IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

MARIA O. OLAITIMAN,
Petitioner-Appellee

v.

EMRAN EMRAN,
Respondent-Appellant.

SUPREME COURT NO. 2007-SCC-0020-FAM
SUPERIOR COURT NO. 06-0631

Cite as: 2011 MP 8

Decided July 7, 2011

Joseph E. Horey, Saipan, Commonwealth of the Northern Mariana Islands, for Appellant.
Maria O. Olaitiman, proceeding pro se.
BEFORE: MIGUEL S. DEMAPAN, Chief Justice; ALEXANDRO C. CASTRO, Associate Justice; JOHN A. MANGLONA, Associate Justice.

DEMAPAN, C.J.:

¶ 1 Emran Emran appeals a trial court order granting his divorce from Maria Olaitiman on the ground of mutual personal indignities, and denying his claim seeking reimbursement of $10,429.00. Olaitiman did not plead personal indignities as a basis for divorce, and this issue was not raised at trial. Accordingly, we hold that the trial court erred in granting divorce based on mutual personal indignities, and we VACATE the divorce decree insofar as it granted divorce on the basis that Emran committed personal indignities toward Olaitiman. However, we decline to remand this issue as the divorce decree remains valid on the unchallenged and properly pled ground that Olaitiman committed personal indignities toward Emran. As to the second issue on appeal, we hold that we cannot review whether Emran's claim was properly denied because the trial court failed to make requisite factual findings concerning whether Olaitiman received the disputed funds. Accordingly, we VACATE the trial court's order denying the reimbursement claim and REMAND for further action consistent with this opinion.

I

¶ 2 Emran Emran and Maria Olaitiman married in 2005.[1] On November 24, 2006, Olaitiman petitioned for divorce alleging that Emran engaged in adultery, willfull desertion and willful neglect. Emran then filed a cross-petition for divorce alleging that Olaitiman engaged in cruel treatment, neglect and personal indignities toward him. Emran also sought equitable distribution of marital assets, including $10,429.00 he allegedly gave Olaitiman to construct improvements to her family's home, which they planned to use as their marital home. Emran claims he received this money by borrowing from friends and selling property he owned in Bangladesh. Emran also asserted counterclaims for fraud and unjust enrichment, arguing that none of the alleged funds were actually spent on the home. Olaitiman denies receiving any money from Emran.

¶ 3 The trial court heard testimony from Emran, Olaitiman, and Olaitiman's father, as well as from a series of witnesses who testified that they loaned Emran money. The court ultimately found both parties committed personal indignities and granted the divorce on this ground. The court denied Emran's equitable distribution claim, finding that he did "not introduce any evidence of an oral agreement, a contract, or proof that the [sum] was intended to benefit the marriage." *Olaitiman v. Emran*, Civ. No. 06-0631 (NMI Super. Ct. June 4, 2007) (Divorce Decree and Final Judgment at 2) ("Divorce Decree"). Emran appealed the trial court's decision.[2] We have jurisdiction pursuant to 1 CMC § 3102(a).

II

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[1] Olaitiman stated in her complaint that they married on September 25, 2005, but their marriage certificate lists August 25, 2005 as the marriage date. Excerpt of Record ("ER") at 1, 7. The trial court stated that Olaitiman and Emran married on August 17, 2005. *Olaitiman v. Emran*, Civ. No. 06-0631 (NMI Super. Ct. June 4, 2007).

[2] Ms. Olaitiman has not retained counsel and did not file an appellate brief or appear at oral argument.

¶ 4 Emran raises two issues on appeal. First, he argues that because Olaitiman did not plead personal indignities as a basis for divorce in her complaint, the trial court lacked jurisdiction to grant divorce based on mutual personal indignities. Second, he asserts that the trial court erred when it denied the $10,429.00 reimbursement claim on the basis that Emran did not present evidence of a contract or oral agreement with Olaitiman. We will address each of these issues in turn.

A. *The Trial Court Impermissibly Granted Divorce Based on Mutual Personal Indignities*

¶ 5 We must determine whether the trial court was permitted to grant the divorce on the unpled ground of mutual personal indignities. At the time the trial court decided this case, the Commonwealth was a fault-based divorce jurisdiction in which divorce could only be granted on the grounds stated in 8 CMC § 1331.[3] While the legislature has since amended 8 CMC § 1331 to include a no-fault provision,[4] this change does not impact the legal issue before this Court. In her complaint, Olaitiman requested termination of her marriage based on 8 CMC §§ 1331(a), (c) and (i), and Emran responded that divorce was warranted under 8 CMC § 1331(b). The trial court ruled that "both parties are guilty of personal indignities that rendered living together burdensome, intolerable and unsupportable, which is grounds for divorce under . . . 8 CMC § 1331(b)." Divorce Decree at 2. The trial court did not include any factual findings or legal analysis supporting this decision.

¶ 6 Mr. Emran argues that because Ms. Olaitiman never pled personal indignities under 8 CMC § 1331(b) as a ground for divorce, the court erred to the extent that it granted the divorce on this ground. This Court has never examined a trial court's authority to grant a divorce on grounds not raised in pleadings, but we discussed pleading rules in the context of civil litigation in *Manglona v. Tenorio*, 2004

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[3] Section 1331 reads:

> A divorce from marriage may be granted under this chapter for the following causes and no other:
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> (a) Adultery.
>
> (b) The guilt of either party toward the other of such cruel treatment, neglect or personal indignities, whether or not amounting to physical cruelty, as to render the life of the other burdensome and intolerable and their further living together unsupportable.
>
> (c) Willful desertion continued for a period of not less than one year.
>
> (d) Habitual intemperance in the use of intoxicating liquor or drugs continued for a period of not less than one year.
>
> (e) The sentencing of either party to imprisonment for life or for three years or more. After divorce for this cause, no pardon granted to the sentenced party shall affect the divorce.
>
> (f) The insanity of either party where the same has existed for three years or more.
>
> (g) The contracting by either party of leprosy.
>
> (h) The separation of the parties for two consecutive years without cohabitation, whether or not by mutual consent.
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> (i) Willful neglect by the husband to provide suitable support for his wife when able to do so or when failure to do so is because of his idleness, profligacy or dissipation.

[4] Public Law 17-20, which became effective October 3, 2010, amended 8 CMC § 1331 to permit a party to plead the no-fault ground of "irreconcilable differences" as a basis for divorce. The fault-based divorce grounds still exist as a basis for divorce, with the exception that leprosy is no longer a valid ground for divorce in the Commonwealth.

MP 17. In *Manglona*, the lower court permitted a party that lost at trial to amend its pleadings to include the unpled claim of unjust enrichment. The trial court then held a second trial and awarded $249,000 based on the unjust enrichment theory. *Id.* ¶ 9. This Court reversed on appeal, stating that there "was neither express nor implied consent by the parties to try a claim of unjust enrichment" and that it was "not a case of a technical mistake where the trial court simply allowed amendment of the pleadings to accurately reflect what the parties actually litigated at trial." *Id.* ¶¶ 23-24.

¶ 7 While *Manglona* is factually distinguishable, we find that the enunciated principle that relief shall not be granted on an unpled ground absent express or implied consent is applicable in divorce proceedings. This is consistent with Rule 15(b) of the Commonwealth Rules of Civil Procedure, which states that when "issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings." While neither *Manglona* nor Rule 15 specifically address divorce cases, "[t]he rules of pleading in civil cases are applicable to divorce cases . . . and should be observed." *Peterson v. Peterson*, 46 N.W.2d 126, 128 (Neb. 1951).[5]

¶ 8 The Texas court of appeals recently faced a similar issue in *In the Interest of S.A.A. and J.D.A.*, 279 S.W.3d 853 (Tex. Ct. App. 2009). Therein, a wife petitioned for divorce based on the no-fault ground of "discord or conflict" and her husband filed a cross-petition alleging "insupportability due to discord or conflict" and adultery. *Id.* at 855. The trial court granted the divorce based on "mutual" adultery, and the husband appealed arguing that since his wife had never pled adultery this finding must be reversed. *Id.* at 856. The appeals court stressed that "[a]bsent trial by consent, judgment on an unpled action is void[,]" and concluded that the trial court abused its discretion because adultery was never alleged in the wife's pleadings and this finding was not supported by sufficient evidence.[6] *Id.* at 856. The court acknowledged that in an "exceptional case" parties could consent to trying an unpled issue, but found that the lack of "substantive and probative evidence supporting the trial court's finding of adultery" meant that the parties had not consented to the adultery issue. *Id.*

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[5] Emran cites a series of cases in his brief supporting his contention that a court lacks jurisdiction to grant judgment on a claim not raised in pleadings or tried with the express or implied consent of the parties. *See, e.g.*, *Rodriguez v. Doral Mortgage Corp*., 57 F.3d 1168 (1st Cir. 1995) (finding that district court lacked authority in a sexual harassment case to enter judgment on a cause of action neither pleaded in the complaint nor expressly or impliedly raised during trial); *Cricket Commc'ns, Inc. v. Trillium Indus.*, 235 S.W.3d 298 (Tex. Ct. App. 2007) (denying attorney fee claim in bankruptcy case where pleadings did not assert claim for attorney fees); *Walls v. Sebastian*, 914 So.2d 1110 (Fl. Dist. Ct. App. 2005) (refusing to modify parent's children visitation schedule where issue not raised in pleadings); *In re Custody of C.S.F.*, 755 P.2d 578 (Mont. 1988) (concerning child visitation schedule modification). Since none of these cases involve divorce proceedings, they are only persuasive under the rationale that divorce and non-divorce cases are subject to the same pleading requirements.

[6] It is unclear from the opinion whether the court would have permitted the finding had there been sufficient evidence.

¶ 9 We are aware that Olaitiman filed her divorce complaint pro se and represented herself at the divorce hearing. Her position is not unusual, and we recognize that Commonwealth divorce proceedings frequently involve pro se litigants who are unfamiliar with the rules of civil procedure and our legal system in general. These factors make it both prudent and equitable to grant trial courts broad discretion in divorce cases.[7] Yet this discretion is not limitless, and, relying on the above authority, we decline to uphold the trial court's decision as merely an exercise of its discretionary powers. Indeed, we can find no case in which a court was permitted to use its general discretionary power to grant divorce on an unpled ground absent express or implied consent. It is undisputed that Emran did not expressly consent to trying the divorce case based on the theory that he committed personal indignities toward Olaitiman. Thus, we must look to whether Emran impliedly consented to this issue. *See Manglona*, 2004 MP 17 ¶ 24*; Maswoswe v. Nelson*, 327 S.W.3d 889, 893-94 (Tex. Ct. App. 2010) ("A plaintiff may not be granted a favorable judgment on an unpled cause of action . . . Absent trial by consent, judgment on an unpled action is void.").

¶ 10 Courts have generally found implied consent in divorce cases where evidence was admitted without objection on the unpled ground. *See Brammer v. Brammer*, 471 P.2d 58, 62 (Idaho 1970) (granting divorce on unpled ground of extreme cruelty after finding "ample evidence that [the husband] was guilty of extreme mental cruelty" and that the parties had impliedly consented to trying this issue); *Moser v. Moser*, 450 N.E.2d 741 (Ohio Ct. App. 1982) (ruling that when a complaint for divorce is filed alleging gross neglect of duty and extreme cruelty, with evidence relating to adultery being admitted without objection, the court does not err in granting a divorce on the ground of adultery). The rationale behind this application of implied consent is that when evidence is admitted without objection, upholding the decision is appropriate where the record sustains the finding and there is no evidence that either party was "misled . . . or unaware of the facts upon which the finding was based." *Losee v. Losee*, 91 Idaho 77, 78-79 (1966); *Cf. Manglona*, 2004 MP 17 ¶ 23 ("This is not a case of a technical mistake where the trial

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[7] A 2003 Superior Court case illustrates how this discretion has been previously exercised. In *Sattler v. Mathis-Sattler*, the Superior Court granted a divorce under 8 CMC § 1331(b), explaining that in "most of the divorce cases in the CNMI, when Section 1331(b) is used as grounds for divorce, there has been little or no inquiry as to the facts constituting such ground by either the plaintiff the defendant or the court." Civ. No. 02-0412 (NMI Super. Ct. Nov. 5, 2003) (Order Granting Plaintiff's Absolute Divorce at 3). The court explained that, "[t]he reason for this practice is relatively simple: both parties desire to have the marriage ended. For the last fifteen years, 8 CMC § 1331(b) has been the catch-all ground for divorce found in this jurisdiction." *Id.* Because of this practice, "there is very little case law in the CNMI about the nature of proof required when one of the parties contests a divorce brought pursuant to 8 CMC § 1331(b)." *Id.*

Whether 8 CMC § 1331(b) has been used as a de facto "no-fault" ground for divorce is not an issue presently before us, although we are naturally wary of any court action which potentially contravenes legislative intent. However, with the passage of Public Law 17-20 we are unlikely to ever confront this question because parties can now plead "irreconcilable differences" as a no-fault basis for divorce. *See supra* note 4.

court simply allowed amendment of the pleadings to accurately reflect what the parties actually litigated at trial.").

¶ 11 The appellate record reflects that Olaitiman never raised personal indignities committed by Emran as a ground for divorce. During Olaitiman's testimony the court examined her divorce petition and confirmed that she sought divorce based on adultery, willful desertion and willful neglect. Transcript of Proceeding ("Transcript") at 6.[8] Significantly, however, personal indignities were never mentioned by the trial judge or Olaitiman at any point during the hearing. Moreover, at the end of the hearing the court stated that it planned to grant the divorce on the ground that Olaitiman committed personal indignities toward Emran.[9] The record simply does not contain evidence that Emran impliedly consented to the unpled divorce theory – that he committed personal indignities – or that the parties litigated this issue at the hearing.[10] Accordingly, we hold that the trial court erred to the extent that it granted divorce on the unpled ground that Emran committed personal indignities towards Olaitiman.

¶ 12 We are not blind to the obstacles facing pro se litigants, and have endeavored to approach this matter in a just and equitable fashion. To this end, if the record or trial court order contained any evidence whatsoever of implied consent we would be inclined to affirm the trial court. However, the complete lack

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[8] The transcript of lower court proceedings constitutes part of the record on appeal. *See* NMI Sup. Ct. R. 10(a)(2), (b) and NMI Sup Ct. R. 11-1(c).

[9] The following exchange occurred:

The Court:	Maria [Olaitiman], do you mind getting divorced on his grounds?
Ms. Olaitiman:	Well, what are his grounds?
The Court:	Basically that you know personal indignities from you towards him?
Ms. Olaitiman:	Yeah.
The Court:	You don't have any problem with that do you? All right. I'm gonna grant it on that . . . .

Transcript at 93. To resolve this matter there is no need to determine whether Olaitiman's comments constituted consent or whether the court's comments had any binding effect. We cite this exchange only as further support that the court's decision to grant the divorce based in part on personal indignities committed by Emran toward Olaitiman is not grounded in any discussion in the record.

[10] We recognize that many of the statutory grounds for divorce – including all three pled by Olaitiman – are potentially relevant in claims involving personal indignities. *See Donnelly v. Donnelly*, 76 Pa. Super. 92 (1921) (considering willful neglect among other factors in divorce action based on marital indignities); *Boyer v. Boyer*, 130 A.2d 265, 268 (Pa. Super. Ct. 1957) ("In a divorce case evidence of an act of adultery by one of the parties is relevant and material to an issue of indignities"); *Williams v. Williams*, 231 P.2d 965 (Wyo. 1951) (finding that evidence of husband's willful desertion of his wife for months at a time along with other factors entitled her to a divorce on the grounds of indignities).

However, we cannot infer implied consent from the mere fact that the pled and unpled grounds for divorce overlap. Implied consent to litigate an unpled issue cannot be found solely in the introduction of evidence directly related to a pleaded issue. *See Galindo* v. *Stoody Co.*, 793 F.2d 1502, 1513 (9th Cir. 1986) ("It is not enough that an issue may be 'inferentially suggested by incidental evidence in the record'; the record must indicate that the parties understood that the evidence was aimed at an unpleaded issue."); *see also Rodriguez v. Doral Mortgage Corp.*, 57 F.3d 1168, 1172 (1st Cir. 1995) ("[T]he introduction of evidence directly relevant to a pleaded issue cannot be the basis for a founded claim that the opposing party should have realized that a new issue was infiltrating the case.").

of legal analysis and factual findings in the trial court order have placed us in a legal straightjacket from which we cannot escape. To infer implied consent in these circumstances would be imprudent, and allowing the trial court's decision to stand would amount to carving out an exception to widely-accepted pleading requirements in divorce cases. We decline to adopt this approach. Accordingly, we vacate the divorce decree insofar as it granted divorce on the basis that Emran committed personal indignities toward Olaitiman. However, we decline to remand this issue as the divorce decree remains valid on the unchallenged and properly pled ground that Olaitiman committed personal indignities toward Emran.

B. *The Trial Court's Denial of Reimbursement Claims*

¶ 13 In his counterclaim for divorce Emran sought to recover funds he allegedly provided Olaitiman to build an extension to her family's home. Emran's testimony and appellate brief assert that he obtained the alleged funds from two sources: $3,990 through loans and $6,439 from selling a piece of property in Bangladesh that he owned prior to the marriage. Olaitiman denies that she ever received any of the disputed funds. The trial court did not issue any factual findings concerning the alleged loans or land sale, or evaluating Olaitiman's denial. Instead, it denied Emran's claim by stating that in reaching its decision it "considered that the Respondent did not introduce evidence of an oral agreement, a contract, or proof that the [sum] was intended to benefit the marriage." Divorce Decree at 2. No legal authority is cited to support this position.

¶ 14 In his pleadings, Emran asserts reimbursement theories based on fraud, unjust enrichment and general principles of equitable distribution. While the trial court rejected Emran's attempt to recover any funds, the order does not refer to any of these specific causes of action. The confusion arising from this deficiency is compounded by the fact that at trial, Emran appeared to change his theory from alleging that the funds were spent on a house extension to that they were squandered. Transcript at 93, 95-97. This "marital waste" theory is rooted in a spouse's duty of good faith imposed by 8 CMC § 1814(a),[11] and the fiduciary duty between spouses. Transcript at 95; *see Reyes v Reyes*, 2004 MP 1 ¶ 31 ("It is well established that a fiduciary relationship exists between husband and wife and that each owes a duty to the other, including the duty to properly manage marital property under his or her control."). The court acknowledged this potential argument at trial, but neither the record nor the court order address whether this new theory of recovery was properly raised.[12] Emran does not discuss the pleaded fraud or unjust

[11] Title 8 CMC § 1814(a) states, "[e]ach spouse shall act in good faith with respect to the other spouse in matters involving marital property or other property of the other spouse. This obligation may not be lessened by a marital property agreement."

[12] Under NMI R. Civ. P. 15(a), a party can amend pleadings with leave of the court or with written consent of the adverse party. Under NMI R. Civ. P. 15(b) "[w]hen issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings." We express no opinion on whether this basis for relief was properly raised.

enrichment arguments in his appellate brief, but instead relies on arguments rooted in a spouse's duty of good faith.

¶ 15 To succeed under any restitutionary theory, Emran must prove the elements of the relevant cause of action. Embedded in any unjust enrichment claim is a requirement that the allegedly enriched individual receive a benefit. *See* Restatement of Restitution § 1 cmt. a (1937). A claim under 8 CMC § 1814(a) brought under a "marital waste" theory requires evidence of misuse or mismanagement.[13] *See Reyes* 2004 MP 1 ¶ 32. Applied to the present case, both recovery theories – unjust enrichment and marital waste – share a common factual predicate: Olaitiman must have received the disputed funds. In other words, if Olaitiman never handled the disputed funds, she could not possibly have squandered them or been unjustly enriched.

¶ 16 Whether Olaitiman received the alleged funds is a factual inquiry, distinct from whether the funds were intended to benefit the marriage or should be classified as marital or individual property.[14] In many cases, a spouse's control over alleged funds is uncontested and the court can proceed to examining whether restitution is appropriate. In this case, however, Olaitiman denied that she ever received the disputed funds. Unfortunately, the trial court order did not include factual findings on this pivotal issue. Instead, the trial court denied the "reimbursement" claims after stating that Emran "did not introduce evidence of an oral agreement, a contract, or proof that the [sum] was intended to benefit the marriage." Divorce Decree at 2. A contract or oral agreement is not required to support a finding that a party received marital or individual property from their spouse or mishandled marital property. Indeed, such agreements would seem highly unusual in the marital context. Additionally, whether property is intended to benefit a marriage is distinct from whether a spouse received or mishandled property.[15] While these factors could impact property classification, they are less probative when evaluating whether a person exercised control over disputed property.

¶ 17 In summary, the trial erred when it denied Emran's claims based on grounds that were, at best, tangentially relevant to the reimbursement claims. To properly evaluate Emran's claims, the court needed

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[13] Under 8 CMC § 1814(a), a spouse's duty of good faith extends to both "marital property and other property of the other spouse."

[14] Property classification is governed by the Commonwealth Marital Property Act of 1990, codified at 8 CMC §§ 1811–1834, and is modeled after the Uniform Marital Property Act ("UMPA"). Classification of marital property and spousal obligations are dealt with in 8 CMC § 1820 and 8 CMC § 1824, respectively. Wisconsin is currently the only state to adopt the UMPA, although Alaska has adopted an "elective" community property system in which residents can choose to classify their property as community property using a system partially resembling the UMPA. *See* Alaska Rev. Stat. §§ 34.77.030 – 34.77.995.

[15] Some of the alleged funds were allegedly acquired through loans. We note that under 8 CMC § 1824 "[a]n obligation incurred by a spouse during marriage . . . is presumed to be incurred in the interest of the marriage or the family."

to issue factual findings concerning whether Olaitiman received the alleged funds. Without these findings, we cannot review whether Emran's claims were properly denied, and we must therefore remand this case for additional factual findings.[16] The trial court has discretion on remand to determine whether additional hearings are necessary and, given the testimony elicited during the divorce proceedings, it may be able to expeditiously resolve this matter without further burdening the parties with court appearances. If on remand the trial court finds that Olaitiman never received any portion of the contested funds, then Emran's reimbursement claims must fail.[17] Conversely, if the trial court finds that Olaitiman received funds, the court must evaluate each properly raised cause of action.

III

¶ 18 For the foregoing reasons, we hold that the trial court erred when it granted divorce based in part on the unpled ground that Emran committed personal indignities toward Olaitiman. Accordingly, we VACATE the divorce decree insofar as it granted divorce on this ground. However, remand on this issue is unnecessary because the divorce decree remains valid on the ground that Olaitiman committed personal indignities toward Emran. We further hold that we cannot review whether Emran's claim was properly denied because the trial court failed to make requisite factual findings concerning whether Olaitiman received the disputed funds. Accordingly, we VACATE the trial court's order denying the reimbursement claim and REMAND for further action consistent with this opinion.

SO ORDERED this 7th day of July 2011.

/s/
MIGUEL S. DEMAPAN

[16] We recognize that determining whether Olaitiman received the funds will likely involve multiple findings depending on the source of the alleged funds. For example, the court will likely need to determine whether the alleged loans were actually made.

[17] Given the unusual combination of a conclusory trial court order and an uncontested appeal, it would be tempting in the interest of speedy resolution to infer from the trial court's order that Olaitiman never received the funds. However, there simply is an insufficient basis in the order for us to make such a finding. Speculation is not a steady foundation for sound jurisprudence and we must decline the temptation to engage in such behavior.

Chief Justice

_/s/_____

ALEXANDRO C. CASTRO
Associate Justice

_/s/_____

JOHN A. MANGLONA
Associate Justice