2012 IL App (1st) 111506

SECOND DIVISION
May 22, 2012

No. 1-11-1506

**IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT**

JOAN N. HINKEN, DVM, an individual,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 09 M 30023334
	)	
MICHAEL V. LAURATO, an individual,	)	
THOMAS F. TOMILLO, an individual.	)	The Honorable
	)	Sandra Tristano,
Defendants-Appellant.	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Cunningham and Connors concurred in the judgment.

ORDER

Held: The circuit court's finding of unjust enrichment is not against the manifest weight of the evidence. The circuit court did not abuse its discretion allowing in evidence plaintiff's invoices, showing the amount due to her from defendant, where plaintiff's counsel laid the proper foundation.

¶ 1 Plaintiff, Joan N. Hinken, DVM, a veterinarian who works at horse racing venues, alleges defendant, Michael V. Laurato, failed to pay her for veterinarian services she provided to horses

defendant owned.[1] The circuit court, after a bench trial, entered a finding of unjust enrichment against defendant, and entered judgment for plaintiff in the amount of $3,964.20, plus costs associated with the suit of $645.35. Defendant raises the following issues on appeal: (1) whether the circuit court erred in finding unjust enrichment; and (2) whether plaintiff's invoices were properly admitted into evidence. We hold the circuit court's finding of unjust enrichment is not against the manifest weight of the evidence. We hold the circuit court did not abuse its discretion allowing in evidence plaintiff's invoices, showing the amount due to her from defendant, where plaintiff's counsel laid the proper foundation.

¶ 2 JURISDICTION

¶ 3 On October 20, 2010, after a bench trial on the matter, the circuit court ordered judgment be entered against defendant on count two of plaintiff's complaint. On November 9, 2010, defendant filed a motion to reconsider. On May 4, 2011, the circuit court denied defendant's motion to reconsider. On May 25, 2011, defendant timely filed his notice of appeal. Accordingly, this court has jurisdiction pursuant to Illinois Supreme Court Rules 301 and 303 governing appeals from final judgments entered below. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); R. 303 (eff. May 30, 2008).

¶ 4 BACKGROUND

[1]On November 12, 2009, defendant filed a motion to add the trainer of the horses, Thomas F. Tomillo, as a defendant. On February 4, 2010, the circuit court ordered that Tomillo be added as a third party defendant. Tomillo passed away approximately five weeks prior to trial. The record does not show if Tomillo's estate, or a personal representative, was ever substituted as a defendant, nor does it disclose if Tomillo was dismissed as a defendant. Accordingly, it is unknown what Tomillo's status is in this litigation.

¶ 5 On July 13, 2009, plaintiff filed a two count complaint against defendant. In count one, plaintiff alleges breach of contract and in count two, unjust enrichment. Plaintiff alleges she is a veterinarian who works "out of a mobile unit at various race tracks in the area." In count two, plaintiff alleges she entered into an oral agreement with defendant to provide veterinary services on several horses he owned. She alleges defendant refused to pay her an outstanding balance of $3,964.20 despite her demands he do so. Plaintiff stated she "provided Defendant with valuable veterinary services for the benefit of Defendant's horses in exchange for a promise of payment," but that "Defendant unjustly accepted and retained the benefit of [her] services without adequately compensating her." She requested the circuit court enter judgment against defendant in the of amount of $3,964.20, plus costs and fees. Plaintiff attached to her complaint an invoice addressed to defendant showing a balance of $3,964.20, and a letter her attorney wrote to defendant demanding payment of the outstanding balance.

¶ 6 At trial on October 20, 2010, plaintiff testified she is an equine veterinarian who primarily works on-site at horse racing tracks in northern Illinois. She provided veterinarian services on horses owned by the defendant beginning in the fall of 2007 until "around November" of 2008. Defendant submitted "several payments" to her drawn from an account called "The Horseman's Guarantee Corporation of America." (HGCA). Plaintiff explained that HGCA is an account commonly used by people in the horse racing industry to make payments to vendors. She explained that race winnings go into an HGCA account and that "trainers, owners, veterinarians *** set up an account with the HGCA." There is no requirement that payments be made using an HGCA account, but that "it sometimes makes it easier if you do have an account

for them to transfer money into your account versus them having to write you out a check." Most of the owners who send her payments, send her checks from non-HGCA accounts, but that "there are numerous owners that do use the HGCA" to pay her.

¶ 7 As an exhibit, plaintiff's counsel tendered plaintiff's billing statements. The following exchange then occurred.

> "Q [Plaintiff's counsel]. Dr. Hinken, can you tell the Court what these are?
>
> A [Plaintiff]. These are my billing statements.
>
> Q. And who are they provided to?
>
> A. They are provided to the owners of the racehorses that I take care of.
>
> Q. And these particular invoices?
>
> A. These particular invoices were for [defendant].
>
> Q. And are you familiar with the billing procedures at your place of business?
>
> A. Yes
>
> Q. Were these invoices issued contemporaneously with - - or shortly after you provided the services described within?
>
> A. They were - - they were issued at the end of the billing period which occurs every month on the 25th.
>
> Q. Would you say that sending these kinds of invoices are

done in the normal course of running your business?

A. Yes.

Q. Do the invoices here adequately reflect charges that were incurred and payments made for the treatment of [defendant's] horses?

A. They appear to be. Yes

Defense counsel. Objection, foundation.

The court. Overruled."

Plaintiff testified further that she was familiar with the standard rates for veterinarian services in the area and responded "yes" when asked whether her rates were "fair and reasonable." Originally the invoices would be given to Thomas F. Tomillo, defendant's trainer, and then she would receive payment through the HGCA account. However, in the spring of 2008, Tomillo gave her a fax number and directed her to send the invoices to that fax number. She believed that the fax number belonged to defendant.

¶ 8 Plaintiff testified that defendant never objected to any of the services she provided. She typically communicates with the horse trainers, not the owners, which was common and customary in her field. When she provided the services covered by the invoices, she believed that all of the horses belonged to defendant; a fact defendant never disputed.

¶ 9 Defendant's account fell into arrears. In May or June of 2008, defendant asked her to resume treating his horses. She told him she "would not treat the horses until I was paid for the previous services rendered, and he agreed to make payment, and that he would continue to make

payment." Defendant asked her for a discount of 20 percent if he paid his bill before the 25th of every month. Plaintiff agreed to the discount and resumed treating defendant's horses. Defendant made payments several times in the summer and fall of 2008.

¶ 10 At one point, defendant's horses were to be shipped to Pennsylvania, but because defendant had an outstanding balance, she would not provide a veterinarian certificate of health, which was required for a horse to travel to another state. Defendant both called her and sent her a letter, which she lost, stating that he would send her payment in full ten days after the horses arrived in Pennsylvania.

¶ 11 In December of 2008, defendant called her to inquire about the outstanding balance on his account, claiming he wanted to pay the balance. She was out of town when defendant called, so she told him that she would have to get back to him with the information. She was never able to get in touch with him.

¶ 12 She never received payment on the outstanding balance of $3,964.20. The invoices were admitted into evidence over defense counsel's foundation objection. Also entered into evidence, over defense counsel's objections of hearsay and foundation, was a December, 2008 "summary of the services provided for the horses that were being trained by Mr. Tomillo and owned by [defendant] at the time that he took his horses to Pennsylvania." Her bookkeeper sent the summary to defendant at defendant's request. She did not routinely send a summary such as the one tendered, but she does do it on occasion. She is familiar with the billing procedures in her place of business. The summary was the final statement sent to defendant in an attempt to recover the balance of $3,964.20. Plaintiff did not speak with defendant again after submitting

the final summary.

¶ 13 On cross-examination, plaintiff testified that she was never directly paid by defendant. She first spoke to defendant at "the end of May, beginning of June of 2008," but that the horse "trainer has authorization to okay the treatments." She issued health certificates for defendant's horses despite claiming defendant owed her money. She believed the invoices were sent to defendant's fax number, but admitted that she did not have any proof that the fax was sent to defendant. She also admitted that she did not have any proof that she mailed or electronically mailed invoices to defendant. She said that "the only proof I would have is that there were payments made on the invoices, so somehow your client found out that he did owe me money and tried to pay me."

¶ 14 On re-direct examination, she answered, "No. Never" when asked whether she had "ever known a trainer to be personally responsible for the debts of an owner *** for those services you provided." Defendant never told her to stop providing veterinarian services on his horses. One time, defendant was erroneously billed, but she credited his account for the error. Besides the corrected error, defendant never denied owning any of the horses plaintiff treated. Plaintiff was also under the impression that Tomillo requested her services on behalf of defendant.

¶ 15 After plaintiff's testimony, plaintiff's counsel rested. Defense counsel moved for a directed verdict, which the court denied.

¶ 16 Defendant testified that he is a licensed horse owner and he is familiar with title 11 of the Administrative Code. Title 11 "deals with the rules of racing, and it governs all of the relationships on a horse track, including that between the owner and trainer and trainer and

veterinarian, ***. Everyone who works on a racetrack has to be licensed, including the owner." Every owner is required to have a trainer and that "[t]he relationship between the owner and trainer is a matter of contract between the owner and the trainer." He hired Tomillo in July of 2007. As an owner, he hires the trainer, who in turn hires "his own independents" including veterinarians "unless an owner wants to contract individually with a different veterinarian, which I did." A trainer has "the complete care and financial responsibility for that horse."

¶ 17 Tomillo "was to train, keep the horses fit, exercise the horses, and prepare the horse for racing." He instructed Tomillo that anabolic steroids were not to be administered to any of his horses for any reason "by any person." Defense counsel presented defendant with a copy of plaintiff's statement and pointed out that on August 14, 2008, "Equipose" was administered to one of the horses. Defendant testified Equipose is an anabolic steroid and that it was given to that particular horse also in September and October of 2008.

¶ 18 Defendant also testified that at the time in question, all of the male horses he owned were gelded horses, and that the administrative regulations forbid Equipose in gelded horses. Defense counsel then presented Title 11, section 603.210 of the Administrative Code as defense exhibit "F7." 11 Ill. Adm. Code 603.210(a)(2), amended at 32 Ill. Reg. 7397 (eff. May 1, 2008). Defendant stated that under subsection "a," sub-subsection "2," "Equipose is only permitted to be administered *** to horses that are other than geldings." Defendant testified that "all of my male horses were geldings and all of them got Equipose."

¶ 19 He never met plaintiff before the day of trial and had only spoken to her on one occasion, on October 31, 2008, saying "the reason that I called her is because I had terminated Mr.

Tomillo's services, and I required health certificates in order to move the horses in interstate commerce. And at that point was the first point that I learned that [plaintiff] had even laid a hand on one of my horses." Plaintiff never contacted him to get authorization to treat his horses. He never received any bills from plaintiff by way of fax and that "[t]he first time that I ever got a bill from [plaintiff] is when she sued me after my relationship with Mr. Tomillo ended." He would never authorize the administration of Equipose to any of his horses.

¶ 20 Defendant did not believe plaintiff's invoices to be authentic because he did not believe they complied with the Administrative Code. When asked whether he was "aware of the drug Lasix," defendant answered that "Lasix is a diuretic *** meant to prevent equine bleeding." He testified Lasix is the brand name for a furosemide which treats exercise induced pulmonary hemorrhage. After plaintiff's counsel objected, defense counsel stated "a lot of the treatments that [plaintiff] is seeking reimbursements for are illegal." The circuit judge questioned the relevance of defense counsel's line of questioning stating it had "no idea that the standard of care was going to be an issue here" and that it will not make any conclusions "from looking at an invoice to what is required of a veterinarian." Further, the circuit court warned that it was "not going to take this big leap into malpractice or negligence or whatever it is based on invoices." In response, defense counsel stated that he was arguing the services plaintiff is seeking compensation for were against the Administrative Code, but admitted that he did not allege malpractice.

¶ 21 Defendant next testified about his relationship with Tomillo. Tomillo was not authorized to hire any veterinarian except for in emergency situations. He did not authorize any of the

treatments for which plaintiff sought payment. Plaintiff's invoices showed charges for treatments for one of his horses that later died. On October 31, 2008, defendant terminated Tomillo's employment because "[h]e did something in contravention of his authority." Defendant paid Tomillo in full for all of his services. After removing his horses from Tomillo's care, he had to file a federal replevin action "in order to get the horses I had." This was when he first "came in touch with" plaintiff so that she could sign health certificates for the horses to be able to leave the state. Plaintiff agreed to do the health certificates and charged him in advance for the work. He paid her $1,450.00 to prepare the health certificates. Plaintiff did not mention to him that he had an outstanding balance, and the invoices show that Tomillo had been paying plaintiff out of the money defendant gave him. All of the services Tomillo hired for his horses were paid out of the "day rate with Mr. Tomillo." Plaintiff never sent him any invoices and that "what happened was, I made the final payment to Mr. Tomillo, and Mr. Tomillo didn't pay [plaintiff] what he owed her. He kept the money himself." He only made one payment to plaintiff, for the health certificates, and that Tomillo had been paying the veterinarian bills out of the fee he paid Tomillo.

¶ 22 Until he hired plaintiff for the health certificates, which he paid, he never had any contractual relationship with plaintiff. Additionally, none of his horses were on the "Illinois bleeder's list" and that it was his "understanding of the Administrative Code *** that a horse has to be on the bleeder's list to be administered Lasix."

¶ 23 On cross-examination, when asked whether he owned the horses mentioned in plaintiff's invoices, he answered "Some of them yes, some of them no." He pointed out two names of

horses that he did not own, but he never brought this to plaintiff's attention "because I didn't get charged for any of those horses until two months after my relationship with Mr. Tomillo ended." He lives in Florida and had "full authority and oversight of the horses" kept in Illinois. He "had a letter of agreement" with Tomillo, but he did not have it with him in court.

¶ 24 On rebuttal, plaintiff testified she has "never" charged for health certificates. She "had nothing to do with the horses being released from Mr. Tomillo" and that a interstate health certificate by a licensed veterinarian is required for the horses to travel out of Illinois. She agreed with defendant that she would complete the health certificates only if he paid her the past due balance. When asked whether she ever knowingly violated the Administrative Code, she answered "No." She answered "Yes" when asked whether she kept records in accordance with the Administrative Code and "No" when asked whether she "necessarily put every record that you keep into these invoices."

¶ 25 On cross-examination, plaintiff agreed that she knew the horses were geldings. She believed that "it was not until January 1st of 2009 that the State of Illinois said that no longer could anabolic steroids be administered to racehorses." In response, defense counsel presented an exhibit which, counsel claimed showed the effective date of the subject provision was May 1, 2008.

¶ 26 The court then asked counsel for both parties whether it could ask a few questions of the witnesses; both counsels agreed. The court asked plaintiff whether defendant owned all of the horses on the invoices. Plaintiff answered she believed there was an error in regards to some of the horse's names on the invoice. She believed her bookkeeper inadvertently added "Boy" to the

end of some of the horses names. As an example, she explained that the horses named "Be A Champion" and "Boonsborough"should not have had "Boy" added to the end of their names. The court then asked defendant whether he owned "horses named Be A Champion and Boonsborough" to which defendant responded "I did, in partnership." However, defendant could not recall whether he owned those two horses during the relevant time period.

¶ 27 The following exchange then occurred between plaintiff and the court after the court asked plaintiff how she knew that all of the services listed in her invoice were provided to defendant's horses:

> "[Plaintiff]. Number 1, Mr. Tomillo had standard operating procedure for how he likes his horses, what we call pre-raced medication administered before races.
>
> One of the most common ones is phenylbutazone, which is what the defendant alluded to. That's a non-steroidal anti-inflammatory similar to somebody taking two aspirins a day before if they know that they going to do something that, you know, they might have a little arthritis, which a lot of these horses do. Lasix is administered. That's a race-day medication. If your horse is on the bleeder's list, it is administered -Lasix to race.
>
> [The Court]. Were these horses on the bleeder's list?
>
> A. If they were not on the bleeder's list, that would have been illegal for them to have had Lasix to race, and it would have

> been found in the post-race samples and the horses would have been disqualified for any purse money they would have had.
>
> And the State of Illinois prints out a sheet every day with - - that they're racing with a list of all the horses that were racing that day that are on the bleeder's list that are to receive Lasix. And we have a 30-minute window that we have to give that Lasix, so there's no way - - and we fill out an affidavit, which we sign, stating that we treated the horse at such a time, how much was given, if it was given by IV injection at which side of the neck – they have jugular veins on both sides - - which side it's administered on.
>
> If a horse was treated with Lasix and not - - was not on the bleeder's list, if that - - you left that affidavit, the horse would be scratched because he was treated improperly, not supposed to.
>
> And if the horse was not treated with Lasix and he was on the bleeder's list, and there was no affidavit saying you treated the horse, again, the horse would be scratched because he was not administered Lasix."

¶ 28 On surrebuttal, defense counsel presented as an exhibit some of plaintiff's bills that defendant testified showed "handwritten changes made by Mr. Tomillo," and corrected total amounts due to plaintiff. Defendant testified that he did not own one of the horses covered in the

bill. The bill went to a "William Fox and Mike Lovado (phonetic) in Bloomingdale, Illinois." He has never lived in Bloomingdale, Illinois. He owned horses with William Fox, but not the horse shown in the bill. Defendant suggested that perhaps plaintiff was overpaid, based on this exhibit. Tomillo told him that he owed plaintiff money.

¶ 29 The circuit court orally stated its decision for the record. The court noted that it listened to the testimony from both sides, reviewed the documents which "primarily consist of invoices, one of which came from defendant and was marked up allegedly by the trainer, Mr. Tomillo," and reviewed the two sections of the Illinois Administrative Code that were introduced. The court entered judgment for the defendant on count one, the breach of contract count, because plaintiff failed to prove a contract existed between herself and defendant.

¶ 30 The circuit court entered judgment in plaintiff's favor on count two of plaintiff's complaint, for unjust enrichment. In making its decision, the circuit court found defendant owned the horses in question. There was some evidence that defendant co-owned several of the horses, but found that defendant "will be able to settle with his co-owners and has the benefit of the services that were provided by the plaintiff." The court found that defendant failed to show that "under no circumstances other than an emergency were his horses to have any veterinary care provided by the vet that was *** sort of the staff vet at the race track." The court found it significant that defendant claimed he had a written agreement with Tomillo, but he did not present it to the court. The court acknowledged that defendant testified regarding his agreement with Tomillo, but she did not find defendant's testimony credible. The court further found that:

"The plaintiff here provided services to the defendant's

> horses for a couple of years really, from 2007 - - well over a year anyway. And there was no testimony at all that any of these services were harmful or not needed or didn't do what they were supposed to do. And I'm not sure that despite defendant's obvious knowledge about horses, having owned many of them, I don't know that he has– his testimony as to the desirability or suggestion to me that these should not be given really has much weight for me.
>
> We have a licensed veterinarian in the State of Illinois testifying that she provided these services to the horses at the racetrack, and I think that the defendant was enriched by her services."

¶ 31 In making its ruling, the court acknowledged that it took "pause at the Equipose issue because the Administrative Code [ ] that was introduced by the defendant did say that it was effective May 1st, 2008, that no Equipose in male horses other than geldings." However, the court found plaintiff's testimony that "it was her understanding that that did not go into effect until January 1st, 2009" on the matter credible. The court noted that "if it was a prohibition that was strictly enforced, then it would make sense to me, as the plaintiff testified, that the horses who tested positive for it during the 2008 racing year, would have been disqualified." The court found that it believed Equipose was given and that plaintiff should be compensated for administering Equipose.

¶ 32 The court addressed the remaining arguments defendant made during his testimony. The court noted "defendant tried to make many different kinds of angles" in making his argument. The court found,

> "One angle was that none of these services were ever provided, they couldn't have been provided because he never saw a statement. Well, I don't find that credible because it is consistent with the racing industry that when the horses are at the racetrack that they receive services from a whole host of providers of services, including the veterinarians, and that owners may not know very much about it. Or they may know generally about it, but they don't specifically authorize each one. Its just not feasible to do so every time.
>
> And, again, if this was some arrangement with this particular owner that these horses could not have certain treatments or could not be treated by the track veterinarian, then I needed to see more proof of that other than the defendant's testimony which was kind of, you know, bouncing back and forth with various types of defenses."

The circuit court entered judgment against defendant in the amount of $3,964.20, plus costs in the amount of $645.35.

¶ 33 On November 9, 2010, defendant filed a motion to reconsider arguing the circuit court, in ruling as it did, enforced illegal conduct; that the plaintiff failed to prove unjust enrichment; and that the court erred in finding that the disputed treatments were authorized by defendant; and

allowing evidence without proper foundation. Plaintiff responded that defendant failed "to meet the high standards of demonstrating" the circuit court applied the law erroneously, to show that the law has changed, or prove the existence of newly discovered evidence and, therefore, defendant's motion must be denied.

¶ 34 On May 4, 2011, the circuit court denied defendant's motion to reconsider. In making its ruling, the court found that defendant's motion did not address any new evidence, but rather, alleged the court made an error as to the law. The court noted that it considered all of the arguments and pleadings in the matter, and found, there was "ample" evidence presented proving unjust enrichment. The court found:

> "These were services that were rendered by a veterinarian at the track, at Arlington Racetrack, for the benefit of a horse owned by the defendant and there was no question that these services were provided, and the defendant tried - - defendant did testify at trial and made the argument that he didn't authorize some specific treatments; but I found that the animal was benefitted by these treatments and that that's standard practice in the racehorse racing industry, that there *** are staff at the racetrack where a horse races, including veterinarians and groomsmen and jockeys, et cetera, and they all provide services and the owners should expect to have to pay for those services.
>
> So the issue of illegality related to a regulation that was

> adopted by the Illinois department of agriculture on what specific types of medication should be given to what specific types of horses and I did take into consideration the regulation that had been adopted just that year, I think, and that it was the testimony of the veterinarian that during the racing season, that regulation was not being enforced and that horses were routinely given certain medications and, in fact, that's what was done."

¶ 35 On May 25, 2011, defendant timely filed his notice of appeal. This appeal followed.

¶ 36 ANALYSIS

¶ 37 Defendant raises two issues for our review: 1) whether the circuit court erred in finding unjust enrichment; and 2) whether plaintiff's exhibits were properly admitted into evidence. We will address each issue in turn.

¶ 38 Unjust Enrichment

¶ 39 Defendant argues that the circuit court's verdict of unjust enrichment was erroneous because it enforces and rewards plaintiff's allegedly illegal conduct. Specifically, defendant argues plaintiff's administration of the drugs Equipose and Lasix to his horses violated the Administrative Code. He did not receive any benefit from plaintiff's services because the treatments were illegal, and that plaintiff did not establish at trial that any benefit was conferred on him. His horses were healthy, and did not need any treatment. He never authorized any of the treatments for which plaintiff sought compensation.

¶ 40 Plaintiff acknowledges there was conflicting testimony in the record, but argues that the

circuit court found her testimony more credible. Plaintiff argues that judgment on the unjust enrichment count of her complaint was proper because the evidence showed defendant owned the horses in question, that plaintiff provided services to defendant's horses, and that these services enriched defendant. Plaintiff denies that she improperly administered the drug Lasix to defendant's horses. She urges that defendant's horses would have been disqualified after their post race body fluid samples were taken had they not been on the bleeders list, and no testimony was presented that any of defendant's horses were disqualified. Defendant never showed that Lasix was improperly administered on a race day, the only time the drug is monitored and prohibited. Plaintiff reiterates similar arguments in regards to the administration of the drug Equipose. That Defendant failed to provide any evidence that his horses were given improper dosages of Equipose, that they were given on race day, or that any of defendant's horses had been disqualified. Defendant should have brought his claim of improper treatments before the Illinois Racing Board, which governs such disputes. The administration of Equipose and Lasix made up only a small portion of the services she rendered on defendant's horses. Plaintiff disputes defendant's contention that he never approved of any of plaintiff's treatment. Either defendant or his trainer, Tomillo, approved all procedures and that it is customary practice in the horse racing industry for service providers, such as herself, to deal primarily with the trainers. This was even more important in this case because defendant lived in Florida.

¶ 41 The findings of the circuit court in a bench trial will not be disturbed by this court unless those findings are against the manifest weight of the evidence. *Commercial Mortgage & Finance Co. v. Life Savings of America*, 129 Ill. 2d 42, 49 (1989). A circuit court's findings are

against the manifest weight of the evidence if they are arbitrary, unreasonable, not based on the evidence, or where the opposite conclusion is apparent. *Vancura v. Katris*, 238 Ill. 2d 352, 385-86 (2010). "Where there are different ways to view the evidence, or alternative inferences to be drawn from it, we accept the view of the trier of fact as long as it is reasonable." *People ex rel. Illinois Historic Preservation Agency v. Zych*, 186 Ill. 2d 267, 278 (1999). The rationale behind applying this standard of review to bench trials, especially those that contain contradictory testimony, is that " ' the trial judge *** is in a position superior to a court of review to observe the conduct of the witnesses while testifying, to determine their credibility, and to weigh the evidence and determine the preponderance thereof.' " *Greene v. City of Chicago*, 73 Ill. 2d 100, 110 (1978) quoting *Schulenburg v. Signatrol, Inc.*, 37 Ill. 2d 352, 356 (1967). We will not reverse the circuit court's judgment merely because we may have reached a different result. *Sexton v. Smith*, 112 Ill. 2d 187, 194 (1986). Further, it is not this court's function to reweigh the evidence. *Zych*, 186 Ill. 2d at 278.

¶ 42 To show unjust enrichment, a plaintiff must show "that the defendant has unjustly retained a benefit to the plaintiff's detriment, and that defendant's retention of the benefit violates the fundamental principles of justice, equity, and good conscience." *HPI Health Care Services, Inc., v. Mt. Vernon Hospital, Inc.*, 131 Ill. 2d 145, 160 (1989). Unjust enrichment "does not require fault on the part of the defendant." *Partipilo v. Hallman*, 156 Ill. App. 3d 806, 810 (1987). Rather, "the essence of the cause of action is that one party is enriched and it would be unjust of that party to retain the enrichment." *Id.*; see also *Schlosser v. Welk*, 193 Ill. App. 3d 448, 450 (1990) (unjust enrichment "is predicated on the principle that no one should unjustly

enrich himself at another's expense.").

¶ 43 In this case, the circuit court found that defendant owned the horses in question, that plaintiff provided veterinarian services to defendant's horses at a race track, and that defendant was enriched by those services. Plaintiff testified that she provided veterinarian services to defendant's horses and that defendant did not pay her for those services. Plaintiff's testimony proved that defendant unjustly retained the benefit of her veterinarian services to her detriment. She established that defendant did not pay her, even after her demands for him to do so. The circuit court found plaintiff's testimony credible. The court stated several times in the record that it did not find defendant's testimony credible. Defendant's argument relies solely upon what he testified to at trial. We cannot say that the court's determinations of credibility of the witnesses is against the manifest weight of the evidence. It is not the function of this court to reweigh the evidence. *Zych*, 186 Ill. 2d at 278. The circuit court is in a better position to determine a witness's credibility. *Greene*, 73 Ill. 2d at 110 quoting *Schulenburg*, 37 Ill. 2d at 356. The circuit court's findings are not against the manifest weight of the evidence.

¶ 44 Before both this court and the circuit court, defendant argued that plaintiff's administration of the drugs Lasix and Equipose were illegal and, therefore, plaintiff could not recover for unjust enrichment. Defendant did not prove that either of those treatments were illegal. In support of his argument that the administration of the drug Lasix is prohibited, defendant presented as an exhibit, Title 11, section 603.70 of the Administrative Code. 11 Ill. Adm. Code 603.70, amended at 33 Ill. Reg. 12571 (eff. August 25, 2009). Defendant testified Lasix is a brand name for a furosemide which treats exercise induced pulmonary hemorrhage.

Section 603.70(a) provides, in relevant part:

> "The Board recognizes that Exercise Induced Pulmonary Hemorrhage (EIPH) is almost universal in performance horses. The Board also recognizes that the diuretic furosemide is helpful in the management of the EIPH syndrome, this includes horses that already had a bleeding episode as well as horses that have not yet exhibited the epistaxis. *In regulating the race day use* of furosemide, the Board has placed strict controls on the dose, route and time the medication is administered. Additionally, Board security personnel monitors these horses during and after the administration. Advances in drug testing techniques permit the Board laboratory to quantitate post-race serum samples for furosemide, providing a thorough regulation of the drug. *All of these measures are designed to prevent the misuse of furosemide.*" (Emphasis added). 11 Ill. Adm. Code 603.70(a), amended at 33 Ill. Reg. 12571 (eff. August 25, 2009).

Defendant presented no evidence to show that plaintiff misused the drug Lasix. Title 11, section 603.70 does not say that the use of Lasix is prohibited. Rather, it regulates its "race day use." Defendant has not shown that plaintiff misused the drug Lasix on a race day in violation of Title 11, Section 603.70 of the Administrative Code.

¶ 45 We are also not persuaded by defendant's reliance on Title 11, section 603.210(a)(2) of

the Administrative Code in arguing that plaintiff's administration of the drug Equipose was illegal. 11 Ill. Adm. Code 603.210(a)(2), amended at 32 Ill. Reg. 7397 (eff. May 1, 2008). Defendant testified that all of his gelded horses received Equipose in violation of Section 603.210(a)(2). He presented Title 11, section 603.210(a)(2) of the Administrative Code, as an exhibit, which at the time of trial stated in relevant part:

> "a) The use of any one of the following four anabolic steroids is permitted if the following urine or plasma threshold concentrations are not exceeded:
>
> ***
>
> 2) Boldenone (Equipose)- in male horses other than geldings; *** 15 ng/ml in urine." Section 603.210." 11 Ill. Adm. Code 603.210(a)(2), amended at 32 Ill. Reg. 7397 (eff. May 1, 2008).

Section 603.210 does not say, as defendant testified, that "Equipose is only permitted to be administered *** to horses that are other than geldings." Rather, section 603.210 addresses the amount of Equipose allowed "in male horses other than geldings." 11 Ill. Adm. Code 603.210(a)(2), amended at 32 Ill. Reg. 7397 (eff. May 1, 2008). It does not even address Equipose in geldings, as defendant alleged.[2]

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[2] We note that the current version of Title 11, section 603.210 does address the administration of Equipose in geldings. 11 Ill. Adm. Code 603.210, amended by emergency rulemaking at 35 Ill. Reg. 2810 (eff. Jan. 26, 2011), amended at 35 Ill. Reg. 8485, eff. May 23, 2011). Section 603.210(b)(1)(B) specifically states "No boldenone [Equipose] shall be permitted

¶ 46 Accordingly, defendant failed to prove that either the administration of Lasix or Equipose were prohibited by the Administrative Code. Defendant has not shown the circuit court's decision to be against the manifest weight of the evidence. We cannot say that the findings of the circuit court were arbitrary, unreasonable, or not based on the evidence. *Vancura*, 238 Ill. 2d at 385-86.

¶ 47 Foundation

¶ 48 Defendant's final argument is that plaintiff's invoices should not have been admitted for lack of a proper foundation because she did not call any recordkeeper to testify nor did she testify that she was the recordkeeper.

¶ 49 Plaintiff responds that the exhibits were properly admitted under Illinois Supreme Court Rule 236 as a business records exception to the hearsay rule. Ill. S. Ct. R. 236 (eff. Aug.1, 1992). She testified that she is familiar with her billing procedures and to the specific billing invoice in question. Both were generated in the normal course of business, which was customary in her business, and that the statement in question was issued shortly after, or contemporaneously with the services she provided. Plaintiff argues that Illinois law does not require the actual recordkeeper to lay the foundation for a billing statement.

¶ 50 We will only reverse the circuit court's decision regarding admission of evidence where the circuit court abuses its discretion. *Westlake v. C. House Corp.*, 2011 IL App (1st) 100653,

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in geldings or female horses." 11 Ill. Adm. Code 603.210(b)(1)(B), amended by emergency rulemaking at 35 Ill. Reg. 2810 (eff. Jan. 26, 2011), amended at 35 Ill. Reg. 8485, eff. May 23, 2011). However, this amendment did not take effect until 2011, well after plaintiff's administration of Equipose to defendant's horses.

¶19. The circuit court abuses its discretion if "the ruling is arbitrary, fanciful or unreasonable, or when no reasonable person would take the same view." *People v. Jenkins*, 383 Ill. App. 3d 978, 988-89 (2008).

¶ 51 Illinois Supreme Court Rule 236 addresses the admission of business records in to evidence. Ill. S. Ct. R. 236 (eff. Aug.1, 1992). Rule 236(a) provides, in relevant part:

> "(a) Any writing or record, whether in the form of any entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence, or event, shall be admissible as evidence of the act, transaction, occurrence, or event, if made in the regular course of any business, and if it was the regular course of the business to make such a memorandum or record at the time of such an act, transaction, occurrence, or event or within a reasonable time thereafter. All other circumstances of the making of the writing or record, including lack of personal knowledge by the entrant or maker, may be shown to affect its weight, but shall not affect its admissibility." Ill. S. Ct. R. 236 (eff. Aug.1, 1992).

Further, it is well established that a business record may be admitted into evidence upon a witnesses's testimony even though the witness did not make the original entry. *Lecroy v. Miller*, 272 Ill. App. 3d 925, 936 (1995). "Under this rule, the witness who testifies as to the records may be anyone acquainted with the business and familiar with the records themselves." *Central Steel & Wire, Co. v. Coating Research Corp.*, 53 Ill. App. 3d 943, 946-47 (1977); see also *Birch*

v. Township of Drummer, 139 Ill. App. 3d 397, 407 (1985) ("Anyone familiar with the business and procedure may testify as to the records.").

¶ 52 We hold that the circuit court did not abuse its discretion in admitting in evidence plaintiff's invoices showing the amount defendant owed. Plaintiff's testimony established that she was familiar with the billing practices of her business, that the invoices were issued at the end of every month, that the invoices were done in the normal course of running her business, and that they reflect the charges and payments incurred on defendant's horses. Accordingly, proper foundation was laid before the invoices were admitted into evidence. Defendant argues that plaintiff cannot establish the proper foundation for the invoices admission because she was not the recordkeeper. This court has repeatedly held that "[a]nyone familiar with the business and procedure may testify as to the records." *Birch*, 139 Ill. App. 3d at 407; *Central Steel* , 53 Ill. App. 3d at 946-47; *Lecroy*, 272 Ill. App. 3d at 936 ("Our courts have held that a witness may produce business records for admission into evidence even though he is not the original entrant as long as the records are made in the course of business, he is familiar with the records sought to be admitted, and acquainted with the business and procedures at issue."). Further, Rule 236 provides that "[a]ll other circumstances of the making of the writing or record, including lack of personal knowledge by the entrant or maker, may be shown to affect its weight, but shall not affect its admissibility." Ill. S. Ct. R. 236 (eff. Aug.1, 1992). We hold plaintiff established the foundation necessary to admit in to evidence the invoices that show defendant's indebtedness to her under Rule 236. The circuit court did not abuse its discretion in admitting plaintiff's invoices in to evidence.

¶ 53 CONCLUSION

¶ 54 The judgment of the circuit court is affirmed.

¶ 55 Affirmed.