

**NOTICE**  
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

NO. 4-10-0449

Filed 1/27/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

ANGEL QUINTANA,	) Appeal from
Petitioner-Appellant,	) Circuit Court
v.	) Cass County
TERESA FIGUEROA,	) No. 09F1
Respondent-Appellee.	)
	) Honorable
	) Scott J. Butler,
	) Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.

Justices Turner and Pope concurred in the judgment.

**ORDER**

*Held:* Petitioner did not state a claim for a constructive trust or for unjust enrichment. Petitioner and respondent, an unmarried but cohabiting couple, are barred from mutually enforceable property rights under *Hewitt v. Hewitt*, 77 Ill. 2d 49, 394 N.E.2d 1204 (1979).

Petitioner, Angel Quintana, appeals from an order of the trial court denying him any property rights in real estate held solely in the name of respondent, Teresa Figueroa, n/k/a Teresa Tippey, his unmarried partner of almost 20 years. We affirm.

I. BACKGROUND

Quintana and Figueroa were married in a religious ceremony in their native Mexico on September 30, 1989. The parties failed to register their marriage with governmental authorities in Mexico as required by Mexican law. They took no

steps to register their marriage after they immigrated to the United States approximately 20 years ago. Since their 1989 Mexican wedding ceremony, the couple has held themselves out as husband and wife and they have three children together. Both parties knew they were not considered married by any governmental authority.

They moved to Beardstown approximately 15 years ago. While living in Beardstown, the parties purchased various items of personal property and had three different residences, the third of which is the subject of this case.

The parties separated in November 2008. On January 14, 2009, Quintana filed a custody action against respondent, Figueroa. By agreement of the parties, issues related to property were made a part of the custody action. The trial court ordered Quintana to file a formal complaint related to property.

On September 4, 2009, Quintana filed a two-count complaint against Figueroa. In count I, Quintana asked the trial court to impose a constructive trust on the former residence of the parties on Taylor Court in Beardstown because the parties acquired the property together and, due to Figueroa's superior English fluency, she held a superior position over Quintana in financial dealings. In count II, Quintana requested the court order an equitable division of all personal and real property acquired by the parties between September 1989 and November 2008.

On October 28, 2009, a hearing was held on all outstanding matters. Testimony showed after the parties arrived in Beardstown, the first home either party owned was a house trailer purchased by Quintana, who paid all the mortgage payments. Figueroa contended Quintana obtained the loan for the home himself. Figueroa had the utility payments in her name due to superior credit.

The parties later moved to a larger house on Oak Street. Figueroa testified she applied for the loan on that home herself and made all of the payments on it as well as any other payments related to the home. Figueroa acknowledged during the parties' relationship Quintana kept large amounts of cash in his jacket pocket and she had access to it. She never maintained either a savings or checking account. Figueroa maintained she never used Quintana's cash for anything other than occasional purchases of food for the children.

In September 2001, the parties moved in the house on Taylor Court, which is the subject of this suit. The property was purchased for \$82,000, of which \$72,000 was financed by a mortgage loan. Figueroa testified she took out the loan for herself and made all payments on the loan as well as all other payments related to the home. Although she claimed to have made every payment on the home herself, without any contributions from Quintana, specific evidence for the year 2003 showed over \$27,000

in mortgage payments, utilities, and improvements were paid while Figueroa's only source of income was from her employment where her gross wages were only \$29,000.

Figueroa also testified Quintana owned all the vehicles between the parties. She helped him obtain loans by acting as his translator as he did not speak English well. He took out the loans in his name, he made all the decisions regarding them, and they were titled in his name. Although she often acted as translator, Quintana handled financial matters on his own, including handling the sale of the Oak Street property, buying materials for home repairs, doing his own taxes, using a credit card, and wiring money to Mexico.

Quintana extensively repaired and remodeled the Taylor Court home and bought and paid for the materials and supplies on his own. Quintana's testimony in this regard was corroborated by testimony from Pete Vredenburgh, owner of Vredenburgh Lumber, who stated he had direct knowledge the purchases made from his business were used in making improvement to the Taylor Court home.

Christina Haberman, representative of First National Bank of Beardstown, provided testimony establishing the foundation of documents indicating payments on the Taylor Court mortgage loan of over \$13,500 by the transfer of money from Quintana's savings account. She further testified to direct payments

totaling over \$10,000, composed of income-tax refund checks made payable to both Quintana and Figueroa. Finally, Haberman established payment on the mortgage debt was made by applying Quintana's payroll check to the mortgage debt.

Quintana testified all of the bills, applications, and just about everything else involved in running their household were in Figueroa's name because his English was so bad. They mixed their money together but Figueroa actually paid the bills because of her English language skills. Most things were paid by money order. Figueroa had permission and access to the cash he kept in their home.

The couple purchased the trailer home for \$20,000, and a down payment on the Oak Street home was made from the proceeds of the sale of that home which was held in Quintana's name. The mortgage debt on the Oak Street home was paid by both himself and Figueroa equally although the loan was in Figueroa's name alone. He trusted her as she spoke English better than him. Quintana stated home improvements were paid for equally as well as the appliances for the home.

The couple purchased the Taylor Court home after jointly viewing several homes and deciding together to buy the home on Taylor Court. Proceeds from the sale of the Oak Street home were applied to Taylor Court. The mortgage indebtedness and other expenses associated with the property were then paid

equally. The parties both banked at First National Bank of Beardstown and went together to the bank every Friday to cash their payroll checks and make a payment on the mortgage. Quintana believed the home was owned by both of them because they went together to fill out the loan forms and he trusted Figueroa to put it in both their names.

The trial court found Quintana to be more credible than Figueroa and found Quintana "contributed at least one-half of the consideration used to acquire and pay the debt on the Taylor Court property." However, the court also found it was bound by our supreme court's opinion in *Hewitt v. Hewitt*, 77 Ill. 2d 49, 394 N.E.2d 1204 (1979), which denies an unmarried cohabitant an interest in property titled in the name of the other cohabitant. Thus, it denied Quintana's request for an interest in the Taylor Court residence and found all "titled" property, including motor vehicles, financial accounts, and the Taylor Court residence are the property of the party in whose name title is held.

This appeal followed.

## II. ANALYSIS

Quintana contends the appropriate standard of review in this case is *de novo* review (see *Price v. Phillip Morris, Inc.*, 219 Ill. 2d 182, 235, 848 N.E.2d 1, 33 (2005)) as the facts are not in controversy and the only issue involves the application of law to these facts. However, the trial court's finding of fact a

fiduciary relationship did not exist between the parties despite Quintana's assertions it did, reveals facts are in controversy and the court's finding of fact is reviewed under the manifest-weight-of-the-evidence standard. *People ex rel. Sussen v. Keller*, 382 Ill. App. 3d 872, 877, 892 N.E.2d 11, 16 (2008).

Quintana acknowledges *Hewitt* is the leading case defining the public policy in Illinois which disfavors the grant of mutually enforceable property rights to knowingly unmarried cohabitants. He argues, however, as he did in the trial court, a fiduciary relationship existed between the parties and, based on a breach of fiduciary duty and undue influence, a constructive trust should have been imposed on the Taylor Court property because Figueroa, who was in possession of the property would be unjustly enriched if allowed to retain it. Quintana maintains there is a recognized exception to the *Hewitt* rule under these circumstances to prevent unjust enrichment.

In *Hewitt*, an unmarried cohabitant claimed property rights amounting to an equal share of property accumulated by the parties during their period of unmarried cohabitation when the couple broke up. Her claim was based primarily upon the contributions which she made to the household as housekeeper and homemaker after the parties expressly decided to live as husband and wife and to hold themselves out to others as married. *Hewitt*, 77 Ill. 2d at 53-54, 394 N.E.2d at 1205-06. Our supreme

court held it would not grant mutual property rights to unmarried cohabitants because to do so would reinstate common-law marriage, which had been abolished by the legislature and would violate the public policy of the state to support marriage. *Hewitt*, 77 Ill. 2d at 65-66, 394 N.E.2d at 1211. In reaching this decision, the court stated the plaintiff's claims were not without merit but there were complex public policy considerations to be considered and it was best for the legislature to make any change and not the courts. See *Hewitt*, 77 Ill. 2d at 66, 394 N.E.2d at 1211.

Quintana relies on the portion of *Hewitt* where the court recognized "cohabitation by the parties may not prevent them from forming valid contracts about independent matters," for which sexual relations do not form part of the consideration. *Hewitt*, 77 Ill. 2d at 59, 394 N.E.2d at 1208. He characterizes the facts in this case as coming within the parameters of the court's recognition cohabitation would not bar cohabiting parties from having mutually enforceable property rights in all circumstances. He further relies on the case of *Spafford v. Coats*, 118 Ill. App. 3d 566, 455 N.E.2d 241 (1983), to support his argument.

In *Spafford*, an unmarried cohabitant filed a complaint for the impression of a constructive trust, alleging she paid for motor vehicles titled in the name of her cohabitant, Coats, or jointly titled in the names of both parties solely for insurance purposes. See *Spafford*, 118 Ill. App. 3d at 568-69, 455 N.E.2d

at 242-43. The trial court directed a verdict in favor of Coats, finding the plaintiff failed to state a cause of action for impression of a constructive trust. *Spafford*, 118 Ill. App. 3d at 569-70, 455 N.E.2d at 243-44. On appeal, this court found, independent of the public policy considerations of *Hewitt*, there were sufficient facts to establish a *prima facie* case for the impression of a constructive trust. *Spafford*, 118 Ill. App. 3d at 570, 455 N.E.2d at 244. At no time, however, did the *Spafford* court find that a constructive trust should be imposed due to a fiduciary relationship. Instead, the court found Spafford's claims were independent of the nonmarital relationship between the parties and not based on rights arising from their cohabitation, *i.e.*, Spafford had actually paid for the motor vehicles herself. *Spafford*, 118 Ill. App. 3d at 572, 455 N.E.2d at 245.

In the cases cited by Quintana, no constructive trusts were imposed by the courts due to the existence of a fiduciary relationship. Further, it is not clear *Hewitt* actually provides for an exception to be made to its holding no property rights are gained by unmarried cohabitants. Instead, the court referred to *contracts* entered into between the parties independent of their personal relationship. Fiduciary relationships are not the same as contracts.

Fiduciary relationships within a *marital* relationship were discussed by our supreme court in *Brod v. Brod*, 390 Ill.

312, 317-19, 61 N.E.2d 675, 677-78 (1945). Reasons for the imposition of constructive trusts are divided into two classes: (1) where actual fraud occurred or (2) where there is a confidential relationship and abuse of the confidence reposed or undue influence. *Brod*, 390 Ill. at 317-18, 61 N.E.2d at 677.

The facts in this case do not support the imposition of a constructive trust. First, the parties were not married, as they were in *Brod* where imposition of a constructive trust was denied, in any case. Further, as the trial court found, the evidence indicated Quintana did rely on Figueroa to translate some communications and documents. However, the evidence also indicated Quintana conducted other business affairs without Figueroa's involvement. There was no fiduciary relationship between the parties different from the trust and reliance enjoyed by most couples in a married or nonmarried relationship. The court's determination no fiduciary relationship existed to justify finding an exception to *Hewitt* based upon a constructive trust is not against the manifest weight of the evidence.

The circumstances of this case closely resemble those in *Ayala v. Fox*, 206 Ill. App. 3d 538, 564 N.E.2d 920 (1990), where the ruling in *Hewitt* was followed by this court to bar all equitable relief asserted by the plaintiff. In *Ayala*, the plaintiff lived with the defendant and, together, they built a new home. The defendant was the only one named on the title but

the plaintiff paid more than half of the mortgage payments and the majority of the taxes and insurance. The defendant even promised to transfer title to joint ownership. *Ayala*, 206 Ill. App. 3d at 539-40, 564 N.E.2d at 920-21. Yet, these claims were found to be barred by *Hewitt*. *Ayala*, 206 Ill. App. 3d at 542, 564 N.E.2d at 922.

The plaintiff in *Ayala* actually had stronger claims than does Quintana here. There is no evidence in the record Figueroa made any promises to put Quintana on the title or Quintana had any expectation he would be added to the title or have any legal ownership interest in the Taylor Court property. Further, in *Ayala*, the plaintiff was on the mortgage and responsible for the loan. Here, Quintana was not on the mortgage and under no obligation to pay the loan.

The results of the rulings in *Hewitt* and *Ayala* and their application in this case are harsh, but it is for the legislature to make any changes necessary to effectuate a change in public policy for the State of Illinois in regard to the property rights of unmarried cohabitants as noted in the long discussion of this policy and its evolution in *Hewitt*. Quintana's claims to property rights in the Taylor Court property, essentially based in the nonmarital relationship he had with Figueroa, are barred under Illinois law.

### III. CONCLUSION

The judgment of the trial court is not against the manifest weight of the evidence as to the existence of a fiduciary relationship between the parties. Petitioner's cause of action is barred under Illinois law. We therefore affirm.

Affirmed.