

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 21, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 99-0682-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

JANICE M. EILOLA,

PLAINTIFF-RESPONDENT,

V.

LINDA HATTLESTAD AND SUSAN JAEGER,

DEFENDANTS,

LORRI WEIX,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Lincoln County:
J. MICHAEL NOLAN, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Gordon Myse, Reserve Judge

PER CURIAM. Lorri Weix appeals a judgment imposing a constructive trust on Wisconsin Employee Trust Fund benefits paid after the death

of her father, Gerald Eilola.¹ She argues that the trial court erroneously imposed the constructive trust for the benefit of Gerald's widow, Janice Eilola. Weix argues that in equity, she is entitled to the fund and that Gerald's "mistake" does not warrant the imposition of the trust. Because the trial court reasonably exercised its discretion by imposing the constructive trust, we affirm the judgment.²

Gerald Eilola, the decedent, was a school teacher in Merrill. In 1965, he designated his then spouse, Linda Hattlestad, and their only daughter, Lorri Weix, as beneficiaries to his state teachers retirement fund. Subsequently, their second daughter, Susan Jaeger, was born. In 1980, Gerald and Hattlestad were divorced. The divorce decree awarded Gerald the rights to his retirement fund.

In 1982, Gerald married Janice Eilola. In January 1996, Gerald was hospitalized and, according to his instructions, Janice filled out a change of beneficiary form. Gerald signed it on January 5. The form named Janice as the primary beneficiary and Gerald's two daughters and a step-daughter as the secondary beneficiaries. Janice testified that she mailed the form to the Department of Employee Trust Funds on Friday, January 12. On January 16, Gerald died.

¹ This is an expedited appeal under RULE 809.17, STATS.

² The judgment also directed the circuit court clerk to hold funds in an interest bearing account until further order of the court. Janice Eilola moved to dismiss the appeal contending that the judgment is nonfinal under § 808.03(1), STATS. We denied her motion and construed the notice of appeal as a petition for leave to appeal. Because the subject matter would merit an interlocutory appeal, by order dated May 13, 1999, we granted leave to appeal.

The department did not receive the beneficiary designation form until January 17. Because it was not received before Gerald died, it rejected the change of beneficiary designation. It is undisputed that the department's regulations require that it pay the benefits according to the 1965 form to Hattlestad and Weix.

Janice brought this action seeking the imposition of a constructive trust on Gerald's retirement account. The trial court determined that Gerald intended that his widow, Janice, be the primary beneficiary of his retirement account benefits and that Gerald mistakenly believed the date he signed the form would control the date the beneficiaries would be changed. The court concluded that payment to Hattlestad and Weix would be contrary to Gerald's express intention, and therefore imposed a constructive trust so that the benefits would be paid to Janice. Only Weix appeals the judgment.

We begin with our standard of review and the principles that guide the court's determination. A constructive trust is an equitable device created by law to prevent unjust enrichment. *See Hendricks v. M.C.I., Inc.*, 152 Wis.2d 363, 366, 448 N.W.2d 289, 291 (Ct. App. 1989). The decision whether to grant equitable relief requires weighing the factors affecting the judgment, which is a function of judicial discretion. *Singer v. Jones*, 173 Wis.2d 191, 194-95, 496 N.W.2d 156, 158 (Ct. App. 1992); *Mulder v. Mittelstadt*, 120 Wis.2d 103, 115, 352 Wis.2d 223, 228 (Ct. App. 1984). If the trial court reaches a reasoned decision based upon the application of correct legal standards to the record's facts, the discretionary decision will be upheld. *Smith v. Smith*, 177 Wis.2d 128, 133, 501 N.W.2d 850, 852 (Ct. App. 1993). It is well established that a trial court in the exercise of its discretion may reasonably reach a conclusion that another court would not. *State v. Wurtz*, 141 Wis.2d 795, 800, 416 N.W.2d 623, 625 (1997).

Underlying a discretionary determination may be questions of fact and issues of law. *See In re Estate of Burgess*, 214 Wis.2d 180, 186, 571 N.W.2d 432, 436 (1997). We review questions of fact under the clearly erroneous standard, giving deference to the trial court's weight and credibility determinations. Section 805.17(2), STATS. Whether the facts satisfy a legal standard presents a question of law that we review de novo. *See Capitol Indem. Corp. v. Reasbeck*, 166 Wis.2d 332, 338, 479 N.W.2d 247, 250 (Ct. App. 1991).

Weix argues that in equity she is entitled to the retirement funds instead of Janice. Weix combines several factual and legal issues under this heading. First, she argues that under the facts, the court could have found that the funds should go to Gerald's ex-wife and two children. She contends that there is no telling what Gerald was aware of at the time the change of beneficiary form was mailed. She claims that Janice was not being truthful at trial and should be denied relief due to dishonest and deceitful conduct. She argues that the court was acting out its own sense of fairness rather than the facts of record. Weix further argues that the court's reliance on *In re Estate of Massouras*, 16 Wis.2d 304, 114 N.W.2d 449 (1962), is misplaced. We are unpersuaded.

First, there was no suggestion at trial that Gerald lacked competency to execute the change of beneficiaries form. Also, the court noted the conflicts between Janice's and Weix's testimony regarding the time frames for filling out the forms and rejected Weix's claim that Gerald did not intend to change beneficiaries. The court found that Gerald's signature on the change of beneficiary forms was genuine. Janice's testimony supports the court's findings. It is the trier of fact, not the appellate court, which has the opportunity to hear and observe testimony. Thus, when a finding of fact is premised on the court's assessment of credibility, we must give due regard to the trial court's opportunity to make this assessment.

See Jacquart v. Jacquart, 183 Wis.2d 372, 386, 515 N.W.2d 539, 544 (Ct. App. 1994). When the record shows that the evidence presented could have supported more than one reasonable inference, as the reviewing court, we must accept the conclusion drawn by the fact finder. *See In re C.A.S.*, 185 Wis.2d 468, 489, 518 N.W.2d 285, 292 (Ct. App. 1994). Consequently, we must accept the trial court's finding that Gerald executed the form with the intent to change his beneficiaries.

"A constructive trust will be imposed only in limited circumstances."

Hendricks, 152 Wis.2d at 366, 448 N.W.2d at 291.

One seeking its imposition must not only establish the elements of unjust enrichment but also that the benefit to the other party was obtained or retained by means of actual or constructive fraud, duress, abuse of a confidential relationship, *mistake*, commission of a wrong, or other unconscionable conduct.

Id. at 366-67, 448 N.W.2d at 291 (emphasis added).

On this record, the trial court could infer that Gerald had the intent to change beneficiaries and took affirmative action to effectuate his intent. The trial court concluded that there was no logical reason that Gerald would have named only his former spouse and one child as primary beneficiaries, except that after his initial designation in 1965, he did not give it another thought until shortly before his death. The court made a finding that Gerald's failure to effect a change of beneficiaries was based on the mistaken belief that simply signing the form was sufficient to effect the change. These are reasonable inferences. These findings are sufficient to invoke the court's power to impose a constructive trust because the failure to change beneficiaries was the result of Gerald's mistake.

Weix argues, nonetheless, that Gerald did not change his beneficiaries for more than two years after he was advised that he must do so, and that his neglect or choice in not timely filing the form implies that he did not want to change his beneficiary. Our supreme court rejected a similar argument in *Massouras*, 16 Wis.2d at 309, 114 N.W.2d at 451. In *Massouras*, the divorce judgment had awarded bonds to the husband, who died without cashing some of them. The former wife claimed ownership of the bonds because her name was not removed from the bonds as co-owner. Our supreme court recognized that under the applicable regulations, the surviving co-owner was to be recognized as the sole and absolute legal owner. *Id.* at 307, 114 N.W.2d at 451. The former wife suggested that the decedent intended her to have the bonds because he had done nothing to change the form of ownership.

The court rejected this view, stating: "We cannot infer such an intention without supporting evidence, which is lacking." *Id.* at 310, 114 N.W.2d at 452. Similarly, Gerald's failure to change the beneficiary designation in a timely fashion does not require an inference that he did not want the change. We conclude that the trial court correctly applied the principles enunciated in *Massouras*. The executed change of beneficiary form supports the trial court's finding that Gerald intended to change his beneficiary. As a result, the trial court's finding stands.

We also conclude that the trial court reasonably applied equitable principles when it imposed the constructive trust. *Massouras* observed: "Her claim rests solely on the happenstance her name was not removed from the bonds and they were not cashed during the decedent's life." *Id.* at 309, 114 N.W.2d at 451. It concluded that "[e]quity principles should foreclose her from her right to use the treasury regulations as a means to accomplish such purposes."

Here, the trial court analogized to *Massouras* when it determined that the strict application of the department's regulations thwarted Gerald's intentions with regard to the disposition of his retirement account and that payment contrary to his intentions would be unjust. We agree that equity dictates that Gerald's intentions be given effect. Consequently, the trial court correctly concluded that *Massouras* is authority for imposing a constructive trust.

Weix argues that *Massouras* does not apply because death benefits are different from co-owned bonds and that here the divorce decree stated that each party *may* change their beneficiaries. Weix's attempt to draw a distinction between bonds and death benefits is not persuasive. Also, any inference Weix seeks to draw from the language of the divorce decree fails in light of the trial court's finding that Gerald intended to change his beneficiaries and took affirmative steps to effectuate his intent.

Weix also cites *Wolf v. Jebe*, 242 Wis.2d 650, 661, 9 N.W.2d 124, 129 (1943), and *Bersch v. VanKleeck*, 112 Wis.2d 594, 597-98, 334 N.W.2d 114, 116 (1983), as authority for her argument that the law entitles her to death benefits. These cases stand for the proposition that a divorce decree does not in itself terminate a beneficiary's interest in a retirement account or life insurance policy. They do not involve the questions arising from the execution but untimely arrival of a change of beneficiary form, nor do they deal with a constructive trust. As a result, they are not controlling precedent for the case before us.

By the Court.—Judgment affirmed.

This opinion will not be published. RULE 809.23(1)(b)5, STATS.

