

JESSICA ROBINSON et al.

v.

GERARD ZARRILLI et al.

Argued May 14, 2013

Decided July 23, 2013

Panel: SAUFLEY, C.J., and ALEXANDER, LEVY, SILVER, MEAD, and JABAR, JJ.

MEMORANDUM OF DECISION

Gerard Zarrilli and Wendy Northrup (Zarrilli) appeal from a judgment of the District Court (Portland, *Kelly, J.*) awarding Jessica Robinson, Mathew Esty, and Esty, Inc., (Robinson) \$10,479.16 in damages for unjust enrichment, following a bench trial. Zarrilli contests the trial court's finding of unjust enrichment, its award of damages and costs, and its denial of his counterclaims.

Contrary to Zarrilli's contention, promissory estoppel or an agreement implied by the parties' conduct did not preclude the court's finding of unjust enrichment because, with the exception of his claim for quantum meruit, which we address below, Zarrilli failed to properly raise these claims in his pleadings or seek to amend the pleadings to include them. *See* M.R. Civ. P. 13(a)(1), (f); *Efstathiou v. Aspinquid, Inc.*, 2008 ME 145, ¶ 22, 956 A.2d 110. As for Zarrilli's counterclaim for quantum meruit, the court did not commit clear error in entering judgment for Robinson, where Zarrilli did not present a M.R. Civ. P. 52(b) motion for additional findings, and competent evidence supports the trial court's judgment. *See Pelletier v. Pelletier*, 2012 ME 15, ¶ 20, 36 A.3d 903; *Jenkins, Inc. v. Walsh Bros., Inc.*, 2001 ME 98, ¶ 15, 776 A.2d 1229. Thus, the claim for quantum meruit did not preclude the court's finding of unjust enrichment. *See Estate of Miller*,

2008 ME 176, ¶ 29, 960 A.2d 1140; *Danforth v. Ruotolo*, 650 A.2d 1334, 1335 n.2 (Me. 1994).

Moreover, the trial court did not commit clear error in concluding that Zarrilli was unjustly enriched in the amount of \$10,479.16, where, in the absence of a M.R. Civ. P. 52(b) motion, we infer that the trial court made the factual inferences necessary to support its judgment, which the evidence in this case permits. *See Pelletier*, 2012 ME 15, ¶ 20, 36 A.3d 903; *Estate of Anderson*, 2010 ME 10, ¶ 10, 988 A.2d 977. Accordingly, there is competent evidence to support the court's damages determination. *See Estate of Hoch v. Stifel*, 2011 ME 24, ¶ 43, 16 A.3d 137. Further, it was not clear error to find that Robinson was the prevailing party entitled to an award of costs. *See* 14 M.R.S. § 1501 (2012); M.R. Civ. P. 54(d); *Doe I v. Williams*, 2013 ME 24, ¶ 80, 61 A.3d 718.

We do not address Zarrilli's remaining arguments related to his counterclaims for debt and conversion, because those issues were only perfunctorily briefed. *See Michalowski v. Bd. of Licensure in Med.*, 2012 ME 134, ¶ 29 n.10, 58 A.3d 1074.

The entry is:

Judgment affirmed.

On the briefs and at oral argument:

Stephen D. Bither, Esq., Portland, for appellants Gerard Zarrilli and Wendy Northrup

Zack M. Paakkonen, West End Legal, LLC, Portland, for appellees Matthew Esty and Jessica Robinson