

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA11-626

LINDA BERRY & NEAL BERRY
APPELLANTS

V.

JOE WALKER
APPELLEE

Opinion Delivered January 4, 2012

APPEAL FROM THE CONWAY
COUNTY CIRCUIT COURT
[CV-2010-17]

HONORABLE DAVID H.
McCORMICK, JUDGE

AFFIRMED IN PART; REVERSED
AND REMANDED IN PART

DAVID M. GLOVER, Judge

Appellants Linda and Neal Berry appeal from the trial court's January 19, 2011 order, which found that they held a life estate in certain designated real property as constructive trustee for appellee, Joe Walker, Linda's brother. The court further found that Joe Walker was entitled to \$40,775.04, concluding that the Berrys also held it for him as constructive trustee. Both the real property and cash originated with Linda and Joe's father, John C. Walker; they involved John's intentions in preparing his will, in deeding the property to Linda, and in setting up two bank accounts with her. The Berrys contend that the trial court was clearly erroneous in finding that Joe Walker is entitled to the life estate and the cash. We affirm in part and reverse and remand in part.



Cite as 2012 Ark. App. 16

Background

In 1995, John C. Walker conveyed eighty acres to his daughter, Linda Berry, by deed. He reserved a life estate in the property for himself. Linda testified that she placed the deed in her lock box and had forgotten it. In addition, John created a joint bank account with Linda and a payable-on-death account in which Linda was the named beneficiary. On May 10, 2001, John executed his last will and testament. In it, he left life estates for each of his four children, including Linda (in the same real property that he had already deeded to Linda), leaving the remainder to his grandchildren. The residual clause left his remaining property to his four children, but no specific mention was made concerning the money held in the bank accounts with Linda. At the time of John's death, Joe was in prison in Missouri. Linda's two other siblings, Jerry and Peggy, had resolved their concerns about the real property and the money before Joe filed his petition for quiet title and injunction against Linda.

At the hearing, an April 8, 2003 letter, written by Linda to Joe, was introduced into evidence; it will be discussed in more detail later. Linda's testimony, in summary, was that she considered the land and the money to be hers; that she had no obligation to convey a life estate in the real property to Joe nor to give him a share of the money; that she had sent him \$4600 of the funds while he was in prison; that he was an alcoholic; and that he would lose the property and blow the money if he received it.

Standard of Review



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Although we review traditional equity cases de novo, the test on review is not whether we are convinced that there is clear and convincing evidence to support the trial court's findings but whether we can say that the trial court's findings are clearly erroneous. *Higgins v. Higgins*, 2010 Ark. App. 71. A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake was made. *Id.*

Discussion

The Berrys contend that the trial court clearly erred in finding that they held the real property and the money in a constructive trust for Joe Walker. A constructive trust is an implied trust that arises by operation of law when equity demands. *Higgins, supra*. Such trusts are imposed against a person who secures legal title by violating a confidential relationship or fiduciary duty, or who intentionally makes a false oral promise to hold legal title for a specific purpose and, after having acquired the title, claims the property for himself. *Id.* The basis of a constructive trust is the unjust enrichment that would result if the person having the property were permitted to retain it. *Id.* To impose a constructive trust, there must be full, clear, and convincing evidence leaving no doubt with respect to the necessary facts, and the burden is especially great when title to real estate is sought to be overturned by parol evidence. *Id.*

1) Real Property

In Linda's April 8, 2003 letter to Joe, she made the following statements:



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Daddy's wishes were that each of us kids had a piece of land that was ours and could not be mortgaged or sold until the grandchildren had the property. That is why we each got a life estate.

.....

Daddy informed me that if the will did not work, I was to do what it took to make it work. Daddy deeded his property to me for a couple of reasons, one being if he went to a nursing home, they could not take the property from him or us, two if the Will did not work.

I filed the deeds and have given Peggy and Jerry their life estates, but the land is *technically* owned by me. These deeds have been filed in the courthouse. I have also prepared a deed giving you a life estate but it will not be filed until you return home. This guarantees you a place to live when you get out.

(Emphasis added.) With this explanation in Linda's own words of what her father wanted to be done and how she regarded her role in handling the real property, we find no clear error in the trial court's decision. We are simply not left with a definite and firm conviction that the trial court made a mistake in finding a constructive trust regarding the real property.

2) Money

With respect to the money, Linda stated in her April 8 letter:

Now for another matter. Daddy left all his money to me so that I could do what was right with it. I have no intention of keeping this money and will divide it when things are settled, subtracting from theirs the amounts that I have paid for Peggy and one small debt Jerry had. Again Peggy is upset that he left her nothing, but now you can see why. The only money that I have spent of Daddy's was to pay for his bills, taxes, and also my taxes which increased enormously due to the inheritance. I have not touched this money for myself.

I had hoped to wait until this mess was settled before I let you know about this. I am keeping *your money* in my name until you get out. At that time I will help you to buy a small mobile home or whatever you need. *Although I will not ever give the money directly to you, it is to be used for you.* That way no one else can claim it. Daddy was very adamant that Cynthia nor the State of Missouri not get anything of his.



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(Emphasis added.) The highlighted portions of this letter, in Linda's own words, support the trial court's finding. Therefore, we are not left with a definite and firm conviction that a mistake was made concerning the money being held in a constructive trust for Joe, except with respect to the specific amount of money that Linda was holding for Joe. It was undisputed that Linda sent \$4600 to Joe while he was in prison. Yet, that amount was apparently not deducted from the amount to which Joe was otherwise entitled. We, therefore, reverse that portion of the trial court's decision and remand with instructions for the trial court to deduct from the amount Linda owes Joe the \$4600 that she sent him in prison.

Affirmed in part; reversed and remanded in part.

GRUBER and HOOFFMAN, JJ., agree.

Gordon, Caruth & Virden, PLC, by: *Bart F. Virden*, for appellants.

Howard C. Yates, for appellee.