IN THE COURT OF APPEALS OF IOWA

No. 2-1008 / 12-0496
Filed January 9, 2013

RYAN LEE MONSMA and
CHRISTOPHER JAMES MONSMA,
Plaintiffs-Appellees,

vs.

LYNN ROBERT ANDERSON, a/k/a
LYNN ANDERSON, Individually and
as Co-Executor of the JANICE
ELLEN ANDERSON ESTATE,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Eliza Ovrom, Judge.

Defendant appeals from the district court's ruling in favor of plaintiffs. **AFFIRMED.**

Eric M. Updegraff of Stoltze & Updegraff, P.C., Des Moines, for appellant.

Steven P. Wandro and Kara M. Simons of Wandro & Associates, P.C., Des Moines, for appellees.

Heard by Doyle, P.J., and Mullins and Bower, JJ.

BOWER, J.

Lynn Anderson, husband of decedent, Jan Anderson, appeals from the district court's ruling in favor of Ryan and Chris Monsma, Jan's sons, on the Monsmas' suit against Lynn for breach of common law fiduciary duty and unjust enrichment resulting from Lynn's depletion of Jan's assets contrary to her intent. Lynn argues the district court erred in finding: (1) Jan's change of beneficiary forms were ambiguous and that extrinsic evidence was admissible to determine Jan's intent, (2) the existence of a constructive trust, (3) the existence of a resulting trust, and (4) Lynn violated a fiduciary duty.

Upon our review, we find a latent ambiguity existed in Jan's change of beneficiary forms and therefore the district court properly considered extrinsic evidence to construe Jan's intent in regard to Lynn's capacity as set forth on the forms. We find a constructive trust should be imposed on funds Lynn received through the beneficiary forms on Jan's various accounts in light of Lynn's unjust enrichment following his sole receipt of Jan's assets. We further find the existence of a resulting trust under these facts because Jan conveyed her money to Lynn with the intent that a trust be created, Lynn acknowledged the money was in trust to be equally divided between himself and the Monsmas, and Lynn violated the fiduciary duty he owed to the Monsmas. Accordingly, we affirm on all issues raised on appeal.

I. Background Facts and Proceedings.

This case arose following the death of Janice Anderson on December 8, 2008, from cancer. At the time of her death, Jan was married to Lynn Anderson. Ryan and Chris Monsma are Jan's two adult sons from a prior marriage.

In late October or early November 2008, Jan contacted attorney Apryl DeLange about changing her will. Jan met with attorney DeLange and stated she wanted to: (1) leave the marital residence and personal property to Lynn, except for her grandfather clocks and jewelry which were to go to Ryan and Chris, (2) change the beneficiaries on all her life insurance policies, annuities, and retirement accounts to go into a trust, and then (3) use the trust to pay off the mortgage on the home, Jan and Lynn's credit card debts, give $3000 to her step-daughter for the benefit of her two children, with the remainder to be divided in equal parts for Lynn, Ryan, and Chris.

On November 20, 2008, attorney DeLange wrote a letter to Jan concerning a draft of the will. The letter stated in part:

> Also, it is very important that you change the beneficiaries on your life insurance, retirement accounts, and other contractual investments like annuities, to be the Jan E. Anderson Family Trust established by this Will. If the beneficiary designation stays the same, all of the proceeds from those various accounts will go directly to Lynn as the designated beneficiary. Without the funds from these various accounts, your desires will not be fulfilled.

DeLange also told Jan in person that she needed to change the beneficiaries on her life insurance, annuities, and 401(k) accounts to the trust. These assets were valued at approximately $600,000.

As directed, Jan signed the change of beneficiary forms for her life insurance and retirement accounts, including a Principal Managed IRA, Principal Annuity, Time Insurance Company life insurance policy, Wells Fargo life insurance policy, and a Wells Fargo 401(k) policy. The change of beneficiary forms were completed and signed by Jan during November 2008. However, instead of naming the trust as beneficiary, the change of beneficiary forms all named Lynn Anderson as beneficiary.

Jan signed her will on December 1, 2008.[1] The will states:

> I bequeath the residue of my estate, which shall be called the Jan E. Anderson Family Trust, to James Krambeck[2] and Lynn Anderson, as co-trustees, to be administered as follows:
> 1. My trustees may either pay off the mortgage on my home or distribute the amount of such mortgages to my husband . . . .
> 2. If any marital debts remain unpaid after all assets of the Estate have been distributed, I direct my trustees to pay such debts from the Trust assets.
> 3. I give $3,000 to Jennifer Landas solely for the benefit of her two children.
> 4. Following satisfaction of paragraphs 1, 2, and 3, I direct my co-executors to divide the remaining assets in three equal shares. One share shall be immediately distributed to my husband. The remaining two shares shall be held in Trust, one for each of my sons [to be distributed when they reach the age of 35].

At the time Jan signed her will, DeLange asked Jan whether she had changed her beneficiary designations. Jan told DeLange she had.

Jan died on December 8, 2008. On December 17, 2008, James Krambeck and Lynn met with Ryan and Chris Monsma to discuss Jan's will.

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[1] There is no claim Jan lacked testamentary capacity or was unduly influenced at the time she signed her will.
[2] James Krambeck is an attorney and longtime friend of Jan and Lynn.

They went through the will line by line. Lynn told the Monsmas that the plan was to pay off the house and credit cards, then distribute the remaining assets one-third, one-third, one-third. Lynn said he was getting the paperwork together on the various insurance and retirement accounts to pool the proceeds of those accounts into the trust created in the will to distribute Jan's assets. Lynn said he would abide by Jan's intent and the assets would be divided equally three ways.

In January 2009, Lynn began dating a twenty-three-year-old woman, Kayla. Lynn is in his sixties. Lynn became engaged to Kayla in February 2009, and they were married in May 2009.[3] In July 2010, Kayla filed for divorce from Lynn, and a decree dissolving their marriage was entered in November 2010. During the short period of his marriage to Kayla, Lynn cashed out all of Jan's life insurance policies, annuities, and retirement accounts (exceeding $600,000) and spent the money.[4] Lynn did not pay off the mortgage on the marital home. He did not place any funds into the Trust established in the will. Lynn has filed for bankruptcy, and the marital home is in foreclosure.

Meanwhile, in December 2009, the Monsmas filed a petition to set aside the will and to set aside the change in beneficiary designations. Lynn filed an answer in February 2010. Lynn was deposed in April 2010. During his deposition, Lynn testified Jan named him as beneficiary in the change of beneficiary forms so he could pool the monies and distribute them to himself and the Monsmas, as set forth in Jan's will.

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[3] In August 2009, Lynn filed a petition in probate for Jan's estate.
[4] Lynn did pay his daughter, Jennifer Landas, $3000 as set forth in Jan's will.

In August 2010, the Monsmas filed a motion to amend their petition to include actions for breach of fiduciary duty and conversion. The Monsmas claimed Lynn violated his fiduciary duty under Iowa Code section 633.160 (2009) and common law in failing to turn over the funds from Jan's various accounts to a trust or the Monsmas themselves.

In January 2012, a bench trial was held on the Monsmas's claims for breach of fiduciary duty and conversion. The court heard testimony from Lynn, Ryan Monsma, DeLange, and James Krambeck. Lynn testified that at the time Jan signed her will (on December 1, 2008), she intended that all her financial assets be pooled into the Trust created in her will, and after paying off the mortgage and marital debts, to be divided in equal shares to Lynn, Ryan, and Chris. Lynn further testified that within the next week before she died (on December 8, 2008), Jan changed her mind and told Lynn he could have all the money.

The district court entered its ruling in favor of the Monsmas in February 2012. The court found Jan named Lynn on the change of beneficiary forms "as beneficiary in his role as trustee, rather than in his individual capacity," and that "Jan transferred her retirement accounts and life insurance policies to Lynn so he could pay off debts and share the remainder with her two sons." As the court stated, "It is clear that Jan intended for Lynn, as trustee, to receive the funds and place them into the trust." The court further stated "Lynn himself admitted this was Jan's intent," and that "Lynn's testimony about a last minute change of heart was not credible."

Upon reaching these findings, the court imposed a resulting trust and a constructive trust on funds Lynn received through beneficiary forms on Jan's various accounts. The court concluded Lynn violated his common law duty to the Monsmas that arose with the creation of the resulting trust and also found Lynn would be unjustly enriched if he were allowed to keep all Jan's assets. The court entered judgment against Lynn in favor of Ryan Monsma in the amount of $94,663.04 and in favor of Chris Monsma in the amount of $94,663.04.[5] Lynn now appeals.

II. Interpretation of Change of Beneficiary Forms.

Lynn argues the district court erred in determining "extrinsic evidence should be used to alter, modify or enlarge the written contract terms in the change of beneficiary forms." Lynn contends the court erred in finding the beneficiary forms "were ambiguous and therefore that extrinsic evidence was admissible to determine Jan Anderson's intent." As Lynn alleges, "[t]here can be little doubt that the name Lynn Anderson, without further written language altering his capacity, is unambiguous." Lynn argues the "[c]ourt's interpretation of the contract goes beyond the simple line of interpretation and outright rewrites the change of beneficiary form by modifying, varying or otherwise changing the terms of the contract."

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[5] Jan's retirement accounts, life insurance policies, and annuities totaled $615,855.30. The mortgage loans and other debts Lynn was supposed to have paid totaled $328,866.18. Lynn paid $3000 to his daughter, Jennifer Landas, as set forth in Jan's will. A balance of $283,989.12 remained, which was to have been divided in three equal shares of $94,663.04.

Because this issue was tried at law, our review is for the correction of errors of law. Iowa R. App. P. 6.907; *Harrington v. Univ. of N. Iowa*, 726 N.W.2d 363, 365 (Iowa 2007); *Sutton v. Iowa Trenchless, L.C.*, 808 N.W.2d 744, 748-49 (Iowa Ct. App. 2011). We are bound by the trial court's findings of fact if they are supported by substantial evidence.

The primary goal in interpreting a will is to discern the intent of the testator. *In re Estate of Hoagland*, 203 N.W.2d 577, 580 (Iowa 1973). This intent is determined by the language used in the will, the scheme of distribution, the circumstances surrounding the will's execution, and the existing facts. *In re Estate of Rogers*, 473 N.W.2d 36, 39 (Iowa 1991); *In re Estate of Anderson*, 359 N.W.2d 479, 480 (Iowa 1984). The question is not what the testator meant to say, but what the testator meant by what the testator did say. *Rogers*, 473 N.W.2d at 39.

Extrinsic evidence is admissible to resolve ambiguity. *Anderson*, 359 N.W.2d at 481. Extrinsic evidence is not admissible to vary, contradict, or add to terms of the will or to show an intention different from that disclosed by the language of the will. *In re Estate of Kalouse*, 282 N.W.2d 98, 104 (Iowa 1979). Because extrinsic evidence may be considered only on issues that are in doubt, we must first determine whether the change of beneficiary forms are ambiguous.

Here, the change of beneficiary forms clearly named "Lynn Anderson." However, Jan's intent, as determined by the facts of this case, the language and scheme of distribution in her will, and the circumstances surrounding the will's execution, was for the assets to be used to pay off the house and credit cards,

and to then be distributed 1/3, 1/3, 1/3 to Lynn, Ryan, and Chris. The change of beneficiary forms were signed by Jan several weeks before she signed her will. Accordingly, a "latent ambiguity" exists in the language of the change of beneficiary forms. *See In re Estate of Lepley*, 17 N.W.2d 526, 259 (Iowa 1945) ("A latent ambiguity exists where the language of the instrument does not lack certainty but some extrinsic or collateral matter outside the will renders the meaning obscure and uncertain.").

Upon our review, we agree with the district court's determination that in regard to the change of beneficiary forms signed by Jan, "there is ambiguity whether she intended to name Lynn as beneficiary as an individual or as trustee on behalf of her children." The district court properly considered extrinsic evidence to construe Jan's intent in regards to Lynn's capacity as set forth on the change of beneficiary forms.

Lynn also argues Jan's request to create a trust "was simply an oral testamentary instruction," not executed in conformance with Iowa Code section 633.279 (requiring all wills to be in writing to be valid). Lynn further contends "absent the improper use of extrinsic evidence, Jan Anderson never funded the trust in her will," and therefore, the Monsmas "are in fact attempting to enforce an oral *inter vivos* trust," in violation of Iowa Code section 633A.2103 (requiring a trust to be a written instrument to be valid). We disagree. As the district court determined, the Monsmas were attempting to enforce Jan's written will or alternatively recover under theories of resulting trust and constructive trust. Finding no error, we affirm as to these issues.

III. Constructive Trust.

Lynn argues the district court erred in determining a constructive trust was created under the facts and circumstances of this case. Because this issue was tried in equity, we conduct a de novo review. *See Sutton*, 808 N.W.2d at 748-49.

"A constructive trust is an equitable remedy courts apply to provide restitution and prevent unjust enrichment." *Berger v. Cas' Feed Store*, *Inc.*, 577 N.W.2d 631, 632 (Iowa 1998). It is a remedial device under which the holder of legal title to property is found to be a trustee for the benefit of another who in good conscience is entitled to the beneficial interest. *Id.* In other words, "a constructive trust may be imposed where defendant has profited inequitably at the expense of plaintiff." *In re Estate of Farrell*, 461 N.W.2d 360, 361 (Iowa Ct. App. 1990).

Iowa law recognizes three types of constructive trusts: (1) those arising from actual fraud; (2) those arising from constructive fraud; and (3) those based on equitable principles other than fraud.[6] *Id.*; *In re Estate of Peck*, 497 N.W.2d 889, 890 (Iowa 1993). The party seeking to impose a constructive trust must establish its existence by clear, convincing, and satisfactory evidence. *Farrell*, 461 N.W.2d at 361.

Lynn contends "Iowa law prevents a party from imposing a constructive trust based on an expectancy interest such as the expectation to inherit money." Lynn further alleges "[a] constructive trust cannot be used to eradicate the requirement under Iowa law that a person must make testamentary instructions

[6] Because the Monsmas' claim is based on equitable principles, they are not required to prove fraud or duress, as Lynn alleges.

in writing." Indeed, the Monsmas concede these points. *See id.* ("[D]isappointment of a mere expectation does not justify the imposition of a constructive trust."). The Monsmas do not rely on their own expectations, but rather Jan's expressly stated intent in regard to the distribution of her assets. Further, Jan's will set forth her desired distribution scheme, and Lynn's testimony was replete with admissions in regard to Jan's intentions.

Lynn relies on *Farrell*, 461 N.W.2d at 361, to support his contention. *Farrell* is factually distinguishable from this case. Unlike in *Farrell*, where the eldest son was unaware he was named sole beneficiary of his father's retirement account, Lynn was well aware he had received Jan's money so that he could pool it and divide it three ways. *See Loschen v. Clark*, 127 N.W.2d 600, 604 (Iowa 1964) (observing "the many verbal statements" made by the parties as evidence of constructive trust). Further, Jan's will specifically delineated how she intended the money to be split.

Upon our de novo review, we find the Monsmas have proven by clear and convincing evidence that a constructive trust should be imposed in this case. Lynn would be unjustly enriched if he were allowed to keep all of Jan's assets. Lynn has admitted several times the money was not all his, but that it was to be shared with the Monsmas. Lynn was aware he had the money and that he was supposed to pool it and divide it three ways. We affirm on this issue.

IV. Resulting Trust.

Lynn contends the district court erred in determining a resulting trust was created under the facts and circumstances of this case. Because this issue was tried in equity, we conduct a de novo review. *See Sutton*, 808 N.W.2d at 748-49.

"A resulting trust is a reversionary, equitable interest implied by law in property that is held by a transferee, in whole or in part, as trustee for the transferor or the transferor's successors in interest." Restatement (Third) of Trusts § 7 (2003). A resulting trust arises by operation of law. *In re Estate of Mahin*, 143 N.W. 420, 422 (Iowa 1913).

To establish the existence of a resulting trust in this case, the Monsmas were required to show by clear and convincing evidence: (1) payment by Jan with her own money, (2) intention by Jan at the time of the conveyance that a trust be created, (3) conveyance to the trustee, and (4) acknowledgement on the part of the trustee of the trust, or his assent thereto, or failure to dissent after knowledge of the Monsmas' contention. *See Crawford v. Couch*, 15 N.W.2d 633, 636 (Iowa 1944); *Westcott v. Westcott*, 259 N.W.2d 545, 547 (Iowa Ct. App. 1977). The parties' intent is critical in proving the existence of a resulting trust. *See Gregory v. Gregory*, 82 N.W.2d 144, 148 (Iowa 1957) (denying the claimed trust where plaintiffs failed to prove intent element by clear and convincing evidence).

As Lynn argues, Jan "filled out a change of beneficiary form, and even assuming that she intended that the transfer be to Lynn Anderson as trustee for the children, that change of beneficiary form effectively transferred the whole

interest in those funds." Accordingly, as Lynn alleges, "where there are two reasonable interpretations of the transaction, a resulting trust is wholly inappropriate."

Intent to create a trust may be inferred from the circumstances and need not be expressly stated. *Crawford*, 15 N.W.2d at 636. We acknowledge that "if the testimony, when fairly construed, is consistent with any reasonable theory which will allow the legal title to stand, no trust will be declared." *Gregory*, 82 N.W.2d at 149. In this case, however, intent need not be inferred. Jan expressly stated her intention to create a trust to further her desired distribution scheme, and Lynn expressly stated Jan named him as beneficiary so he could pool the monies and distribute them equally to himself and Jan's sons, as set forth in Jan's will. Lynn stated he would abide by Jan's intent and the assets would be divided equally three ways. We do not find Lynn's testimony that within the week before she died Jan changed her mind and told Lynn he could have all the money to be a "reasonable theory" which would allow Lynn to be the sole beneficiary of Jan's assets. Indeed, we agree with the district court that "Lynn's testimony about a last minute change of heart was not credible."

Upon our de novo review, we find the Monsmas have proven by clear and convincing evidence Jan conveyed her money to Lynn with the intent that a trust be created and that Lynn acknowledged the money was in trust to be equally divided between himself and the Monsmas. *See Crawford*, 15 N.W.2d at 636; *Westcott*, 259 N.W.2d at 547. We affirm on this issue.

V. Fiduciary Duty.

Lynn argues the district court erred in determining he violated a fiduciary duty. Lynn contends the Monsmas cannot prove he "committed constructive fraud as a fiduciary or as a result of confidential relationship because no written document ever created a fiduciary relationship or confidential relationship" and no such relationship can be created "[a]bsent the improper use of extrinsic evidence . . . to modify, alter or add to the terms of the change of beneficiary forms." Because this issue was tried at law, we review for correction of errors at law. *See Harrington*, 726 N.W.2d at 365; *Wiedmeyer v. Equitable Life Assur. Soc'y of U.S.*, 644 N.W.2d 31, 33 (Iowa 2002).

A fiduciary duty is created upon establishment of a resulting trust. *See* Restatement (First) of Restitution § 160 (1937) ("The trustee of a resulting trust, like the trustee of an express trust, is in a fiduciary relation to the beneficiary of the trust."). We have determined the Monsmas proved the existence of a resulting trust in this case; accordingly, Lynn held a fiduciary duty to the Monsmas as trustee of the resulting trust. The district court found Lynn violated this common law fiduciary duty: "[Lynn] owed a duty to Ryan and Chris Monsma, as beneficiaries of the resulting trust, to act for their benefit. Instead, he spent all the money placed into his hands as trustee. This left them with nothing." Finding no error, we affirm on this issue.

VI. Conclusion.

Upon our review, we find a latent ambiguity exists in Jan's change of beneficiary forms and therefore the district court properly considered extrinsic

evidence to construe Jan's intent in regard to Lynn's capacity as set forth on the forms. We find a constructive trust should be imposed on funds Lynn received through beneficiary forms on Jan's various accounts in light of Lynn's unjust enrichment following his sole receipt of Jan's assets. We further find the existence of a resulting trust under these facts because Jan conveyed her money to Lynn with the intent that a trust be created, Lynn acknowledged the money was in trust to be equally divided between himself and the Monsmas, and Lynn violated the fiduciary duty he owed to the Monsmas. Accordingly, we affirm on all issues raised on appeal.

AFFIRMED.