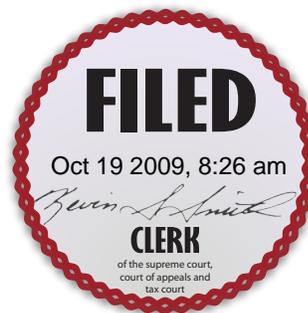


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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EUGENE DUNCAN and GAYE E. DUNCAN, )

Appellants-Defendants, )

vs. )

CHARLES WHITEHAIR, as Personal )

Representative for the Estate of J.P. Guill, )

Appellee-Plaintiff. )

No. 18A02-0902-CV-161

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APPEAL FROM THE DELAWARE CIRCUIT COURT  
The Honorable Linda R. Wolf, Judge  
Cause No. 18C03-0611-CC-578

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October 19, 2009

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**KIRSCH, Judge**

Eugene and Gaye E. Duncan (“the Duncans”) appeal the trial court’s judgment in favor of Charles Whitehair, as personal representative for the Estate of Jeffrey P. Guill (“the Estate”). The Duncans raise one issue, which we restate as whether sufficient evidence was presented to support the trial court’s judgment in favor of the Estate on its unjust enrichment claim.

We affirm.

### **FACTS AND PROCEDURAL HISTORY**

In 2003, Guill and Eugene Duncan (“Duncan”) entered into an oral agreement for the construction of a horse stable that would contain rental stalls and a riding arena. Under the agreement, Guill was to provide \$50,000 that would be used to purchase materials to build the stable. Duncan would provide land on which to build the stable and the labor needed to build the stable. The parties agreed that once the stable was completed, Duncan would repay Guill his \$50,000 from the proceeds of horse stall rental payments, and thereafter, the stable would belong solely to Duncan.

After reaching this agreement, Guill opened a joint bank account in both his and Duncan’s names. Guill deposited a total of \$42,100 into the account. No further funds were supplied by Guill for the construction of the stable. Using the funds in the joint account, Duncan began constructing the stable. By spring of 2004, all \$42,100 in the joint account had been spent. The primary structure of the stable, which is a functioning barn/storage facility, was completed, but no horse stalls were constructed. Because Guill did not provide any additional funds, Duncan could not afford to make the barn into a functioning horse stable.

Since 2004, the Duncans have had exclusive use of and access to the barn and have used the barn to store equipment, personal property, and hay. The Duncans have never repaid Guill or his estate the \$42,100 he placed in the joint account that was used to construct the barn.

In 2005, Guill died. Thereafter, Whitehair, acting as the personal representative of Guill's estate, filed this action against the Duncans alleging claims for breach of contract and unjust enrichment. With regard to the unjust enrichment claim, the Estate specifically alleged that Guill had loaned \$42,100 to the Duncans, that the Duncans had used this money to build a barn on their property, and that the Duncans had been unjustly enriched because they refused to repay to Guill or the Estate the money that was loaned to them.

A bench trial was held on October 30, 2008. Thereafter, the trial court issued findings of fact and conclusions thereon. The trial court granted judgment in favor of the Duncans on the breach of contract claim, but found in favor of the Estate on the unjust enrichment claim. As to the unjust enrichment claim, the trial court made the following relevant findings:

31. Guill paid (\$42,100) toward the construction of a riding stable.
32. Mr. Duncan provided labor and materials toward the construction of the riding stable.
33. Although the riding stable was never completed, Mr. and Mrs. Duncan now have a barn for their own use (personal or business) worth approximately (\$100,000), while Guill and his estate are left with nothing.
34. Guill conferred a measurable benefit on both Mr. and Mrs. Duncan in the amount of (\$42,100) and the retention of said benefit without any

payment would be unjust.

*Appellant's App.* at 41. The trial court ordered the Duncans to pay damages totaling \$42,100. The Duncans now appeal.<sup>1</sup>

## DISCUSSION AND DECISION

The Duncans argue that there was insufficient evidence to support the trial court's judgment in favor of the Estate on its unjust enrichment claim. Where, as here, the trial court enters findings of fact and conclusions thereon pursuant to Indiana Trial Rule 52, we apply a two-tiered standard of review. *Tompa v. Tompa*, 867 N.E.2d 158, 163 (Ind. Ct. App. 2007). First, we determine whether the evidence supports the findings and then whether the findings support the judgment. *Id.* "The trial court's findings and conclusions will be set aside only if they are clearly erroneous, that is, if the record contains no facts or inferences supporting them." *Id.* "A judgment is clearly erroneous when a review of the record leaves us with a firm conviction that a mistake has been made." *Id.* We will not reweigh the evidence or assess the credibility of witnesses and we will only consider the evidence most favorable to the judgment. *Id.* "We review conclusions of law de novo." *Id.*

In addressing an unjust enrichment claim, our Supreme Court recently stated:

A claim for unjust enrichment "is a legal fiction invented by the common law courts in order to permit a recovery . . . where the circumstances are such that under the law of natural and immutable justice there should be a recovery . . . ." *Bayh v. Sonnenburg*, 573 N.E.2d 398, 408 (Ind. 1991) (citation omitted). "A person who has been unjustly enriched at the expense of another is required to make restitution to the other."

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<sup>1</sup> We commend the trial court for the thoroughness and clarity of its findings, which greatly aided appellate review of this case.

Restatement of Restitution § 1 (1937). To prevail on a claim of unjust enrichment, a claimant must establish that a measurable benefit has been conferred on the defendant under such circumstances that the defendant's retention of the benefit without payment would be unjust. *Bayh*, 573 N.E.2d at 408.

*Zoeller v. East Chicago Second Century, Inc.*, 904 N.E.2d 213, 220 (Ind. 2009).

Here, the Estate contends that the Duncans were unjustly enriched because they refused to repay the \$42,100 that was loaned to them by Guill. The record reveals that Guill and Duncan entered into an oral agreement to build a horse stable. Guill agreed to provide \$50,000 in cash that was to be used by Duncan to build the stable. Upon completion of the stable, Duncan would repay Guill his \$50,000. Guill then opened a joint bank account in both his and Duncan's names and deposited a total of \$42,100 into the account. By placing the \$42,100 into the joint account, Guill conferred a measurable benefit upon Duncan. Duncan used all of the \$42,100 in the account to complete the primary structure of the stable, which is a functioning barn/storage facility. Although the Duncans did not have sufficient funds to make the barn into a fully functional horse stable, since 2004, the Duncans have had exclusive use of and access to the barn and have used the barn to store equipment, personal property, and hay. The Duncans have never repaid Guill or the Estate the \$42,100 that was loaned to them. Under these circumstances, the Duncans retention of the barn without repayment to Guill or the Estate of the \$42,100 that was loaned to them would be unjust. Therefore, we conclude that the evidence presented was sufficient to support the trial court's judgment in favor of the Estate on its unjust enrichment claim. Affirmed.

NAJAM, J., and BARNES, J., concur.