

NO. CV05-5000243S

THOMAS THORNDIKE

: SUPERIOR COURT

V.

: JUDICIAL DISTRICT OF WATERBURY

CHRISTINA DEMIRS

: July 26, 2007

MEMORANDUM OF DECISION

The facts in this case are vigorously contested and the testimony highly conflicting. Therefore, the court will give considerable attention to the respective testimony of the parties and emphasize where they are mainly at odds.

The plaintiff, Thomas Thorndike, first began to date the defendant, Christine Demirs, in February or March of 2004. For the two previous years, he had done her income tax, but the relationship then was merely professional. The plaintiff was divorced in 2001 from his wife of more than 20 years and was devastated by the experience. It was apparently a very bitter breakup. There were three minor children of the marriage. That experience according to the plaintiff made him very wary of a

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new relationship and he determined to be very careful before becoming involved in such a relationship.

During the balance of 2004, his relationship with the defendant did become serious. Ms. Demirs, who had never married before, was 36 years old, independent, owned her own condominium free and clear, had \$120,000 in savings and an investment account of under \$50,000. She was considerably younger than the plaintiff who falsified his age to her. The plaintiff claims he made it clear from the beginning that if they were to get married, she would have to sign a prenuptial agreement. The parties became engaged in November of 2004, while vacationing on the island of St. Maarten. He claims he had made her aware of the requirements of signing the prenuptial agreement before and after the engagement. He claims she always agreed to sign such an agreement. Of interest at the time of the engagement, the plaintiff presented the defendant with an imitation Cubic Zirconia engagement ring, but advised her that he would replace it with a real diamond whenever she wanted. He further claims that he memorialized the requirements of a prenuptial agreement in several emails to the defendant over the following six months. The wedding was scheduled for May 27, 2005. Both parties expended considerable money for the wedding. Predictably, the defendant testified that the first email she received

on the subject of a prenuptial agreement was on April 29, 2005 and that there were no oral discussions on that subject before that date.

The file discloses both parties had acquired the services of computer experts to testify as to the computer system at the plaintiff's company, Cornerstone Financial Services, and the authenticity of several emails sent on that equipment by and between the parties. Predictably, the plaintiff's expert was disclosed to support their authenticity and the defendant's just the opposite. There are facially certain discrepancies with some of the emails and the court was hoping that such testimony might help resolve such problems. However, at a point during the trial, the parties stipulated that neither side would present their experts as witnesses. The court will therefore discuss some of the emails in detail to shed light on their authenticity or the lack thereof. This is important because the defendant testified that the first email she got from the plaintiff concerning a prenuptial agreement was Plaintiff's Exhibit K dated April 11, 2005, which referenced an attached "DRAFT" prenuptial agreement. She claims she first saw it on her personal AOL computer on April 29, 2005 and did not receive it on the company computer system at Cornerstone. It should be observed that at all times relevant hereto the plaintiff had

employed the defendant at Cornerstone in some capacity and all of the emails were sent and received on Cornerstone equipment.

The first email purportedly exchanged between the parties and offered by the plaintiff was Plaintiff's Exhibit G dated December 9, 2004. It states that on that day at 2:30 p.m., the plaintiff emailed the defendant that as soon as we get the "wedding set and the engagement ring purchased," we must draft a prenuptial agreement, which he would have his attorney, Julie Porzio, do. The subject of that email was "Re Pre Nep." Note the misspelling of Pre Nup. The reported response from the defendant to the plaintiff bore the same date and the time of 3:52 p.m. The subject remained the same with the same misspelling of "Pre Nup".

Of greater significance, however, is that the defendant's response in addition to agreeing to sign any agreement also agreed to share the wedding expenses 50/50 and to return the upgraded wedding ring if the wedding did not take place. The plaintiff's email never even proposed those subjects, so it would be difficult to agree to something that was not even proposed. The defendant denied ever receiving the email or replying to it and the court finds that testimony credible.

Plaintiff's Exhibit H was admitted and it includes several emails to and from the parties from February 3, 2005 to March

23, 2005 concerning several issues about the wedding, but none having to do with the prenuptial agreement, the ring or the wedding expenses.

Next the plaintiff offered as Plaintiff's Exhibit I, four emails between the parties, the first one dated Thursday, March 11, 2004 at 11:06 a.m., re: Engagement Ring, from the defendant to the plaintiff just indicating she was going shopping for a ring. The next email in the exhibit was from the plaintiff to the defendant, re: Engagement Ring, sent Friday, March 12, 2004 at 2:08 p.m. wherein the plaintiff purports to say that the ring will have to be returned if they don't get married and gratuitously adding how she has said many times that she doesn't want anything from him. Next comes a purported response from the defendant dated Friday, March 12, 2004 at 3:09 p.m. wherein she purports to agree to return the new engagement ring to him if the marriage doesn't take place.

The problem with all these emails is that they are all dated in March of 2004, when the parties first began dating and six months before they even got engaged. That error seems to be an error of one scrivener. The new ring wasn't purchased until March, 2005.

The final email on Exhibit I is purportedly from the plaintiff to the defendant dated Thursday, March 10, 2005 at

3:18 p.m. Re: ENGAGEMENT RING. The body of that email doesn't even mention an engagement ring, but concerns the subject of a draft Pre Nep he received from his lawyer. There are just too many things wrong with these emails. The defendant denies receiving or responding to them and the court finds her testimony credible.

The next email, Plaintiff's Exhibit J dated Thursday, March 10, 2005, at 3:21 p.m. is exactly the same text as the final email in Plaintiff's Exhibit I. The defendant denies having received it and the court finds that credible.

The next email, and the first one that the defendant admits she received (Plaintiff's Exhibit K) dated Monday, April 11, 2005 at 9:26 a.m. from the plaintiff contains the exact text concerning the "Draft" Pre Nep as in the two previous exhibits. The defendant did testify, however, that she only received Exhibit K on her own personal computer on or about April 29, 2005 and she did not receive this email at her work station. She further testified that the plaintiff had falsified several of the emails because he had her username and password. She testified that she was greatly angered by the email she received on April 29th, 2005, because it was less than a month from their wedding day, she got it on the day before her bridal shower, it contained no provision for adopted children, which she claims

she discussed with the plaintiff and there was other language she disapproved of. She further testified that she was unfamiliar with prenuptial agreements, that the plaintiff had not explained to her that changes could be made in it, that she never received any financials from him and has no idea of his salary, stock or bond assets, pensions or the value of Cornerstone Financial or the other businesses that he is involved with. She further testified that she made some attempts to hire an attorney, but the lack of adequate time before the wedding was a factor in her being unable to do it intelligently.

The plaintiff sent her another email on Tuesday, May 3, 2005 at 9:28 a.m., re: Pre Nep (Plaintiff's Exhibit M), wherein he states "We need to change anything we both agree on", "we need to do this soon", "please don't make this a huge deal" and most importantly "Yes, this should have been mentioned before, but I always thought that the way you were, so independent and having all of your own stuff etc, that this would be no problem what so ever." That last quote is a clear indication that he dropped the subject of a prenuptial agreement on her at the last minute, with little time to reflect and with no financial information at all. The plaintiff made assumptions he simply should not have.

Plaintiff's Exhibit 0 is comprised of three emails dated May 12 and 13, 2005. The first from the plaintiff to the defendant, subject: Job pay, seems to pertain to her working and living conditions, which he obviously believes are generous. He ends by saying to her "And I am not thankful for all that you do for me". He ends with a P.S. "I don't want to mention it, but you must see a lawyer and have the Pre Nep signed next week. I don't plan on asking you again." Quite a demand for someone who has provided not a speck of financial disclosure. The defendant's email response (Pl. Ex. 0) came on May 13, 2005 at 12:34 where she stated: I will not sign that agreement period. . . You could have asked me to sit down with a lawyer to talk about your concerns. You could have done this a little earlier, but I truly believe that you did this last minute to make me feel pressured to do it. I asked you to talk to me in person and you didn't even do that." There is nothing in the email however that says that the wedding is off, or that she is calling it off.

On May 13, 2005 at 7:32 p.m., the plaintiff answered the previous email with these words: "I need to protect my assets and my three kids no matter who I marry . . . I am not going to get married without the agreement, so we have our answer. No marriage . . . We should have discussed this much sooner . . .

In any event the wedding is off . . . Besides the agreement, I have not been happy with how you have been treating me . . . In any event I think you should move back home, since we are calling off the wedding." (Plaintiff's Exhibit O). He clearly called the wedding off.

Subsequently, the defendant continued in her effort to keep her wedding plans intact. She sent the plaintiff an email dated May 16, 2005 at 12:05 p.m., asking for a copy of the draft agreement, which she had deleted, because she had an appointment to have it reviewed. (Plaintiff's Exhibit P). Also on that day, she responded to two graduation invitations to the plaintiff saying they would be on their honeymoon and advised the plaintiff of this.

On May 17, 2005 at 12:42 p.m., the plaintiff sent his next email to the defendant (Plaintiff's Exhibit R) wherein he reiterated he wanted to call off the wedding, because "we have so many differences about the issue . . . It feels like we rushed into this . . . I really don't want anyone watching over me, telling me what to do, listening to my phone conversations, reading my email, and generally bossing me around. It will only get worse after marriage when I want to play golf, ride my motorcycle, buy a different car, paint a room, etc."

In Defendant's Exhibit 3, the plaintiff again emails the defendant on May 18, 2005 at 7:54 with more of the same, "I am no longer happy with our relationship . . . None of this is your fault . . . I am sorry for the last minute decision, but it would only be worst for me if we went thru the marriage and then got divorced."

On May 20, 2005 at 12:17 (Defendant Exhibit 2), the plaintiff again emails the defendant telling her of all the things he has done in furtherance of the wedding. Lastly, on May 21, 2005 at 4:40 p.m., the plaintiff sent his final email to the defendant (Defendant's Exhibit 4) with a summary of their current status." I do not want to get married, it is too late to sign a pre nup, I cannot make every decision with you, I will never let anyone make decisions about my children."

On the question of the plaintiff's credibility, the defendant offered into evidence a certified copy of a decision of the United States Bankruptcy Court for the District of Connecticut involving the debtor, Thomas Thorndike, the plaintiff herein, where after filing a Chapter 7 petition, he subsequently sought a discharge of his debts. In that matter, which was commenced in 2001, at or about the time of his divorce, the plaintiff was found by the bankruptcy judge to have failed to schedule his ownership in Cornerstone Financial as

part of a scheme to frustrate the bankruptcy process to a material degree and the requirement of fraudulent intent is satisfied. He apparently at the time he filed for bankruptcy stopped doing business in the name of his existing firm, COMPLETE Financial and dissolved it, formed a new LLC, Cornerstone Financial, where he convinced a trusted employee to be listed as the only member and continued to run Cornerstone as he had run Complete. He then failed to list Cornerstone as an asset at least until after the bankruptcy was completed. The court found his conduct to have been fraudulent and denied his request for a discharge.

The court is confronted with two positions concerning the subject of the prenuptial agreement that are so opposite that it is obvious that one party is fabricating the truth in a gross and continuous manner. The plaintiff claims that from before their engagement in November of 2004 through May of 2005, the subject of the defendant signing a prenuptial agreement was the subject of nearly daily conversations between the parties and numerous emails. The defendant testified that there were no oral or email communications concerning her signing a prenuptial agreement until she received a draft of such an agreement on April 29, 2005. The court finds her testimony on this subject more credible. This conclusion is fortified by several

admissions the plaintiff has made in several emails after May 1, 2005, wherein he admits and apologized for being so late in providing her with a draft prenuptial agreement. It is also obvious that at no time up to one week before the planned wedding had he provided her with any of the financial information she would need before seeking the advice of a lawyer. The plaintiff was offering the proverbial "pig in a poke" and the defendant wasn't buying.

The operative pleadings in the case begin with the Amended Revised Complaint dated June 22, 2006 in six counts. Several of the counts refer to the defendant's accepting and keeping wedding gifts which the plaintiff was demanding the return of. At trial the plaintiff withdrew any claim concerning wedding gifts and the court will therefore ignore that subject in rendering its decision.

The issues remaining in the complaint concern a diamond engagement ring the plaintiff purchased, paid for and gave to the defendant on or about March 19, 2005 for a purchase price of \$30,200. All six counts of the complaint demand damages and the return of the ring. The court will leave the issue of the ring as the final issue to be discussed.

In the Fifth Count of the Complaint, in addition to the claims concerning the ring, the plaintiff claims that in

reliance on the defendant's promise to sign a prenuptial agreement and marry him, he expended \$9,000 for a reception hall, \$2,750 for a band and \$10,500 for a honeymoon. He is seeking those funds as damages from the defendant on the theory of fraud in the inducement. In his testimony the plaintiff confirmed that he did spend \$9,000 for the hall, a deposit of \$2,750 for the band but the honeymoon expense, he got most of it back and that his actual loss was only \$2,500.

His claims in this count is that the defendant promised to sign a prenuptial agreement going back to before their engagement in 2004 and continuously during 2005 and to marry him. Based on the earlier discussion in this memorandum, the court finds that the plaintiff has failed to prove those allegations and judgment for the defendant shall enter concerning expended sums of money by the plaintiff as set forth in paragraph 18 of that count.

The court will now discuss the Counterclaim dated September 27, 2006 in the Four Counts; First Count (Fraudulent Misrepresentation), Second Count (Breach of Contract), Third Count (Detrimental Reliance) and Fourth Count (Negligent Misrepresentation). All of these counts made the claim that the defendant expended \$14,438.26 of her own money towards the costs of the wedding and reception. The arrangement on agreement, if any, as

to who would pay certain expenses is as uncertain and contested as all the other evidence in this case. The plaintiff maintains that the defendant had agreed orally and in some emails to split the costs of the wedding and reception on a 50/50 basis. She denies that at least as to their final agreement. She claims she wanted a small wedding and he wanted a large affair. She claims at least at that time she was not agreeable to share the expenses equally because the plaintiff had a lot more money than she did and he wanted the big wedding. What the court is left with, unfortunately, is that she clearly did agree to pay some of the expenses for the wedding. The nearly \$15,000 she expended was without condition, voluntarily, and without any commitment of the plaintiff to reimburse her. The only thing this court can find from the evidence is that she did not agree to pay 50% of the total expenses, but she did agree to pay some of them. As for the expenses she paid for she neither protested or asked for reimbursement at the time she incurred those expenses.

That is how her testimony on direct by plaintiff's counsel ended on the subject of the arrangement for paying wedding expenses. The court anticipated that on cross her attorney would clarify the subject and ask her what the arrangement between the parties actually was on expenses. The first

question on cross by her own attorney was "Any other details about who had paid for the costs of the wedding other than what was already testified to?" and her answer was "No." That was the only question asked of her on that subject. So the court is left right where it was when the direct examination ended, that is, she had agreed to assume some of the costs of the wedding, she paid from her own funds specific expenses of the wedding and before the filing of the Counterclaim never sought reimbursement of those expenses from the plaintiff. As far as the wedding dress and the reception dress, she retains possession of them.

The First Count of the Counterclaim alleges that the plaintiff's promise to marry the defendant on May 27, 2005 was false and was made to induce the defendant to incur expenditures associated with the wedding and reception and there is simply no proof of that. This is certainly not the first instance when after a legitimate engagement, the parties subsequently did not get married.

The Second Count of the Counterclaim alleges a breach of contract by the plaintiff's refusal to get married on May 27, 2005 in accordance with his proposal and the defendant has failed to prove that Count. The Third Count sounding in Detrimental Reliance is the mirror image of the First Count of the Counterclaim. The claim is that when the couple got engaged

in November of 2004 and set their wedding date for May 27, 2005, the plaintiff knew or should have known that his promise was false. That also has not been proved. The Fourth Count sounding in Negligent Misrepresentation is basically the same and also fails for a lack of proof to meet the defendant's burden of proof. On the Counterclaim as to all Four Counts, judgment shall enter for the plaintiff. So each party is left to assume the costs they incurred.

The remaining subject and the subject of all six counts of the Complaint pertains to a diamond ring purchased for the defendant by the plaintiff on or about March 19, 2005. Some additional facts must be considered. When the parties became engaged on the island of St. Maarten in late November of 2004, the plaintiff gave the defendant an engagement ring with a Cubic Zirconia stone. Both parties were aware of this. The plaintiff always maintained that he wanted to replace that ring with a real diamond before the wedding. The plaintiff testified that he asked the defendant to pick a reasonably priced ring in the range of \$5,000 to \$10,000. The defendant and the plaintiff went to Gayle O'Neill Fine Jewelers on more than one occasion and of the three rings she was shown, she chose one costing \$30,210. The plaintiff did not object to the ring or the cost and paid in full for it immediately. The ring was picked up by

the defendant on March 23, 2005. She later returned it for sizing on May 2, 2005 and it was returned to the original jeweler in New York for that purpose. The information is unclear as to exactly when it was picked up. Gayle O'Neill, who testified, did not have any record of it. The defendant testified that she picked it up before May 13, 2005, the day she emailed the plaintiff that she would not sign "that agreement."

The evidence from the parties was predictable. The defendant testified that the ring was a gift, and that she never agreed orally, in emails or any other kind of discourse that she would give the ring back in the event the wedding did not take place. The plaintiff testified that both before and subsequent to his buying the ring in March of 2005, that he made it abundantly clear that if the wedding did not proceed for any reason that she would have to return the ring. He claims she acknowledged this on numerous occasions and he in fact testified that they talked about her returning the ring so often that it became "sickening." The plaintiff's simple theory of the case is that the defendant always agreed to sign a prenuptial agreement, that this was a condition for the wedding to take place, that she failed to honor that condition, the wedding was canceled and therefore she should return the ring.

The court has already opined that it believes some of the plaintiff's emails on the subject were falsified. The court has further opined that the defendant only became aware of the plaintiff's insistence on a prenuptial agreement late in April of 2005, that she never discussed it with him, she was given insufficient time to accomplish a thoughtful review of the draft agreement and was given zero information about the plaintiff's assets and income.

The court will not discuss the plaintiff's claims with respect to the ring in his Amended Revised Complaint dated June 22, 2006. In the First Count he claims that the defendant's retention of the ring constitutes a conversion of the ring. In the Second Count the plaintiff claims that the defendant's retention of the ring constitutes statutory theft and entitles him to treble damages pursuant to Connecticut General Statutes § 52-564. In the Third Count he alleges that her retention of the ring constitutes an unjust enrichment. In the Fourth Count the plaintiff charges that the aforesaid conduct results in a constructive trust of the ring for his benefit. The Fifth Count alleges Fraud in the Inducement and claims that the defendant's promise to sign a prenuptial agreement and to marry him, which were both false, was the basis of his buying the engagement ring. Finally, the Sixth Count alleged a Breach of Contract and

specifically alleges that the plaintiff in consideration of the defendant's promise to marry him and sign a prenuptial agreement purchased the ring and the defendant breached that agreement by not signing the prenuptial agreement and failing to marry him.

All six counts of the complaint include and re-allege the first sixteen paragraphs of the First Count. That is what the plaintiff must prove. The court will now discuss those factual allegations in detail. The plaintiff's case is premised on a simple proposition 1) the defendant's promise to sign a prenuptial agreement and marry him, 2) she refused to discuss or sign such an agreement; and 3) she canceled the wedding.

More specifically, in paragraph three of the First Count, the plaintiff alleges that in November of 2004 the plaintiff and the defendant discussed a prenuptial agreement and becoming engaged and she indicated she would sign such an agreement and marry him. The court concludes that he has failed to prove that.

In paragraph 6, the plaintiff alleges that on December 9, 2004, in addition to the prenuptial agreement, the defendant agreed to equally share the cost of the wedding, and to return the engagement ring if they did not get married. For reasons previously stated, the court concludes these facts in this paragraph have not been proven by the necessary burden.

In paragraph 7, the plaintiff alleges that from December 2004 to May 2005 the defendant reaffirmed her intention to sign a prenuptial agreement. That also has not been proved.

As to paragraphs 8 and 9, the plaintiff has proven that he purchased and presented to the defendant an engagement ring for \$30,210 and on or about April 29, 2005 presented her with a draft prenuptial agreement. The balance of the allegations of those two paragraphs he did not prove.

As to paragraphs 11 and 12 of the First Count, those allegations have simply not been proven. As to paragraph 13, the plaintiff has proved that the defendant is in possession of the ring.

As far as the ring is concerned the plaintiff has failed to prove a Conversion in the First Count, a theft in the Second Count, a Constructive Trust in the Fourth Count, Fraud in the Inducement in the Fifth Count or a Breach of Contract in the Sixth Count as the case has been pled and judgment shall enter for the defendant on all those counts.

This case illustrates clearly the problem of overpleading. In the plaintiff's briefs he now is urging on the court a simple proposition; 1) the engagement ring is a conditional gift, 2) the condition of the gift is the subsequent marriage of the parties to the engagement, 3) the marriage did not take place

and 4) the ring must be returned to the donor. Wouldn't it be great if the Complaint had a count within it that simply pled that. The only way the court can get to that issue is through Count Three, Unjust Enrichment and to do so will require the court to ignore certain factual allegations that are superfluous to an unjust enrichment claim.

In looking at the Third Count it basically alleges that the parties discussed getting engaged and did get engaged in November of 2004. They set their wedding date for May 27, 2005. The plaintiff bought the defendant a replacement engagement ring in March of 2005 at a cost of \$30,210. The wedding was canceled and has never taken place. Despite demands for the return of the ring, the defendant has wrongfully retained it and remains in possession of it without the plaintiff's authorization. The plaintiff's claim is such retention constitutes an unjust enrichment to the defendant. For purposes of this count, the court has ignored any claims of false representation or misrepresentation alleged against the defendant. This court concludes that the gift of the ring in March of 2005 was an engagement ring conditional upon a subsequent marriage and not a completed gift as the defendant testified to.

The law in this case is not very complex, however, there are two very different viewpoints. One view, which is described

as the fault approach, provides that if the marriage does not take place due to the fault of the donee or with the mutual consent of both parties, the ring must be returned to the donor. In the event that the marriage does not take place due to the fault of the donor, then he is not entitled to the return of the ring. Accordingly under this rationale, the courts should not aid a donor who has broken his promise of marriage to regain possession of something he would not have regained if he had kept his promise.

Other jurisdictions have adopted what is called a "no fault" approach, i.e., the modern trend, holding that once an engagement is broken, the engagement ring should be returned to the donor regardless of fault.

Up until now the only case on this subject in Connecticut was *White v. Finch*, 3 Conn. Cir. Ct. 138 (1964), wherein the court described the issue as a case of first impression in Connecticut. The plaintiff in that case was seeking a recovery from the defendant in the amount of \$515.91 alleged to be the value of an engagement ring that he had given the defendant. That ring had been stolen after being given to the defendant. Without going into detail, the facts established that it was the plaintiff who called off the wedding and it was his conduct

prior to cancellation of the wedding that was inconsistent with anyone wanting to get married.

In finding the issues for the defendant the court adopted the fault approach by observing:

"The prevailing view in the United States and England follows the Roman law in placing weight upon the fault of the parties. Hence, it has been held that when an engagement is broken owing to the fault of the donor he may not recover the ring."

Those decisions are based on the theory that the ring is given upon an implied condition that the marriage will take place. Conversely, the ring must be returned if the engagement to marry is broken by the fault of the donee or her failure to observe a condition of the gift or by mutual agreement.

This decision was certainly aided by the facts in the case that cast the plaintiff donor in a very unfavorable light as opposed to a very innocent donee. That unfortunately is not always the case.

The *Finch* case holding has been noted favorably in at least one other Superior Court case, *Syragakis v. Hopkins*, No. 114142 (Feb. 6, 2001) 2001 Ct. Sup. 2111. In that case, however, the court concluded that the ring was a straight gift and was not given in contemplation of marriage. So the court never grappled with the question of fault or the absence thereof.

Preliminarily the defendant argues that all the plaintiff's claims are barred by Connecticut General Statutes § 52-572(d) (hereinafter "Heart Balm Act"). That is not the law and that claim was put to rest in the case of *Piccininni v. Hajus*, 180 Conn. 369, 372 (1980), wherein the court stated "the predominate view is that the Heart Balm statute should be applied no further than to actions for damage suffered from loss of marriage, humiliation, and other direct consequences of the breach, and should not affect the rights and duties determinable by common law principles."

So this court is left to decide whether it will follow the single 43-year-old precedent of *Finch* or join the modern view cases that fault should not be a factor in determining who keeps an engagement ring. The modern view is that the gift of the engagement ring is a conditional gift, the condition being the subsequent marriage of the parties. If the marriage does not take place, the condition has not been met and the ring should be returned to the donor. After a review of numerous cases and A.L.R. treatises, this court is convinced that the modern no fault rule is clearly the better rule and comports with the modern trends on handling family matters on a no fault basis. *Aronow v. Silver*, 223 N. J. Super. 344, 538 A.2d 851, 1987; *Fowler v. Perry*, 830 N.E.2d 97 (2005), an Indiana case; *Meyer v.*

Mitnick, 244 Mich. App. 697, 625 N.W.2d 136 (2001); *McIntire v. Raukhorst*, 65 Ohio App. 3rd, 585 N.E.2d 456 (1989), *Lindh v. Surman*, 560 PA.1, 742 A.2d 643 (1999); *Heiman v. Parrish*, 262 Kan. 926, 942 P.2d 631 (1997); *Gagliardo v. Clemente*, 530 NYS 2nd 279 (1992); *Fierro v. Hoel*, 465 N.W.2d 669 (1990) IOWA; *Brown v. Thomas*, 129 Wisc.2d 318, 379 N.W.2d 868 (1985); and *Benassi v. Miland*, 629 N.W.2d 475 (2001) Minn.

The best way to illustrate the logic of the modern view is to quote portions of the decisions in support of it.

In *Fowler v. Perry*, *supra*, the court stated:

First, we examine whether the ring at issue constitutes a gift in contemplation of marriage. In so doing, we note that, at trial, both parties referred to the ring as an engagement ring. An "engagement ring" [***15] is defined as "a ring given in token of betrothal." WEBSTER'S THIRD NEW INTERNATIONAL Dictionary, 751 (2002). The term "betrothal" refers to "a mutual promise or contract for a future marriage." *Id.* At 209. In light of the parties' reference to the ring at issue as an engagement ring, the trial court erred when it found that the evidence was insufficient to prove that such ring was given in contemplation of marriage.

Having determined that the engagement ring was given to Perry in contemplation of marriage, we next examine whether, upon the parties' break-up, *Fowler* [*105] was entitled to the return of the ring or, in the event that the ring could not be returned, the purchase price of the jewelry. This question is one of first impression. See *Linton v. Hasty*, 519 N.E.2d 161, 162 (Ind.Ct.App. 1988) (recognizing that no court in Indiana has addressed this issue), *reh'g denied*.

It is undisputed that, at some point, Fowler gave Perry the engagement ring that he purchased for \$5,499.00 in cash and trade. That said, we must determine whether the ring was intended as an absolute, or a conditional, gift. In addition to the competency of the donor, a valid inter vivos gift - i.e., an absolute gift - occurs when: (1) the donor intends to make a gift; (2) the gift is completed with nothing left undone; (3) the property is delivered by the donor and accepted by the donee; and (4) the gift is immediate and absolute. *Shourek v. Stirling*, 652 N.E.2d 865, 867 (Ind.Ct.App. 1995). Thus, once delivery and acceptance of a gift inter vivos occurs, the gift is irrevocable and a present title vests in the donee. *Hopping v. Wood*, 526 N.E.2d 1205, 1207 (Ind.Ct.App. 1988), reh'g denied, trans. denied. By contrast, a gift is conditional if it is conditioned upon the performance of some act by the donee or the occurrence of an event in the future.

The gift at issue in the present case is an engagement ring. In our society, an engagement ring i.e., a gift incidental to an engagement is the symbol and token of a couple's agreement to marry. As such, marriage is an implied condition of the transfer of title to the ring and, thus, the gift does not become absolute until the marriage occurs. See *Elaine Marie Tomko, Annotation, Rights in Respect of Engagement and Courtship Presents When Marrying Does Not ensue*, 44 A.L.R.5th 1 (1996). Put another way, marriage is a condition precedent before ownership of an engagement ring vests in the donee. Therefore, in the absence of a contrary expression of intent, an engagement ring is a conditional gift given in contemplation of marriage, and not an inter vivos transfer of personal property. [fn3]

Having concluded that, in most circumstances, an engagement ring is a conditional gift, we next analyze the rightful ownership of the engagement ring when the condition of marriage is never satisfied. The majority of jurisdictions that have considered the ownership of an engagement ring after the engagement was terminated has adopted a "fault-based" approach, wherein the donor is entitled to the return of an engagement ring

only if the engagement was broken by mutual agreement or unjustifiably by the donee. See *Heiman v. Parrish*, 262 Kan. 926, 942 P.2d 631, 635 (1997); see also 44 A.L.R.5th 1 (providing an extensive summary of the cases arising in this area and the rationales employed to resolve them). The rationale behind the "fault-based" approach is, in large part, as follows:

On principle, an engagement ring is given, not alone as a symbol of the status of the two persons as engaged, the one to the other, but as a symbol or token of their pledge and agreement to marry. As such pledge or gift, the condition is implied that if both parties abandon the projected marriage, the sole cause of the gift, it should be returned. Similarly, if the woman, who has received the ring in token of her promise, unjustifiably breaks her promise, it should be returned. When the converse situation Page 106 occurs, and the giver of the ring, betokening his promise, violates his word, it would seem that a similar result should follow, i.e., he should lose, not gain, rights to the ring. In addition, had he not broken his promise, the marriage would follow and the ring would become the wife's absolutely. The man could not then recover the ring.

44 A.L.R.5th 1 (citing *Sloin v. Lavine*, 11 N.J. Misc. 899, 168 A. 849 (1933)). Accordingly, under this rationale, the courts should not aid a donor, who has broken his promise of marriage, to regain possession of something that he could not have regained if he had kept his promise. Id.

A minority of jurisdictions has adopted a "no-fault" approach, i.e., the modern trend, holding that once an engagement is broken, the engagement ring should be returned to the donor, regardless of fault. *Heiman*, 942 P.2d at 635. Pursuant to this approach, fault is irrelevant, if ascertainable at all, because ownership of the engagement ring was conditional and the condition of marriage was never fulfilled. Id. (citing

Aronow v. Silver, 223 N.J.Super. 344, 538 A.2d 851 (1987)). Some of these "no-fault" jurisdictions, for example, highlight the fact that the primary purpose behind the engagement period is to allow the couple to test the permanency of their feelings for one another, and with that purpose in mind, it would be irrational to penalize the donor for taking steps to prevent a possibly unhappy marriage. See *Fierro v. Hoel*, 465 N.W.2d 669 (Iowa Ct.App. 1990). We find this latter approach to be more persuasive. Indeed, the "no fault" approach is consistent with our "no-fault" system of divorce. See Ind. Code § 31-15-1-2.

We do not want to require our judiciary to tackle the seemingly insurmountable task of determining which party was at fault for the termination of an engagement for marriage, as such may force trial courts to sort through volumes of self-serving testimony regarding who-did-what during the engagement.

In *Heiman v. Parrish*, supra, the Kansas Supreme Court concluded:

After careful consideration, we conclude the no-fault line of cases is persuasive.

What is fault or the unjustifiable calling off of an engagement? By way of illustration, should courts be asked to determine which of the following grounds for breaking an engagement is fault or justified? (1) The parties have nothing in common; (2) one party cannot stand prospective in-laws; (3) a minor child of one of the parties is hostile to and will not accept the other party; (4) an adult child of one of the parties will not accept the other party; (5) the parties' pets do not get along; (6) a party was too hasty in proposing or accepting the proposal; (7) the engagement was a rebound situation which is now regretted; (8) one party has untidy habits that irritate the other; or (9) the parties have religious differences. The list could be endless.

The engagement period is one where each party should be free to reexamine his or her commitment to the

other and be sure he or she desires the commitment of marriage to the other. If the promise to wed were rashly or improvidently made, public policy would be better served if the engagement promise to wed would be broken rather than the marriage vows.

The ring which was given on the promise of a future marriage and is the symbol of the parties' commitment to each other and their life together is, after the engagement is broken, a symbol of failed promises and hopes, hardly a treasured keepsake for its formerly betrothed wearer. Broken engagements engender hurt pride, anger, and wounded egos. They do not ordinarily present the major questions of changes in lifestyles, standards of living, etc., that broken marriages involve. Yet the legislature has applied the no-fault principle to divorces on the grounds of public policy. It is difficult to see how the public policies involving divorce and the division of marital property are best served by no-fault principles, but broken engagements should require a fault-based determination as to ownership of the engagement ring. Litigating fault for a broken engagement would do little but intensify the hurt feelings and delay the parties' being able to get on with their lives.

In *Benassi v. Miland*, supra, the Court of Appeals of Minnesota concluded:

We find the conditional gift theory particularly appropriate when the contested property is an engagement ring. The inherent symbolism of this gift * * * forecloses the need to establish an express condition that marriage will ensue. Rather, the condition may be implied in fact or imposed by law in order to prevent unjust enrichment.

Therefore, it is given in contemplation of the marriage and is a unique type of conditional gift. *Id.* Other courts have reached a similar conclusion. Having determined an engagement ring is a conditional gift, we must next decide who, in this case, is entitled to the ring. There is a split of authority on this issue. The "majority" approach resolves the issue

by determining ownership on the basis of fault. The "minority" approach applies a no-fault rule such that the ring would be returned to the donor after the engagement is broken, regardless of fault

Respondent-bankruptcy trustee, on the other hand, argues that the district court properly reflected Minnesota public policy by adopting the no-fault reasoning. The no-fault approach compares a broken engagement to a broken marriage; since a no-fault divorce is the modern approach to a broken marriage, a no-fault approach to a broken engagement is equally appropriate.

Numerous states have abandoned the "majority," fault-based approach in favor of the no-fault approach, including Iowa, Kansas, Michigan, New Jersey, New York, and Wisconsin.[fn1] The Wisconsin Court of Appeals, explaining why it adopted the no-fault approach, stated:

[The question of, who is at fault, often becomes] lost in the murky depths of contradictory, acrimonious, and largely irrelevant testimony by disappointed couples, their relatives and friends.

Brown, 379 N.W.2d at 873. The *Brown* court, considering Wisconsin's no-fault divorce law, concluded that the only relevant inquiry in conditional engagement gift cases is whether the condition under which the gift was made has failed. *Id.*

And finally in the case of *Meyer v. Mitnick*, *supra*, the court held that:

Like the courts in other states and the dicta in *Lowe*, we find [***8] that engagement rings should be considered, by their very nature, conditional gifts given in contemplation of marriage.

The facts in this case have similarities to the instant case. The parties became engaged, the donor presented his bride

to be with a \$19,500 engagement ring and three months later he demanded that she sign a prenuptial agreement. Both parties agreed that terminated the relationship and both parties blamed the other. The court concluded:

We find the reasoning of the no-fault cases persuasive. Because the engagement ring is a conditional gift, when the condition is not fulfilled the ring or its value should be returned to the donor no matter who broke the engagement or caused it to be broken. As stated by the court in *Aronow*, supra at 349, in concluding that fault is irrelevant in an engagement setting: What fact justifies the breaking of an engagement? The absence of a sense of humor? Differing musical tastes? Differing political views? The painfully-learned fact is that marriages are made on earth, not in heaven.

They must be approached with intelligent care and should not happen without a decent assurance of success. When either party lacks that assurance, for whatever reason, the engagement should be broken. No justification is needed. Either party may act. Fault, impossible to fix, does not count. [[fn4]]

In sum, we hold that an engagement ring given in contemplation of marriage is an impliedly conditional gift that is a completed gift only upon marriage. If the Page 704 engagement is called off, for whatever reason, the gift is not capable of becoming a completed gift and must be returned to the donor.

Therefore on the Third Count, the court finds the issues for the plaintiff. Unjust enrichment is a broad and flexible equitable remedy. A plaintiff seeking recovery for unjust enrichment must prove, 1) a benefit to the defendant, 2) that the defendant unjustly did not pay for the benefit, and 3) that

the failure of payment caused a detriment to the plaintiff. *Vertex v. City of Waterbury*, 278 Conn. 557 (2006). In that the ring is still possessed by the defendant, it is more reasonable that she return the ring rather than pay the plaintiff its purchase price. Whether it is worth what he paid for it, is not significant. The ring is ordered returned to the plaintiff.

Because of the possibility that an Appellate Court may reverse this court's adoption of the modern view of no fault, this court will now entertain the issue of fault which was completely tried before it. That should obviate any requirement of a remand. If the issue of fault for calling off the wedding became significant on a reversal of this court, this court finds that the plaintiff called off the wedding, that he was the cause or fault of the breakup, and therefore under the fault view, judgment would enter for the defendant on all counts and she would be entitled to keep the ring.

This court will not repeat everything it has already said, but will incorporate all previous findings of fact in determining that issue. The plaintiff's emails clearly indicate that he called the wedding off. The court has already concluded that the plaintiff, only a month before the wedding, raised the requirement of the defendant signing a prenuptial agreement and

in subsequent emails, apologized to the defendant for raising it so late.

His real reasons for calling off the wedding are contained in his own emails to the defendant. (Plaintiff's Exhibits O, P and R and Defendant's Exhibit 2 and 3) including "And I am not thankful for all that you do for me." "I need to protect my assets and my three kids no matter who I marry...I am not going to get married without the agreement, so we have our answer. No marriage. . . Besides the agreement I have not been happy with how you have been treating me." "We have so many differences about the issue....it feels like we rushed into this." . . . "I really don't want anyone watching over me, telling me what to do, listening to my phone conversations, reading my email, and generally bossing me around." "It will only get worse after marriage when I want to play golf, ride my motorcycle, buy a different car, paint a room, etc." "I am no longer happy with our relationship. . ." "None of this is your fault . . ." and "I do not want to get married" . . . "I cannot make every decision with you. I will never let anyone make decisions about my children." His own words prove he cancelled the wedding and it was his fault and he cancelled it for reasons far beyond the prenuptial agreement.

Therefore, if an Appellate Court reverses the trial court and follows the fault theory, then the defendant keeps the engagement ring.


_____, JTR
GORMLEY