels of Columbus, LLC v. Preferred Fire Prot.*, 765 N.E.2d 658, 661 (Ind. Ct. App. 2002). Principles of equity prohibit unjust enrichment in cases where a party accepts the unrequested benefits provided by another despite

having the opportunity to decline those benefits. *Olsson v. Moore*, 590 N.E.2d 160, 163 (Ind. Ct. App. 1992), *trans. denied*. Indiana courts articulate three elements for this claim: 1) a benefit conferred upon another at the express or implied consent of such other party; 2) allowing the other party to retain the benefit without restitution would be unjust; and 3) the plaintiff expected payment. *Woodruff v. Ind. Fam. & Soc. Servs. Admin.*, 964 N.E.2d 784, 791 (Ind. 2012), *cert. denied*, 568 U.S. 825 (2012).

[18] The Hendrixes challenge the sufficiency of the evidence to support the first and third elements, that is, whether they consented to the repair work Pamela performed and whether Pamela expected payment for the repairs. The Hendrixes acknowledge the trial court's determination that "the repairs constitute[d] a measurable benefit" to them; the Hendrixes "acquiesced in receiving this benefit"; and although the Hendrixes "had the opportunity to decline the benefit[, they] did not do so." Amended [Appealed] Order at 6-7. But they maintain that the evidence does not support a finding that the repairs Pamela made to the Gosport house were undertaken with their express or implied consent or that Pamela expected to be repaid for the repair work. We cannot agree.

[19] When reviewing the sufficiency of evidence in a civil case, we will decide whether there is substantial evidence of probative value supporting the trial court's judgment. *Martin v. Roberts*, 464 N.E.2d 896, 904 (Ind. 1984). We neither reweigh the evidence nor judge the credibility of witnesses but consider

only the evidence most favorable to the judgment along with all reasonable inferences to be drawn therefrom. *Id.*

[20] Here, the parties presented conflicting testimony regarding the repair work. For example, Angela’s husband Ryan testified that Pamela “tried to control everything” regarding the Gosport house and that he and Angela were not asked to approve the repairs to the house and were not asked to pay for the repairs. Transcript of Evidence, Volume II at 59. But he also testified that he and Angela did not call a repairman to undertake the repairs. And, on cross-examination, he was asked if he believed he had to pay the Campbells for the cost of the repairs because he and Angela still owned the home, and he answered, “Not because I want it to be[,] but yes.” *Id.* at 137.

[21] Pamela testified that Angela told her the Gosport house only needed the walls painted and the carpets cleaned, but shortly after the Hendrixes closed on the Spencer house, she discovered this was not the case. Pamela testified the repairs were necessary to prevent the house from being condemned. She also testified that she did not start to repair the home until the Hendrixes had moved to the Spencer house and that the Hendrixes knew the repairs needed to be done. She further testified that she “intended for somebody to pay for [the repair work.]” *Id.* at 118.

[22] Angela, on the other hand, testified that when Pamela saw the condition of the house, she was “very angry [the] house was in such a disarray[,]” she “didn’t realize [the house] was as bad as it was[,]” and she “forced” Angela and Ryan

out of the house. *Id.* at 156. Angela also testified that she did not ask for the repairs to be done and that she had “plenty of people that would help [her and Ryan]” make the repairs. *Id.* at 165.

[23] Our review of the record convinces us the Hendrixes did, in fact, sanction the cleaning and repairs Pamela performed and that Pamela expected to be repaid for the repair work. The Hendrixes, who still owned the Gosport house, knew the repair work was needed and knew that the work was being performed, but they made no effort to stop Pamela from making the repairs. And Pamela testified that she expected to be repaid for the cost of the repairs. The evidence was sufficient to support the trial court’s judgment on this claim. The Hendrixes’ arguments to the contrary are invitations to reweigh the evidence, which we will not do. *See Martin*, 464 N.E.2d at 904.

IV. Repayment of the Loan

[24] The Hendrixes also argue the trial court erred when it entered judgment in favor of the Campbells for the balance of the loan, \$90,896.93, and ordered interest to accrue at the rate of eight percent per annum until the Hendrixes repay the loan in full. The Hendrixes acknowledge that they are obligated to repay the loan, but challenge the trial court’s determination that the balance is “immediately due and payable [as a] lump sum[,]” including interest. Brief of Appellants, Angela Hendrix and Ryan Hendrix (Corrected) at 26. The Hendrixes claim the “expectation” is that “repayment [of the loan] would be over ten . . . years and at no interest” based on the Campbells’ “own evidence” and “as found by the

[trial court] in the Findings of Fact[,]” and that the trial court’s conclusions of law are not supported by the evidence. *Id.* at 25. According to the Hendrixes, the trial court’s judgment is unjust and fails to provide equitable relief because it “accelerat[es] the [120] month payment period to an entirely presently due amount” that with interest amounts to a windfall to the Campbells. *Id.* at 24.

[25] The Hendrixes’ argument, however, is yet another invitation to reweigh the evidence, which we will not do. *See Martin*, 464 N.E.2d at 904. The trial court heard the evidence and found that the Campbells provided the Hendrixes a benefit in the form of the loan; the Campbells expected the Hendrixes to repay the loan amount; and allowing the Hendrixes to retain the benefit of the loan without restitution would be unjust. The court ultimately determined that equitable relief required the loan balance be due and payable immediately with interest accruing until the debt was paid. We will not second-guess the trial court’s decision.

V. Issue on Cross-Appeal

[26] On cross-appeal, the Campbells argue the trial court erred in determining their claim against the Hendrixes for theft by deception was not supported by the evidence.⁴ They “posit that the Hendrixes’ testimony that they were not going

⁴ The Campbells also ask this court to find the Hendrixes’ appeal “bar[red]” on grounds that the Hendrixes, in some of their pleadings, argued against the existence of an enforceable contract but on appeal present arguments to the contrary. Brief of Appellees at 11. However, we decline the Campbells’ request and note that the Campbells, too, presented arguments in their pleadings both in favor of and against the existence of an enforceable contract between the parties.

to repay the loan while keeping both [houses]” showed they entered into the loan agreement with the intention of defrauding the Campbells. Brief of Appellees at 12. The Campbells ask this court to find the Hendrixes committed theft by deception and award the Campbells treble damages and attorney fees. We note, however, that beyond recitation of the statute governing theft by deception, a passing reference to one appellate decision, and cursory references to the trial transcript, the Campbells do not develop their argument, and we will not construct one for them. *See Bass v. State*, 797 N.E.2d 303, 305 (Ind. Ct. App. 2003) (“[I]t is not [this court’s] role to develop arguments for the parties [on appeal.]”). At best, the Campbells argument amounts to a request to reweigh the evidence, which we will not do. *See Martin*, 464 N.E.2d at 904. The trial court did not err in determining the evidence failed to support the Campbells’ claim that the Hendrixes committed theft by deception.

Conclusion

[27] We conclude that no enforceable contract existed between the parties, and the trial court did not err in determining the Campbells are entitled to restitution for the costs of the repairs to the Gosport house, ordering the loan repaid with interest until paid in full, and finding the Hendrixes did not commit theft by deception. Therefore, we affirm the trial court’s judgment.

[28] Affirmed.

Pyle, J., and Weissmann, J., concur.