

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA12-442

JAMES LAUNIUS and DORA D.
LAUNIUS

APPELLANTS

V.

EDWINA DAWN BEASLEY

APPELLEE

Opinion Delivered JANUARY 30, 2013

APPEAL FROM THE UNION
COUNTY CIRCUIT COURT
[NO. CV-10-359-6]

HONORABLE DAVID F. GUTHRIE,
JUDGE

REVERSED AND REMANDED

BILL H. WALMSLEY, Judge

Appellants James and Dora Launius appeal from the Union County Circuit Court's refusal to impose an implied constructive trust on assets held by their daughter, appellee Edwina Dawn Beasley. We reverse and remand for clarification of what appear to be inconsistent findings by the trial court.

After consulting with an attorney and certified public accountant for estate-planning purposes, appellants transferred a certificate of deposit and deeded two tracts of real property to appellee. Appellants hoped to avoid depleting their assets in the event they should enter a nursing home and were concerned about leaving sufficient funds to care for their disabled adult son. Approximately four years after the transfers to appellee, the appellants' once close and loving relationship with appellee became contentious, and they filed suit against their daughter, seeking to impose a constructive trust on the assets held by her and an order compelling her to transfer the assets back to them.



At trial, appellee testified that the property at issue was put in her name to protect her parents' assets and that she claimed no part of the money. Appellee also testified that she considered herself to be a good manager of her parents' property. Appellants admitted that their daughter had not mismanaged the property transferred to her.

The trial court concluded that appellants failed to prove entitlement to the imposition of a constructive trust. Thus, the court denied appellants the relief they had sought. The trial court further found that appellants voluntarily chose to transfer their assets to appellee, rather than create an express trust, but that it was understood by the parties that the transfers to appellee "were in trust for the primary benefit of the [appellants] and their son."

On appeal, appellants argue that the trial court erred in failing to impose a constructive trust on the assets held by appellee and require appellee to transfer the property to them. They further contend that the trial court erred by not permitting them to revoke the oral trust they created.

In reviewing a circuit court's exercise of its equity jurisdiction, we consider the evidence de novo, but we will not reverse a trial judge's findings unless they are clearly erroneous or clearly against the preponderance of the evidence. *Le v. Nguyen*, 2010 Ark. App. 712, 379 S.W.3d 573. We give due deference to the superior position of the trial judge to view and judge the credibility of the witnesses. *Id.* A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made. *Id.*

A constructive trust is an implied trust that arises by operation of law when equity so



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demands. *Malone v. Hines*, 36 Ark. App. 254, 822 S.W.2d 394 (1992). The basis of a constructive trust is the unjust enrichment that would result if the person having the property were permitted to retain it. *Edwards v. Edwards*, 311 Ark. 339, 843 S.W.2d 846 (1992). Where a promise is made by one who stands in a confidential relation to the grantor, equity will impose a constructive trust without proof of actual fraud or any other evidence that the promisor had the intent to defraud at the time of the representation, but a broken promise must still be shown. See *White v. White*, 254 Ark. 257, 493 S.W.2d 133 (1973). Constructive trusts are often imposed when there has been a breach of a fiduciary duty, abuse of a confidential relationship, fraud, or an unjust enrichment. See *Cole v. Rivers*, 43 Ark. App. 123, 861 S.W.2d 551 (1993). Full, clear, and convincing evidence is required in order to impose a constructive trust. See *Berry v. Walker*, 2012 Ark. App. 16.

Because we cannot reconcile the trial court's findings as they are set forth in the judgment on appeal, we must reverse and remand for further proceedings consistent with this opinion. See, e.g., *Wrightsell v. Johnson*, 77 Ark. App. 79, 72 S.W.3d 114 (2002). The trial court ruled that appellants failed to carry their burden of proving the existence of a constructive trust. Yet, the trial court found that the transfers created an oral trust and concluded that appellee held the property for the benefit of her parents and brother.

A trust may be created by the transfer of property to another person as trustee during the settlor's lifetime or by a declaration by the owner of property that the owner holds identifiable property as trustee. Ark. Code Ann. § 28-73-401(1), (2) (Supp. 2007). Such a trust need not be evidenced by a trust instrument, but the creation of an oral trust and its



terms must be established by clear and convincing evidence. Ark. Code Ann. § 28-73-407 (Supp. 2007).

On remand, the trial court is directed to resolve the apparent inconsistencies in its findings, as set out above.

Reversed and remanded.

GLADWIN, C.J., agrees.

PITTMAN, J., concurs.

JOHN MAUZY PITTMAN, Judge, concurring. I agree that the trial court appears to have made inconsistent findings in this case, and I respectfully concur in the result reached. I write separately only to clarify that constructive trusts can be imposed in the absence of either fraud or mismanagement of the subject property by the legal-title holder and to point out the existence of proof in this record that favors appellants on the elements of their cause.

It is undisputed that appellants and appellee shared a confidential relationship at the time that the transfers of property occurred. Where, as here, there is such a relationship between grantor and grantee, all that the grantor must show in order to be entitled to imposition of a constructive trust in his favor is a promise by the grantee to hold property for the benefit of the grantor, or to reconvey the property, and the grantee's refusal to perform her promise. See *White v. White*, 254 Ark. 257, 493 S.W.2d 133 (1973); *Mitchell v. Mitchell*, 28 Ark. App. 295 (1989). The promise need not have been false or fraudulent at the time that it was made. See *White v. White, supra*. The majority opinion discusses in general terms the evidence favorable to appellee. However, it does not mention the proof favorable to



appellants' position. Appellant Mrs. Launius testified that appellee had specifically assured her that appellants could get the property back at any time they ever needed or wanted it. Mrs. Launius also testified that the lawsuit would never have been filed had appellee given back the property "the way she said she was going to." Appellee admitted in her testimony that she was "not going to voluntarily convey those properties back to" appellants.

Nor is there any requirement that a grantor show that the grantee has mismanaged or converted the property to her own use. A constructive trust arises whenever it appears from the accompanying facts and circumstances that the beneficial interest should not go with the legal title. *Andres v. Andres*, 1 Ark. App. 75, 613 S.W.2d 404 (1981). The obligation to reconvey is often imposed to *prevent* or *avoid* unjust enrichment from occurring. *See Betts v. Betts*, 326 Ark. 544, 932 S.W.2d 336 (1996). If the property is not returned to appellants, they could be denied the ability to use it as they wish, and it is possible that appellee will secure an interest in the property upon their deaths.

While it is true, as the majority states, that clear and convincing evidence is required to support imposition of a constructive trust, it is also true that clear and convincing evidence is simply that degree of proof that will produce in the trier of fact a firm conviction of the allegations sought to be established. *First National Bank v. Rush*, 30 Ark. App. 272, 785 S.W.2d 474 (1990). Notably, the trial court in this case has already found that all of the parties understood that appellee held the property in trust for the primary benefit of appellants and their son, and that appellee would have an interest in the property in the event of the appellants' deaths.

Burbank Dodson & Barker, PLLC, by: *Don B. Dodson*, for appellants.

Daniel W. Newell, for appellee.