

No. A05-2569

STATE OF MINNESOTA

IN COURT OF APPEALS

Kelly Danielson,

Appellant,

vs.

Shane Danielson,

Respondent.

APPELLANT'S BRIEF AND APPENDIX

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LEGAL ISSUES

I. WAS PAROL EVIDENCE ADMISSIBLE TO ALTER THE TERMS OF THE QUITCLAIM DEED?

The district court ruled in the affirmative and found the parties held an undivided one-half interest in the farmstead in trust for Respondent's brother.

Apposite authorities:

- City of St. Paul v. Dahlby, 123 N.W.2d 586 (Minn. 1963)

II. DID THE TRIAL COURT ERR AS A MATTER OF LAW IN AWARDING A CONSTRUCTIVE TRUST IN FAVOR OF A NON-PARTY?

The district court ruled in the negative and found the parties held an undivided one-half interest in the farmstead in trust for Respondent's brother.

- Sammons v. Sammons, 642 N.W.2d 450 (Minn. App. 2002)
- In re Ferlitto, 565 N.W.2d 35 (Minn. App. 1997)
- Erickson v. Hinckley Municipal Liquor Store, 373 N.W.2d 318 (Minn. App. 1985)

III. DID THE EVIDENCE SUPPORT A FINDING OF FACT AWARDING RESPONDENT'S BROTHER A ONE-HALF INTEREST IN MARITAL REAL ESTATE?

The district court ruled in the affirmative and found the parties held an undivided one-half interest in the farmstead in trust for Respondent's brother.

Apposite authorities:

- In re Estate of Eriksen, 337 N.W.2d 671 (Minn. 1983)
- Wright v. Wright, 311 N.W.2d 484 (Minn. 1981)
- Mjolsness v. Mjolsness, 363 N.W.2d 839 (Minn. App. 1985)
- Tourville v. Kowarsch, 365 N.W.2d 298 (Minn. App. 1985)

IV. DID THE DISTRICT COURT ERR IN AWARDING THE ENTIRE HOMESTEAD TO RESPONDENT WHERE THAT AWARD WAS INCONSISTENT WITH THE COURT'S PREVIOUS FINDINGS OF FACT?

The district court ruled in the negative and found the parties held an undivided one-half interest in the farmstead in trust for Respondent's brother, but granted Respondent the entire farmstead.

Apposite authorities:

- Minn. R. Civ. P. 52.01 (1989)
- Rutten v. Rutten 347 N.W.2d 47 (Minn. 1984)
- Wright v. M.B. Hagen Realty Co., 269 N.W.2d 62 (Minn. 1978)

STATEMENT OF THE CASE

This claim arises out of a dissolution of marriage proceeding. The District Court, the Honorable Kenneth A. Sandvik presiding, heard arguments at trial on May 19 and May 20, 2005. (A-1.)¹ By Findings of Fact, Conclusions of Law, Order for Judgment, and Judgment and Decree filed August 8, 2005, the District Court found that the parties held an undivided ½ interest in their farmstead in trust for Mark Danielson, Respondent's brother. (A-10.) The District Court found the parties' remaining interest in their farmstead less the encumbrances was a marital asset and should be divided equally. (A-11.)

The parties petitioned the District Court for amended findings, or in the alternative a new trial. (A-26.) The District Court heard these cross motions on October 26, 2005. (A-32.) By Order filed November 3, 2005, the District Court denied the parties' motions in all respects. (Id.) This appeal followed. (A-35.)

¹ (A-*) refers to Appendix.

STATEMENT OF THE FACTS

Appellant Kelly Danielson, n/k/a Kelly Jensen, and Respondent Shane Danielson (“the parties”) met in 1989. (Transcript, I-3.) In the fall of 1992, they began living together. (Id.) In December of 1992, Respondent’s parents passed away and Respondent and his brother, Mark Danielson, inherited their property located at 251 Linnell Road, Grand Marais, Minnesota (“the farmstead”). (Id. at I-2-3; II-30-31.) Appellant’s parents moved onto the farmstead at this time. (Id.) The parties moved onto the farmstead in February or March, 1993. (Id. at I-4; II-34.) During this time, Respondent was employed as a logger and earned only nominal income. (Id. at I-6; II-35.) Appellant worked full-time and provided the primary financial support for the family. (Id. at I-5-7.)

On August 22, 1996, Mark Danielson and Respondent executed a quitclaim deed transferring all interest in the farmstead to “Shane A. Danielson and Kelly L. Jensen as joint tenants” (Id. at I-8, 18, 89-91; II-33, 37; A-37.) Appellant and Respondent were not married at the time of the transfer. (Id. at I-8; II-12, 121.) Appellant testified she understood this meant she was now a co-owner of the farmstead. (Id. at I-14.)

The deed transferring the farmstead to the parties as joint tenants was signed in attorney Steven Steinle’s law office in the presence of Appellant, Respondent, and Mark Danielson. (Id. at I-9.) Prior to signing the deed, Mr. Steinle discussed the effect of the deed with them. (Id. at I-11, 13.) Mr. Steinle testified that it is his “typical practice...to explain to clients what the difference is in ownership and the legal implications or consequences of [a joint tenancy versus tenancy in common.]” (Steinle depo., 12, ln. 5-8.) By signing the deed, “Mark Danielson had divested himself of the interest in the

property fully.” (Id. at 10, ln. 4-17.) He had no further right to manage or control the property (Id.) Further, Respondent could not thereafter sell the farmstead without Appellant’s consent and she would have inherited the entire property if Respondent died. (Id. at 11, ln. 1-10.)

In addition to the deed that was actually signed transferring Mark Danielson’s interest to the parties, two other deeds had been prepared to provide the parties with additional options. (Id. at 12, ln. 18-25; 13, ln. 1-25; 14, ln. 1-7.) The first transferred title from Mark Danielson to Respondent only. (Id. at 12, ln 18-25.) The second transferred title to Appellant and Respondent as tenants in common. (Id. at 13, ln. 1-8.) Mr. Steinle opined that, had this second deed been signed, Appellant would not have had a right of survivorship and thus not received Respondent’s one-half interest if he died. (Id. at 13, ln. 9-13.)

The parties were not married until two years after the property was deeded to Appellant and Respondent. (Transcript, I-2.) The parties had two had two children before separating in March 2004. (Id.) From the time they began living together on the farmstead in 1993 until their separation in 2004, they referred to the farmstead as “our home” and treated it as their home. (Id. at I-8; II-118-19.) Appellant worked full-time and paid expenses associated with the farmstead, including contributing \$15,000 of non-marital money to pay down the principal balance on the mortgage. (Id. at I-15-16, 19; II-124.) The parties also made many capital improvements to the farmstead, including partially finishing the basement, replacing the furnace, installing a sub-floor in the attic and building a new barn with the help of Appellant’s father. (Id. at II-123-24.)

Respondent claimed the property had been conveyed to the parties, as joint tenants, because they needed financing to start an ostrich business and could obtain this financing only by relying on Appellant's credit history. (Id. at II-37, 39-42.) However, Respondent and his brother both acknowledged that there were other methods through which the financing could have been obtained short of a complete divestiture of any interest Mark Danielson had in the property. (Id. at II-39-42, 122.)

In the Decree, the Court found that the "parties hold record title" to the farmstead and recognized that title had been validly transferred "by Quit Claim Deed dated August 22, 1996, [through which] Mark Danielson and Husband quit claimed the farmstead to Husband and Wife as joint tenants." (A-9-10, Findings #17, 22.) However, the Court also found "[t]hat Husband and Mark Danielson retained an equitable ownership interest in the farmstead." (A-10, Finding #25.) Without any evidence to support the valuation, the Court valued Mark Danielson's interest at \$200,000. (A-10, Finding #28.) The Court also concluded that "Husband is awarded the farmstead" but made no reservation against that award for the claimed interest of Mark Danielson, thereby effectively awarding Respondent the entire interest in the farmstead and awarding Appellant $\frac{1}{4}$ of its total value. (A-17, Conclusion #9.)

ARGUMENT

I. STANDARD OF REVIEW

A district court's findings of fact will not be set aside unless they are clearly erroneous. Minn. R. Civ. P. 52.01 (1989). Findings of fact are considered clearly erroneous only if they are not reasonably supported by the evidence. City of Golden Valley v. One 1998 Pontiac Grand Prix, VIN No. 1G2WP521WF309530, 616 N.W.2d 780, 782 (Minn. App. 2000) (citation omitted). By contrast, whether the trial court utilized the proper standards in arriving at its decision is a question of law. Moore v. Sordahl, 389 N.W.2d 748, 749 (Minn. App. 1986).

II. THE TRIAL COURT IMPROPERLY ADMITTED PAROL EVIDENCE TO ALTER THE TERMS OF THE DEED.

The application of the parol evidence rule is a question of law subject to de novo review. Mollico v. Mollico, 628 N.W.2d 637, 640 (Minn. App. 2001). The parol evidence rule prohibits admission of extrinsic evidence of prior or contemporaneous oral agreements, or prior written agreements, to explain the meaning of a contract when the parties have reduced their agreement to an unambiguous integrated writing. Alpha Real Estate Co. of Rochester v. Delta Dental Plan of Minnesota, 664 N.W.2d 303, 312 (Minn. 2003) (citation omitted). It is error to admit such evidence to alter, vary, or contradict a written agreement. Id.

The terms of a deed cannot be contradicted, altered, added to, or varied by parol evidence or by evidence of a prior oral agreement. City of St. Paul v. Dahlby, 123 N.W.2d 586, 592 (Minn. 1963). There, the grantor deeded property to the City of St.

Paul for the Capitol. Id. at 588-89. The grantor's heirs later claimed title to the property because it was no longer being used as the Capitol. Id. at 587. The heirs produced an affidavit from the grantor's attorney stating that the grantor intended, and had asserted in writing, to retain a reversionary interest if the property was not used as the Capitol. Id. at 591. The trial court made findings that the City of St. Paul owned the property in fee simple and the Supreme Court affirmed. Id. at 587. The Court held that there were no documents or records showing an intent to retain a reversionary interest. Id. at 592. In its analysis, the Court noted that "parol evidence is inadmissible to prove that a written instrument was executed with the understanding it was not to be binding according to its terms." Id.²

The parole evidence rule, especially when applied in matters relating to real estate, is founded on strong public policy considerations. If extrinsic evidence is permitted to undo the effect of a quitclaim deed, the certainty of real estate transactions will be left to the questionable veracity of interested witnesses. Moreover, the protection of parties who have reduced their agreement to writing will be left to the dubious claims of witnesses with uncertain memories.

² Many other states adhere to this rule of law. See, e.g., Syversen v. Hess, 665 N.W.2d 23, 25 (N.D. 2003) ("noting "[o]ral testimony is incompetent and inadmissible to vary or contradict an executed and delivered quitclaim deed and to nullify the grant contained in the deed."); Des Lacs Valley Land Corp. v. Herzig, 621 N.W.2d 860, 863 (N.D. 2001) (concluding parol evidence was not admissible to contradict grants in quitclaim deeds); Bliss v. Bliss, 898 P.2d 1081, 1086 (Idaho 1995) (holding evidence regarding parties' intent and conversations when a deed is executed is inadmissible to contradict the deed); Abercrombie v. Hayden Corp., 883 P.2d 845, 851 (Or. 1994) (concluding quitclaim deeds are integrated agreements and, as such, courts cannot admit parol evidence); Robar v. Ellingson, 301 N.W.2d 653, 659 (N.D. 1981) (holding the Court "has the right and duty" to exclude evidence of intent in construing a deed absent fraud, mistake, or accident).

In the present case, the terms of the quitclaim deed clearly and unambiguously give the farmstead to Appellant and Respondent.

Mark Ryan Danielson, a single person and Shane Arthur Danielson, a single person, Grantor(s), hereby convey and quitclaim to Shane A. Danielson and Kelly L. Jensen as joint tenants [the farmstead property in Grand Marais]. (A-37.)

There is absolutely no ambiguity in the language of the deed and the intent of the parties is entirely ascertainable from the writing. See Mollico, 628 N.W.2d at 641.

Respondent and his brother intended to convey the entire interest in the property to Respondent and Appellant. Had the grantors intended to reserve any further interest in the property in favor of Respondent's brother, they could have done so in a myriad of ways. For example, they could simply have added Appellant's name to the deed rather than entirely eliminating Mark Danielson's interest in the property. Further, they could have transferred the property subject to a reservation in favor of Mark Danielson. They did not, and the transfer was absolute.

No parol evidence should have been admitted to contradict the clear terms of the deed and, in doing so, the district court committed clear error. Therefore, the district court's finding that the parties held a one-half interest in trust for Respondent's brother must be reversed.

III. EVEN IF PAROL EVIDENCE WAS PROPERLY ADMITTED, THE TRIAL COURT ERRED AS A MATTER OF LAW IN FINDING A CONSTRUCTIVE TRUST FOR A NONPARTY.

In the present case, imposition of a constructive trust in favor of a non-litigant third-party was improper as a matter of law. A district court does not have jurisdiction over a nonparty. In re Ferlitto, 565 N.W.2d 35, 37 (Minn. App. 1997). A district court

errs as a matter of law where it orders a litigant to pay money to a nonparty. Id.; Erickson v. Hinckley Municipal Liquor Store, 373 N.W.2d 318, 323 (Minn. App. 1985). It also errs as a matter of law in imposing a constructive trust against property owned by a nonparty. Sammons v. Sammons, 642 N.W.2d 450, 457-58 (Minn. App. 2002). Thus, it follows that a district court cannot impose a constructive trust in favor of a non-party.

Constructive trusts have only been imposed in favor of a litigant who brought suit to prevent the other party from being unjustly enriched. See In re Estate of Eriksen, 337 N.W.2d 671, 674 (Minn. 1983) (constructive trust of ½ interest in home imposed in favor of a person who co-purchased the home and shared equally in all expenses); Dietz v. Dietz, 70 N.W.2d 281, 283-85 (Minn. 1955) (constructive trust imposed in favor of mother where son deceived her into deeding the property to him and then physically assaulted her after she refused to leave the home)³.

In the present case, Mark Danielson was not a litigant.⁴ Because the district court cannot exercise jurisdiction over a nonparty and errs as a matter of law in awarding payment to a non-party, it erred as a matter of law in imposing a constructive trust in favor of non-party Mark Danielson.

³ See also Thompson v. Nesheim, 159 N.W.2d 910, 913-14, 919 (Minn. 1968) (constructive trust imposed in favor of husband, where parties purchased property jointly but placed property in wife's name to avoid creditors); Knox v. Knox, 25 N.W.2d 225, 227-29 (Minn. 1946) (constructive trust granted where Husband deeded property to his wife to defeat moratorium proceedings).

⁴ The sole question before the court related to division of marital property. Appellant was not seeking to deprive Mark Danielson of any interest he may have claimed in the property through a future action in properly-brought litigation. In fact, she willingly conceded that the entire property would be awarded to Respondent.

IV. EVEN IF THE TRIAL COURT PROPERLY APPLIED MINNESOTA LAW, ITS FINDINGS AND CONCLUSIONS WERE CLEARLY ERRONEOUS.

A. THE DISTRICT COURT'S FINDINGS FACT HOLDING ONE-HALF OF THE PARTIES' FARMSTEAD IN TRUST FOR RESPONDENT'S BROTHER WERE CLEARLY ERRONEOUS

Even if a constructive trust is a proper remedy for a nonparty in a dissolution action, it should not have been imposed in this case. A constructive trust is a judicially created equitable remedy imposed to prevent unjust enrichment of a person holding property under a duty to convey it or use it for a specific purpose. Wright v. Wright, 311 N.W.2d 484, 485 (Minn. 1981). It arises only if legal title to property has been obtained through fraud, oppression, duress, undue influence, force, crime, or similar means, or by taking improper advantage of a confidential or fiduciary relationship. Id. There must be clear and convincing evidence that the imposition of a constructive trust is justified to prevent unjust enrichment. In re Estate of Eriksen, 337 N.W.2d 671, 674 (Minn. 1983).

Constructive trusts are an extreme remedy and not to be imposed lightly. See Tourville v. Kowarsch, 365 N.W.2d 298, 299 (Minn. App. 1985) (finding no unjust enrichment to the homeowner where her cohabitant paid her "approximately \$300 per month for [17 of 20 months], made one monthly mortgage payment, and purchased some household items"); Mjolsness v. Mjolsness, 363 N.W.2d 839, 840 (Minn. App. 1985) (refusing to award a constructive trust despite the fact that formerly married parties lived together for 10 years, jointly paid bills and party claiming trust proved, over the ten year period, he contributed his services and performed "substantial repairs on the home").

Because Mark Danielson willingly transferred his interest without a written instrument identifying any intent to reserve a lien, there can be no constructive trust. Wright v. Wright, 311 N.W.2d at 485-86. In that case, plaintiffs loaned their son and defendant, his wife, \$5,700 to purchase homestead property. Id. at 484-85. Less than two years later, defendant obtained a divorce and was awarded the homestead as part of the distribution. Id. at 485. The Supreme Court affirmed the trial court's ruling that the parents were not entitled to a constructive trust against the homestead.

As a practical matter, plaintiffs' loan was made to both the defendant and her former husband, the plaintiffs' son. At the time of the latter parties' marital dissolution, plaintiffs' son did not contest the property division by which the defendant was awarded the homestead and in addition, he subsequently executed a quit claim deed, terminating all interest in the homestead. There is nothing in the record which would preclude the plaintiffs from obtaining a loan repayment from their son or which establishes that the debt is simply that of the defendant because she owns all right and title to the homestead. Id.

In the present case, Respondent's brother freely and voluntarily deeded his interest in the farmstead to Appellant and Respondent. The transfer was not obtained through fraud, duress or any other improper method. In fact, execution of the deed occurred at an attorney's office after he had explained the implications of the deed to all parties. Further, unlike the cases in which a constructive trusts have been imposed, Mark Danielson had neither purchased the home nor made any financial contributions to the property before, during or after he terminated his ownership interest. Even as significantly, Respondent and Appellant were not married at the time of the transfer. Appellant could have sold, partitioned, or mortgaged the farmstead at any time.

The testimony regarding the donor's alleged "intent" must be disregarded. That testimony must be viewed in the context in which it was offered -- years after the fact, at a time when Respondent was seeking to preserve as much of his property for himself as possible. As the Court of Appeals recognized, such testimony is not credible evidence:

The trial court relied on the fact that the property has been in respondent's family for many years and that [the donor] has a close relationship with respondent but not with appellant...Common sense tells us that the mere fact that property had previously belonged to one side of the family or the other is virtually meaningless. By definition, every gift from one spouse's relative during a marriage always comes from the husband's side or the wife's side of the family. Evidence that the property in question previously belonged to one side of the family, or that the donor knew one of the joint tenants better than the other, without more, is insufficient as a matter of law.

Courts of equity, as are family law courts, have the power to trace nonmarital assets so that it finds its way to the true owner. But they do not have the power to summarily confiscate property from a true owner, and give it to somebody else merely because the donor has a change of heart, after the fact, and years down the road...The record is devoid of any inference that the couple ever treated the property as anything but in co-ownership after the transfer...It was only when the marriage started to fail (years after the transfer) that respondent began to indulge in the sad, but predictable, soul-searching that led to the argument, "Well, now that I think about it, Uncle Klemmet really wanted me to have this property for myself."

Olsen v. Olsen, 552 N.W.2d 290, 294 (Minn. App. 1996), *affirmed*, 562 N.W.2d 797 (Minn. May 8, 1997).

In the present case, no one deceived Mark Danielson into signing the quitclaim deed. Rather, he did so after being educated as to the effect of the deed. The mere fact that the farmstead had previously belonged to his parents is irrelevant. Thus, imposition

of a constructive trust for the benefit of Mark Danielson was wholly inconsistent with the law and facts and must be reversed.

B. THE DECISION MUST BE REVERSED BECAUSE THE DISTRICT COURT'S CONCLUSION OF LAW AWARDING RESPONDENT THE ENTIRE FARMSTEAD WAS INCONSISTENT WITH ITS FINDINGS OF FACT THAT THE PARTIES HELD ONE-HALF INTEREST IN THE FARMSTEAD FOR MARK DANIELSON

In all actions tried upon the facts without a jury, the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment. Minn. R. Civ. P. 52.01 (1989). Where an award is inconsistent with the court's findings, it must be set aside. Rutten v. Rutten 347 N.W.2d 47, 50 (Minn. 1984) (where the trial court makes a clearly erroneous conclusion, against logic and the facts on the record, the appellate court will find an abuse of discretion); Wright v. M.B. Hagen Realty Co., 269 N.W.2d 62, 66 (Minn. 1978).

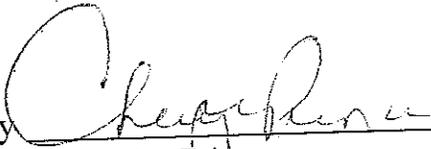
In the present case, the trial court erred when, despite vague reference to the "constructive trust", it transferred the entire property to Respondent without reserving any interest in favor of the alleged "third party beneficiary." In essence, the trial court "unjustly enriched" Respondent through its ineffective imposition of a "constructive trust." In calculating Ms. Danielson's interest in the farmstead for purposes of determining the amount of her equalization payment, the trial court deducted ½ of homestead value. However, the court then awarded the entire homestead to Respondent. No portion of the homestead was reserved in favor of the alleged "constructive trustee." While the trial court gave "lip service" to the "trust", it made not effective attempt to effectively recognize it when transferring the property.

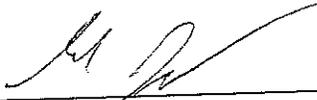
The effect of this disposition is to wrongfully deprive Ms. Danielson of her interest in the property, while unjustly enriching Respondent. Respondent is now free to sell the entire property and pocket the entire proceeds. Despite the vague reference in the Findings to the trust, Mark Danielson is still required to bring a separate action to recover any amounts allegedly due him as the trial court's findings are not legally binding on Respondent for purposes of this claim.

CONCLUSION

The District Court improperly allowed parol evidence which altered the terms of the quitclaim deed reserving a one-half interest in the farmstead for Respondent's brother. Alternatively, the District Court erred as a matter of law in awarding an interest in marital real estate to a nonparty. Alternatively, Appellant should be awarded one-half interest in the farmstead because (1) no unjust enrichment would result to her and (2) the District Court's Conclusions of Law did not reflect its Findings of Fact.

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STATE OF MINNESOTA

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Kelly Danielson,

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**CERTIFICATION OF
BRIEF LENGTH**

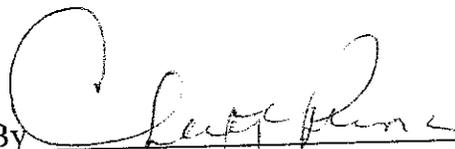
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I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subds. 1 and 3, for a brief produced with proportional font. The length of this brief is 3,932 words. This brief was prepared using Microsoft Word 2003. The word processing program has been applied specifically to include all text, including headings, footnotes and quotations.

Dated: 2/17, 2006.

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).