STATE OF MICHIGAN

COURT OF APPEALS

In re Estate of BERTHA DZIUBAN, Deceased.

PAUL A. DZIUBAN, Personal Representative for the Estate of BERTHA DZIUBAN, Deceased,

Appellant,

v

JOHN JAMES DZIUBAN,

Appellee.

UNPUBLISHED
November 20, 2008

No. 279539
Arenac Probate Court
LC No. 05-007682-CZ

Before: Hoekstra, P.J., and Whitbeck and Talbot, JJ.

PER CURIAM.

In this action stemming from consolidated circuit court and probate court cases, appellant Paul Dziuban, as personal representative for the estate of Bertha Dziuban, deceased, appeals as of right from the probate court's order granting judgment in favor of appellee John James Dziuban. The probate court ordered that John Dziuban owned a Washington Mutual Financial Services brokerage account and one-half of a certificate of deposit at Independent Bank free of any claims of ownership by the estate. The judge also ordered that John Dziuban reimburse the estate for 25 United States Savings Bonds that he cashed in, that the real estate at issue is owned as specified on the deeds, and that Arnold Dziuban owns the checking account. We affirm.

I. Basic Facts And Procedural History

Bertha Dziuban died on August 27, 2003. Ten children survived her. Her husband John Joseph Dziuban died in 1975. Bertha Dziuban owned the following assets titled jointly with various of her children: (1) Independent Bank Certificate of Deposit titled "Bertha Dziuban or Arnold Dziuban or John James Dziuban"—approximate balance $97,500; (2) Washington Mutual Financial Services brokerage account titled "Bertha Dziuban and John James Dziuban"—approximate value $250,000; (3) real estate in Standish and Presque Isle titled jointly with rights of survivorship with all ten of her children; (4) Series E bonds titled in the name of Bertha Dziuban and "John J. Dziuban"—approximate value $13,400; and (5) State Bank of Standish checking account titled in the name of "Bertha or Arnold Dziuban"—approximate value $9,000.

Paul Dziuban contends that Bertha Dziuban intended for all her assets to be used to support the 90 acres of real estate in Standish ("the family farm"), so that it would be available to generations that followed. Paul Dziuban further urges that the assets titled jointly with John Dziuban should be placed in a constructive trust so that they can be used for this purpose, rather than for John Dziuban's personal gain.

John Dziuban has lived in California since 1968, and his practice was to visit Michigan for about a month every year in November and December to see his mother. He is Bertha Dziuban's oldest son. He is not married and has no children. His relationship with his mother was friendly, cordial, and trusting. He testified that his mother did not discuss her finances with many people, but that he was able to help her with finances. When in Michigan, he assisted her with routine banking. He did her tax forms for several years in the 1980s and again around 2000 when he sold a stock for her resulting in a capital gain. He also helped with home improvements and fought her insurance company for reimbursement when a tornado damaged her property. On a healthcare agency's form, Bertha Dziuban indicated that John Dziuban had power of attorney over her.

On a trip to Michigan in 1993, John Dziuban helped Bertha Dziuban set up the deeds, brokerage account, and a bank account that became the certificate of deposit that are at issue in this case. During this visit, John Dziuban did some research for his mother on interest rates and, based on this, helped her open an account at Independent Bank. On a subsequent visit, in 1999, John Dziuban informed his mother that she had several bank accounts that were not making much interest and helped her consolidate her accounts in a certificate of deposit at Independent Bank. Bertha Dziuban made John Dziuban and another son, Arnold Dziuban, joint owners of this account with her. These were Bertha Dziuban's only unmarried children at the time.

Also, while visiting in 1993, John Dziuban recommended to his mother that she open a brokerage account. He said that this was after she asked him how she could sell her stocks. He helped her set up an account with the same broker that he used in California. He made the phone calls, assisted her with the application and affidavit of domicile, and helped transfer her stock certificates to this account. At times, John Dziuban spoke to his mother about buying and selling stocks from this account, but she only made two transactions in the ten years that she was managing the account. In 1993, Bertha Dziuban also asked her son, David Dziuban, about her financial affairs and her stocks. He testified that she told him that the stocks were for all the kids to have something to remember their father by. But only John Dziuban was listed as a joint owner of this securities account.

During his 1993 visit, Bertha Dziuban told John Dziuban that she wanted to put all of her children on her property deeds. To meet this goal they met with a local attorney, Ron Bergeron, who was also the Probate Judge. Judge Bergeron testified that he believed that John Dziuban made the appointment and that he met with them together. Prior to preparing the deeds listing Bertha Dziuban and all her children as joint tenants with rights of survivorship in all her real estate, Judge Bergeron believed he discussed the implications of joint ownership with Bertha Dziuban. He also discussed with her the desirability of avoiding probate. He described her as having good mental facilities and did not have any concerns about her being influenced by John Dziuban.

According to her children, Bertha Dziuban was a trusting person and trusted all of her children. Many of her children testified about having a close and loving relationship with their mother and said that she treated them as equals. Her children said that she was a strong-willed and private person, particularly about finances. Her children also reported no concerns about her cognitive abilities, but did not believe she was financially sophisticated.

Bertha Dziuban had begun having difficulty seeing in 1990. And in 1993, she was diagnosed with macular degeneration, which caused her increasing difficulty with vision. John Dziuban testified that in 1993, when they opened the accounts in question, she could read with the help of a magnifying glass, but by 2000, she could no longer read her financial statements, even with her magnifying glass. She relied on her children to assist her in activities of daily living. Many of them even assisted her with her banking and paying bills by helping her sign checks and perform transactions.

Bertha Dziuban had financial dealings with several other children as well. David Dziuban helped her sell a home in Detroit that she lived in with her husband. Arnold Dziuban did her tax returns for her from 1994 to 2000 and once researched interest rates for her at her request. She also loaned $10,000 to Paul Dziuban to help him start a business.

It was common practice for Bertha Dziuban to have joint accounts with her children. In addition to John Dziuban, sons Arnold, Paul, and Joe Dziuban all testified that they were joint owners of her bank accounts at some time. One of her daughters, Deanna Deleeuw, testified that she encouraged her mother to put more than one name on her accounts for convenience and for security. Deleeuw did warn her mother that she thought it was best to have only unmarried children on the accounts so there would be less conflict. While preparing her deeds, Judge Bergeron testified that he is sure that he spoke with Bertha Dziuban about what joint ownership with rights of survivorship means and its risks.

John Dziuban testified that he knew his mother wanted to keep the farm in the family because she deeded it equally to all the children and they discussed it. Paul Dziuban said that his mother told him in a 1990 conversation that she wanted all of her assets to be used to support the farm. He recalled her saying, “I want to tie everything together to maintain the farm so its there for all the grandkids and great-grandkids.” He said that she did not want to leave money to anyone by dividing it ten ways because she wanted it all to be used to maintain the farm. She spoke of not wanting the farm to be a financial burden on any of the children, so she wanted to use any money she had to operate the farm. He stated that he recommended using a trust to accomplish this, but that they did not plan this together.

In 1990, when Joe Dziuban spoke to his mother about selling the farm because of her medical concerns, she told him that her intention was to keep the farm in the family and that she was taking care of things so that it would remain in the family. Similarly, Bertha Dziuban told Deleeuw that the plan was for the farm to be available to everyone without a financial burden on them because her accounts would be maintaining the properties. She spoke with Arnold Dziuban about keeping the farm intact and mentioned that she had enough money to keep it going. In 1993, she told David Dziuban that, when she is no longer here, she wanted all the children to get the same amount. She expressed strong concern and frustration that she would not be able to accomplish this unless she went through probate court, but she wanted to avoid this at all costs.

Other than avoiding probate, Bertha Dziuban was not clear on how she would like the children to accomplish her wishes. She told some of her children that she had things taken care of, and mentioned to several people at the hospital in 2003 that she had a will in her bedroom. After her death, when her children gathered in her room, they found two hand-written pages in a notebook that gave burial instructions and named John Dziuban as her power of attorney. It is believed that this document was written several years prior, when her vision was better, because of her handwriting and references to a fence.

John Dziuban testified that he told his mother that he would try to help her achieve her goal of keeping the farm in the family. While discussing the real estate deeds, he stated that he warned her, however, that there was no guarantee that he could accomplish this because it would require that all the children get along. He stated that she responded by saying "good luck." After her death, John Dziuban even established an account in multiple children's names for the maintenance of the farm with money (about $8,100) found at the house. He, however, said that he was not sure exactly what his mother's wishes were or what she wanted him to do with all the assets. After her death, he took documents that related to the accounts he was in joint ownership of from Bertha Dziuban's home.

There was a gathering of siblings soon after Bertha Dziuban's death where they were all informed that they were all equal owners of the family's real estate. At this meeting, there was discussion of creating a trust so that the farm could be maintained and passed on to descendants, rather than pass by rights of survivorship from joint ownership. John Dziuban advised his siblings that he had a plan to use the assets to maintain the family farm.

During a November 2004, John Dziuban told Paul Dziuban in phone conversation, "We have plenty of money." He also sent an e-mail in November 2004 disclosing for the first time the ownership of each of the estate assets, and stating that the current plan was to fund the real estate with these accounts because he, his mother, and many siblings wanted to preserve the farm. John Dziuban testified that if the family wanted to keep the farm, then his plan was to use the funds he received from his mother to keep the farm. He also said that his plan was never to use all of the funds for this purpose.

Paul Dziuban and David Dziuban went to John Dziuban's home in California in December 2004 to discuss the status of their mother's assets. At this meeting, John Dziuban gave them copies of all the brokerage account statements, and they discussed trying to find a vehicle to hold the estate assets. By March 2005, John Dziuban felt that his plan "went out the window." He wanted everyone to attend a family meeting and this was not accomplished, so he felt that there was low family interest in maintaining the farm. He said when there was talk of litigation against him, he backed out of his original plan. In March 2005, John Dziuban sent an e-mail to his siblings telling them that the accounts that he owned jointly with his mother were his personal accounts and that he was not willing to make an accounting of them to his siblings. He also told them that their mother knew the risks of having joint accounts and that he considered the accounts his personal accounts. John Dziuban also mentioned in a phone conversation with Arnold Dziuban that all the certificate of deposit funds did not have to be used to support the farm because they were jointly held.

The Independent Bank certificate of deposit was held jointly between Arnold Dziuban and John Dziuban. When family talks were breaking down, Arnold Dziuban decided to close out

the entire CD and place the proceeds in a checking account for the farm and another CD. He considered the account to belong to the entire family for maintenance of the farm and was concerned that John Dziuban would take all the proceeds as joint owner. Arnold Dziuban was able to close the original CD account by filing a lost certificate of deposit form and opened the new CD jointly with Deleeuw to protect it from John Dziuban. Arnold Dziuban was also the joint owner of a checking account with his mother and used that account to pay the farm's expenses.

John Dziuban also took 25 savings bonds from his mother's bedroom. His father purchased the bonds and the face value of the bonds was $2,500. The bonds were in the name of John J.[1] and Bertha Dziuban. Bertha Dziuban had told David Dziuban that his father had bonds and she did not know what to do with them. Bertha Dziuban spoke with John Dziuban about cashing them in, but they decided not to because they were still earning interest. John Dziuban claimed ownership of the bonds because he loaned his father $2,500 in 1960 to help him purchase the farm and his father promised to "give the 20 acres or buy you bonds or something" to pay him back. John Dziuban inferred that the bonds were his, but acknowledged that it is possible that they were in his father's name. Joe Dziuban testified that John Dziuban told him that he could cash the bonds in because he had the same first name and middle initial as stated on the bonds and they could avoid probate by cashing them in. John Dziuban cashed the bonds in for over $13,000. He deposited those proceeds in the brokerage account that he shared with his mother.

After a bench trial, the probate court found that Bertha Dziuban was not "overpowered in any way" and that her free will was not affected to her detriment. Rather, the probate court found "that she acted according to her own wishes."

II. An Inference Of Undue Influence

A. Standard Of Review

Paul Dziuban's argues that because of the confidential and fiduciary nature of John Dziuban's relationship with his mother Bertha Dziuban, combined with his inequitable benefit from her distribution of the assets, the probate court erred when it did not accord a presumption of undue influence on the transactions at issue.

A suit attempting to set aside a transaction because of undue influence is an equitable action.[2] This Court reviews de novo a trial court's decision in an equitable action.[3] We review for clear error the trial court's factual findings, while we review for an abuse of discretion the court's dispositional rulings.[4] A finding is clearly erroneous when the reviewing court is left

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[1] Bertha Dziuban's husband was named John Joseph Dziuban.

[2] *In re Conant Estate*, 130 Mich App 493, 498; 343 NW2d 593 (1983).

[3] *Slatterly v Madiol*, 257 Mich App 242, 248-249; 668 NW2d 154 (2003).

[4] *In re Baldwin Trust*, 274 Mich App 387, 396-397; 733 NW2d 419 (2007).

with a definite and firm conviction that a mistake has been made.[5] The trial court does not abuse its discretion when it chooses an outcome within the range of reasonable and principled outcomes.[6]

B. Legal Standards

A presumption of undue influence is required where the evidence establishes: (1) the existence of a confidential or fiduciary relationship between the grantor and a fiduciary, (2) the fiduciary benefits from a transaction, and (3) the fiduciary had an opportunity to influence the grantor's decision in that transaction.[7] A confidential or fiduciary relationship exists when one party has placed complete trust in the other party who has the requisite knowledge, resources, power, or moral authority to control the subject matter at issue.[8] A fiduciary relationship exists as fact when there is confidence given on one side, and a resulting superiority and influence on the other.[9] It is a broad term that focuses on relationships involving inequality.[10] Common examples include where a patient makes a will in favor of his physician, a client in favor of his lawyer, or a sick person in favor of a priest or spiritual adviser.[11]

A relationship where an inexperienced party relies on another party does not necessarily create a fiduciary relationship.[12] Assisting with and conducting another's business affairs does not give rise to a fiduciary relationship because it lacks the required reliance on the judgment of another.[13] In a family context, relationships are based on mutual trust and commitment, so marriage is not a relationship that has traditionally been recognized as involving fiduciary duties.[14] However, fiduciary relationships can exist in informal relationships where one person trusts and relies on another.[15]

C. Applying The Standards

Here, certainly John Dziuban benefited from his mother including him as a joint owner on the certificate of deposit and the brokerage account. He was able to claim ownership of these

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[5] *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

[6] *In re Temple Marital Trust*, 278 Mich App 122, 128; 748 NW2d 265 (2008).

[7] *In re Estate of Erickson*, 202 Mich App 329, 331; 508 NW2d 181 (1993).

[8] *In re Estate of Karmey*, 468 Mich 68, 74-75; 658 NW2d 796 (2003).

[9] *In re Wood's Estate*, 374 Mich 278, 283; 132 NW2d 35 (1965), overruled on other grounds to extent inconsistent with *Windmeyer v Leonard*, 422 Mich 280, 288; 373 NW2d 538 (1985).

[10] *Karmey*, *supra* at 74 n 3.

[11] *In re Wood's Estate*, *supra* at 285-286.

[12] See *Ulrich v Fed Land Bank of St Paul*, 192 Mich App 194, 196; 480 NW2d 910 (1991).

[13] *In re Jennings' Estate*, 335 Mich 241, 243-244; 55 NW2d 812 (1952).

[14] *Karmey*, *supra* at 74-75.

[15] *Van't Hof v Jemison*, 291 Mich 385, 393; 289 NW 186 (1939).

significant assets upon her death. Additionally, John Dziuban had the opportunity to influence his mother's decisions about these assets. He spoke to her about both accounts and he was with her when she established them, even doing most of the work to set up the brokerage account. The relevant issue, however, is whether this relationship rose to the level of a fiduciary relationship or was merely a case of a son, knowledgeable in financial matters, providing advice and assistance to his mother.

John Dziuban responded affirmatively when he was asked if he was the person his mother trusted and in whom she had confidence. She asked him about financial matters, while she typically was reluctant to talk about them with others. When asked for her power of attorney on a healthcare form, she listed John Dziuban. She listed him as a joint owner of most of her valuable assets. Increasingly, since the early 1990s, she needed his assistance to help her read the documents. What is not clear is that she relied on him for these decisions or that there was inequality in the relationship.

The probate court found through much consistent testimony that Bertha Dziuban was strong-willed and strong-minded. The probate court further found that she acted according to her own wishes and that she did not always follow John Dziuban's recommendations. Notably, she chose not to list him as a joint owner on her checking account; she did not give him exclusive joint ownership of the certificate of deposit, also listing another son as a joint owner, even though John Dziuban was with her when she set this account up; and she deeded her real estate to all ten children, even though Jon Dziuban was with her when she performed this transaction.

Bertha Dziuban also asked other children financial questions about the same transactions. It appears that she made her own decisions about her assets and did not rely solely on John Dziuban to make these decisions. As a trusted child, John Dziuban and his mother had a close relationship and he had the opportunity to influence her life and these decisions. This opportunity alone, however, does not result in a presumption that John Dziuban exercised undue influence.[16] Bertha Dziuban did not rely on John Dziuban in making these decisions and the relationship was not a confidential or fiduciary relationship. Thus, there is no basis for finding a presumption of undue influence to apply.

But, even if there were a fiduciary or confidential relationship and a presumption of undue influence was accorded to John Dziuban, we conclude that the probate court did not clearly err in finding such presumption would have been overcome. Where a presumption of undue influence arises, the burden shifts to prove that the transactions were not the result of undue influence.[17]

At trial, the probate court found that, if there was a burden shift, John Dziuban had met his burden and did not abuse the relationship. The probate court specifically found that Bertha Dziuban understood the documents she was signing. The probate court based this finding on the testimony of Judge Ronald Bergeron who, in his capacity as a private attorney, met with Bertha

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[16] *In re Hannan's Estate*, 315 Mich 102, 122; 23 NW2d 222 (1946).

[17] *Kar v Hogan*, 399 Mich 529, 541-542; 251 NW2d 77 (1976); *Van't Hof, supra* at 393-394.

Dziuban and John Dziuban to deed her property jointly. Judge Bergeron stated that he discussed probate avoidance and the risks of joint ownership with Bertha Dziuban. He further testified that Bertha Dziuban had good mental faculties. Additionally, the probate court mentioned the testimony of several of Bertha Dziuban's children that she had good mental capacity and was strong-willed. The probate court highlighted Bertha Dziuban's familiarity with joint accounts because of her frequent practice of using and adjusting the owners of them.

Paul Dziuban does not allege that there was direct evidence that undue influence was used. Rather, he alleges that the presumption was appropriate and not rebutted. However, the probate court concluded that if there was a presumption, then it was adequately rebutted. Whether or not there is sufficient evidence to overcome the presumption of undue influence is for the trier of fact to decide.[18] "To prove undue influence it must be shown that the grantor was subjected to threats, misrepresentation, undue flattery, fraud, or physical or moral coercion sufficient to overpower volition, destroy free agency, and impel the grantor to act against the grantor's inclination and free will."[19] Here, there was no evidence that Bertha Dziuban did not wish for her estate to pass the way it did. She made arrangements according to her intentions for distribution of her assets, even if the assets have not been used as she may have hoped.

In short, John Dziuban offered sufficient evidence to satisfactorily rebut the presumption of undue influence. The probate court's failure to establish on the record if the presumption was accorded to Paul Dziuban did not deprive him of full consideration of the claim.[20] The probate court effectively held that John Dziuban met his burden to rebut any presumption, stating that if John Dziuban had a confidential or fiduciary relationship with Bertha Dziuban, "it was not abused." And we conclude, considering the evidence presented during the course of the trial, there was sufficient evidence in the record to support that holding.

Paul Dziuban also argues that it was error to find that John Dziuban did not abuse a possible confidential or fiduciary relationship and that more than one child may have had a confidential or fiduciary relationship. As discussed above, the probate court made findings to support his satisfaction that any presumption was adequately rebutted. Additionally, the probate court said that Bertha Dziuban had a trusting relationship with most of her children and involved some of them in her financial dealings. This raised the possibility of confidential or fiduciary relationships with more than one child and highlighted some of the probate court's reasoning in deciding when a parent-child relationship becomes confidential or fiduciary in nature.

Paul Dziuban also disputes the probate court's finding that Bertha Dziuban's loss of eyesight occurred past 1993, when the accounts in question were created. Judge Bergeron reported no recollection of Bertha Dziuban's vision being poor when he created the deeds. The probate court mentioned that poor vision alone would not support a finding of undue influence,

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[18] *In re Estate of Peterson*, 193 Mich App 257, 260; 483 NW2d 624 (1991).

[19] *McPeak v McPeak*, 233 Mich App 483, 496; 593 NW2d 180 (1999).

[20] *Conant*, *supra* at 502.

and it was not clear how much Bertha Dziuban's vision was impaired in 1993. This was after her diagnosis of macular degeneration, but before she was declared legally blind in 1999.

In sum, we conclude that the probate court did not err in finding that there was no fiduciary or confidential relationship between John and Bertha Dziuban and in determining that any possible presumption of undue influence was rebutted.

III. Determinations of Ownership

A. Standard of Review

Paul Dziuban argues that John Dziuban should not have been granted ownership of the brokerage account and one-half of the certificate of deposit. A trial court's finding is clearly erroneous when the reviewing court is left with a definite and firm conviction that a mistake has been made.[21]

B. Joint Accounts

In some sense, a joint bank account has the effect of a testamentary disposition.[22] Funds placed in joint accounts are presumed to be the property of the survivor.[23] This presumption must be rebutted by reasonably clear and persuasive proof.[24] When the presumption of undue influence also exists, the burden is on the survivor on the account to show, by a preponderance of the evidence, that no undue influence exists.[25] If this burden is satisfied, an appellee is able to benefit from the statutory presumption.[26]

Here, as discussed above, John Dziuban has met his burden of showing that no undue influence existed and, therefore, is presumed to be the surviving owner of the accounts. There is no evidence to directly contradict Bertha Dziuban's intent for these accounts to vest in John Dziuban's ownership.

C. Brokerage Account Papers

Paul Dziuban disputes the probate court's finding that Bertha Dziuban filled out the brokerage account papers creating a joint account. It is not clear from the testimony who filled out the papers creating the account. John Dziuban took an active role in opening this account. He stated that when he opened the account, Bertha Dziuban wanted his name on it with her. He stated that the account was set up over the phone and that an application was mailed in. He testified that Bertha Dziuban had to fill out an affidavit of domicile and he took her to have it

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[21] *Miller*, *supra* at 337.

[22] *Jacques v Jacques*, 352 Mich 127, 134; 89 NW2d 451 (1958).

[23] MCL 487.703; *Habersack v Rabaut*, 93 Mich App 300, 305; 287 NW2d 213 (1979).

[24] *Jacques*, *supra* at 136-137.

[25] *Habersack*, *supra* at 305.

[26] *Id*.

notarized, and she had to fill out another one once he returned to California. Bertha Dziuban was active in creating the joint account and reviewed the account statements for the next ten years, but it is not clear which of the papers she filled out.

Paul Dziuban asserts that it was error for the probate court to find that Judge Bergeron explained the risks of joint ownership and avoidance of probate and, therefore, that the court was not convinced that Bertha Dziuban was improperly influenced. Judge Bergeron testified that he was sure that he discussed avoiding probate and that he warned Bertha Dziuban of the risks of joint ownership. The probate court concluded that because Bertha Dziuban understood the consequences of joint ownership that it was her decision to title her assets in this way. We have no basis upon which to overturn this conclusion.

D. Real Estate

Paul Dziuban disputes the probate court's finding that, if John Dziuban had unfettered control over his mother, he did not persuade her to place all of the real estate in his name. Bertha Dziuban titled her assets jointly with several of her children. She also changed who held assets jointly with her a number of times. Paul Dziuban contends that, because Bertha Dziuban was alone with John Dziuban, he asserted more control over her decision to include only him on the brokerage account. But we conclude that Bertha Dziuban's behavior was more consistent with her pattern of making determinations of how to title the assets based on her wishes. We note that she had 11 months of a year to change the joint owner of accounts when John Dziuban was *not* present with her.

These findings of the probate court do not leave us with a definite and firm conviction that the probate court made a mistake. We conclude that the dispositional rulings on the accounts in question follow reasonably the logic of the findings.

IV. Constructive Trust

Paul Dziuban requests the imposition of a constructive trust over the joint accounts. A constructive trust is appropriate when circumstances under which property was acquired make it unconscionable for the legal title-holder to retain beneficial interests.[27] A constructive trust may be imposed to avoid unjust enrichment.[28] Constructive trusts do not arise by agreement or intention, but by operation of law.[29]

Here, Bertha Dziuban's goal was apparently to keep the family farm in the family. It was not clear from her actions or her words how she intended to accomplish this. It is clear that she decided, of her own free will, to leave the real estate equally to each of her children and her accounts to various of her children by titling them jointly. Her express testamentary goal

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[27] *Kent v Klien*, 352 Mich 652, 656; 91 NW2d 11 (1958).

[28] *In re Estate of Swantek*, 172 Mich App 509, 517; 432 NW2d 307 (1988).

[29] *Arndt v Vos*, 83 Mich App 484, 487; 268 NW2d 693 (1978).

involved the land and was silent as to the accounts. She may have wished her accounts to be used by the title-holders to pay for the expenses of maintaining the real estate, but she made no clear expression in act or words to that end. She may have trusted her children to take action to that end, but she did not require it. She had the knowledge, ability, and opportunity to make alternate arrangements, but chose this disposition. We conclude that the probate court did not err when it refused to impose a constructive trust.

Affirmed.

/s/ Joel P. Hoekstra
/s/ William C. Whitbeck
/s/ Michael J. Talbot