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PROBATE LAW CASE SUMMARY

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Alan May is a shareholder who is sought after for his experience in guardianships, conservatorships, trusts, wills, forensic probate issues and probate. He has written, published and lectured extensively on these topics.

He was selected for inclusion in the 2007 through 2010 issues of *Michigan Super Lawyers* magazine featuring the top 5% of attorneys in Michigan and is listed in the 2011 and 2012 compilations of *The Best Lawyers in America*. He has been called by courts as an expert witness on issues of fees and by both plaintiffs and defendants as an expert witness in the area of probate and trust law. He is listed by Martindale-Hubbell in the area of Probate Law among its Preeminent Lawyers.

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DT: October 19, 2011

RE: Estate of Annette K. Boyle, Deceased
STATE OF MICHIGAN COURT OF APPEALS

MAJOR LEAGUE LORE:

Odd Baseball Transactions Harry Chiti

Harry was journeyman catcher who once played for Tigers. Harry was of such stature that he was traded to the New York Mets for a player to be named later. The Mets named him.

The Tigers were also involved in a first and only. In 1960 they traded their manager, Jimmy Dykes to Cleveland for their manager, Joe Gordon.

The most interesting “non-trade” involved Ken “the Hawk” Harrelson. Ken played before free agency and couldn’t leave a team and get a hefty raise. In 1967 “the Hawk” played for the



eccentric owner Charlie Finley in Kansas City. Finley fired manager, Alvin Dark. Harrelson called Finley “a menace to baseball.” Finley got so mad he released Harrelson, making him a free agent and allowing him to sign a bonus deal with the Boston Red Sox.

Who could forget Yankees Mike Kekich, and Fritz Peterson. In the spirit of teamwork they switched wives and kids in 1973.

REVIEW OF CASE:

Reference Files: Constructive Trusts
 Real Estate – No written document

Decedent “gave” Appellee Blackacre. Appellant, as personal representative, inventoried Blackacre in Decedent’s estate, together with other real estate. Appellee filed a complaint asking for a constructive Trust and for an order requiring the personal representative to Quit Claim Blackacre to him. Although it doesn’t say so, since a constructive Trust is a remedy and not a cause of action, the cause of action must have been a complaint for Determination of Title.

At trial Appellee adduced that Decedent handed him the antecedent Deed in the chain of Title, went to the County Treasurer to change over the name of the payor of taxes, that Appellee paid the taxes, that Appellee treated the property as his own, that the Decedent owned other real estate and that disinterested witnesses confirmed all of the above.

The trial court imposed the constructive Trust and the Court of Appeals affirmed. The gravamen of the granting of equitable relief was that there was a mutual mistake as to the sufficiency of the conveyance intended.

This is a good Decision, but no mention is made of the Statute of Frauds. It might have been beneficial for future similar cases to have mentioned the Statute of Frauds and found that there was some writing and partial performance, which would have taken the conveyance outside of the Statute of Frauds. It is conceivable that Appellant never raised the Statute of Frauds.

This Opinion has good definitions of constructive trusts and when the remedy is appropriate.

AAM:jv:699391v2
Attachment

STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of ANNETTE K. BOYLE, Deceased.

TERESA KINNEY, as Personal Representative of
the Estate of ANNETTE K. BOYLE,

UNPUBLISHED
September 20, 2011

Petitioner,

and

J. MICHAEL BOYLE,

Petitioner-Appellee,

v

WENDY B. THORNYCRAFT and SUSAN J.
BOYLE,

No. 297753
Berrien Probate Court
LC No. 2007-000728-DE

Respondents-Appellants.

Before: GLEICHER, P.J., AND HOEKSTRA AND STEPHENS, JJ.

PER CURIAM.

Respondents Wendy B. Thornycraft and Susan J. Boyle appeal as of right the final judgment, following a bench trial, in favor of petitioner J. Michael Boyle in this proceeding to resolve issues relating to the will of the parties' mother, Annette K. Boyle, as well as to title to certain real property owned by Annette at the time of her death. We affirm.

Annette died on March 9, 2006; her husband and the parties' father, Dr. John E. Boyle, predeceased her. Annette's will contained a single, specific monetary bequest to Michael¹ and it directed that "the remaining residue of [the] estate be distributed in equal shares to [Annette's] then living children," petitioner Teresa Boyle Kinney (Teri), Susan, Wendy and Michael. The inventory of Annette's estate filed with the court identified interests in several parcels of real

¹ The validity of this specific bequest was challenged by respondents. The trial court concluded that the specific bequest was valid. That determination is not at issue in this appeal.

property, including a “100% interest in real property located at 4682 Notre Dame Ave” (the property). As to this parcel, however, the inventory indicated that the Boyles “agreed to transfer the property” to Michael, and that “[t]he property is occupied, maintained and controlled by” Michael. After respondents objected to the suggestion that Michael owned the property, which remained titled in Annette’s name at her death, Michael filed a complaint in the trial court seeking “a judgment determining that a constructive trust existed” regarding the property and “ordering the Personal Representative of the estate to execute a quit claim deed conveying title to” the property to him. A bench trial was held, at the conclusion of which the trial court entered judgment in Michael’s favor, imposing a constructive trust on the property and directing that the estate convey the property to Michael by quitclaim deed.

On appeal, respondents challenge a number of the trial court’s factual findings. This Court reviews a trial court’s findings of fact following a bench trial for clear error, affording appropriate regard to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. MCR 2.613 (C); *Mettler Walloon, LLC v Melrose Twp*, 281 Mich App 184, 195; 761 NW2d 293 (2008); *Glen Lake-Crystal River Watershed Riparians v Glen Lake Ass’n*, 264 Mich App 523, 531; 695 NW2d 508 (2004); *Amb’s v Kalamazoo Co Rd Comm*, 255 Mich App 637, 652; 662 NW2d 424 (2003). “A finding is clearly erroneous where, although there is evidence to support the finding, the reviewing court is left with the definite and firm conviction that a mistake has been made.” *Id.* at 652. Determinations of witness credibility “are far more within the competence of the trial court than within the competence of appellate judges reading dry records.” *Morris v Clawson Tank Co*, 459 Mich 256, 271; 587 NW2d 253 (1998). Thus, “[t]he trial court’s findings are given great deference, as it is in a better position to examine the facts.” *Chelsea Investment Group, LLC v City of Chelsea*, 288 Mich App 239, 251; 792 NW2d 781 (2010).

Contrary to respondents’ contention, there was substantial evidence presented at trial to support the trial court’s factual findings. At issue before the trial court was whether Annette and John had given the property to Michael in 1995 under circumstances which, despite the absence of proper conveyance of title, warranted the imposition of a constructive trust on the property for Michael’s benefit.² In this narrow context, the trial court concluded that the Boyles intended to

² Respondents frame their challenges to the trial court’s judgment to include the determination of whether Annette “intended to devise the property” to Michael, and whether the payments made by the Boyles’ children on their behalf were “gifts and not loans.” However, Michael never asserted, and the trial court did not conclude, that Annette “intended to devise” the property to Michael. Rather, Michael argued that his parents had actually given him the property in 1995, but that they failed to properly convey title to him due to their mistaken belief that their actions had been sufficient to do so. Likewise, Michael did not contend that payments made by him to or on behalf of his parents constituted loans; he repeatedly testified that all money he provided to, or paid on behalf of, his parents was a gift. Michael also testified that his payment of the taxes on the property was neither a gift nor a loan to his parents. Instead, he explained that he paid those taxes on his own behalf, because he, along with his parents and other family members, believed that the property belonged to him.

convey title to Michael in 1995, and that their failure to properly effectuate that conveyance was the result of a mistaken belief that their actions had been sufficient to do so. Michael, Teri, and the parties' cousin, Michael Walsh, each testified that members of the family, including Annette and respondents, had long referred to the property as Michael's property and treated it as belonging to him. Teri repeatedly noted that her parents believed that they had given the property to Michael. Walsh testified that John specifically told him that he and Annette had given the property to Michael. Even Wendy testified that John referred to the property as Michael's. Michael testified that during the 1995 meeting at which his parents gave him the property in exchange for his substantial financial assistance to them over the years, they delivered to him various documents pertaining to ownership of the property. Among those documents was the 1957 deed by which the Boyles acquired their interest in the property. Annette retrieved that deed from her personal lock box and handed it to Michael. Testimony and documentation established that, after that meeting, John took affirmative action to have the property listed solely in Michael's name with the local taxing authority. Believing the property to be his, Michael paid all taxes associated with the property thereafter. Finally, the trial court was presented with a list of the Boyles' assets and debts, prepared in 2002, which does not identify the property as an asset. While not inclusive of certain personal property, cash, insurance or stocks, the listing identifies all real property, except that at issue here, that was owned by the Boyles at that time.

While Susan and Wendy denied any knowledge that their parents had given the property to Michael, the trial court was tasked with assessing the credibility of the witnesses in light of the documentary evidence presented. The trial court specifically indicated that it had had an opportunity to observe each witness and to consider each witness's "ability and opportunity to observe, their memory, their manner while testifying, any interest, bias and/or prejudice of any witness"; that it had determined the credibility of each witness and the weight to be given to their testimony, and that it had considered the "reasonableness of the witness's testimony . . . in light of all of the evidence in the case," resolving "any conflicts relative to testimony" accordingly. The trial court credited testimony from Michael, Teri and Walsh, that the Boyles believed that they had given the property to Michael in 1995, and that, thereafter all family members believed that the property belonged to Michael. Affording due deference to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it, MCR 2.613(C); *Amb's*, 255 Mich App at 652, and considering the evidence presented at trial, respondents have not established that the trial court clearly erred in its relevant factual findings.

Respondents also argue that the trial court committed legal error by imposing a constructive trust on the property in favor of Michael on the facts presented here. They assert that Annette's will was unambiguous and, therefore, that the trial court should have distributed the property as part of the residual estate in accordance with the will. At most, respondents argue, the evidence established an unenforceable intent to devise the property to Michael. We disagree.

This Court reviews a trial court's conclusions of law de novo. *Mettler Walloon*, 281 Mich App at 195; *Heeringa v Petroelje*, 279 Mich App 444, 448; 760 NW2d 538 (2008). We also review de novo a trial court's equitable decisions, including whether to impose a constructive trust. *Winchell v Mixer*, 316 Mich 151, 159; 25 NW2d 147 (1946); *Sweet Air Investment, Inc v Kenney*, 275 Mich App 492, 496; 739 NW2d 656 (2007).

A constructive trust is an equitable remedy. *In re Swantek Estate*, 172 Mich App 509, 517; 432 NW2d 307 (1988). Constructive trusts arise by operation of law and they render the holder of the legal title as a trustee for the benefit of another who in good conscience is entitled to the beneficial interest. *Arndt v Vos*, 83 Mich App 484, 487; 268 NW2d 693 (1978). Property need not be wrongfully acquired for the imposition of constructive trust; it need merely be unconscionably withheld. *Kent v Klein*, 352 Mich 652, 657; 91 NW2d 11 (1958); *Grasman v Jelsema*, 70 Mich App 745, 752; 246 NW2d 322 (1976). A constructive trust may be imposed where necessary to achieve equity or to prevent unjust enrichment, and it may be based on a number of circumstances, including mistake. *Kammer Asphalt Paving Co, Inc v East China Twp Sch*, 443 Mich 176, 188; 504 NW2d 635 (1993); *Reed & Noyce, Inc v Muni Contractors Inc*, 106 Mich App 113, 120; 308 NW2d 445 (1981); *Grasman*, 70 Mich App at 752; *Chapman v Chapman*, 31 Mich App 576, 580; 188 NW2d 21 (1971). 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 Mich*, 104 Mich App 482, 492; 305 NW2d 522 (1981). As our Supreme Court explained, in *Nelson v Woodworth*, 363 Mich 244, 250; 109 NW2d 861 (1961):

As we have recently held with respect to the constructive trust, 'Fraud in the inception we do not require, nor deceit, nor chicanery in any of its varied guises, for it is not necessary that property be wrongfully acquired. It is enough that it be unconscionably withheld.' The constructive trust is purely a remedial device, 'the formula through which the conscience of equity finds expression.' [Citations omitted.]

Thus,

if circumstances are such as to render it inequitable for holder of the legal title to retain the same, the court may charge it with a trust in favor of the equitable owner. . . . This form of trust is practically unlimited in extent and is employed whenever, in the opinion of the court, it becomes necessary to prevent a failure of justice. [*Digby v Thorson*, 319 Mich 524, 539; 30 NW2d 266 (1948).]

The trial court found that the Boyles intended to give the property to Michael in 1995, and, believing that they had done so, they treated the property as belonging to Michael thereafter. John changed the property tax records to place Michael's name, solely, on the property, and, believing the property to be his, Michael paid more than \$24,000 in property taxes from 1995 through 2006. Michael took steps to build a house on the property and showed his plans to the Boyles, and the family referred assessment issues for the property to Michael. There was no evidence presented that the Boyles asserted any ownership over or acted in any manner consistent with ownership of the property after Jon had the tax records for the property changed. Members of the family, including the Boyles, the parties to this action and cousin Walsh, had all long referred to the property as Michael's, and it was commonly understood that the Boyles had given the property to Michael. The evidence presented supported the trial court's conclusion that the Boyles' failure to properly convey the property to Michael was the result of mistake but for

which the estate would not have legal title. Therefore, the trial court did not err by invoking its equitable powers to impose a constructive trust on the property in favor of Michael, to remedy the Boyles' mistake and effectuate their intention, so as to avoid a failure of justice.³

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Joel P. Hoekstra
/s/ Cynthia Diane Stephens

³ Contrary to respondent's assertions, Michael did not argue that his parents intended to devise the property to him at some future time, but rather, that they had actually give the property to him during the 1995 meeting, and in reliance thereon, he had paid the property taxes for the property since then. Accordingly, *Bailey v Bailey*, 321 Mich 166; 32 NW2d 429 (1948), is inapposite. Further, having concluded that imposition of a constructive trust was warranted, the trial court did not err by failing to distribute the property in accordance with Annette's will. Recognizing that the property was held, first by the Boyles, then by Annette, and then, finally, by the estate, as trustee for the benefit of Michael, *Arndt*, 83 Mich App at 487, the property was no longer an asset of the estate subject to distribution under the terms of the will. See, *id.* Moreover, despite respondents' assertions otherwise, the trial court did not "look[] outside" the will and consider extrinsic evidence as to the will's meaning. Rather, the trial court properly considered the question whether the property remained an asset of Annette's estate, subject to distribution under her will, or whether the property should be treated as having been conveyed to Michael by the Boyles during their lifetimes.