

STATE OF MICHIGAN
COURT OF APPEALS

HELEN JOANN NETTE and RICHARD R.
NETTE, JR.,

UNPUBLISHED
March 15, 2005

Plaintiffs-Appellees,

v

No. 252328
Oakland Circuit Court
LC No. 03-047975-CK

ROBERT N. WILLIAMS and DOROTHY
NETTE WILLIAMS,

Defendants-Appellants,

and

MERRILL LYNCH, PIERCE, FENNER &
SMITH, INC.,¹

Defendant.

Before: Zahra, P.J., and Murphy and Cavanagh, JJ.

PER CURIAM.

Plaintiffs filed an eight-count complaint in this action involving a dispute between family members over the ownership of an investment account. Seven of the alleged causes of action were dismissed, either through stipulation or the trial court's ruling on defendant's motion for summary disposition. The sole count at issue here, a claim seeking the imposition of a constructive trust, was resolved in favor of plaintiffs on their motion for summary disposition under MCR 2.116(C)(10). The trial court's final judgment awarded the investment account to plaintiffs as their sole and exclusive property. Defendants appeal as of right. We affirm.

A trial court's ruling on a motion for summary disposition is reviewed de novo by this Court. *Hazle v Ford Motor Co*, 464 Mich 456, 461; 628 NW2d 515 (2001). In addition, when

¹ Defendant, Merrill Lynch, Pierce, Fenner & Smith, Inc., was dismissed in this action by stipulated order in the lower court. All references in this opinion to "defendants" pertain solely to Robert N. Williams and Dorothy Nette Williams.

reviewing an equitable determination reached by a trial court, this Court reviews the trial court's conclusion de novo, but the trial court's underlying findings of fact are reviewed for clear error. *Forest City Enterprises, Inc v Leemon Oil Co*, 228 Mich App 57, 67; 577 NW2d 150 (1998). A summary disposition motion brought pursuant to MCR 2.116(C)(10) tests the factual support of a claim. *Hazle, supra* at 461. After reviewing the documentary evidence in a light most favorable to the nonmoving party, the trial court may grant a motion under MCR 2.116(C)(10) if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Id.*

The documentary evidence indicates that Herbert and Ella Nette, both deceased, owned an investment account that was of considerable worth. Herbert and Ella had two children, defendant Dorothy Nette Williams and Richard Nette, Sr. Dorothy, who lived near Herbert and Ella here in Michigan, was added to the investment account as a joint owner with full rights of survivorship after Ella died. Richard Sr. and his wife, plaintiff Helen Joann Nette, lived in Arizona. Subsequently, Herbert passed away; he died intestate.

Sole ownership of the account passed to Dorothy pursuant to her rights of survivorship. Less than a month after Herbert's death, Dorothy divided the funds from the single investment account into two separate accounts. The accounts, which we shall reference in short form as account #19 and account #20, reflected a nearly equal division of the original investment account. Dorothy's husband, defendant Robert N. Williams, was added to both accounts. The two new accounts were held by defendants jointly with rights of survivorship.

The evidence reflects that Dorothy divided the investment account specifically for the purpose of setting up a separate account, account #19, for the benefit of Richard Sr. Dorothy offered Richard Sr. ownership of account #19 because, according to Dorothy, he was family. Helen testified that Dorothy told Richard Sr. that she would give him half of Herbert's investment account. A financial advisor with Merrill Lynch testified that Dorothy indicated that one of the accounts was being set up for the benefit of Richard Sr. Richard Sr. became involved in directing investment strategies that would benefit him by generating income yet minimize tax liabilities. Dorothy testified as follows:

Q. And it was Richard who made the decision as to how the investments were to be made in that account [#19]; correct?

A. Yes.

Q. Why would you agree to have your name on the account if it was Richard's money?

A. That's the way they wanted it.

Q. Richard and his wife Jo?

A. Yes.

Account #19 generated monthly interest income, and beginning in 1993, regular disbursements of income from the account were paid directly to Richard Sr. and Helen. These

disbursements continued uninterrupted until 2002. Additionally, occasional disbursements of principal withdrawn from account #19 were provided to Richard Sr. upon his request and defendants' approval. Routine paperwork associated with maintenance of account #19 was sent to Richard Sr. Until 2002, defendants never objected to disbursements made to Richard Sr. and Helen. Moreover, defendants never sought or received distributions from account #19, as indicated by Dorothy's testimony.

Q. Do you know if your brother and his wife were receiving monthly checks or distributions from Merrill Lynch?

A. Yes.

Q. Did you and/or your husband ever receive any monthly distributions from Merrill Lynch from the account [#19] with the tax-free investments?

A. No.

Q. Did you or your husband ever withdraw any monies from the account

A. No.

Q. Why didn't you receive monthly checks from that account?

A. Because they were to go to Richard.

On April 14, 1999, Richard Sr. and Helen were added to account #19; defendants remained on the account. In October 2000, Richard Sr. died, and plaintiff Richard Jr. was added to the account in November 2000.

In December 2000, a dispute arose between Richard Jr. and defendants with respect to Richard Jr.'s purchase of defendants' insurance agency. They became embroiled in litigation that lasted into 2002. In January 2002, partial summary disposition was granted in favor of Richard Jr. in that litigation. In May of 2002, the litigation was settled. It is evident from the record that the litigation and its aftermath caused bad feelings and resentment between the families that led to disputes and arguments regarding control of account #19. Prior to the dispute over the sale of the insurance business, the families were close and on friendly terms.

Defendants placed holds on the account and blocked disbursements. Eventually, defendants sought to divide account #19 into two separate accounts, one in their name and one in the names of Helen and Richard Jr. Merrill Lynch contacted defendants, informing them that the account could not be divided in the manner requested without the completion of certain documents and plaintiffs' signatures and social security numbers. With the termination of monthly disbursements, Helen's income was reduced significantly and this action ensued.

On cross motions for summary disposition, the parties submitted conflicting evidence and made arguments relative to Herbert's intent and wishes concerning the investment account. On the claim requesting imposition of a constructive trust, the trial court indicated that defendants had not clearly rebutted plaintiffs' evidence pertaining to the true intent of Herbert to equally distribute his assets between Dorothy and Richard Sr. The trial court noted:

Although the true intent of Herbert is contested, Plaintiffs have submitted sufficient evidence to impose a constructive trust. Plaintiffs presented: (1) deposition testimony of Helen stating that Herbert told her that all of his assets were to be divided evenly between his two children; (2) deposition testimony from Dorothy indicating that she “offered” Richard “half of the balance” in the Herbert account “because he’s [Richard] my brother and . . . he was family;” (3) deposition transcript of Dorothy affirming that Richard made the decision as to how the investments were to be made in Account 19; (4) evidence that Richard and Helen were named as joint owners to Account 19; and (5) evidence that Richard and Helen received interest payments from Account 19 for approximately nine years.

Based on this reasoning, the trial court determined that plaintiffs’ request for imposition of a constructive trust would be granted based on law and “principles of equity.”

“A constructive trust is in reality not a trust, but rather a judicial remedy to which resort is had after the fact and arises by operation of law.” *Grasman v Jelsema*, 70 Mich App 745, 752; 246 NW2d 322 (1976)(citation omitted). A constructive trust may arise out of unconscionability and unjust enrichment; the property need not be wrongfully acquired. *Id.* When property has been acquired under such circumstances that the legal titleholder may not, in good conscience, retain the beneficial interest, equity converts the titleholder into a trustee. *Kent v Klein*, 352 Mich 652, 656; 91 NW2d 11 (1958). A constructive trust is the mechanism through which conscience of equity finds expression. *Id.*² Constructive trusts “are imposed solely where a balancing of equities discloses that it would be unfair to act otherwise.” *Children of the Chippewa, Ottawa & Potawatomy Tribes v The Regents of the Univ of Michigan*, 104 Mich App 482, 492; 305 NW2d 522 (1981). In *Kammer Asphalt Paving Co, Inc v East China Twp Schools*, 443 Mich 176, 188; 504 NW2d 635 (1993), our Supreme Court stated:

A constructive trust may be imposed “where such trust is necessary to do equity or to prevent unjust enrichment” Hence, such a trust may be imposed when property “has been obtained through fraud, misrepresentation, concealment, undue influence, duress, taking advantage of one’s weakness, or necessities, or any other similar circumstances which render it unconscionable for the holder of the legal title to retain and enjoy the property” Accordingly, it

² The *Kent* Court further stated:

It is enough, to compel the surrender, that one feed and grow fat on that which in good conscience belongs to another, that he enjoy a windfall resulting in his unjust enrichment, that he reap a profit in a situation where honor itself furnishes rich reward, where profit, the mainspring of the market place, is both foreign and inimical to the trust reposed. These principles have been firmly established in this jurisdiction for many years and we do not propose to depart therefrom. [*Kent, supra* at 657.]

may not be imposed upon parties “who have in no way contributed to the reasons for imposing a constructive trust.” The burden of proof is upon the person seeking the imposition of such a trust. [Citations omitted; omissions in original.]

We find it unnecessary to delve into the parameters of MCL 487.703,³ the nature of the parties’ relationships with Herbert, or any matter touching on Herbert’s intent with respect to the investment account. Assuming that Dorothy was made a joint tenant with rights of survivorship because Herbert intended that she receive the entire account on his death, Dorothy’s actions following Herbert’s death support invoking equitable principles and the imposition of a constructive trust in favor of plaintiffs. Shortly after Herbert’s death, Dorothy divided the investment account in two because *she* wanted Richard Sr. to enjoy the benefit of half the account’s value. Although Richard Sr. declined to take official ownership of account #19 because of his concern regarding the impact on government health benefits, defendants, while retaining their names on the account, effectively gave Richard Sr. full control and direction over the account, and there were years of unchallenged disbursements to Richard Sr. and Helen. Defendants never sought or received any income or principal disbursements from account #19. The scenario is quite similar to a trustee-beneficiary relationship. It is not unreasonable to conclude, by analogy, that defendants were willingly holding the account in “trust” for Richard Sr. and plaintiffs. Even if Dorothy legitimately acquired sole ownership of the investment account on Herbert’s death, she made the decision that she and Richard Sr. should share equally in the account. It is evident from the record that after years of treating account #19 as if it belonged to Richard Sr. and Helen, defendants began interfering with and blocking disbursements simply because of the ill will that arose out of the litigation.

Under the circumstances, defendants would be unjustly enriched should they be awarded the whole or any part of account #19. Defendants’ behavior and actions over the many years, which clearly reflected that account #19 was not for their benefit but for the benefit of Richard Sr. and plaintiffs, contributed to the need for imposition of a constructive trust, where defendants now seek to exercise control over the account. Allowing defendants to retain their legal interest in account #19 cannot, in good conscience, be permitted, and a balancing of the equities falls squarely in favor of plaintiffs. We conclude that it would be blatantly unfair to plaintiffs to allow defendants to retain an interest in the account after years of both families acting as if the account belonged to Richard Sr. and Helen. The arguments presented by defendants do not sway us to the contrary, nor do they compel a different result. Although our analysis differs from that of the trial court, the court reached the correct result. See *Wickings v Arctic Enterprises, Inc*, 244 Mich App 125, 150; 624 NW2d 197 (2000).

Affirmed.

/s/ Brian K. Zahra
/s/ William B. Murphy
/s/ Mark J. Cavanagh

³ MCL 487.703 addresses joint bank accounts, rights of survivorship therein, and prima facie evidence of intent.