

**APPELLATE COURT NO.: A06 0421**

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**STATE OF MINNESOTA  
IN COURT OF APPEALS**

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Elizabeth Peterson,

Plaintiff/Respondent,

District Court File: 27-CV-04 000813

vs.

Patricia Peterson, and  
Holiday Recreational Industries, Inc.,

Defendants/Appellants

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**APPELLANTS' BRIEF**

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## INTRODUCTION

This appeal is both simple and complex. It is simple because most of the claimed errors are contained in the District Court's orders and can be evaluated without regard to any other part of the record. *See App 24, 81, and 96*. It is complex, however, because there are several different errors that require examination.

Defendants are appealing from a Hennepin County District Court Order pursuant to which Plaintiff Elizabeth Peterson was awarded real estate and other property owned by her daughter, Defendant Patricia Peterson. Plaintiff claimed that she was always the intended owner of the property, but that she did not hold it in her own name because of her desire to defraud a judgment creditor. The District Court made its determination notwithstanding the fact that Patricia Peterson acquired the property from her grandmother and the validity of that transaction was never challenged, notwithstanding the fact that Patricia Peterson has personal guaranties relating to the real estate and the other property, notwithstanding the fact that the property is located in Anoka County, and notwithstanding the fact that Plaintiff's own testimony was that the property was to be held in trust for the family and now Defendant Patricia Peterson has been excluded from any benefit of the property whatsoever.

Appellants seek to have the District Court's Order reversed as a matter of law. Alternatively, the Order should be vacated and the matter should be tried in Anoka County. As a final alternative, a new trial in Hennepin County would be a minimum remedy. In any event, the existing judgment cannot be allowed to stand.

## STATEMENT OF ISSUES

Some of Defendants' arguments would result in a reversal and a dismissal of Plaintiff's claims, while others would warrant a reversal and a remand. For organizational purposes, the issues will be addressed chronologically. For example, jurisdictional issues will be discussed first, followed by errors at trial, and concluding with the failure to amend the findings or grant a new trial.

1. WHETHER A HENNEPIN COUNTY COURT HAS JURISDICTION TO ORDER THE TRANSFER OF REAL ESTATE IN ANOKA COUNTY.

**Holding:** Minn. Stat. § 542.02 provides that actions for the recovery of real estate can only be tried in the county where the real estate is located and that courts in other counties "shall have no jurisdiction over the action." *App. 116*. The District Court relied on Minn. Stat. § 542.11 (*App. 118*) (which is the statute that provides that a court with proper venue can transfer venue in the interests of justice, etc.) and stated that it could deny a demand for change of venue as of right based upon those considerations. *App. 97*

2. WHETHER A DISTRICT COURT CAN DISALLOW A DEMAND FOR CHANGE OF VENUE AS OF RIGHT UNDER THE GENERAL VENUE STATUTE (MINN. STAT. § 542.10) BASED ON THE FACTORS THAT ALLOW A COURT WITH PROPER VENUE TO TRANSFER AN ACTION.

**Holding:** The District Court originally denied the Demand for Change of Venue because "events in this action arose in Hennepin County . . . [and] Defendants . . . failed to show that they would be prejudiced if venue was retained in Hennepin County." *App. 25*. In connection with the post-trial motion, the District Court relied on Minn. Stat. § 542.11, as it did with Issue 1, *supra. App. 97*.

3. **WHETHER A PARTY WHO FREELY ADMITS TO UNCLEAN HANDS AND CLAIMS IN COURT THAT SHE WAS MERELY ACTING TO DEFRAUD CREDITORS IS ENTITLED TO INVOKE THE EQUITY JURISDICTION OF THE COURT.**

**Holding:** The District Court held that “unclean hands” was a defense available only to the party that was the subject of the particular wrongful act and granted relief to a party who freely admitted that her ongoing objective was to defraud a party who had lawfully obtained a judgment against her. *App. 96-97.*

4. **WHETHER PLAINTIFF HAS STATED A CLAIM FOR RELIEF IN LIGHT OF THE FACT THAT THERE HAS BEEN NO CHALLENGE TO THE TRANSACTION PURSUANT TO WHICH DEFENDANT PATRICIA PETERSON ASSUMED CERTAIN ASSETS AND LIABILITIES FROM HER GRANDMOTHER.**

**Holding:** The District Court admitted evidence regarding that transaction, but relied on a different theory in reaching its conclusion. There was no Finding that the transfer between Obelyn (Grandma) Peterson and Patricia Peterson was fraudulent. *See App. 85*

5. **WHETHER PLAINTIFF’S CLAIMS ARE BARRED BY THE STATUTE OF FRAUDS.**

**Holding:** The District Court did not make a specific ruling on the statute of frauds and apparently relied on a “constructive trust” theory as a method of avoiding the signed writing requirement. *See App. 81.*

6. **WHETHER A CONSTRUCTIVE TRUST IS, IN ESSENCE, A REMEDY FOR A DEFECTIVE EXPRESS TRUST.**

**Holding:** The District Court apparently determined that an express trust was intended and therefore imposed a constructive trust. *See App. 81.*

7. WHETHER A CONSTRUCTIVE TRUST THEORY CAN BE USED TO COMPEL THE CONVEYANCE OF TITLE.

**Holding:** The District Court did not specifically discuss the issue. The District Court purported to impose a constructive trust, but then ordered the outright transfer of the property. *See App. 81.*

8. WHETHER THE CONVEYANCE OF TITLE TO PLAINTIFF WAS AN APPROPRIATE REMEDY IN LIGHT OF THE FACT THAT PLAINTIFF'S OWN TESTIMONY WAS THAT THE PROPERTY WAS TO BE HELD IN TRUST FOR THE BENEFIT OF THE WHOLE FAMILY.

**Holding:** The District Court ordered the transfer of the real estate and other property and made no provision whatsoever for Defendant or other alleged trust beneficiaries. *See App. 81.*

9. WHETHER THE DISTRICT COURT ERRED IN AWARDING THE PROPERTY TO PLAINTIFF WHEN THE UNCONTRADICTED TESTIMONY INDICATED THAT PLAINTIFF ORALLY AGREED TO WAIVE ANY CLAIM AGAINST THE PROPERTY IN EXCHANGE FOR ALL RIGHTS TO THE FAMILY HOME.

**Holding:** The District Court enforced the alleged oral trust, but declined to enforce the oral waiver of claims. *See App 81*

10. WHETHER DEFENDANT SHOULD BE GRANTED A NEW TRIAL.

**Holding:** Appellants sought a new trial based upon “irregularity in the proceedings . . . whereby the moving party is deprived of a fair trial,” and/or upon “errors of law occurring at the trial,” and/or when “the verdict, decision, or report is not justified by the evidence, or is contrary to the law.” The District Court denied the motion for new trial, but did not make specific findings on the issues. *See App 96.*

## STATEMENT OF THE CASE

This matter was tried in Hennepin County District Court before the Honorable Harry S. Crump on January 3 and 4, 2006. Defendants had been represented throughout most of the litigation, but their attorney withdrew in September of 2005, when Defendants fell behind in paying. *App 80*. Defendants requested a continuance, but it was denied. *App 92, Tr 2-16*. Defendant Holiday Recreational Industries, Inc. was deemed to be in default for not having an attorney and Defendant Patricia Peterson was required to proceed *pro se*. *Id.*

Plaintiff's essential claim was that she was entitled to some sort of continuing interest in certain real estate and other property that was owned by her daughter. After a very brief trial, the District Court awarded Plaintiff outright possession of the real estate and the stock of Defendant Holiday Recreational Industries, Inc. *App. 81*. Subsequent to that Order, Defendant was able to retain counsel. *App 92*. A motion for amended findings or a new trial was promptly served and filed. *App. 90*. Judgment on the original trial order was entered on February 13, 2006. *App. 98*. The Order denying the post-trial motion was signed on February 14, 2006 (*App 96*), and entered as a judgment on February 16, 2006. *App. 99*.

## STATEMENT OF FACTS

Defendant disputes many of the facts presented by Plaintiff and adopted by the District Court. Unfortunately, Defendant was forced to proceed *pro se*, and the trial transcript does not reflect the evidence that she would have otherwise presented. Fortunately, some of the relevant evidence is already in the record by virtue of a Summary Judgment Motion that had been brought when Defendants were represented. More importantly, most of the errors of law raised by this appeal exist even if the District Court's factual findings are accepted as true.

### **A. The Background**

Plaintiff presented evidence that she and her now ex-husband operated a recreational vehicle dealership in the 1970's and 1980's. *Findings of Fact*, ¶ 1 (*App* 81). That business ultimately went bankrupt, and she and her husband had large personal judgments entered against them. *Id.* ¶¶ 3-5 (*App.* 82) Curiously, the District Court's Order seems to suggest that those judgments were somehow unjust. Yet, although the judgment itself was never entered into the record, the testimony indicates that it was a validly entered judgment by a District Court in Minnesota and affirmed by the Court of Appeals. *Tr.* 29-30

Thereafter, Plaintiff and her husband were involved in starting a new business. *Findings* ¶ 6 (*App.* 82) There is no evidence that Plaintiff provided any personal funding to start the new business. Rather, Plaintiff's mother-in-law (Defendant's grandmother), Obelyn Peterson, provided the funding and held the stock in the new corporation. *App* 48.

Plaintiff gave a deposition in her marriage dissolution in which she specifically denied investing any funds in the start-up. *See App 48, Page 53*, attached as an Exhibit to the Affidavit of Chris Harmoning. The arrangement allowed Plaintiff to earn a living without having any income that was easily attachable. There is an implied suggestion that Plaintiff provided sweat equity to build the value of the various assets, but there is no evidence of that fact. With respect to the company itself, Plaintiff's counsel stated in court that he did not believe that the company – Holiday Recreational Industries, Inc. – had any value in itself (*Tr. 22-23*), and he submitted no evidence to the contrary. Thus, the only equity is in the real estate, and that equity exists simply by virtue of increased real estate values. There was no testimony that Plaintiff personally painted the buildings, installed the plumbing, or otherwise contributed to the improvement of the real estate. Rather, she merely worked at the company that was located on the real estate and, at best, oversaw improvements that were paid for by the company.

Plaintiff submitted several personal checks that she claims demonstrate an “investment” in the company. *See Exhibit 5 (App. 101)* There are no documents evidencing such “investment,” such as promissory notes, stock certificates, or even receipts, and the memo section on those checks does not indicate that an investment was being made. Furthermore, most of the checks are for small, unrounded amounts that are not consistent with an investment. For example, checks in amounts such as \$214 and \$63.60 are more consistent with Plaintiff making a payment for which she was later reimbursed or Plaintiff repaying personal charges incurred on a company credit card. There are a couple larger charges, but they can easily be explained in a new trial.

There was no dispute that Defendant worked at the company for most of her life, beginning when she was in the 4<sup>th</sup> grade. *Tr. 131. See also App 45, page 74* There was also no dispute that Defendant acquired the real estate and the ownership of the corporation from her grandmother. *Tr. 13.* There was a suggestion that there was something improper about that transaction, but two things should be noted. First, Plaintiff was fully aware of and, in fact, participated in coordinating that transaction. *See Findings, ¶ 9, App 82* Second, Plaintiff's own witness (her son, Defendant Patricia Peterson's brother) testified that the transfer was done in order to allow Obelyn Peterson to receive Medical Assistance if she had to go into a nursing home. *Tr. 123* (As an aside, that type of estate planning was customary at the time. The laws have subsequently been changed, but at the time it was common for older people to convey assets in that manner. *See Minn Stat. § 514 981* )

At some point, there was a discussion about placing the assets in question into a family trust instead of having them owned by Defendant. *Findings, ¶ 11, App 83.* The only written evidence of that proposal is contained in a handwritten note that is allegedly in Defendant's handwriting. *App 111* The Appendix copy of that document does not accurately convey the exhibit. The original is a document prepared by Elizabeth Peterson which has a small handwritten note attached to it. The part that was allegedly written by Patricia Peterson is not dated or signed. Thus, it is not clear whether it preceded or followed the transaction between Defendant and her grandmother. What is undisputed, however, is that no such trust was ever established. Instead, Defendant Patricia Peterson became personally liable on certain obligations and acquired assets from her grandmother

that consisted of the RV dealership, the real estate under it, and a campground. *Findings* ¶ 13, *App.* 83. Patricia Peterson personally signed the promissory note for the real estate and personally held title to it. *Id.*, ¶ 13.

Plaintiff continued to work at the company after Defendant became the owner. At some point, Plaintiff and her husband had a falling out and got divorced. At that time, their primary asset was their homestead, although they apparently owned other real estate through false names. *Tr.* 37-40. Also at that time, Plaintiff worked and derived an income from the RV dealership, while the husband worked and derived an income from a campground which was also part of the conveyance to Defendant from her grandmother.

Plaintiff made much of the fact that the campground was conveyed to the husband in exchange for a release of any and all claims that he had against the dealership, and that was allegedly significant because he had a claim that was no better than the one asserted by Plaintiff. The unrefuted facts, however, are that Plaintiff and her husband reached a divorce agreement that she would get the homestead, he would get the campground, and Defendant would keep the RV dealership. *Tr.* 139-141. *See also Peterson Dissolution Decree, Finding XXIII and Conclusion 5 (App. 68 and 72).* While Defendant did not manage to submit much evidence at trial, she testified to that agreement, and that testimony was not refuted. *Tr.* 139-142.

A problem subsequently developed between Plaintiff and Defendant Patricia Peterson. Plaintiff wrote checks without sufficient funds and Defendant was advised by her bank that Plaintiff was “kiting.” *Tr.* 131; *App.* 77. Defendant terminated Plaintiff’s

position as an officer, and that led to Plaintiff's removal from the company. *See Complaint, ¶ 17, App. 3*

The record is also important for what is not in it. There was no evidence that it was ever intended that Patricia Peterson would ever convey the property to Elizabeth Peterson. In fact, the testimony was the opposite in that Patricia Peterson and her brother were intended to have the property after Elizabeth's death. *See Findings, ¶ 11, App. 83* Similarly, there was no evidence that Elizabeth received ongoing rent or other payments from the property. Rather, she received a place to work, just as she had when Obelyn Peterson invested in the real estate originally.

**B. The Litigation**

The lawsuit was commenced in Hennepin County, even though the real estate is located in Anoka County. Defendants submitted a Demand for Change of Venue as of Right. *App. 17-19*. Plaintiff challenged the transfer and asserted certain minimum contacts with Hennepin County. *App. 20-23*. The District Court determined that Defendant had not shown that she would be prejudiced by proceeding in Hennepin County and denied the change of venue. *App. 24*.

Defendant was initially represented by the firm of Gray Plant Mooty. In that regard, she twice prepared for trial, only to have the trial date changed for reasons outside of her control. *App. 26-39*. The proceedings dragged on and Defendant fell behind in paying her attorneys. *App. 91*. Defendants' attorneys withdrew in September of 2005. *App. 80*.

Defendant Patricia Peterson has been diagnosed as bi-polar. *App. 91* When her attorneys withdrew, she became somewhat depressed about her prospects. *Id.* Furthermore, at the time, she lacked the funds to retain new counsel and, indeed, if she had such funds she would have never lost her original counsel. *Id.* In November of 2005, she was in a position to retain an attorney, but, given the short notice and the upcoming holidays, was not successful. *Id.* The week prior to trial, she asked for a continuance. Because the judge was on vacation, that request could not be considered until the scheduled trial date. *Id.* She renewed that request, but it was denied. *Tr 16.*

At trial, Plaintiff specifically testified that it was always understood that she had an interest in the real estate and other property. In an apparent attempt to preempt any evidence about the fraud she had committed on her creditors, Plaintiff provided testimony suggesting that she had never lied under oath, but that her judgment creditor had simply asked the wrong questions. The questions and answers at trial were as follows:

Q. [By Mr. Lawson] Now also, you were asked by the judgment creditor, Ms. McGregor, who held the large judgment on what we call post-judgment discovery, you were asked in a deposition after the judgment was already entered, by her attorney, do you have any interest in Holiday Recreational Industries or do you claim any interest, and you said no; is that correct?

A. Right. And Jim told me to say no, and then also the attorney said you don't have the legal ownership.

Q. Correct. And in fact, that was an accurate statement; correct?

A. Yes.

Q. You did not have any legal ownership in that property?

A. No. And they didn't ask the intent, so –

*Tr 100-101.* By this testimony, she somehow seemed to suggest that she was being honest when she said she had no “ownership” and that her unrecorded, secret interest did not need to be disclosed in response to that question. In fact, under oath she has previously given the following testimony:

Q. [By the attorney for the judgment creditor] To your personal knowledge are there any persons that have an ownership interest in Holiday Recreational Industries?

A. That I'm not sure of. I really don't have anything to do with that.

Q. You're not aware of any agreements among the family members to divide the profits or otherwise distribute compensation in addition to the salaries or commissions that either you or your husband earn?

A. Well, I am aware that there isn't any comp – additional compensation or profits or anything paid to either myself or Jim.

Q. Okay. No compensation has been paid. Are you aware of any –

A. No.

Q. – Agreements to pay any additional compensation?

A. No.

Q. Or agreements to divide profits?

A. No.

Q. Or share profits?

A. No.

*See Deposition Transcript in McGregor v. Peterson, App 41, ¶ 17, line 13 – ¶ 18, line 8*

In short, she denied every aspect of the secret understanding that she now claims.

This process was repeated when her deposition was taken in connection with her dissolution. In that deposition, the following exchange occurred:

Q. [By her husband's attorney] And it's true that you and Mr. Peterson had no ownership interest in that at all?

A. Absolutely.

*App 44, Page 18, Line 13-15*

She also executed an Affidavit in her divorce proceeding, which was submitted as an exhibit to the Harmoning Affidavit in this action, in which she was more specific. "Jim [her ex-husband] was and is aware that Obelyn was the only owner of the campground and the RV business, and neither was held 'in trust'." *App 55*. Ultimately the fact that Elizabeth Peterson has repeatedly made statements under oath that are directly contrary to the claims in this case was apparently of no concern to the District Court, as it held that such conduct would create a cause of action for the defrauded parties, but was not relevant to Plaintiff's claim for equitable relief. *App. 96*.

## ARGUMENT

The majority of the arguments involve questions of law. As a result, this Court gives no deference to the conclusions reached below. *See Frost Benco Elec. Ass'n. v Minnesota Public Utilities Comm'n.*, 358 N.W.2d 639, 642 (Minn. 1984). Furthermore, whether evidence fairly establishes an alleged fact is a question of law. *See Rautio v International Harvester Co.*, 231 N.W.2d 214, 216 (Minn. 1931). As a matter of law, Defendants are entitled to a reversal.

1. **A Hennepin County Court Has No Jurisdiction to Order the Transfer of Real Estate Located in Anoka County.**

Minnesota Statute § 542.02 provides:

Actions for the recovery of real estate . . . shall be tried in the county where such real estate or some part thereof is situated, subject to the power of the court to change the place of trial in the cases specified in § 542.11, Clauses (1), (3), and (4). If the county designated in the complaint is not the proper county, the court therein shall have no jurisdiction of the action.

*See Minn. Stat § 542 02 (emphasis added). App 116.* Defendants made a demand for change of venue as of right and provided an affidavit stating, among other things, that the real estate was in Anoka County. That demand was denied.

In Minnesota, venue is generally not jurisdictional, so proceeding in the incorrect county is not fatal if no objection to venue is raised. The real estate venue provision is different, however, in that it expressly provides that its provisions are jurisdictional. Furthermore, even though the demand was stated below in terms of “venue,” claims of lack of subject matter jurisdiction can be made for the first time on appeal. *See McCormick v. Hoffert*, 243 N.W.2d 392, 393 (1932).

If the action had been commenced in Anoka County, that Court could theoretically have transferred the action to a different county based upon issues such as convenience of witnesses and interests of justice. *See Minn. Stat § 542.11, App 118* Minn. Stat. § 542.10 is explicit, however, that Minn. Stat. § 542.11 cannot be used as a basis to deny a change of venue. Minn. Stat. § 542.10 specifically states: “where a demand for change of the place of trial is made as herein provided the action shall not for any of the reasons specified in Section 542.11 be retained for trial in the county where begun, but can be tried therein only upon removal thereto from the proper county in the cases provided by law.” In other words, a court in which venue is proper can transfer the action, but a court in which venue is not proper cannot refuse to transfer the action based upon the considerations in Minn. Stat. § 542.11.

There is some old case law that tries to make a distinction for cases where the claim is “transitory.” Even if such a distinction exists, the issue in this case was not transitory. There is no allegation that there was a contract between Plaintiff and Defendant, and that is because such a claim would fail in light of the Statute of frauds and other issues. Similarly, there is no claim that the transaction between Patricia and Obelyn Peterson was fraudulent. In fact, there is no identifiable legal claim whatsoever. Rather, Plaintiff merely asserts some sort of vague equitable right to the real estate by virtue of her long association with it. That her claim is not transitory is best proved by the fact that she claims the property was always intended for her – even before the transfer to Patricia Peterson. Any interpretation that excludes this proceeding from an “action for the

recovery of real estate” would be to render that phrase and that statute completely meaningless.

2. **The District Court Had No Authority to Deny the Demand of Change of Venue as of Right Under the General Venue Statute.**

In addition to ignoring the real estate venue statute, the District Court misapplied the general venue provision. Minnesota Statute § 542.10 is called: “Change of Venue as of Right: Demand.” Unlike federal court proceedings, under specified circumstances, a defendant in state court does not need to make a motion to change venue. Rather, it is automatic. The exception is where it is subsequently determined that the cause of action or some part thereof arose in the county originally chosen. Plaintiff failed to articulate anything that satisfied that standard.

Plaintiff listed a series of contacts that might satisfy a minimum contacts analysis for personal jurisdiction purposes, but failed to articulate any elements of any cause of action that occurred in Hennepin County. *App. 22*. Those contacts, which are in an affidavit from Plaintiff’s attorney and not Plaintiff, consist of various “conversations” and “discussions,” but nothing of substance. Plaintiff’s underlying claim, and the theory apparently accepted by the District Court, was that she worked for the business located on the property in Anoka County and that it was always understood that she would have some sort of continuing interest in it. In addition, she made claims for lifetime employment and for various alleged unreimbursed expenses. None of her claims involved an actual element that occurred in Hennepin County. If the venue statute is to have any meaning whatsoever, it must be enforced.

At one time, venue disputes were sometimes addressed through extraordinary writs to the appellate courts. The current rules and statute provide, however, that extraordinary writs are only to be used to compel an action that is not being taken and are not to be used in circumstances where the issue is subject to appeal. *See Minn. R. Civ. P. Rule 120, Advisory Committee Note and Minn. Stat. 586.01.* In this case, the demand for change of venue was duly filed. The fact that an extraordinary writ was not sought should not be deemed to be a waiver.

**3. A Party Seeking to Invoke Equity Jurisdiction Must Have Clean Hands.**

The District Court found that Plaintiff engaged in a long campaign to defraud a judgment creditor. *App. 82, ¶ 6.* Placing assets beyond the reach of a creditor is only the first part of the fraud. The fraud becomes complete when the defrauding party recovers the assets under circumstances where the defrauded creditor no longer has a claim against them. Even assuming Plaintiff's version of the facts are true, the District Court was a necessary conspirator and provided its jurisdiction in order to complete the fraud.

Plaintiff claims that the property was always intended for her and that she transferred her own money into the business at different times. In prior legal proceedings, however, she claimed to have no interest whatsoever. Plaintiff's explanation of her prior testimony should be rejected. If her current claim has any merit, she clearly lied under oath on several occasions. Equity should not allow her to take a new position.

Plaintiff's response was that Defendant Patricia Peterson somehow acted wrongfully and it would be inappropriate to allow her to retain the property. The facts, however, are clear that Patricia Peterson acquired the property from her grandmother, that

she did so at the request of various parties including her aunts and uncles, and that the reason was to allow her grandmother to go on Medical Assistance. Defendant Patricia Peterson did not defraud her mother or even breach any identified contract with her. Furthermore, Defendant Patricia Peterson did not defraud any creditors. In fact, the only harm to others is occurring because of the District Court's decision to exercise its jurisdiction. Specifically, Defendant Patricia Peterson is a personal obligor on various bank loans, but the District Court ripped those assets from her hands and deprived her of the ability to repay those loans.

Minnesota recognized the clean hands principle as early as 1883. *See Weed v Little Falls & D.R. Co.*, 31 Minn. 154, 16 N.W. 851 (1883). In that case, Plaintiffs were board members who negotiated oral side agreements that benefited them personally to the detriment of the other shareholders. When the plaintiffs tried to enforce the oral side agreements, the Supreme Court refused based upon the familiar principle that a party seeking equity must have clean hands.

Even if Patricia Peterson could somehow be accused of having acted wrongfully, the courts will not come to the aid of a wrongdoer who is seeking to perpetrate a fraud. *See Johnson v Freberg*, 228 N.W. 159 (1929). Because Patricia Peterson did nothing wrong, this case is even more compelling. There is nothing unjust about the transaction.

Minnesota has not addressed the issue in the recent past, but Iowa recently had a case that is virtually identical. In *Opperman v. M&I Dehy, Inc* 644 N.W.2d 1 (Iowa 2002), the Iowa Supreme Court was presented with a family member who had attempted to hide assets with other family members and then sought to recover them. The Court of

Appeals had permitted the claim, but the Iowa Supreme Court unequivocally reiterated the familiar clean hands rule and ordered the claim dismissed. In this case, Defendant Patricia Peterson was not even involved when the alleged fraud on creditors was occurring. She is blameless, and is being punished for no reason.

4. **Plaintiff Lacks Standing to Challenge the Transaction Transferring the Property to Defendant.**

A deed is presumptive evidence of the ownership of real estate. *See B.E. Construction, Inc v Hustad Development Corp*, 415 N.W.2d 330, 331 (Minn. App. 1987). A party challenging that ownership must present clear and convincing evidence to the contrary. *See Beasy v. Misco*, 210 N.W.2d 881 (1973). In this case, Defendant obtained ownership from her grandmother. If there was anything fraudulent about that transaction, it is her grandmother who must assert the claim. In that regard, her grandmother can obviously proceed through a guardian or conservator if she is incapable.

The fact of the matter, however, is that Defendant Patricia Peterson came into possession of the property through a completely legitimate transaction. The evidence that was submitted that indicated that the property had equity as of the time of transfer is irrelevant. As testified to by Plaintiff's witness, that was part of Obelyn's estate planning. The attempts to characterize that transaction as fraudulent in any way is inappropriate.

The District Court made findings regarding the equity in the property, but failed to find that anything was improper about the transaction. Furthermore, the District Court was not aware of the fact that Plaintiff had previously testified that Patricia Peterson assumed over \$1 million in total debt when she acquired the property. *App. 47, page 33*

Even if a finding could be made that the transfer to Patricia Peterson was fraudulent, the result would be that the real estate should be restored to Obelyn, the person who invested the money to buy the real estate that has now appreciated in value. The question then would be whether the grandmother would want the property transferred to her ex-daughter-in-law or to her family.

**5. The Claimed Right to the Property is Barred by the Statute of Frauds.**

The law has always been clear that a real estate transaction is not enforceable without a signed writing. *See Minn Stat §§ 513.03 and 513.04.* Plaintiff's case was based upon an unsigned, handwritten note that Plaintiff testified that she recognized as Defendant's handwriting. The document does not purport to be a contract or a conveyance, but is merely a note about the possibility of placing property into a family trust. The undisputed facts, however, establish that such a trust was never set up.

The handwritten note was apparently an integral part of Plaintiff's case. If a new trial is granted, that document will probably not even be admitted into evidence because it is hearsay, and none of the exceptions apply. The hearsay rule is designed to exclude out-of-court statements that can be misinterpreted or interpreted in different ways. In this case, the note merely establishes that at some point Patricia Peterson made notes about the possibility of a family trust. The fact of the matter, however, is that a family trust was not set up. Instead, the property was transferred to Patricia Peterson. Thus, an equally strong or stronger inference from the note is that Obelyn Peterson decided against a family trust.

It should also be noted that, based on Plaintiff's own testimony, the judgment against her should have already expired at the time of the transaction. Plaintiff testified

that the judgment resulted in the prior corporation filing bankruptcy in 1990. *Tr. 29* She also testified that the transfer to Patricia Peterson occurred in April, 2001. *Tr. 67*. Thus, given the fact that judgments expire after ten years, Plaintiff's entire explanation is suspect.

6. **A Constructive Trust is not a Remedy For a Defective Trust or an Unenforceable Oral Trust.**

The District Court, in essence, disregarded trust law completely. The creation of an express trust requires a signed writing. *Minn. Stat § 513.03. App 114*. "Constructive trust" was never intended to mean "oral trusts" or express trusts that were otherwise defective. *See Dietz v Dietz, 780 N.W.2d 281, 285 (1955)*. In fact, constructive trusts arise entirely outside of the express trust context. *See Harney v. Harney, 213 N.W. 38, 39 (1927)*. They are trusts that are imposed in unique circumstances where a clear injustice would otherwise occur. That does not describe the facts of this case.

A constructive trust exists when a person is under a legal or moral obligation to transfer property, but fails to do so. *See Wright v Wright, 311 N.W.2d 484, 485 (1981)*. There was no evidence whatsoever that it was ever intended that Patricia Peterson would transfer the property to Elizabeth Peterson, as the claim was that she would hold it in trust for her. Because she had no such obligation, the elements for a constructive trust do not exist.

7. **A Constructive Trust Cannot be Used to Compel a Conveyance of Title.**

A constructive trust does not result in the conveyance of the real estate. As this Court has stated: "The establishment of a constructive trust does not set aside the title to the property but instead proceeds on the theory that, even though legal title rests in the

grantee of the deed, equity will declare that such title is held in trust for someone else to whom it rightfully belongs.” See *In re Vittorio*, 546 N.W.2d 751, 751 (1996). See also *Freundschuh v Freundschuh*, 559 N.W.2d 706, 711 (Minn. App 1997).

If Plaintiff could provide facts that entitled her to a constructive trust, and was allowed to invoke the Court’s equity jurisdiction, that would, at most, provide her with rights in the property. Ordering the transfer of the property eliminates any “trust” that might otherwise exist. Thus, the court purported to impose a constructive trust, but obviously imposed no trust whatsoever.

**8. The Conveyance of Title Conflicts With Plaintiff’s Own Version of Events.**

The District Court’s Order is even more troubling because it is completely inconsistent with the story Plaintiff provided as a justification for the lawsuit. Plaintiff claimed that the property was to be held in trust for her benefit during her lifetime, but was to go to her children thereafter. See *Complaint* ¶ 11 (*App 3*), *Findings* ¶ 11 (*App 83*). That, however, was not what the Court ordered. Instead, the District Court completely divested Patricia Peterson of any interest in the property, and did nothing to alleviate the personal guarantees that she had executed in connection with the real and personal property.

If a Court was to believe Plaintiff and was to provide her with relief notwithstanding her unclean hands, the appropriate remedy would be some sort of life estate interest in a portion of the proceeds from the property. Plaintiff’s claim is that Patricia Peterson was holding the property in trust for the entire family. That claim is doubtful given that Plaintiff made no objection to the fact that Patricia Peterson was

deriving benefits from the property from the time it was transferred to her until the time Plaintiff was terminated by the company. Thus, by her own actions, Plaintiff cannot deny that Plaintiff was previously receiving the exclusive benefits relating to the property.

Furthermore, by Elizabeth's own testimony, the property was to go to her heirs. Thus, by virtue of her testimony and her actions, the most that a Court could reasonably award her would be a part interest in the net rent for the real estate (fair market value rent minus debt service) and a part interest in the proceeds from the company, and, in both cases, continuing only during her lifetime.

Plaintiff has thus far managed to avoid the legal impediments to her claim by proceeding under the sometimes amorphous concept of "constructive trust." There are no clear rules regarding the parameters for such a remedy (other than the general rules of equity), but equity certainly should not provide Plaintiff with a remedy that exceeds her factual claims. If the Court determines that she is entitled to have the property held in a family trust in which she is a beneficiary while she is alive, there is no basis to provide a remedy that actually exceeds that testimony.

9. **Plaintiff Orally Waived Any Claim to the Property.**

Plaintiff made much of the fact that her ex-husband signed a document in which he released any and all claims as against the real estate or other property at issue in this litigation. Plaintiff's reasoning was that the ex-husband could not release his claims if he did not have any in the first place. That is completely contrary to established practice and principles of law. The fact that a party releases a claim does not, as a matter of law, mean that the party had a claim. Legal disputes are settled all the time by virtue of a party

agreeing not to attempt to make a claim. Thus, the release document is of virtually no value whatsoever.

Because that document was admitted into evidence, there was testimony about it. Specifically, an agreement was reached in connection with the divorce of James and Elizabeth Peterson pursuant to which Elizabeth would be granted the homestead, and, in exchange, the campground would be conveyed to James Peterson. *Tr. 139-142 See also App. 68 and 72* In other words, to help her mother, Plaintiff agreed to transfer the campground to her father. That Plaintiff orchestrated that transaction is clear from the release which includes a release of claims Jim Peterson might have against Elizabeth (*App. 113*) and the fact that it is expressly part of the Dissolution Settlement Agreement, which was incorporated into the divorce decree. *App. 68, ¶ XXXIII* (the dissolution agreement was not separately reproduced in the Appendix, but it is in the record as Exhibit W to the Christopher Harmoning Affidavit). As part of that transaction, both James and Elizabeth Peterson were supposed to execute documents in which they released any “claim” that they might have to the RV dealership and corresponding real estate. *Tr. 139-142* That testimony was not refuted. Yet, the District Court enforced the unwritten trust agreement, but not the oral release from Elizabeth.

**10. The Evidence Does Not Support the Judgment and/or Defendant is Entitled to a New Trial.**

The District Court has an interest in managing its docket and in wanting to bring matters to resolution. That being said, the public has a right to expect some compassion in the administration of the schedule. Patricia Peterson was previously represented, but her attorneys withdrew in September of 2005 because she did not have the money to

continue paying them. By the time she got money, she could not find anyone to take it on such short notice. The litigation had previously been continued as a result of a very similar request made by the Plaintiff, so it would seem reasonable that Defendants be given some additional time to obtain counsel.

New trials are authorized under Rule 59 by “irregularity in the proceedings . . . whereby the moving party is deprived of a fair trial.” More importantly, new trials are to be granted based upon “errors of law occurring at the trial, and objected to at the time or, if no objection need have been made pursuant to Rules 46 and 51, plainly assigned in the Notice of Motion.” Similarly, a new trial is warranted when “the verdict, decision, or report is not justified by the evidence, or is contrary to law.” *See Rule 59 01 of the Minnesota Rules of Civil Procedure.*

Patricia Peterson was not allowed to represent the corporation and was forced to represent herself. She lacked the ability to object to the admission of documents and, in fact, part way through trial, the District Court stopped even asking her if she had an objection to the admission of exhibits. *Tr. 51, 56, 64, 74, 76, etc.* With representation, she could better establish at least the following:

1. The checks made payable by Elizabeth Peterson to Holiday Recreational Industries were not for investments, but were for things like reimbursements of money advanced to Elizabeth Peterson.

2. The transaction between Patricia and Obelyn Peterson was not fraudulent as to any party and was completely consistent with standard estate planning practices at the time.

3. The handwritten note was hearsay, and too vague to be characterized as an admission or to fall under an exception

4. The fact that a family trust was discussed is irrelevant in light of the fact that one was not established.

5. A family trust could have been set up in a way to shield Elizabeth's interest from creditors, so the fact that one was not established speaks volumes regarding intent.

6. Based upon Elizabeth's testimony regarding the prior judgment, it appears that the time to enforce the judgment had already expired, so there was no reason not to transfer the assets into a family trust if that was what was intended.

7. Plaintiff and Patricia Peterson were still on good terms as of the time the campground was transferred to James Peterson. Compare Complaint ¶16 (*App. 3*) and the Release (*App 113*). The fact that Jim Peterson received the campground and Elizabeth Peterson did not receive the RV dealership at the same time is strong evidence against Plaintiff's claims.

Furthermore, a new trial is not dependent upon problems with the factual evidence. Rather, a new trial is warranted by errors of law. In this case, the errors of law are, in many instances, sufficient to allow this Court to simply reverse the judgment with instructions that the Complaint be dismissed with prejudice. Alternatively, the District Court could be reversed with instructions that the matter be transferred to Anoka County for any further proceedings.

## CONCLUSION

The District Court judgment must be reversed. Several of the grounds for reversal would also end the case. Alternatively, the District Court must be reversed and the property must be restored to Patricia Peterson pending a new trial. There is no basis in either the facts or the law for the result that occurred. Plaintiff personally undertook the risks of ownership and personally obligated herself on various loans, yet the District Court took it away based upon the claims of someone who has consistently lied in connection with legal proceedings. Justice demands that this Court rectify the situation.

### **GUST LAW FIRM**

Dated: April 19, 2006



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