STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
February 25, 2000

M. MAGDALENA SANCHEZ McHENRY and MARIA SANCHEZ,

Plaintiffs-Appellants,

v

No. 209318
Bay Circuit Court
LC No. 96-003830-CH

VELIA FLORES and CHRISTINA SANCHEZ, a minor,[1]

Defendants-Appellees.

Before: Holbrook, Jr., P.J., and Smolenski and Collins, JJ.

PER CURIAM.

Plaintiffs appeal by leave granted a jury verdict that plaintiffs held real property in constructive trust for their niece, defendant Christina Sanchez. We affirm.

This case involves a dispute over real property that was owned by Michael Sanchez (Sanchez), who was the father of Christina Sanchez (defendant), the ex-husband of Velia Flores (Flores), and the brother of plaintiffs Maria Sanchez and Magdalena Sanchez McHenry (McHenry). In 1992, Sanchez deeded to himself and plaintiffs, as joint tenants with rights of survivorship, property on Oxford Street in Hampton Township (the Oxford Street property). Sanchez died in 1996. Following her father's death, defendant published a notice claiming an interest in the Oxford Street property; plaintiffs then brought an action to quiet title. The case was tried before a jury, which found a constructive trust for the benefit of defendant.

Plaintiffs first argue on appeal that because this equitable action was improperly submitted to a jury, the verdict must be reversed and the case remanded for determination by the trial court. We disagree. Pursuant to the reasoning of *McPeak v McPeak*, 457 Mich 311; 577 NW2d 670 (1998),

the parties consented to the use of a jury in this equitable matter. Accordingly, a new trial is not warranted.

Under the prior versions of our current court rules, it was improper to impanel a jury in a matter in equity. See *Robair v Dahl*, 80 Mich App 458, 462; 264 NW2d 27 (1978). However, MCR 2.509(D) provides that the parties may consent to the use of a jury in a matter for which a jury is not available by right. Plaintiffs contend that because they did not explicitly consent to a jury trial in this case, MCR 2.509(D) does not apply. However, in *McPeak, supra*, our Supreme Court found that where a party timely demanded a jury trial, the opposing party made no motion to strike the jury demand or limit the issues to be submitted to the jury, both parties participated in jury selection and submitted proposed jury instructions, and the parties agreed on most aspects of the jury form, the issues were tried before the jury with the consent of the parties. *Id.* at 316.

The facts of this matter are similar to those in *McPeak*. Here, defendant timely made a jury demand and plaintiff did not object.[2] Plaintiffs participated in the selection of a jury, submitted proposed jury instructions, failed to object to the jury instructions ultimately given or the general verdict form presented to the jury, and failed to raise the issue of the jury trial in its motion for a new trial or JNOV. In short, as in *McPeak*, "[n]othing in the record indicates that the trial court or any of the parties at any time questioned the appropriateness of a jury trial." *McPeak* at 313. We conclude, therefore, that plaintiffs consented to trial by jury of this matter.

We note that this case does not present facts similar to those in *Zurcher v Herveat*, ___ Mich App ___; ___ NW2d ___ (issued 10/26/99), where this Court found that the filing of a jury demand by the plaintiffs, standing by itself, was not conclusive evidence of their consent to a jury trial. *Id.*, slip op at 15. In *Zurcher*, the case went to trial on both the plaintiffs' equitable claim for specific performance and their claim for damages. *Id.*, slip op at 3. This Court cited to discussions on the record indicating that both parties understood that the plaintiffs' equitable claims would be considered, if not decided, by the trial court, and noted that under those circumstances, it could not conclude that no one in the case questioned the appropriateness of a jury trial of the equitable issues. *Id.*, slip op at 15, 20-21 n 21. Here, the only issues submitted to the jury were the equitable issues of whether there existed a constructive trust for defendant's benefit and whether each of the plaintiffs was a trustee. Moreover, as stated above, there was nothing in the record to indicate that either party questioned the appropriateness of a jury trial in this case. Accordingly, any reliance on *Zurcher* is misplaced.

Next, plaintiffs argue that defendant did not present sufficient evidence to support the imposition of a constructive trust. As a threshold matter, plaintiffs contend that the standard of review appropriate to reviewing determinations of a trial court sitting in an equity case applies here, and that the absence of factual findings by the trial court in this case makes impossible, or at least hampers, this Court's review of this matter. We disagree. When reviewing an equitable determination reached by the trial court, we review the conclusion de novo, but we review the supporting findings of fact for clear error. *Forest City Enterprises, Inc v Leemon Oil Co,* 228 Mich App 57, 67; 577 NW2d 150 (1998). However, MCR 2.509(D)(2) provides that where the parties have consented to a trial by jury, the "verdict has the same effect as if trial by jury had been a matter of right." Thus, we address plaintiffs' claim that there

was insufficient evidence to support imposition of a constructive trust by reviewing the trial court's denial of plaintiff's motion for judgment notwithstanding the verdict (JNOV). A motion for JNOV should be granted only when there was insufficient evidence presented to create an issue for the jury. *Farm Credit Services of Michigan's Heartland, PCA v Weldon,* 232 Mich App 662, 671; 591 NW2d 438 (1998). If reasonable jurors could have honestly reached different conclusions, the jury verdict must stand. *Central Cartage Co v Fewless,* 232 Mich App 517, 524; 591 NW2d 422 (1998). When deciding a motion for JNOV, a trial court must examine the testimony and all legitimate inferences that may be drawn therefrom in a light most favorable to the nonmoving party. *Id.* Only if the evidence so viewed fails to establish a claim as a matter of law is JNOV appropriate. *Badalamenti v William Beaumont Hosp-Troy,* 237 Mich App 278, 284; 602 NW2d 854 (1999). This Court reviews de novo the trial court's ruling on a motion for JNOV. *Farm Credit Services, supra.*

Plaintiffs contend that, as a matter of law, the evidence presented could not support a finding of a constructive trust because there was no evidence of fraud, actual or constructive, or any other wrongdoing, on the part of plaintiffs. A constructive trust is a fraud-rectifying remedy that arises independently from the intentions of the parties. *LeZontier v Shock,* 78 Mich App 324, 333; 260 NW2d 85 (1977). A constructive trust will be imposed where fraud, undue influence or other circumstances render it unconscionable for the wrongdoer to retain title. *Id*. at 334. Constructive trusts are imposed solely where a balancing of the equities discloses it would be unfair to act otherwise. *Children of the Chippewa, Ottawa & Potawatomy Tribes v Regents of the Univ of Michigan,* 104 Mich App 482, 492; 305 NW2d 522 (1981). One need not have wrongfully obtained the property for a constructive trust to arise; unconscionability or unjust enrichment may serve as the basis for a constructive trust. *Grasman v Jelsema,* 70 Mich App 745, 752; 246 NW2d 322 (1976). See also *Kent v Klein,* 352 Mich 652, 657; 91 NW2d 11 (1958).

The imposition of a constructive trust in this matter is supported by *Kent, supra.* There, a mother deeded property to a number of her children, except a son who had been institutionalized for mental problems. *Id*. at 654. One sister was deeded property for the mentally ill son, but refused to turn it over to her brother's heirs. *Id*. at 654-655. Our Supreme Court affirmed the imposition of a constructive trust, ruling that the evidence supported a finding that the sister was deeded the property to hold for her incompetent brother. *Id*. at 655-656. The Court said while there was no evidence of a confidential or fiduciary relationship, the sister held the land "because her mother implicitly trusted her honor, her integrity, and her familial solicitude." *Id*. at 655.

Here, defendant's theory at trial was that Michael Sanchez deeded the Oxford Street property to himself, McHenry, and Maria Sanchez with the intention that they would hold the property for defendant until she reached the age of majority, and that if something happened to him before she reached that age, plaintiffs would follow through with his intention. There was considerable testimony presented that Sanchez stated, both before and after he included his sisters on the deed, that the Oxford Street property was to go to his daughter Christina. There was also testimony of a nonfamily witness, Michael Wilcox, a financial planner, that McHenry acknowledged that Sanchez intended the house to go to Christina, despite the deed to McHenry and Maria Sanchez. Maria Sanchez admittedly moved out of the Oxford Street property after her brother's death, although she testified that she did so only

out of fear of Flores, because her brother had told her that she was a violent person. Attorney Neil Wackerly indicated that Sanchez wanted Velia Flores to receive none of his assets, including the house, and that Sanchez was upset with defendant at the time he deeded the Oxford Street property to himself and his sisters. However, he did not testify that Sanchez told him he did not want Christina to receive any of his assets. At the same time, there is no evidence that McHenry and Maria Sanchez unduly influenced their brother or made misrepresentations in an effort to induce him to include them as joint tenants on the Oxford Street property deed. Viewing the evidence in a light most favorable to defendant, however, we conclude that there was sufficient testimony for a reasonable jury to conclude that both plaintiffs understood that they were holding the Oxford Street property for defendant, and to support the imposition of a constructive trust in defendant's favor. Therefore, the trial court did not err in denying plaintiffs' motion for JNOV.

Finally, plaintiffs argue that the trial court erred in failing to grant their motion for a new trial. With respect to a motion for a new trial, the trial court's function is to determine whether the overwhelming weight of the evidence favors the losing party. *Severn v Sperry Corp*, 212 Mich App 406, 412; 538 NW2d 50 (1995). We review a trial court's decision to deny a motion for a new trial for an abuse of discretion, *Setterington v Pontiac General Hospital*, 223 Mich App 594, 608; 568 NW2d 93 (1997), giving substantial deference to the trial court's conclusion that the verdict was not against the great weight of the evidence. *Phinney v Perlmutter*, 222 Mich App 513, 525; 564 NW2d 532 (1997).

Given the testimony discussed above, we conclude that the trial court did not abuse its discretion in denying plaintiffs' motion for a new trial.

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Michael R. Smolenski
/s/ Jeffrey G. Collins

[1] At the time this action was initially filed, Christina Sanchez was a minor, and her mother, Velia Flores, was named a party only as her de facto representative.

[2] In its pretrial order, the court noted that plaintiff's suit was one to quiet title and that no jury demand had been filed. The order provided that either party could request a jury trial within seven days of the date of the pretrial conference held on March 17, 1997, and pay the jury fee if it wished to have a jury trial. The order further stated that its provisions were binding unless the parties objected. Neither party submitted any objections to the order and on March 21, 1997, defendant filed a jury demand and paid a jury fee.