

STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of Margaret Davies, Deceased.

JOHN PENNELL, SR., Personal Representative of
the ESTATE OF MARGARET DAVIES,
Deceased,

UNPUBLISHED
August 3, 2004

Petitioner-Appellee,

v

GERALD AKKERHUIS,

No. 242521
Montcalm Probate Court
LC No. 99-027857-IE

Respondent-Appellant.

Before: Fitzgerald, P.J., and Bandstra and Schuette, JJ.

PER CURIAM.

Respondent appeals as of right from an order to reconvey property based upon a finding that he held the property deeded to him by the deceased in constructive trust for the estate. We reverse.

Several years before her untimely passing in an automobile accident, Margaret Davies conveyed the property at issue to respondent, Gerald Akkerhuis, her son-in-law. According to the trial testimony, Davies conveyed the property to respondent to avoid the possibility of losing it to potential creditors. She had co-signed on a loan for her grandson; he had defaulted and Davies became concerned that her grandson's creditor might attempt to recover its loss by taking her property to repay the loan. Trial testimony indicated that the property was conveyed to respondent with the understanding that he would later reconvey the property to her. However, there was no written agreement that the property would be reconveyed, and Davies died intestate before respondent reconveyed the property. After Davies' death, petitioner, the personal representative of Davies' estate, asked respondent numerous times to reconvey the property back to Davies' estate. Respondent refused. Petitioner then brought this action in the probate court.

The probate court found, relying on testimony at trial, that respondent only held the property for a term of seven years ending on June 1, 2003, and since holds the property in a constructive trust for the estate. The court therefore ordered that respondent convey the property to the estate.

The court further held that any improvements on the property made by respondent were made after the estate informed respondent of its claim on the property, and therefore he was not to be compensated for the improvements. But in light of the improvements made by respondent, the court gave respondent the option of purchasing the property at \$40,000--twice the state equalized value of the property. Respondent then filed this appeal.

The first issue is whether the probate court had proper jurisdiction over this case. Respondent argues that the concurrent jurisdiction granted to the probate court by MCL 700.1303 does not extend to the instant action. We disagree. Subsection (1)(a) of that statute provides the probate court with “concurrent legal and equitable jurisdiction to do all of the following in regard to an estate of a decedent ... determine a property right or interest.” And in stating the purpose of creating concurrent jurisdiction, the legislature provided:

The underlying purpose and policy of this section is to simplify the disposition of an action or proceeding involving a decedent’s ... estate by *consolidating the probate and other related actions or proceedings in the probate court*. [MCL 700.1303(3), emphasis supplied.]

Although previously there may have been some question regarding the jurisdiction of the probate court over quiet title actions which could include fraudulent conveyances, this was under statutes that have since been repealed. We conclude that the intent of the legislature as expressed in the language above is that the instant case is properly consolidated in the probate court as an action “related” to the probate of the estate. Until the proper owner of this property is determined, Davies intestate estate cannot be properly divided. Thus, consolidation in the probate court is more efficient and simplifies the disposition of the action as provided in MCL 700.1303. The probate court had proper jurisdiction over this case.

Second, we consider whether there were sufficient grounds for the imposition of a constructive trust. “Constructive trusts are creatures of equity and their imposition makes the holder of legal title the trustee for the benefit of another who in good conscience is entitled to the beneficial interest.” *Arndt v Vos*, 83 Mich App 484, 487-488 ; 268 NW2d 693 (1978). Our Supreme Court has stated,

Constructive trusts do not arise by agreement or from intention, but by operation of law; and fraud, active or constructive, is their essential element.

The breach of a promise by a grantee to dispose of it [property] in accordance with an oral agreement with the grantor does not, standing alone, constitute fraud. To raise a constructive trust, an oral promise to dispose of land as directed by the grantor must have been the inducing cause of the conveyance relied upon by the grantor.” [*Hewelt v Hewelt*, 245 Mich 108, 110; 222 NW 119 (1928). (Citations omitted).]

Yet, “actual fraud is not necessary, but such a trust will arise whenever the circumstances under which property was acquired make it inequitable that it should be retained by him who has legal title.” *Kent v Klein*, 352 Mich 652, 657; 91 NW2d 11 (1958). Actions besides fraud which would warrant imposition of a constructive trust are: “misrepresentation, concealment, mistake,

undue influence, duress, and breach of fiduciary or confidential relations.” *Chapman v Chapman*, 31 Mich App 576, 580; 188 NW2d 21 (1971).

The trial court found that Davies never intended for respondent to keep the property indefinitely and that respondent himself did not initially intend to keep the property permanently either. The court reached its conclusion based upon the testimony of a number of witnesses and we do not find that the trial court erred in this finding. The oral agreement to reconvey plus the confidence and trust of the family relationship provides sufficient grounds for imposing a constructive trust. See *Kent, supra*, 655 and *Chapman, supra*, 578.

However, though sufficient grounds for a constructive trust exist, it is an equitable remedy, and one who seeks equity must do equity. In *Menard v Menard*, 295 Mich 80, 84; 294 NW 106 (1940), our Supreme Court said,

Equity will not lend its assistance to one who participates in a supposed fraud for his own gain, even though it afterward appears that he himself was the defrauded party. One who voluntarily conveys his land to another to avoid claims of creditors cannot compel reconveyance to himself even after his creditors have been satisfied; and it is immaterial whether he receives consideration therefor. Equity has no relief for a party who, in the practice of one fraud, has become the victim of another. Where one executes a conveyance for the illegal purpose of delaying his creditor in the collection of his demand and the party he trusts defrauds him, he must bear the consequences.

See also *Poppe v Poppe*, 114 Mich 649, 651; 72 NW 612 (1897) in which our Supreme Court said,

When one conveys his property to another for the purpose of avoiding anticipated claims against him, he is not in position to invoke the aid of a court of equity to obtain a reconveyance. He does not come into court with clean hands, and equity leaves him to lie in the bed of his own making.

The testimony in the probate court was that Davies conveyed the property to respondent temporarily in order to avoid potential claims by creditors stemming from a loan to her grandson, for whom she co-signed on the loan, and on which he defaulted. The trial court opined:

While from the point of view of a potential creditor of Mrs. Davies, one may question the action of both Mrs. Davies and Mr. Akkerhuis in this case. That is not the issue to which the Court has to decide.

We disagree with the trial court, and hold that because the purpose of Davies’ conveyance was to defraud potential creditors out of their rights to the property, she [and thus her estate] has unclean hands and is not entitled to the equitable relief of a constructive trust.

More recently, in the unpublished decision in *Bieri v Bozek* (Docket No. 229684, rel’d July 9, 2002), this Court followed the principle from *Poppe* in considering whether to impose a constructive trust. Michael Bieri had conveyed property to his wife’s son, Jon Bozek, in order to protect the property from potential civil judgments stemming from Bieri’s criminal conduct.

Bieri and his wife then divorced and in an action for the property, Bozek denied agreeing to reconvey the property. The trial court granted summary disposition for the defendant, which was affirmed by this Court. This Court reasoned that any oral agreement violated the statute of frauds and a constructive trust was not proper because Bieri conveyed the property with unclean hands in that the conveyance was merely to put the property out of reach of potential creditors.

We find the instant case similar to *Poppe* and *Bieri*, and find petitioner's attempts to distinguish these cases from the instant case unconvincing. Petitioner argues that contra *Bieri*, any threat to Davies' property was not imminent and therefore the conveyance did not demonstrate unclean hands. This argument is flawed because an *imminent* threat is not required for this Court to find that Davies' acted with unclean hands. It is the mere fact that she conveyed the property for the *purpose* of avoiding creditors "either present *or prospective*" that indicates she had unclean hands. *Poppe, supra*, 651 (emphasis supplied).

Petitioner also argues that under *Chapman, supra*, because there are no specific proofs showing that Davies' property would have been in danger from creditors—ie., that she could not have paid the debt from other resources—then unclean hands does not apply. However, the *Chapman* Court did not primarily rely upon this fact. The essential finding in *Chapman* was that the transfer there actually "gave added protection to creditors whose loans were secured by the two parcels." *Chapman, supra*, 580. The opposite is true in the instant case, wherein the transfer diminished the creditors' ability to collect on the debt. In *Chapman*, the property was not conveyed for the purpose of defrauding a creditor of an asset on which it could collect its debt, but as collateral for a loan to get the money necessary to be able to make payments on that very property so that the creditors would be satisfied. In *Chapman*, the position of the creditors was enhanced by the transfer. Here, the position of potential creditors was harmed by the transfer.

Finally, petitioner argues that because respondent induced Davies to transfer the property to him, he is precluded from arguing unclean hands. Testimony at trial indicated that respondent induced Davies to either put the property in his name or risk losing it. In *Hewelt, supra*, 110, our Supreme Court stated, "To raise a constructive trust, an oral promise to dispose of land as directed by the grantor must have been an *inducing cause* of the conveyance and relied upon by the grantor." [Emphasis supplied.]

Thus, in ordinary circumstances, if respondent induced Davies to transfer the property to him, a constructive trust should be imposed requiring respondent to act in accordance with the oral agreement between the parties. However, this is not an ordinary circumstance because Davies acted with unclean hands by conveying the property in order to defraud potential creditors of collateral. To impose a constructive trust under such circumstances petitioner must show that respondent induced Davies to convey to him by *fraudulently* representing that she was in danger of losing her property to creditors when no such danger actually existed. As our Supreme Court stated in *Barnes v Brown*, 32 Mich 146 (1875),

A court of equity will not usually aid any one against a voluntary act in fraud of the law. But equity will not usually allow a person to profit by any instrument which is extorted by exciting false alarms or threats of legal consequences, when there is such a relation of confidence as gives one a special power over the other. *This was not intended to defraud honest creditors. There were no creditors to defraud, and there was no debt on which complainant was liable at all. And if no*

creditor could attack the transaction, it was not void, and was only blameworthy for an intention in which defendant is more guilty than complainant. Relief will not be denied to the party least in fault against one who has led her into the act by a violation of confidence. [Id. at 152-153; see also Menard supra, 295 Mich at 84-85. (emphasis supplied).

In the instant case there were legitimate creditors whom Davies was attempting to defraud and any inducement from respondent was from a legitimate concern that the property could be lost. Thus, even though respondent may have induced Davies to transfer the property to him, it was not a fraudulent inducement, so her estate is still precluded from equitable relief because of her unclean hands in the conveyance.

Therefore, despite respondent's questionable behavior, we hold that the property should remain with respondent and that the trial court erred in finding a constructive trust in favor of petitioner.

Reversed.

/s/ E. Thomas Fitzgerald
/s/ Bill Schuette

I concur in result only.

/s/ Richard A. Bandstra