

APPELLATE COURT NO.: A06 0421

STATE OF MINNESOTA
IN COURT OF APPEALS

Elizabeth Peterson,

Plaintiff/Respondent, District Court File: 27-CV-04 000813

vs.

Patricia Peterson, and
Holiday Recreational Industries, Inc.,Defendants/Appellants

APPELLANTS' REPLY BRIEF

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INTRODUCTION

Plaintiff/Respondent (generally referred to as "Plaintiff" herein) does not seriously contradict many of the legal arguments presented in Appellants' Brief. Furthermore, Plaintiff merely reiterates several arguments that have already been shown to be contrary to clearly established law. Finally, even the factual conclusions are suspect. For many reasons, the District Court must be reversed.

FACTS

Most of the underlying facts are not disputed, but the conclusions to be drawn from them are. Fundamentally, however, there is one factual theme that the Court must scrutinize. Plaintiff Elizabeth Peterson has tried to emphasize contributions she allegedly made to the business, but she has not accounted for what she received. For example, in 1994, long before Defendant Patricia Peterson's ownership, Elizabeth claims that she and her husband contributed \$22,000.00 to the business from the sale of real estate that was fraudulently being held in their neighbors' names. No reason for an "investment" has been identified. Rather, that transaction was, in all likelihood, simply a device to launder the money.

Ultimately, the business arrangement was typical of the schemes employed by people who are trying to hide assets from creditors. Assets are kept in the corporation's name to the extent possible. By not drawing a regular salary, wage garnishment is virtually impossible. Such debtors rarely use personal checking accounts, and most transactions are done in cash. This case is no different. In short, there is no reason to

believe that Elizabeth Peterson put time and money into the business, but did not reap any rewards.

DISCUSSION

Defendants will not reiterate all of the arguments in their initial brief. Rather, the focus will be on the items raised in the Response Brief.

1. **Minnesota Statute § 542.11 Deals With Changing Venue, Not the Refusal to Change Venue.**

Plaintiff asserts that: “Appellants’ [venue] argument can be dispensed with quickly by a simple reading of the entire statute,” but Plaintiff then fails to read the entire statute. Minn. Stat. § 542.11 allows a court to change venue under certain circumstances. That statute does not allow a court to use those considerations as a basis to deny a change of venue as of right.

Minn. Stat. § 542.10 is the statute containing the change of venue as of right, and it specifically states that the provisions of § 542.11 cannot be used to deny a change of venue. That statute was quoted and explained in Appellants’ Brief, yet Plaintiff simply ignores it in the hope that it will go away.

A change of venue as of right can only be denied when an element of a cause of action arose in the county where the action was filed. Plaintiff Elizabeth Peterson has not identified any elements of any cause of action that occurred in Hennepin County. The things cited by the District Court might satisfy a minimum contacts analysis, but they do not amount to elements of a cause of action. The District Court made a clear error of law in denying a Demand for Change of Venue as of Right.

2. Hennepin County had no Jurisdiction to Order the Recovery of Property.

This case is even more compelling, however, because there is a separate venue provision that provides that actions for the recovery of real estate must be brought in the county in which the real estate is located. Plaintiff cites two cases for the proposition that an action that is “transitory” may not be subject to Minn. Stat. § 542.02, and transitory apparently means it is a dispute between persons. The most noteworthy thing about those cases is that venue was changed for the benefit of the defendant. In other words, the policy behind the general venue statute were sufficiently strong that the court determined that venue should be changed to the county where the defendant was located, notwithstanding the fact that one of the issues in the cases related to the ownership of real estate in a different county. Thus, the general venue provision “trumped” the real estate provision when necessary to protect the defendant. Here, both provisions should have work in concert to assure an Anoka venue.

More importantly, the thrust of Plaintiff’s claims were not transitory, and she should not be allowed to frustrate the venue statute by adding transitory claims. Plaintiff claimed that her interest in the property arose from a long history and understanding. She cited evidence that allegedly showed Patricia was aware of her claims, but the basis of the claims was not dependent upon the specific dealings between the parties. If, for example, Obelyn Peterson had died before transferring the property to Patricia, Plaintiff would be making the same claim against the property. Thus, her claim to the property is not dependent upon an alleged agreement with Patricia and, as a result, her claims cannot fairly be characterized as transitory.

3. **The District Court Should Not Have Exercised its Equity Jurisdiction to Help a Party With Unclean Hands.**

Plaintiff argues that both parties' hands are equally unclean, but, on the same page, then attempts to distinguish *Johnson v. Freberg*, 228 N.W. 159 (1929) based on the fact that it involved a case where both parties were guilty of unclean hands. *Johnson* stands for the proposition that equity will not assist a wrongdoer – even if the wrongdoer is seeking relief from another wrongdoer. Thus, *Johnson* would seem to close the doors on any equity claim in a matter of this type.

The fact of the matter, however, is that Patricia Peterson does not have unclean hands. She obtained the property from her grandmother, and there was no testimony that she did anything to help Elizabeth Peterson defraud her creditors. In fact, the evidence available suggests that the judgment against Elizabeth Peterson had expired by the time Patricia Peterson took the property.

Defendants do not dispute the fact that the unclean hands doctrine requires that there must be some nexus between the unclean hands and the relief sought from a court of equity. Thus, for example, a party who is convicted of a crime cannot, thereafter and for the rest of his life, be barred from seeking equity in transactions unrelated to the acts resulting in the conviction. In this case, however, the Order of the District Court actually completes the fraud perpetrated by Elizabeth Peterson. That is the reason for the maxim. A Court of Equity should not invoke its powers in order to cause that result.

4. **Plaintiff Does Not Have Standing to Challenge the Conveyance from Obelyn Peterson to Patricia Peterson.**

Plaintiff Peterson does have standing to claim a breach of an alleged oral contract or trust agreement. Those claims will fail for, among other reasons, the statute of frauds, but at least she is the party who has standing to make them. Conversely, the entire case, including the arguments on appeal, seems to be premised on some sort of unjust enrichment in connection with the transaction between Obelyn Peterson and Patricia Peterson. The only party with a claim that Patricia Peterson was somehow unjustly enriched by that transaction would be Obelyn Peterson.

Plaintiff cannot mix and match her claims and her standing. The District Court was fixated on the fact that there was allegedly net equity in the property at the time it was transferred to Patricia Peterson. That net equity would arguably be relevant if Obelyn was challenging the transaction, but it is not relevant to the claims being made in this case. Furthermore, an unjust enrichment claim could arguably be made if there was evidence that Patricia Peterson was supposed to transfer the property to Elizabeth, but Plaintiff's theory of the case is that Patricia was supposed to hold the property in a family trust.

5. **Plaintiff's Arguments to Avoid the Statute of Frauds are Unpersuasive.**

Plaintiff attempts to avoid the statute of frauds by claiming partial performance. That alleged partial performance consisted of two things. First, "Appellant Peterson [allegedly] consented to Plaintiff putting her own funds into HRI." See Respondent's Brief at 8. That reference apparently relates to the \$22,000.00 real estate proceeds that

were transferred by James and Elizabeth Peterson into HRI in 1994, long before Appellant Peterson owned the property. The other aspect of Elizabeth's alleged performance is the fact that, although she had rendered herself completely judgment-proof, she provided a personal guaranty for the comfort of the bank. The suggestion that Elizabeth Peterson actually put anything at risk in connection with the property is unfounded, because she had no attachable assets. Rather, the personal guaranty was, in all likelihood, required by the bank as a means of protection in light of the fact that Elizabeth Peterson might have the ability to affect the disposition of assets. Elizabeth Peterson's creditworthiness was, therefore, irrelevant, and she risked nothing by obligating herself on the loan. Conversely, signing the personal guaranty allowed the business to continue and, in turn provided her with a job.

Ultimately, Plaintiff's claims focus on oral contracts or trust agreements. Those claims are barred by the clear statutory language. Interests in real estate must be reflected in signed writings. The policy behind that requirement is demonstrated by this case. Plaintiff has failed to provide any rebuttal and, as a result, her claims must fail.

6. The Equities Clearly Favor Patricia Peterson.

Plaintiff makes repeated references to "unjust enrichment," and the suggestion that equity should not permit Patricia Peterson to own the property transferred to her by her grandmother. In fact, even if a court of equity could take jurisdiction over a dispute of this type, the equities are clearly against the outcome ordered by the District Court.

The equity considerations with respect to Plaintiff Elizabeth Peterson are as follows:

1. All of her actions were, by her own testimony, taken in an attempt to defraud a judgment creditor.
2. Her alleged financial investment in the company was a payment of \$22,000.00, jointly with her ex-husband, and miscellaneous checks that look more like reimbursements than investments. She has not, however, accounted for her income during all of the years that she was involved with Holiday Recreational Industries. Thus, there is every reason to believe that those transactions were done simply to avoid creditors, but that the funds were diverted back to her by way of cash compensation or otherwise.
3. By her own testimony, the parties never intended that the property would be transferred to her.

Conversely, with respect to Patricia Peterson, the equity considerations are as follows:

1. She did not act to defraud any creditors, although she is now in default on loans and lacks the control necessary to cure those defaults.
2. She personally obligated herself on the loans. Plaintiff Peterson provided a personal guaranty and claims that such an action proves her entitlement, but she fails to explain why Patricia Peterson would personally obligate herself on the loans under the same circumstances and yet be left with nothing.
3. Appellant Peterson worked at the dealership starting in fourth grade. With the exception of time in college, she had spent almost as much time at the dealership as Plaintiff Peterson.

If a Court is going to invoke its equity jurisdiction, it cannot reasonably reach the outcome ordered by the District Court.

7. **The District Court's Remedy was Improper.**

At best, Plaintiff's testimony was that she was entitled to some sort of continuing interest in the property during her life. There was absolutely no testimony that Patricia Peterson was supposed to convey the property to Elizabeth Peterson at any time. Furthermore, the acts of the parties demonstrate that Elizabeth Peterson was not receiving any ongoing income relating to the property itself, but was merely provided with a place to earn a living. Even if a constructive trust was appropriate, the remedy is not a transfer of title. Defendants already cited several cases for that proposition, and they have not been refuted. Thus, even if Plaintiff could make it past the numerous legal hurdles to her claim, her remedy would be substantially less than what was ordered.

8. **The Evidence Does Not Justify the Findings of Fact and Conclusions of Law and/or Appellant is Entitled to a New Trial.**

This Court has ample grounds on which to reverse the District Court and dismiss the underlying claims with prejudice. Thus, a new trial is a matter of last resort. Most of the arguments do not need additional evidentiary support, and a new trial would not substantially enhance the legal arguments already presented. That being said, a review of the evidence indicates that the District Court made erroneous findings and those findings should either be reversed or the District Court should be given an opportunity to consider the matter again.

At the District Court level, Plaintiff waved two pieces of evidence as proving her claim. First, was a handwritten note in which Patricia Peterson wrote words about the possibility of setting up a family trust to hold various assets, and that note was apparently made during conversations with an attorney. Second, a campground was conveyed to James Peterson and, as part of that transaction, he signed a release of any claims as against the RV dealership. In reality, neither piece of evidence is helpful to Plaintiff's case.

In Appellants' Brief, the handwritten note was shown to reflect the fact that a trust was apparently discussed, but a decision was obviously made not to pursue it. Thus, the handwritten note does not support the conclusion that the parties intended a trust. Rather, it supports the conclusion that the parties did not intend a trust because they specifically considered it and decided against it. Plaintiff apparently concedes that point, as the handwritten note did not find its way into Respondent's Brief.

The Release provided by James Peterson also does not provide the conclusive proof that Plaintiff claims. Plaintiff's position is that the RV dealership and the campground were held in the name of Obelyn Peterson and then Patricia Peterson, but that Elizabeth and James Peterson were the secret owners. She then suggests that because James received the campground, she was entitled to the RV dealership. Yet, she was fully aware of the transfer of the campground to James Peterson. The question, then, is why didn't Elizabeth Peterson have the RV dealership transferred to her at the same time? James and Elizabeth Peterson were judgment debtors on the same judgment, so the fact that he took title to the campground makes it clear that the judgment must have expired.

Thus, the fact that the campground was transferred to James Peterson and the RV dealership was not transferred to Elizabeth Peterson at the same time is actually the strongest evidence that Elizabeth Peterson's version of events is false. If that property was supposed to be transferred to her, it would have happened when the campground was transferred.

Furthermore, if Elizabeth Peterson was the secret owner of the campground, why did she not sue James Peterson to recover it? The answer was provided in testimony, albeit briefly. The marital dissolution documents provided that Elizabeth Peterson received the homestead and expressly acknowledged that James Peterson had been given the campground. In other words, Patricia Peterson conveyed the campground to James Peterson for the benefit of Elizabeth Peterson. This lawsuit is the thanks Patricia Peterson gets for helping her mother.

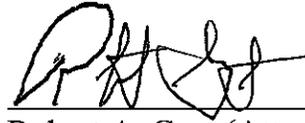
CONCLUSION

Underlying all of the legal arguments is the essential fact that Patricia Peterson took title to the property pursuant to a valid transaction, obligated herself on several loans related to the real estate and other property, obtained the necessary licensing and bonding necessary to operate an RV dealership, and was otherwise responsible for the business. With the stroke of a pen, the District Court dispossessed her of everything. Furthermore, it did so without regard for the fact that she continued to have personal guaranties, that she was responsible for the taxes and other obligations of the business, and that her life and other affairs were tied up in the company. The District Court claimed to be invoking

its equity jurisdiction, but the result was about as inequitable as possible. The errors of law and fact must be reversed and Patricia Peterson must be restored to possession.

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