

No. A05-2569

STATE OF MINNESOTA

IN COURT OF APPEALS

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Kelly Danielson,

Appellant,

vs.

Shane Danielson,

Respondent.

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**APPELLANT'S REPLY BRIEF**

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## ARGUMENT

Respondent's arguments in support of the trial court decision are unpersuasive.

### **I. Parol Evidence Was Improperly Admitted.**

#### **A. Standard of Review.**

Respondent has cited the incorrect standard of review for the parol evidence rule.

While it is true that procedural and evidentiary rulings are within the district court's discretion, 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) (citing Anchor Cas. Co. v. Bird Island Produce, Inc., 82 N.W.2d 48, 54 (Minn. 1957) (stating the parol evidence rule is a matter of substantive law, not a rule of evidence)).

#### **B. The trial court erred as a matter of law in allowing parol evidence.**

Citing In Re Estate of Vittorio, 546 N.W.2d 751, 755 (Minn. App. 1996),

Respondent contends that parol evidence is admissible to show the establishment of a constructive trust. While this general principle may be true, the application of the parol evidence rule here altered the terms of the deed, which disposed of Respondent's brother's interest in the farmstead and conveyed an undivided ½ interest to Appellant.

Because the terms of a deed cannot be altered by parol evidence<sup>1</sup>, the trial court erred as a matter of law.

### **II. A Constructive Trust Cannot Be Awarded In Favor Of A Nonparty.**

No Minnesota Court has ever, in a published decision, imposed a constructive trust in favor of a nonparty. In fact, the weight of the cases suggests that such action is

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<sup>1</sup> City of St. Paul v. Dahlby, 123 N.W.2d 586, 592 (Minn. 1963).

improper as a matter of law. See, Sammons v. Sammons, 642 N.W.2d 450 (Minn. App. 2002). In that case, the Court held that a constructive trust could not be imposed against a nonparty. Logically, if the Court cannot impose a trust against a nonparty, it cannot impose a trust in favor of a nonparty.

Respondent goes on to contend that a trust is proper in this instance because “Respondent and his brother are then left to work out a fair resolution of the brother’s claim.” Resp. Brief, p. 7. This is precisely the problem. Respondent, his brother, and the bank—which holds a legal interest in the farmstead through a mortgage—are all left to “work [it] out.”

While “nothing the trial court did negatively affected any interest in the brother”, it did negatively affect other parties with interests in the real estate. After Respondent and his brother conveyed their interest to Respondent and Appellant as joint tenants, the parties gave a security interest in the farm to Admiral Mortgage. T-II, pp. 41-42. This loan was refinanced several times, the last of which was in 2003. T-I, p. 95. No notice was ever given to the bank of the alleged “trust.” Therefore, as of 2003, the bank had a mortgage on the farmstead secured by a note signed by Appellant and Respondent. In 2005, with the entry of the Judgment and Decree, the district court embezzled one-half of the bank’s security interest in the farmstead by finding the parties held a one-half interest in trust for Respondent’s brother.

Put another way, the bank was the first party in interest in this matter because it held a security interest in the farmstead. Yet, the bank, a nonparty to this suit and unrepresented at trial, has now been stripped of its security interest with the imposition of

a constructive trust. Should Respondent default on his mortgage note, the bank cannot sell the farmstead at a foreclosure sale because of the newly-created, unsecured interest held for Respondent's brother. Likewise, Respondent's brother has no legal responsibility for the mortgage note, despite the trial court's finding that he is entitled to one-half of the farmstead. Therefore, the constructive trust should not have been created in favor of one nonparty (Respondent's brother) and against another nonparty (the bank).

**III. The Trial Court's Findings Of Fact Holding One-Half of the Farmstead in Trust for Respondent's Brother Were Clearly Erroneous.**

While a constructive trust arises "whenever a legal title to property is obtained through fraud, oppression, duress, undue influence, force, crime, or similar means, or by taking improper advantage of a confidential or fiduciary relationship"<sup>2</sup>, Respondent fails to recognize that none of these elements is present in this case.

Although Respondent recognizes that no fraud or other such basis is present, he erroneously pins application of a constructive trust on the suggestion that there was a confidential and fiduciary relationship between Appellant and Respondent's brother. In fact, no such relationship existed at the time title was conveyed. Appellant was not married to Respondent and, certainly, stood in no fiduciary relationship with Respondent's brother. Thus, the constructive trust imposed here did not even meet the basic elements necessary for imposition of such a trust, and was clearly erroneous.

Further, the trial court engaged in impermissible speculation in the extent of the trust. Appellant testified that the parties' intention was to give Respondent's brother

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<sup>2</sup> Wright v. Wright, 311 N.W.2d 484, 485 (Minn. 1984).

10 acres for him to build on. T-I, pp. 93-94. Respondent testified it was the parties' intention to give his brother "some acreage, build him a house, then give him – I believe it was \$30,000." T-II, p. 43. Nowhere did parties testify that it was ½ to be preserved to Respondent's brother; it could have been 3/8; it could have been 1/3; it could have been 1/6. Carving out one-half of the farmstead for Respondent's brother without a factual basis is clearly erroneous.

In addition, imposition of the constructive trust in this case effectively unjustly enriched Respondent and deprived Appellant of her interest in the property. It is a blatant misstatement of the facts to suggest that Appellant did not advance "consideration" for her interest in the farmstead. Appellant's initial consideration was her good credit to obtain the ostrich farm loan; her continued consideration was working full-time and contributing both marital and non-marital money toward the note securing the mortgage, paying property taxes and making many capital improvements to the farmstead. Clearly, she would not have been unjustly enriched by an award of one-half of the value of the farmstead. In contrast, Respondent's brother contributed nothing towards the farm during this time—he paid no property taxes, made no improvements, and did not contribute a penny towards this property.

Moreover, Respondent's argument that a constructive trust is necessary because of equity considerations is fallacious for two reasons. First, before the deed was signed, the attorney who prepared the deed discussed its effect with Appellant, Respondent and his brother. T-I, pp. 11, 13. Rather than signing one deed which would have reserved an interest in favor of Respondent's brother, they chose to sign the deed transferring the

entire property to Appellant and Respondent. Steinle depo., pp. 12-13. Certainly, Respondent's brother could not thereafter argue that he did not intend to convey away his interest.

Second, as noted by the trial court, Respondent's brother already received his share of substantial mortgage proceeds. Finding of Fact # 26, p. 10.<sup>3</sup> If he is now permitted to have an additional one-half interest in the farmstead, it would constitute a "double dip." Certainly a conclusion that gives Respondent's brother more than he ever would have had—a one-half interest plus the mortgage proceeds, without being liable for the security interest—is a conclusion that equity cannot allow.

Finally, Respondent's argument that he and his brother did not intend to "gift" Appellant an interest in the farmstead is unpersuasive. Any testimony of the transferors' alleged "intent" must be seen in the context it was offered – years after the fact, when the marriage failed. Olsen v. Olsen, 552 N.W.2d 290, 294 (Minn. App. 1996), *affirmed*, 562 N.W.2d 797 (Minn. May 8, 1997). The fact is that Appellant and Respondent were not married at the time of the transfer and the parties, had they truly intended to reserve any part of the farm for Respondent's brother, could easily have done so simply by leaving his name on the title. The fact that such action was not taken indicates an intent to

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<sup>3</sup> Finding of Fact #26 states as follows:

**Re-Financings.** That following the original ostrich farm loan, the parties undertook subsequent loan refinancings, the last of which was on September 15, 2003, subsequent to which the principal mortgage balance was reduced by \$4,265.21 with monthly payments of principal, yielding a current mortgage encumbrance of \$79,856.10. All of the mortgage proceeds were spend by Husband and Wife. Mark Danielson received his portion of such proceeds.

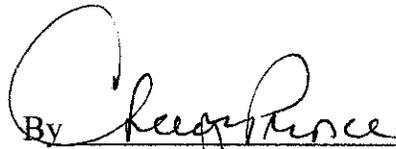
transfer the entire property to Appellant and Respondent. The Trial Court's imposition of a constructive trust in favor of Respondent's brother was clearly erroneous.

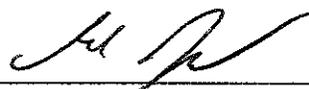
### CONCLUSION

For the reasons stated herein and in Appellant's Brief, Appellant respectfully requests that she be granted the relief sought.

Dated: April 10, 2006.

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STATE OF MINNESOTA

IN COURT OF APPEALS

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Kelly Danielson,

Appellant,

**CERTIFICATION OF  
BRIEF LENGTH**

vs.

Shane Danielson,

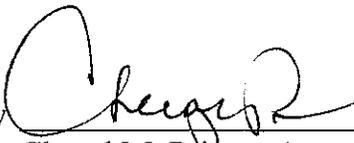
Respondent.

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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 1,509 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: April 10, 2006.

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