2018

ROBBEN ANN OLDROYD, Petitioner/ Appellant, v. FARRELL LYNN OLDROYD, Respondent/ Appellee: Brief of Appellant

Utah Court of Appeals

IN THE UTAH COURT OF APPEALS

ROBBEN ANN OLDROYD, Petitioner/Appellant, v. FARRELL LYNN OLDROYD, Respondent/Appellee.	Case No. 20180257

Brief of Appellant

Appeal from Judgment Entered by the Second Judicial District Court,
Honorable Noel S. Hyde

Brian E. Arnold ARNOLD & WADSWORTH 298 24th Street, #230 Ogden, UT 84401 *Counsel for Appellee*	Brent D. Wride Bryant McConkie RAY QUINNEY & NEBEKER P.C. 36 South State Street, Suite 1400 Salt Lake City, UT 84111 *Counsel for Appellant*

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JURISDICTION

This Court has jurisdiction over this appeal pursuant to Utah Code Annotated §78A-4-103(2)(h).

ISSUE PRESENTED FOR REVIEW

On remand, did the district court err in holding that its prior judgment could be upheld, post-appeal, based upon the theory of unjust enrichment, which was not pleaded or tried by consent?

Standard of Review: This is a legal issue that is reviewed by the appellate court de novo. *438 Main Street v. Easy Heat, Inc.*, 99 P.3d 801, 813 (Utah 2004). "While the court's factual findings are reviewed for clear error, its legal conclusions are reviewed for correctness, including its application of law to the facts of the case. *State v. Fuller*, 2014 UT 29, ¶17; 764 Utah Adv. Rep. 7.

The appellant preserved this issue for appeal in her *Petitioner's Memorandum Regarding Post-Appeal Issues.* R. 1207.

DETERMINATIVE STATUTES, RULES, AND REGULATIONS

This appeal is governed by Rule 15(b)(1) of the Utah Rules of Civil Procedure, which states: "When an issue not raised in the pleadings is tried by the parties' express or implied consent, it must be treated in all respects as if raised in the pleadings."

STATEMENT OF THE CASE

Nature of the Case and Course of the Proceedings

This is a divorce case that is on appeal to this Court for the second time. The issue is whether Farrell Oldroyd ("**Farrell**") has an interest in a house in Morgan County, Utah, that Ann Oldroyd ("**Ann**") built and paid for with her separate funds prior to her marriage to Farrell. As set forth below, the district court originally awarded Farrell a 50% premarital interest in the house. Ann appealed, and this Court vacated the judgment. On remand, the district court again awarded Farrell a 50% interest in the house.[1]

Disposition in the Trial Court

After the trial in this matter, the district court ruled that Farrell had an equitable premarital interest in Ann's house. R. 615. Ann then filed an appeal. R. 642.

First Appeal

On appeal, this Court ruled:

> [T]he court did not explain what legal theory gave rise to that equitable interest, i.e., the court did not discuss whether unjust enrichment, promissory estoppel, quasi-contract, or some other theory applied. Nor does our review of the proceedings below indicate that Farrell identified to the court a particular theory under which he was

[1] Although not legally required to do so, Ann has agreed from the outset that Farrell may receive 50% of the *appreciation* of the House. All that she asks is that before the equity in the House is split between the parties, she receive credit for the money she spent to build the House.

entitled to a premarital interest. It is therefore unclear what theory the court applied and which facts it believed supported that theory.

R. 1175-76. The Court held that "the district court's findings were inadequate to support its determination," R. 1172, and the Court vacated the district court's ruling and remanded the case "for the district court to enter a ruling with more complete findings." R. 1173.

Post-Remand Disposition in the Trial Court

On remand, the district court issued its *Supplemental Findings of Fact and Conclusions of Law and Order*. R. 1227. The district court ruled that it could "rely upon theories not plead when evidence is produced at trial that supports the theory relied upon." R. 1232. The court then ruled that Farrell would receive a 50% "premarital" interest in the house "to prevent unjust enrichment." R. 1232. However, the district court did not find that the unpleaded theory of unjust enrichment had been "tried by the parties' express or implied consent" as required by Rule 15(b)(1) of the Utah Rules of Civil Procedure.

Statement of Facts

1. Prior to the parties' marriage, Ann purchased a building lot in Morgan County, Utah, for $110,000. R. 613.

2. All funds used to purchase the building lot came from Ann's separate funds. R. 613-14.

3. The building lot is titled in Ann's name only. R. 614.

4. Acting as the general contractor, Ann built a house on her lot (the "**House**"). R. 653 at 105:2-3, 209:23-25; R. 614.

5. It is undisputed that Ann paid all for all of the materials and out-of-pocket building costs for the House solely out of her own separate funds. R. 615.

6. Ann paid Farrell and other parties to assist in constructing the House. R. 653 at 124:6-11, 19-24. She paid Farrell between $18,000 and $19,000 for his work on the House. R. 616.

7. Farrell admits that Ann's out-of-pocket expenses for building the House were "at least" $350,000. R. 653 at 247:21 to 248:1; *see also id.* at 240:3-15.

8. Before the parties were married, Ann obtained an occupancy permit for the House. R. 653 at 107:18-24. The occupancy permit was issued solely to Ann. *Id.* at 210:13-15.

9. The parties then got married and moved into the House. R. 653 at 107:20 to 108:5; R. 616 at ¶ 47.

10. On July 16, 2013, Ann filed a *Verified Petition for Divorce* with the district court. R. 1.

11. On September 18, 2013, Farrell filed an *Answer and Counter Complaint for Divorce*.[2] R. 48.

12. Farrell's counterclaim merely requested a divorce and a division of "marital" property. R. 52. Farrell did not seek any determination regarding premarital property, and he did not plead any theories such as unjust enrichment, promissory estoppel, contract, or quasi-contract. *Id.*

13. On April 23, 2015, after a two-day trial, the district court granted the parties a divorce. R. 626.

14. The district court ruled that Farrell acquired a "premarital" interest in the House. R. 615 at ¶ 32.

15. However, on appeal, this Court vacated the district's court's ruling and remanded the case for further proceedings. R. 1178.

16. On remand, the district court allowed the parties to file simultaneous post-appeal briefs, and it ordered the parties to prepare proposed supplement findings. *See* Minute Entry dated August 9, 2017.

17. Ann filed proposed supplemental findings with the district court on September 26, 2017. R. 1210. She also filed a post-appeal memorandum in which she argued that the theory of unjust enrichment had not been "pleaded or litigated." R. 1204.

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[2] It is common in divorce cases for an answering party to file a counterclaim so that the petitioning party cannot later unilaterally dismiss the divorce proceedings.

18. Farrell filed a post-appeal brief in which he argued that the court "could rely on other theories of law in order to come to the same conclusion," R. 1199. However, Farrell did not suggest that any of those theories had been pleaded or litigated by consent.

19. Farrell did not prepare any supplemental findings. *See* Docket, generally.

20. Ultimately, the district court prepared its own supplemental findings. It entered its *Supplemental Findings of Fact and Conclusions of Law and Order* on January 26, 2018. R. 1227.

21. The district court ruled that it had "the authority to rely upon legal theories not plead when evidence is produced at trial that supports the theory relied upon." R. 1232.

22. The district court awarded Farrell a 50% premarital interest in the House "to prevent unjust enrichment." *Id.*

23. However, the district court did not find that the issue of unjust enrichment had been tried by consent. *See* R. 1227-35.

24. Ann filed a timely notice of appeal on February 21, 2018. R. 1236.

SUMMARY OF ARGUMENT

The district court did not properly apply Rule 15(b)(1). It is undisputed that Farrell did not plead the theory of unjust enrichment or any other theory that would entitle him to affirmative relief with respect to pre-marital property. Therefore, the district court could rely on the theory of unjust enrichment only if the issue was tried by "express or implied consent." Utah R. Civ. P. 15(b)(1). The district court did not find that unjust enrichment was tried by consent.

Moreover, the district court could not have found the Ann consented to try the unjust enrichment claim. As shown below Farrell's counsel stated in his trial brief that "the statute of limitations has passed." R. 493. Thus neither party thought that the theory of unjust enrichment was before the court, and Ann clearly did not consent to its adjudication. Indeed, Farrell expressly told Ann and the district court that unjust enrichment was *not* an issue at the trial. Thus, Ann did not present evidence at trial regarding the specific elements of unjust enrichment.

In addition, even if Ann had impliedly consented to try the issue of unjust enrichment, the claim fails as a matter of law because (1) Farrell argued that the claim was barred by the statute of limitations, and (2) Farrell did not prove the elements of unjust enrichment. Among other things, Farrell obtained a benefit in exchange for his labor on the House because he lived in the House rent-free and operated his business out of the House both before and after the divorce.

As a matter of law, the district court erred in granting judgment based on the theory of unjust enrichment.

ARGUMENT

I. Farrell never filed a motion to amend the pleadings.

The district court ruled that "[t]he court has the authority to rely upon legal theories not plead when evidence is produced at trial that supports the legal theory relied upon." R. 1232. The district court relied upon two authorities for this ruling: (1) Rule 15(b) of the Utah Rules of Civil Procedure and (2) the decision of the Utah Supreme Court in *Big Butte Ranch, Inc. v. Holm*, 570 P.2d 690, 692 (Utah 1977). *Id.* In *Holm*, "a motion to amend the pleadings to conform to the evidence was granted." *Id.* at 692. Here, however, no motion to amend the pleadings was ever filed or granted. The *Holm* case is therefore not applicable here. Thus, the only possible support for the district court's ruling is Rule 15(b).

II. The district court did not determine whether the theory of unjust enrichment was tried by the parties' consent.

Rule 15(b)(1) provides: "When an issue not raised in the pleadings is tried by the parties' express or implied consent, it must be treated in all respects as if raised in the pleadings." Thus, under Rule 15(b)(1), the district court was required to determine whether the theory of unjust enrichment was tried by the parties' consent. Indeed, before relying on a theory that was not pleaded, the district court was required to engage in an analysis in which it gave Ann "the benefit of every

doubt" and which ensured that Ann was not "misled nor in any way prejudiced" by relying on an unpleaded theory. *Buehner Block Co. v. Glezos*, 310 P.2d 517, 519 (Utah 1957). The district court did not undertake the required analysis, and its judgment must be reversed on this basis alone. However, there is no need for a second remand in this case because, as a matter of law, Ann did not consent to trial of the theory of unjust enrichment.

III. As a matter of law, the theory of unjust enrichment was not tried by the parties' consent.

As a matter of law, the theory of unjust enrichment was not tried by consent. There is nothing in the record to suggest that Ann consented to be a defendant in an unjust enrichment action. While Farrell filed a counterclaim, he sought only a divorce, along with equitable distribution of *marital* property. Farrell did not rely on unjust enrichment at trial. In fact, he expressly told the district court that he was *not* pursuing such a remedy.

In his trial brief, which he filed prior to trial, Farrell referred to possible non-divorce causes of action against Ann and stated: "Respondent realizes the statute of limitations has passed barring him from filing a lawsuit." R. 493. Then, in his opening argument, Farrell's counsel stated: "[M]y client could have sued her for unjust enrichment." R. 653 at 22:25 to 23:1. However, Farrell's counsel then stated: "[T]he statute of limitations has now run on that because we have an 18-year marriage." *Id.* at 23:6-7.

The only other time that the phrase "unjust enrichment" appears in the trial transcript is when Farrell's counsel asked Ann, "[I]s it your understanding that if you would have broke off the marriage that you could have potentially opened yourself to a lawsuit for unjust enrichment? R. 653 at 145:20-23. Ann's counsel objected to this question, and the court sustained the objection. *Id.* at 145:25 to 146:2.

Because Farrell explicitly told the district court that he was not pursuing a claim for unjust enrichment, this Court should rule that, as a matter of law, an unjust enrichment claim was not tried by the parties' consent.

IV. Post-appeal application of the theory of unjust enrichment would prejudice Ann.

In this case, the district court was required to ensure that Ann "had a fair opportunity" to defend herself against an unjust enrichment claim and to determine "whether [she] could offer additional evidence if the case were retried on a different theory." *Colman v. Colman*, 743 P.2d 782, 785 (Utah Ct. App. 1987). In this case, Ann could certainly offer additional evidence if the case were retried on an unjust enrichment theory.

Because Farrell sought an equitable division of *marital* property, Ann's main effort at trial was to demonstrate that the House was *premarital* property. Ann succeeded in this effort, and the district court recognized that it was awarding Farrell a "premarital interest" in the House. R. 615 at ¶ 32. As this Court noted in

its Opinion, "the district court did not rule that the house was marital property that should be divided unequally." R. 1176.

If Ann had known that the district court would eventually rely on unjust enrichment, she would have presented evidence of her own showing that the elements of this particular cause of action were not met. However, she had no need to present such evidence because the claim was not before the court. "[T]he interests of justice are not enhanced when the court exceeds its role as arbiter by reaching out and deciding an issue that would otherwise be dead, it not have been litigated at the time of trial." *Girard v. Appleby*, 660 P.2d 245, 247 (Utah 1983).

If the case had been tried on the theory of unjust enrichment, Ann would have offered evidence to show that Farrell did not meet the requirements for recovery under that cause of action. To sustain a claim for unjust enrichment, "'[i]t is not enough that a benefit was conferred on the defendant, rather, the enrichment to the defendant must be unjust in that the defendant received a true windfall or "something for nothing."'" *Richards v. Brown*, 2009 UT App 315, ¶ 29, 222 P.3d 69 (citations omitted). In the *Richards* case, this Court ruled that a petitioner did not establish a claim for unjust enrichment because he received "something in return" for payments he made—he received "a place to live." *Id.* at ¶ 31. Here, Ann would prove that Farrell "received something" in return for his work on the House. *Id.* at ¶ 31. First, he received a wage. But Ann would also

offer evidence that Farrell received "a place to live." *Id.* Farrell also received a place from which to operate his woodworking business both before and after the divorce. Had Farrell not lived in the House, "he would have incurred living expenses elsewhere." *Id.* And those expenses would have been greater because any similar mortgage that Farrell would have obtained would not have been reduced by $350,000 of Ann's separate funds that she used to build the House. Consequently, the evidence does not support a post-appeal finding that Ann received a true windfall or something for nothing.

In addition, if the case had been tried on an unjust enrichment theory, Ann would have presented considerable additional evidence regarding damages. Farrell argues that Ann was unjustly enriched by the services he rendered in constructing of the House. In unjust-enrichment cases involving services rendered, "the proper measure of damages is the reasonable value of [the] services." *Jones v. Mackey Price Thompson & Ostler*, 2015 UT 60, ¶ 58, 355 P.3d 1000. *See also Emergency Physicians Integrated Care v. Salt Lake County*, 2007 UT 72, ¶ 29, 167 P.3d 1080 (measure of damages is the "reasonable value of services rendered"); *Espinoza v. Gold Cross Servs., Inc.*, 2010 UT App 151, ¶ 10, 234 P.3d 156 (measure of damages in an unjust enrichment action is the reasonable value of the services provided).

In this case, Farrell argues that he provided services in connection with the construction of the House. Ann argues (and Farrell admits) that she paid Farrell $18,000 to $19,000. If the case had been tried on the basis of unjust enrichment, Ann would have offered evidence that this was a reasonable amount for Farrell's services. Specifically, Ann would have presented evidence regarding what it would have cost her to pay someone else to provide the services that Farrell rendered. To apply the unpleaded theory of unjust enrichment after the trial and after an appeal in this case prejudices Ann because it deprives her of the right to present evidence that the value of Farrell's services was not one-half of the value of the House, but what it would have cost Ann (who was the general contractor) to hire a different subcontractor.[3] The district court therefore erred in ruling that its prior judgment could be upheld on the basis of unjust enrichment.

V. Before basing a judgment on unjust enrichment, the district court should have ruled on Farrell's repeated assertion that an unjust enrichment claim was barred by the statute of limitations.

Farrell did not file a motion to amend the pleadings, and he was likely estopped from doing so based upon his arguments both before and during the trial that an unjust enrichment claim was barred by the statute of limitations. Before the district court *sua sponte* applied the theory of unjust enrichment, the district court should have at least analyzed and ruled upon Farrell's argument that an unjust

[3] Ann was the general contractor for the construction of the House.

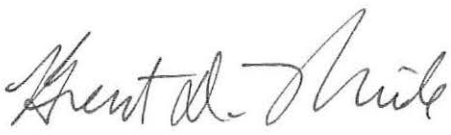
enrichment claim was barred by the statute of limitations. Ann recognizes that a statute-of-limitations argument is an affirmative defense that she would have been required to raise in her answer, but because Farrell never pleaded the claim, Ann never answered. This demonstrates one more way in which Ann was prejudiced by the post-appeal application of the theory of unjust enrichment in this case. Furthermore, even though Ann did not have the opportunity to raise statute-of-limitations argument as an affirmative defense, Farrell himself raised the issue, and it was therefore before the district court.

CONCLUSION

The unpleaded theory of unjust enrichment was not tried by consent, and Ann was prejudiced by application of the theory at this late date. In addition, the elements of the claim are not met here as a matter of law. Moreover, Farrell himself argued that the claim is barred by the statute of limitations. For these reasons, this Court should reverse the judgment of the district court.

DATED this 5th day of September, 2018.

RAY QUINNEY & NEBEKER P.C.



Brent D. Wride
Attorneys for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on September 5, 2018, two true and correct copies of the foregoing **BRIEF OF APPELLANT** were served upon the following by United States Mail:

Brian E. Arnold
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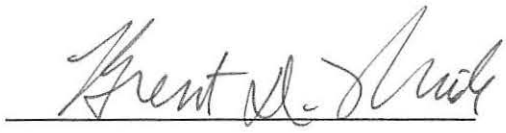

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The appellant, Robben Ann Oldroyd, respectfully requests that the Brief of Appellant be corrected to include the following certificate of compliance:

CERTIFICATE OF COMPLIANCE

I certify that:

(1) The Brief of Appellant is less than 30 pages in length and therefore complies with Rule 24(g)(1) of the Utah Rules of Appellate procedure; and

(2) The Brief of Appellant does not contain any non-public information and therefore complies with Rule 21(g) of the Utah Rules of Appellate Procedure.

DATED this 8th day of September, 2018.

RAY QUINNEY & NEBEKER P.C.

Brent D. Wride
Attorneys for Appellant

This errata is respectfully submitted this 8th day of September, 2018.

RAY QUINNEY & NEBEKER P.C.

Brent D. Wride
Attorneys for Appellant

ADDENDUM

(Supplemental Findings of Fact and Conclusions of Law and Order)

IN THE SECOND JUDICIAL DISTRICT COURT
COUNTY OF MORGAN, STATE OF UTAH

ROBBEN A. OLDROYD, Petitioner, vs. FARRELL L. OLDROYD, Respondent.	**SUPPLEMENTAL FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER** Case No.: 134500028 Judge: Noel S. Hyde Commissioner: Catherine S. Conklin

THIS MATTER comes before the court on remand. On March 16, 2017, the Court of Appeals remanded this matter to this court to make additional findings relating to the premarital interest of the parties in the house at issue. Both parties filed post-appeal briefs on September 26, 2017. A hearing was held on this matter on December 6, 2017. Based upon the court's consideration of all evidence, documents, and its previous rulings, the court hereby sets forth the following:

PROCEDURAL HISTORY

1. The parties were divorced in April 2015.
2. As part of the divorce decree, the court found that the home and related structural improvements located on the property at 2622 South Morgan Valley Drive (the "Morgan home") were premarital property.
3. The court found that Petitioner and Respondent each had an equal interest in the Morgan home.
4. Petitioner appealed this finding.[1]
5. The Court of Appeals held that the findings relied upon by the trial court were inadequate to

[1] Respondent cross-appealed various issues on which the Court of Appeals did not rule. On remand, Respondent did not raise any of these claims. The only issue addressed by either party is the Morgan home division. Therefore, the court will only address this issue.

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support its determination and remanded the case to the trial court to enter a ruling with more complete findings.

FINDINGS OF FACT

1. The Morgan home consists of the home itself and all related structural improvements.
2. The Morgan home does not include the real estate on which the home is located.
3. Petitioner purchased the unimproved land on which the Morgan home was built for $110,000.
4. All funds used to purchase the unimproved land were separate funds derived from either the sale of the Petitioner's Mountain Green premarital asset or other assets Petitioner acquired in the decree in her prior divorce.
5. Petitioner acquired the unimproved property on which the Morgan home was built in her name only, and at all times relevant to these proceedings, the property, including land and all improvements, has always been titled in Petitioner's name alone.
6. There has never been a record transfer or title change in the property from Petitioner to Respondent.
7. The real estate on which the Morgan home was built is a separate premarital asset of Petitioner in which Respondent holds no interest.
8. During the period of the marriage through the date of trial, Petitioner never transferred any equitable interest in that land itself by any form of legal conveyance or by deed to Respondent.
9. There has also been no gift by Petitioner of any interest in the original unimproved real estate to Respondent.
10. At the time the parties began dating, Respondent was employed through the State of

Wyoming, making approximately $13 per hour.

11. Respondent left that employment for the purpose of coming to Utah and assisting in the construction of the Morgan home.
12. Prior to meeting Petitioner, Respondent had, through training and experience, developed substantial expertise in the construction of large-scale log structures.
13. The Morgan home was a large-scale log structure, the construction of which required unique and specialized skills. Such skills were possessed by Respondent, but not by Petitioner.
14. Through the joint contributions of Petitioner's financial resources and Respondent's unique and specialized skills, a log home of substantial value was constructed on the property.
15. The acquisition of the construction materials and payments of all out-of-pocket costs for the improvements were made by Petitioner from her separate premarital funds awarded to her in her prior divorce settlement. The aggregate amount of such costs and expenses was approximately $350,000.00
16. Respondent identified and organized the materials needed to construct the Morgan home, and also supervised and directed the entire construction process.
17. The value of the specialized expertise and labor provided by Respondent in the construction of the Morgan home was equivalent to the value of Petitioner's financial contributions to the home's construction.
18. While Petitioner performed some incidental and unskilled labor with respect to the construction of the home, Respondent contributed significantly more skilled labor and expertise to the building of the home than Petitioner.
19. Respondent provided the vast majority of supervision and conceptual direction for the construction of the home.

20. The value of Respondent's contribution to the building of the Morgan home cannot be precisely determined in dollars and cents, and Respondent did not provide such contribution as a gift to Petitioner.

21. Neither of the parties could have accomplished the building of the Morgan home without the joint efforts of each other.

22. Before the marriage, both Petitioner and Respondent contributed equivalent value to construction of the home.

23. The construction of the home occurred before the parties married.

24. During the construction of the home, Petitioner paid Respondent between $18,000 and $19,000.

25. Petitioner's payments of between $18,000 and $19,000 were not tied to the value of Respondent's contributions to the home, but rather were to assist Respondent in meeting his ongoing financial obligations for a vehicle and payments related to his first marriage, and were understood by the parties to be part of the financial contribution the Petitioner was making to the construction of the Morgan home.

26. During the period of construction of the Morgan home, Respondent focused his effort and energy on constructing the home, and Petitioner provided for some of his ongoing financial obligations to permit Respondent to focus on the construction of the Morgan home.

27. There was no express promise made by either Petitioner or Respondent relating to the Morgan home.

28. Respondent conferred upon Petitioner the benefit of his unique and specialized knowledge and skills in constructing the Morgan home.

29. Petitioner was aware of and appreciated the unique and substantial benefit being conferred upon her.

30. Permitting Petitioner to retain the benefit of Respondent's knowledge and skills without granting Respondent equal value in the home would unjustly enrich Petitioner.

31. At trial, evidence was produced showing that both parties provided substantial value to the construction of the home prior to the marriage.

32. Based on the testimony of both parties, the current value of the home is approximately $1.135 million.

33. The mortgage on the home was solely in Petitioner's name, and is currently in the amount of approximately $122,000.

34. Despite the mortgage being in Petitioner's name, payments on the mortgage during the marriage were made from marital funds.

35. Respondent bore the vast majority of payments and expenses for the mortgage after the parties' separation.

36. After the parties' separation, Respondent was not required to pay rent of any kind to anyone, and he continued to conduct his business on the premises and derived value at least equivalent to the contributions that he was making for the property's maintenance.

CONCLUSION OF LAW

1. The Morgan home is premarital property.

2. The contributions of Petitioner's premarital cash and Respondent's specialized supervision, labor, work expertise, and conceptual direction are of roughly equal value.

3. The $18,000 to $19,000 paid to Respondent by Petitioner did not represent the value of services rendered by Respondent but rather part of the financial contribution Petitioner made

to the parties' joint effort to construct the Morgan home.

4. The court has the authority to rely upon legal theories not plead when evidence is produced at trial that supports the theory relied upon. Utah R. Civ. P. 15(b). See Also Big Butte Ranch, Inc. v. Holm, 570 P.2d 690, 692 (Utah 1977).
5. Promissory estoppel does not apply in the circumstances of this case.
6. Allowing either party to retain the full benefit of both parties' contributions to the construction of the Morgan home would unjustly enrich that party.
7. There is no adequate remedy at law by which Respondent may recover the value of his contributions to the construction of the Morgan home.
8. Therefore, as a matter of equity and to prevent unjust enrichment, Petitioner and Respondent should each be awarded a 50% premarital interest in the Morgan home.

ORDER

1. The court awards to Petitioner as a separate premarital asset $110,000, representing the unimproved real estate on which the Morgan home was built.
2. The remaining value in the property resulting from the equivalent contributions of Petitioner and Respondent shall be split by the parties equally.
3. The parties' equity shall be determined after satisfaction of any and all encumbrances on the home, which encumbrances total approximately $122,000.
4. As a matter of equity, the mortgage will be charged against the equity of both parties equally, even though the debt is solely in Petitioner's name.
5. The Morgan home shall be sold by commercially reasonable means.
6. Respondent shall be responsible to keep the home in show condition until a sale is completed.

7. Respondent shall facilitate the sale in every way and keep Petitioner informed of every action taking place related to the sale.

8. The parties shall sell the home in a manner that is designed to maximize the home's value.

9. Respondent is required to involve the Petitioner in all aspects of the sales effort, to communicate all offers, to interact with the realtor, to permit Petitioner's interaction equally with the realtor, and give Petitioner input in decisions as far as listing price and adjustments or reductions of the price.

10. The parties shall have equal input and access to all information related to the sale.

11. Petitioner is ordered to cooperate with Respondent fully in sales efforts including executing whatever documents are necessary to accomplish the sale.

12. The parties shall equally bear the responsibility with respect to the ultimate sale, the completion of the documents, and the completion of closing in a timely manner.

13. The parties are obligated to work in good faith with each other with respect to the listing the home for sale.

14. Because allocation of the interest in the home deviates from the legal ownership, the equitable allocation of the interest in the Morgan home shall be made by balancing the legal interests retained by the Petitioner and the equitable contributions of the parties before and after marriage.

15. The court declines to grant any additional award to Respondent for his financial contributions relating to the mortgage.

16. The court also does not award Respondent any additional amounts based on contributions to the maintenance or upkeep of the property after the parties' separation.

17. Respondent is ordered to maintain the mortgage so long as he remains a resident at the

property.

18. The party who pays the mortgage on the home is to receive the benefit of the mortgage interest deduction on his or her personal tax filings.
19. To the extent a realtor requires improvements related to some safety concern or statutory requirement to sell the home, the costs of such improvements shall be borne equally by the parties.
20. The parties may make improvements to the home that they mutually agree upon, but discretionary improvements must be by mutual agreement.
21. If either party wishes to make a discretionary improvement to the home, that party may be required to bear 100% of the expenses for that improvement, unless the other party agrees in writing to voluntarily contribute to such expenses. However, neither party is entitled to make unilateral improvements.
22. Improvements must be either at the request of the realtor or agreed upon by both parties.
23. This is a final order. No further order is needed.

Dated this 26th day of January, 2018.

Judge Noel S. Hyde

CERTIFICATE OF MAILING

On this 26th day of January, 2018, I hereby certify that I mailed a true and correct copy of the foregoing Supplemental Findings of Fact and Conclusions of Law and Order to the following:

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