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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0454**

Brad Kyle,
Appellant,

vs.

Dennis Tuttle,
Respondent.

**Filed December 10, 2012
Affirmed
Johnson, Chief Judge**

Wright County District Court
File No. 86-CV-09-1970

David M. Cox, Myles A. Schneider & Associates, Ltd., Elk River, Minnesota (for appellant)

Dennis Tuttle, Monticello, Minnesota (pro se respondent)

Considered and decided by Johnson, Chief Judge; Bjorkman, Judge; and Crippen, Judge.*

*Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

JOHNSON, Chief Judge

Dennis Tuttle defrauded Brad Kyle of hundreds of thousands of dollars while acting as a broker for Kyle's buying and selling of collector automobiles. Kyle obtained a default judgment against Tuttle and then sought to impose a constructive trust on Tuttle's home, which Kyle alleged had been acquired with his funds. The district court denied relief on the ground that Kyle failed to sufficiently trace his funds to the purchase of the home. We affirm.

FACTS

Between August 2007 and August 2008, Kyle and Tuttle entered into a series of agreements by which Tuttle was to act as a broker for Kyle's trading of twelve restored antique automobiles. Kyle provided Tuttle with funds to purchase the vehicles by making wire transfers to Tuttle's bank account. But Tuttle failed to deliver at least seven vehicles for which Kyle made payment.

In January 2009, Kyle commenced this action against Tuttle. In September 2009, Kyle obtained a default judgment against Tuttle in the amount of approximately \$823,000. In July 2011, Kyle attempted to satisfy the judgment by a writ of execution, but it was returned unsatisfied.

In November 2011, Kyle moved for an order to establish a constructive trust on Tuttle's home and to direct the sheriff to sell the property at an execution sale for Kyle's benefit. Kyle acknowledged the statutory homestead exemption, *see* Minn. Stat. § 510.01 (2010), but argued that the exemption should not apply because Tuttle purchased the

home with funds that he had fraudulently obtained from Kyle. In February 2012, the district court denied Kyle's motion. The district court concluded that the homestead exemption does not apply to homes that have been purchased with wrongfully obtained funds. But the district court also concluded that Kyle had not sufficiently traced the funds that Tuttle used to purchase his home. Kyle appeals.

D E C I S I O N

A constructive trust is an equitable remedy that may be ordered if a party holds property with a duty to convey the property to its rightful owner “on the ground that he would be unjustly enriched if he were permitted to retain it.” *Thompson v. Nesheim*, 159 N.W.2d 910, 917 (Minn. 1968). A constructive trust “is not in its true sense a trust at all but merely a creation of equity designed to provide an unjust-enrichment, rectifying remedy.” *Id.* (citation and quotation omitted). The concept of a constructive trust is grounded in the right of property and allows a defrauded party to “assert equitable rights in the traceable product.” *Id.* at 916.

A. Scope of Review

We begin by addressing this court's scope of review in light of Kyle's requests for relief. Kyle first seeks reversal of the district court's ruling on the ground that a constructive trust is required. In the alternative, Kyle urges this court to reverse the district court's ruling and remand for additional findings on the ground that the district court's findings of fact are inadequate.

In a civil case tried without a jury, the district court must “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. If a district court fails to make required findings of fact, “the burden is on the parties to alert the court by a motion for amended finding[s] under Minn. R. Civ. P. 52.02.” *Frank v. Illinois Farmers Ins. Co.*, 336 N.W.2d 307, 311 (Minn. 1983). A motion for amended findings serves to either “eliminate the need for appellate review” or, “if appellate review is sought,” to “facilitate development of ‘critical aspects of the record.’” *Alpha Real Estate Co. v. Delta Dental Plan*, 664 N.W.2d 303, 309 (Minn. 2003) (discussing motion for new trial) (quoting *Sauter v. Wasemiller*, 389 N.W.2d 200, 201 (Minn. 1986)). The implication of *Frank* is that if a party fails to move for amended findings, the party forfeits the argument that the district court’s findings are incomplete and, thus, forfeits the appellate remedy of a remand for additional findings. See *Anderson v. Peterson’s N. Branch Mill, Inc.*, 503 N.W.2d 517, 518-19 (Minn. App. 1993) (declining to review adequacy of findings and conclusions of law because appellant did not move for amended findings); *Pacific Mut. Door Co. v. James*, 465 N.W.2d 696, 701 (Minn. App. 1991) (same); *Love v. Amsler*, 441 N.W.2d 555, 560 (Minn. App. 1989) (same), *review denied* (Minn. Aug. 15, 1989).

Kyle did not move for amended findings in the district court before taking this appeal. Accordingly, we will not review the adequacy of the district court’s findings. Rather, our review is limited to an inquiry into whether the evidence supports the district court’s findings of fact and whether the district court’s findings of fact support its conclusions of law. See *Frank*, 336 N.W.2d at 311.

B. Tracing

Kyle argues that the district court erred by concluding that he failed to sufficiently trace the funds that Tuttle used to purchase his home.

To impose a constructive trust, a district court must find both “property identified as belonging, in equity and conscience, to the plaintiff” and also a specific “property on which the trust can be fastened.” *Rock v. Hennepin Broadcasting Assoc. Inc.*, 359 N.W.2d 735, 739 (Minn. App. 1984). The party seeking a constructive trust must prove by clear and convincing evidence that a constructive trust is necessary to prevent unjust enrichment. *In re Estate of Eriksen*, 337 N.W.2d 671, 674 (Minn. 1983). We apply a clearly erroneous standard of review to a district court’s determination that a constructive trust should or should not be imposed. *Thompson*, 159 N.W.2d at 920; *Peterson v. Holiday Recreational Indus. Inc.*, 726 N.W.2d 499, 506 (Minn. App. 2007), *review denied* (Minn. Feb. 28, 2007).

Kyle’s motion for a constructive trust on Tuttle’s home is based on undisputed evidence that Kyle wired \$355,000 to Tuttle’s bank account on April 4, 2008. As the district court found, Kyle and Tuttle had agreed that Tuttle would use the funds to purchase a 1969 Pontiac Trans Am convertible, which Tuttle purportedly intended to sell to a Japanese buyer at a higher price. But Tuttle never delivered the vehicle to Kyle or to another buyer. In fact, the paperwork for the sale of the vehicle had been forged. On July 10, 2008, Tuttle wrote a check for approximately \$207,000 on the same bank account, which he used to make a cash purchase of a home. Kyle proved these facts by

introducing into evidence the April 2008 and July 2008 statements for Tuttle's bank account.

In a six-page order, the district court concluded that Kyle is not entitled to a constructive trust because he "has not sufficiently traced the funds fraudulently obtained from him by [Tuttle] and into the Property." The district court did not issue a separate memorandum, which makes the legal basis of its decision unclear. But the district court made findings of fact concerning other funds that were wired to Tuttle's bank account. Specifically, the district court identified deposits from three other persons in April 2008 totaling approximately \$17,000. The district court specifically noted that Kyle did not introduce Tuttle's bank statements for May or June 2008. Thus, the district court was limited in its ability to make findings concerning other deposits to and withdrawals from Tuttle's bank account.

On appeal, Kyle contends that he satisfied his burden of proof because he traced the funds "as thoroughly as possible." This contention is belied by the fact that Kyle did not introduce bank statements for May and June of 2008, which may have shown additional funds entering and leaving Tuttle's bank account. At oral argument, Kyle's counsel acknowledged this gap in the documentary evidence but did not offer an explanation that would support the contention that Kyle did all he could do to trace funds. The absence of evidence about a two-month interval between Kyle's transfer of funds and Tuttle's withdrawal of funds leaves open many possibilities, including the possibility that Tuttle defrauded one or more other persons in May or June. The evidence shows that approximately \$350,000 was deposited into Tuttle's bank account by persons other than

Kyle between April 5 and 30, 2008, and approximately \$260,000 was deposited by other persons between July 1 and 9, 2008. Kyle was required to prove his entitlement to a constructive trust by clear and convincing evidence. *See Eriksen*, 337 N.W.2d at 674. The district court did not clearly err by concluding that Kyle failed to satisfy his burden in light of the incomplete nature of his evidence.

To support his argument, Kyle relies on *American Railway Express Company v. Houle*, 169 Minn. 209, 210 N.W. 889 (1926), in which an employer obtained a constructive trust on the home of an employee who had embezzled funds from the employer over a four-year period. *Id.* at 210-11, 210 N.W. at 889. The employee commingled the embezzled funds with funds legitimately received from his employment and used the commingled funds to build a home. *Id.* The district court determined that it was appropriate to impose a constructive trust on the home in favor of the employer based on a finding that the employee had used commingled funds to acquire the home, and the supreme court affirmed. *Id.* at 211-13, 210 N.W. at 889-90. The present case, however, is different in important respects. Kyle failed to present a complete picture of Tuttle's financial transactions during the interval between Tuttle's fraud and his purchase of the home. The evidence in the record shows that Tuttle received funds from other sources in April and July of 2008, but the record is silent as to whether other persons also were defrauded in that time period. If Tuttle defrauded other persons, the funds Tuttle used to purchase the home may not rightfully belong entirely to Kyle. This is significant because a person is entitled to a constructive trust for his or her benefit only if he or she can prove that his or her funds were used to acquire a property and that other persons'

funds were not used. *See Rock*, 359 N.W.2d at 739 (“A constructive trust may be imposed only when there is some specific property identified as belonging, in equity and conscience, to the plaintiff.”). For these reasons, *Houle* is distinguishable.

Thus, the evidence supports the district court’s findings of fact, and the findings of fact support the district court’s conclusions of law. Accordingly, the district court did not clearly err by concluding that Kyle failed to trace the funds used by Tuttle in purchasing the home.

C. Burden-Shifting

Kyle also argues, in the alternative, that the district court erred by not shifting the burden of proof to Tuttle after Kyle introduced evidence that his funds were, or may have been, used in the purchase of Tuttle’s home.

“In an ordinary civil action the plaintiff has the burden of proving every essential element of his case.” *Wick v. Widdell*, 149 N.W.2d 20, 22 (Minn. 1967). But Kyle relies on *Petersen v. Swan*, 57 N.W.2d 842 (Minn. 1953), a case involving a constructive trust, in which the supreme court stated:

On whom does the burden rest of proving ownership of the funds used in purchasing the [property] involved? The general rule is that, where there is a wrongful commingling of trust funds with personal funds of the trustee, the entire mass will be treated as trust funds except insofar as the trustee is able to distinguish what is his.

Id. at 846. In *Petersen*, the supreme court held that the burden shifted only because the plaintiff established that his funds had been commingled with the defendant’s funds and that the commingled funds were used to purchase the property at issue. *Id.* at 847. In this

case, on the other hand, the district court determined that Kyle had not proved that Tuttle had actually used Kyle's funds to purchase the property. Kyle's funds comprised only a portion of the funds flowing into and out of Tuttle's account. As stated above, approximately \$350,000 was deposited into Tuttle's bank account by persons other than Kyle between April 5 and 30, 2008, and approximately \$260,000 was deposited by other persons between July 1 and 9, 2008. The absence of evidence from the months of May and June prevented Kyle from proving by clear and convincing evidence that Tuttle purchased the home with Kyle's funds and not with funds belonging to other persons.

Thus, in light of the incomplete nature of Kyle's evidence, the district court did not err by not shifting the burden from Kyle to Tuttle.

Affirmed.