IN THE COURT OF APPEALS OF IOWA

No. 3-212 / 12-0766
Filed April 24, 2013

IN THE MATTER OF THE ESTATE OF PAUL BYRON LOY, Deceased

LARRY P. LOY,
Plaintiff-Appellant,

and

BRENDA J. LOY,
Plaintiff,

vs.

JERRY C. LOY, GARY B. LOY, BARRY A. LOY, JODEENA RENAE ROBINS, ZACHERY CHARLES LOY, STACY BYRON LOY, RYAN LEE LOY, JESSICA J. MCBRIDE-HENDRICKSON, DESIRAE C. LOY, GARTH LOY, KYLE ROBERT LOY, TAYLOR JOAN LOY AND RUTH ANN BURK,
Defendants-Appellees.

Appeal from the Iowa District Court for Clarke County, Sherman W. Phipps, Judge.

Larry Loy appeals from the district court order rejecting claims he brought against his father's estate and granting the estate's counterclaims against him. **AFFIRMED.**

James L. Sayre of James L. Sayre, P.C., Clive, for appellant.

Thomas P. Murphy and James E. Van Werden of Hopkins & Huebner, P.C., Adel, and Lawrence P. Van Werden of Reynoldson, Van Werden & Reynoldson, L.L.P., Osceola, for appellees.

Heard by Eisenhauer, C.J., and Potterfield and Tabor, JJ.

TABOR, J.

Larry Loy appeals from the district court order rejecting claims he brought against his father's estate and granting the estate's counterclaims against him. Like the district court, we decline to impose a constructive trust on the farm devised to Larry in his father's will. We also agree Larry did not prove he incurred costs on his father's behalf, and that actually Larry was unjustly enriched at the expense of the estate. Accordingly, we affirm the order in all respects.

I. Background Facts and Proceedings

Paul Loy had five sons: Terry, Larry, Jerry, Gary, and Barry. Paul's marriage to Dixie Loy ended in 1984. Paul did not remarry, though he lived with Ruth Ann Burke from 2000 to 2007. Ruth Ann knew Paul had not drafted a will and urged him to do so—given "his holdings" and the number of sons who stood to inherit. In February 2004, Paul heeded her advice and wrote out his "final wishes" in long hand, drawing a column for each of his five sons. He designated his son Jerry as executor of his estate. Relevant to the issues in this appeal, he wrote the following in Larry's column: "200 acres Thayer . . . I put $12,000 in the 200 acres you purchased and couldn't keep. Pay the $12,000 to Gary."

The so-called Thayer farm consisted of 200 acres of land in Union County originally purchased by Larry under a real estate contract from Kathleen Randall. Larry paid Randall $2050 in earnest money in June 1982 and $10,000 as a down payment in September 1982. The purchase caused Larry trouble with his application for a loan from the Farmers Home Administration (FmHA). The FmHA informed Larry in February 1983 that he was not authorized to purchase

the farm using its security. To resolve the problem, Paul borrowed $12,000 so that his son could repay the FmHA. In March 1983, Larry assigned the real estate contract to his father. That same month Larry entered a cash farm lease for the property, setting the annual rent due to Paul at $10,000 for three years. Paul, in turn, made the real estate contract payments to Randall, except in 1989, 1990, and 1991, when Larry paid Randall $6000 per year. Paul reimbursed Larry for the payments he made in those three years. Randall conveyed the Union County property to Paul by warranty deed dated March 2001.

Paul enrolled 130 of the 200 acres in the Conservation Reserve Program (CRP) in 1987. He listed himself as owner of one hundred percent of the shares in the farm. Paul received $9310 in CRP payments per year until 1999, when the payments increased to $10,889. Paul took out a mortgage on the Thayer farm and paid on that mortgage. Paul also paid real estate taxes and maintained insurance on that property.

In 1984, Paul's divorce lawyer, J.A. Reynoldson, mentioned the Thayer farm in a letter to Dixie Loy's attorney, James Steffes. The letter stated:

> The 200 acre farm that shows a little equity on Paul's financial statement filed with the bank in December is really Larry Loy's farm. Larry was buying this farm on contract and was not able to make a payment and Paul took over the contract and borrowed money to make that payment in order to not have it forfeited. We do feel that although that contract is now in Paul's name it is not an asset that we should consider.

But the Union County property was listed as being owned by Paul in the 1984 dissolution decree. The property was not listed as an asset belonging to Larry in Larry's 1999 dissolution decree.

Paul died on February 19, 2010. His son Jerry filed a petition for probate of the will and was appointed as executor on March 18, 2011. On August 13, 2010, Larry filed his claim in probate, advancing two positions: (1) the court should recognize he owned the Thayer farm, under equitable principles, even before he was devised the property in his father's will, and (2) the estate should reimburse him for $104,604.06 in expenses he allegedly incurred from 1983 through 2010 for maintaining machinery and equipment owned by his father.

Larry also filed an objection, arguing his father's holographic will was not subject to probate. Larry was joined in his objection by Brenda Loy, his brother Terry's widow.[1] She argued the will was vague and ambiguous and by its terms was only effective if Paul died in an accident. In June 2011, Larry withdrew his will contest.

In September 2011, the estate filed an answer and counterclaims, alleging Larry had been farming his father's property without paying rent to the estate's detriment and Larry was unjustly enriched by using equipment belonging to his father. The court held a trial on Brenda Loy's will contest, Larry Loy's claims against the estate, and the estate's counterclaims against Larry and actions for rent. Larry testified the estate owed him $36,242.37 for unreimbursed expenses for 2005 through 2010.

On January 6, 2012, the district court ruled Paul's hand-written will was valid. The ruling also rejected Larry's claims against the estate and entered judgment against Larry in favor of the estate for $16,079.50 in farm rent for

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[1] Terry Loy died shortly after his father, in March 2010.

2010–11; $49,600 in farm rent for 2011–12; and $13,700 as reimbursement for damages to or removal of property belonging to the estate, for a total of $79,379.50. Larry now appeals.

II. Scope and Standards of Review

The nature of the probate proceeding dictates our standard of review. Iowa Code § 633.33 (2011). That statute provides: "Actions . . . for the establishment of contested claims shall be triable in probate as law actions, and all other matters triable in probate shall be tried by the probate court as a proceeding in equity."

Larry's suit seeks to establish contested claims, which would be tried and reviewed as a law action. *See In re Estate of Dodge*, 281 N.W.2d 447, 449 (Iowa 1979). But constructive trusts and unjust enrichment are both equitable doctrines, which call for de novo review. *See In re Estate of Welch*, 534 N.W.2d 109, 111 (Iowa Ct. App. 1995).

As the party seeking the remedy of a constructive trust, Larry must establish his right to the property by clear, convincing, and satisfactory evidence. *See Slocum v. Hammond*, 346 N.W.2d 485, 493 (Iowa 1984).

III. Analysis

A. Constructive Trust

Larry claims the 200-acre Thayer farm was not part of his father's estate. Instead, Larry contends his father held the land for him by virtue of a constructive trust. A constructive trust is "a fiction imposed as an equitable device for achieving justice." *Healy v. Comm'r of Internal Revenue*, 345 U.S. 278, 282

(1953). A constructive trust is not created by the intent of the parties, but "arises by operation of law, or more accurately, by construction of the court." *Westcott v. Westcott*, 259 N.W.2d 545, 547 (Iowa Ct. App. 1977). Courts often find constructive trusts in cases of fraud, but also can impose the remedy based on other equitable principles, such as unjust enrichment. *In re Estate of Peck*, 497 N.W.2d 889, 890 (Iowa 1993).

The trust chapter recognizes a constructive trust "arises when a person holding title to property is subject to an equitable duty to convey the property to another, on the ground that the person holding title would be unjustly enriched if the person were permitted to retain the property." Iowa Code § 633A.2107.

Larry argues his father's estate would reap an unfair advantage if the court does not impose a constructive trust on the Thayer farm. To prevail on his unjust enrichment theory, Larry must prove three elements: (1) his father's estate was enriched by receiving a benefit; (2) the enrichment was at his expense; and (3) it is unjust to allow the estate to retain the benefit under the circumstances. *See State ex rel. Palmer v. Unisys Corp.,* 637 N.W.2d 142, 154–55 (Iowa 2001).

The evidence does not support an unjust enrichment theory. Paul borrowed money and purchased the Thayer farm for his son's benefit. By retaining ownership of the property, the estate did not receive an undeserved benefit to Larry's detriment. In fact, Larry profited from the arrangement with his father, continuing to operate the Thayer farm for many years rent free. Paul's will achieved equity by devising the farm to Larry, but requiring Larry to repay Paul's investment in the farm to another heir, Gary. We agree with the district court's

assessment that Larry failed to prove any of the three elements of unjust enrichment by clear and convincing evidence. Accordingly, equity does not demand the establishment of a constructive trust.

B. Reimbursement for Farming Expenses

In his second assignment of error, Larry asserts he had a verbal agreement with his father to share the farming expenses equally. He now claims the estate owes him $36,242.37 in unreimbursed expenses to cover costs he advanced from 2005 until his father's death in 2010. Larry offered the testimony of his accountant to document the calculations.

At trial, executor Jerry Loy testified he reviewed his father's financial paperwork from 1983 to 2010, and presented an accounting to the court for 2001 through 2009. The district court found "instances in which decedent wrote checks for items pertinent to Larry's farm operation which were then reimbursed by Larry or vice versa but found no instances of either party reimbursing the other for one-half of any expense." The district court found Jerry's testimony to be credible and Larry's to be "self-serving, unsubstantiated, and unreliable." The court noted Larry's admission that he never submitted any of the claims to his father while he was living and did not keep records pertaining to the expenses. The court discounted the accountant's testimony because he was "merely a conduit for information provided to him by Larry." Accordingly, the court denied Larry's claim for unreimbursed expenses.

Like the district court, we side with the estate on this issue. The estate shall not allow a claim unless the amount is "justly due." *See* Iowa Code §

633.418. Where a factual determination hinges on the relative believability of the witnesses, we rely on the district court's findings. *See Neimann v. Butterfield*, 551 N.W.2d 652, 654–55 (Iowa Ct. App. 1996) ("We are keenly aware of the trial court's superior vantage point to make credibility determinations due to its ability to consider firsthand the demeanor and appearance of the parties."). We defer to the district court's determination that Larry did not present credible evidence the estate owed him the amounts claimed.

C. Assessment of Damages and Rents

Larry also argues the district court wrongly ordered him to pay the estate damages in the amount of $13,700 and rents in the amount of $16,079.50 for 2010–11 and $49,600 for 2011–12. Larry contends the court erred in taking "at face value the testimony of executor, Jerry Loy, concerning damages incurred by the estate" as a result of Larry's actions. Larry complains Jerry did not document the cost of replacement, repair, or depreciation for the equipment at issue. On the rent issue Larry cites section 633.355 as a legal reason he does not owe the estate for the 2010–11 crop year.[2]

Like the second issue, the relative credibility of brothers Jerry and Larry is key to the district court's determination on the estate's counterclaims. The court considered the estate's request for damages and rent under a theory of unjust

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[2] The estate argues Larry did not preserve error on his section 633.355 argument because he raised that legal ground for the first time in his motion to enlarge or amend the court's ruling under Iowa Rule of Civil Procedure 1.904(2). *Cf. In re Marriage of Bolick*, 539 N.W.2d 357, 361 (Iowa 1995) (holding motion under then rule 179(b) was not vehicle for party to retry issues based on new facts). We choose to bypass Larry's potential error preservation problem and affirm on the merits. *See State v. Taylor*, 596 N.W.2d 55, 56 (Iowa 1999).

enrichment. The court accepted Jerry's testimony that Larry "damaged or used equipment belonging to the estate and should pay for the damages and use" in the amount of $13,700. The court relied on testimony from farm manager Don Russell to set the fair market rental value of the Thayer farm at $49,600 for the 2011–12 farm year. The court noted the estate was only asking for rent in the amount of $16,079.50 for the 2010–11 farm year. We find no reason to upend the district court's credibility and other factual determinations.

Finally, we reject Larry's argument he did not owe rent for the 2010–11 and 2011–12 crop years by virtue of section 633.355 (providing "the personal representative shall deliver all specifically devised property to the devisees entitled thereto after the expiration of nine months[3] from the date of appointment of the personal representative"). Larry was not entitled to delivery of the Thayer farm under his father's will until he paid $12,000 to his brother Gary. Accordingly, he would owe the rent ordered for those two years. We concur with the district court's resolution of the estate's counterclaims.

AFFIRMED.

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[3] Legislation in 2012 substituted "twelve" for "nine" months. Acts 2012 ch. 1123, § 8.