

STATE OF MICHIGAN

IN THE SUPREME COURT

Appeal from the Court of Appeals
The Honorable Jane M. Beckering, Honorable Ronayne Krause,
and Honorable Mark T. Boonstra

IN RE FILIBECK ESTATE,

Heidi J. Filibeck, Pers. Rep.
Plaintiff/Appellee,

Supreme Court No.: _____

Court of Appeals No.: 315107

-vs-

Trial Court No.: 11-000067-CZ

Laura Beal,
Defendant/Appellant.

Attorney Lynette L. Erickson (P46216)
Attorney for Plaintiff/Appellee
1101 11th Avenue, Suite 2
Menominee, MI 49858
(906) 863-9892

Attorney Gerald Mason (P29471)
Attorney for Defendant/Appellant
915 14th Avenue
Menominee, MI 49858
(906) 863-2653

149671

PLAINTIFF/APPELLEE'S
RESPONSE TO DEFENDANT/APPELLANT'S
REQUEST FOR LEAVE TO APPEAL

FILED

AUG 4 2014

LARRY S. ROYSTER
CLERK
MICHIGAN SUPREME COURT

Lynette L. Erickson (P46216)
Attorney for Plaintiff/Appellee
1101 11th Avenue, Suite 2
Menominee, MI 49858

TABLE OF CONTENTS

INDEX TO AUTHORITIES ii

STATEMENT OF QUESTIONS PRESENTED iii

STATEMENT OF FACTS AND PROCEEDINGS 1

LEGAL ANALYSIS 2

ARGUMENT I 3

The issue involved in this case does not involve a legal principle of major significance to this State’s jurisprudence.

ARGUMENT II 5

The decision of the Court of Appeals was not clearly erroneous.

CONCLUSION 11

RELIEF REQUESTED 12

INDEX TO AUTHORITIES

CASE

Babcock v. Fisk, 327 Mich 72, 41 NW 2nd 479 (1950) 7

Bert v. Bank of Saginaw, 341 Mich 216, 217, NW 71 (1928) 9

Davidson v. Bugbee, 227 Mich App 264, 575, NW 2nd, 574 (1997) 9

Jones v. Causey, 45 Mich App 271, 274-275; 206 NW2d 534 (1973) 8

Kent v. Klein, 352 Mich 652 (1985) 6

Luke v. Des Autell, 294 Mich 527 (1941) 8

Nelson v. Woodworth, 363 Mich 244 (1961) 6

Ooley v. Collins, 344 Mich 148 (1955) 6

Osius v. Dingle, 735 Mich 605(1965) 8

Potter v. Lindsay, 337 Mich 404 (1953) 6

Racheo v. Beach, 254 Mich 600 (1931) 6

COURT RULES

MCR 7.302 (b) 2

MCR 7.302 (b)(3) 2

MCR 7.302 (b)(5) 2

MCR 7.301 (b)(1) 2

MCR 7.301 (b)(2) 2

MCR 7.301 (b)(4) 2

MCR 7.301 (b)(6) 2

MCR 7.302 (5) 5

STATEMENT OF QUESTIONS PRESENTED

I.

DOES THIS CASE INVOLVE LEGAL PRINCIPLES OF MAJOR SIGNIFICANCE TO THE STATE'S JURISPRUDENCE?

Defendant/Appellant says yes.
Plaintiff/Appellee says no.
Trial Court did not address.
Court of Appeals did not address.

II.

WAS THE COURT OF APPEALS DECISION CLEARLY ERRONEOUS?

Defendant/Appellant says yes.
Plaintiff/Appellee says no.
Trial Court said no.
Court of Appeals said no.

STATEMENT OF FACTS AND PROCEEDINGS

Plaintiff/Appellee accepts the Statement of Facts and Proceedings set forth by Defendant/Appellant except for the specific facts set forth in the paragraphs numbered below as follows:

1. Plaintiff/Appellee asserts that Defendant/Appellant was not alone in putting forth the time and effort required to plan, coordinate, organize, and host the affair, but instead numerous other volunteers assisted with such efforts.
2. Plaintiff/Appellee asserts that the monies were not raised by Laura, but instead by her and the other numerous volunteers and donators assisting with such effort.
3. Plaintiff/Appellee asserts that, contrary to Defendant/Appellant's statement, Heidi Filibeck would not personally be the primary beneficiary of the Estate, but instead she, as the spouse of the decedent, would share the estate with Decedent's children, Defendant/Appellant and her sister, Lisa.
4. Contrary to Defendant/Appellant's assertion, the Probate Court ruled that Steve did not hold legal title to the funds, with such legal title being held in the name of the Defendant/Appellant, but that such funds were being held by the Defendant/Appellant in a constructive trust for the benefit of Steve, thus creating in Steve a expectancy interest which was passed to his estate at the time of his death.

LEGAL ANALYSIS

MCR 7.302 (b) sets forth the grounds which can be used to request leave to appeal to the Supreme Court of Michigan. MCR 7.301 (b)(1) does not apply to this case as the validity of a legislative act is not in question. Likewise, MCR 7.302 (b)(2) does not apply, as this case does not involve the state nor any of its agencies or subdivisions nor any agent of the state nor any of its agencies or subdivisions. MCR 7.302 (b)(4) does not apply as the Court of Appeals has made a final decision in the matter. Finally, MCR 7.302 (b)(6) does not apply because the case does not involve a decision made by the attorney discipline board.

Therefore, the only grounds upon which the Defendant/Appellant can assert the right to request leave to appeal to the Supreme Court consists of MCR 7.302 (b)(3) and MCR 7.302 (b)(5), i.e. the case must either involve an issue of major significance to the state's jurisprudence or the decision of the Court of Appeals must be clearly erroneous and must either cause material injustice or must conflict with a Supreme Court decision or another decision of the Court of Appeals. If neither of these grounds exist, the Defendant does not have the right to request leave to appeal to the Supreme Court and the application should be denied.

ARGUMENT I

THE ISSUE INVOLVED IN THIS CASE DOES NOT INVOLVE A LEGAL PRINCIPLE OF MAJOR SIGNIFICANCE TO THIS STATE'S JURISPRUDENCE.

As asserted by the Defendant/Appellant, this case does indeed appear to be a case of first impression in the State of Michigan in that no case in the state has definitively addressed the question of ownership of funds raised through voluntary donations and other fundraising efforts made by third parties when an individual faces a financial crisis and not all the monies raised are needed for the specific expense related to donors. However, the mere fact of an issue not having been previously decided does not necessarily mean the question involves a legal principle of major significance to the state's jurisprudence. In fact, the lack of a need to address the question for the past 200 years can and, in this case does, reflect the insignificance of the question to the state's jurisprudence. The rarity of an individual who participated voluntarily in efforts to raise money to assist a third party in a financial crisis claiming thereafter that such monies belongs to such volunteer rather than to the person for whom such monies were raised, is evidence itself that this question is not one that will significantly affect the state's jurisprudence. Rather, the state's jurisprudence will be minimally affected by this decision. Any decision made regarding this scenario will impact only cases with a similar factual scenario. Certainly, an issue which has not arisen in a couple hundred of years cannot be said to be a legal principle of major significance, and certainly any decision made in this case will not have a major impact on the state's jurisprudence in any way.

While questions regarding the factual scenarios in which a constructive trust is equitably imposed, whether a beneficiary of a constructive trust has the ability to gift his interest in such a constructive trust before the trust has been declared by a court, and the factual standards for making a completed gift are certainly all issues of legal principle of major significance to this

state's legal jurisprudence, all such issues have previously been adequately addressed by both the Appellate Courts and the Supreme Court, and the state's jurisprudence will not be affected in any significant way by the decision rendered in this case.

ARGUMENT II

THE DECISION OF THE COURT OF APPEALS IN THIS CASE WAS NOT CLEARLY ERRONEOUS.

Although it is somewhat difficult to ascertain, it appears that Defendant/Appellant is requesting leave to appeal pursuant to MCR 7.302(5), alleging that the decision of a Court of Appeals is clearly erroneous. Again, it is difficult to ascertain whether Defendant/Appellant is maintaining that such allegedly erroneous decision will cause material injustice or whether the decision conflicts with a Supreme Court decision or another decision of the Court of Appeals or is alleging both these basis for appeal. However, Plaintiff/Appellee maintains that it is irrelevant whether Defendant/Appellant is arguing that an erroneous decision will cause manifest injustice or whether she is arguing that the decision conflicts with a prior decision of the Supreme Court and/or Court of Appeals or both, because the decision is not only not clearly erroneous, but is in fact the correct decision.

It appears that Defendant/Appellant is arguing that the Appellate Court was erroneous in upholding the Trial Court's decision that a constructive trust should be imposed on the monies raised for the benefit of Steve Filibeck, but instead those monies should have been considered Laura's because she was the one who spearheaded the raising of the monies and she deposited them in a bank account titled in her name.

The determination of whether a constructive trust should be imposed in a particular situation consists both of determinations of fact and determinations of equity in that a determination of equity is based upon the specific facts of the case.

The factual scenarios for the imposition of constructive trusts have essentially fallen into two broad categories. The first category includes cases which involve wrongdoing on the part of

the individual holding legal title to property when acquiring that legal ownership and the second includes cases which involve the wrongful withholding of funds after legal title is obtained through no wrongful act.

Courts have consistently held that when property is obtained through wrongful acts, the appropriate remedy is to impose a constructive trust over such property, treating the legal owner of the property as a constructive trustee holding the property for the benefit of the rightful owner. Therefore, when property has been

“obtained through fraud, misrepresentation, concealment, undue influence, duress, taking advantage of one’s weakness or necessities, or any other similar circumstances which render it unconscionable for the holder of the legal title to retain and enjoy the property it’s appropriate that a constructive trust be imposed”.

Ooley v. Collins, 344 Mich 148 (1955); Potter v. Lindsay, 337 Mich 404 (1953); Racheo v. Beach, 254 Mich 600 (1931).

However, wrongdoing in order to obtain title is not necessary in order for the imposition of a constructive trust to be appropriate. Even when an individual has legally, and with no wrongdoing, obtained assets, but wrongfully withholds those assets from an individual who is equitably entitled to those assets, a constructive trust should be imposed. Kent v. Klein, 352 Mich 652, (1985), Nelson v. Woodworth, 363 Mich 244 (1961).

In Kent, supra, the court stated

“when property has been acquired in such circumstances that the holder of the legal title may not, in good conscience, retain the beneficial interest, equity converts them into a trustee.” (p. 657)

The court further stated

“...It is enough to compel the surrender that one feed and grow fat on that which, in good conscience, belongs to another, that he enjoy a windfall resulting in his unjust enrichment, that he reap a profit in a situation where honor itself furnished

rich reward, where profit, the mainspring of the marketplace, is both foreign and inimical to the trust reposed.” (p. 658)

Laura recognized that others who were donating their money, goods, and time were doing it, not for her benefit, but for Steve’s benefit. She, in fact, stated that her efforts were also solely to benefit Steve. (TT p. 125, 19, through p. 126, 2, p. 126, 9-11) Laura further recognized that her obligation in regard to the monies was to apply the monies raised for the benefit of Steve (TT p. 126, 12-20, p. 128).

In this case, permitting Laura to retain the monies raised from third parties through the generous donations of their money, goods, and time for the purpose of assisting Steve would certainly provide her with a windfall and permit her to be enriched as a result of a situation in which “honor itself furnished rich reward”, where profit for herself was “foreign and inimical” to the purpose for which she organized the fundraiser.

The Appellate Court correctly relied upon the ruling and reasoning set forth in Babcock v. Fisk, 327 Mich 72, 41 NW 2nd 479 (1950) for the determination that the monies raised but unneeded for Steve’s medical expenses nonetheless equitably belonged to Steve and, upon his death, to his Estate. While Laura argues that the “differences” in Babcock, i.e. that such case involved a minor child while this case involves an adult, such difference is irrelevant at most. In Babcock, the monies could not be given directly to the child because the child was a minor. In this case, the monies could not be given directly to Steve because Steve was deceased. Therefore, it went to his Estate.

The Appellate Court correctly followed the previous decisions made by both the Supreme Court and the Appellate Court in regard to determining whether a constructive trust should be imposed upon the fundraising monies and for whose benefit.

The Appellate Court was also correct in determining that Steve's attempt to gift the monies to his daughters was ineffective, both because he did not have title to the assets at the time he attempted to make the gift, and because there was no delivery, a required element for completing a gift.

The elements required for gifting were clearly set forth in Luke v. Des Autell, 294 Mich 527 (1940) and Osius v. Dingle, 735 Mich 605 (1965) and one of those elements is the physical or constructive delivery of the item. Actual or constructive delivery is necessary whether a gift is *inter vivos* or *causa mortis*. Jones v. Causey, 45 Mich App 271, 274-275; 206 NW2d 534 (1973). It is also necessary that title pass unconditionally to the donee, i.e. that it's intended that the gift be effective even if the donor survives whatever he is expecting will lead to his death. In the event a transfer is not unconditional or would not be effective if the giftor survived, it is not an effective gift, but rather merely an expression of an intent to make a future gift, with such not being binding on either the giftor or the giftor's estate. Osius, supra.

The Appellate Court recognized that even Laura acknowledged that she would have been obligated to continue to hold the monies for Steve's benefit if he had not died, and would not have considered them as belonging to her or her sister, and therefore the attempted gift was not unconditional.

The Appellate Court further recognized that Steve did not have ownership of the monies at the time he attempted to gift them. While Defendant/Appellant seems to be confused about the rulings made by the Trial Court and the Appellate Court, arguing that such decisions made no sense because the Court determined that Steve was not the legal owner of the properties and therefore could not gift them and also that he had no right as beneficiary of the constructive trust to gift them, such confusion resides in Defendant/Appellant alone. While Plaintiff/Appellant

argues that an individual has the right to gift a beneficial interest in a Trust to a third party, what Defendant/Appellant fails to understand is that the monies in question were legally titled in her name at the time of the attempted gift. A constructive trust was not imposed on those monies until after Steve died, when Heidi initiated her current action. Therefore, while Steve and Laura both recognized, during his lifetime, that the monies were to be used for his benefit, Steve was not a beneficiary, nor did he have any legal interest in those monies until the constructive trust was imposed by the Probate Court. Since, at the time of his attempt at gifting the monies, he held neither a position as a legal owner of the monies, nor as a beneficiary of a trust, he had no standing to gift the monies in question, as determined by both the Probate court and the Appellate Court.

Furthermore, even if an individual determined to be the beneficiary of a constructive trust had the right to gift the interest created by the imposition of a constructive trust prior to its actual existence, one of the requirements for a completed gift did not exist, that of delivery, either physical or constructive. All documents relating to the bank account in which the monies were deposited had been handed by Laura to Steve at the time the account was established. These items, consisting of the bank statement book, the bank signatures cards, etc., continued to be in the possession of Steve at the time of the attempted gift. None of these indicia of ownership were, however, delivered by Steve to Laura and Lisa.

Defendant/Appellant now argues that such delivery was not necessary because the monies were already in the possession of the donee at the time of the gift was made, citing Bert v. Bank of Saginaw, 341 Mich 216, 217, NW 71 (1928) and Davidson v. Bugbee, 227 Mich App 264, 575, NW 2nd, 574 (1997). However, Defendant/Appellant failed to present this argument to either the Trial Court or the Appellate Court, but instead is raising it for the first time in her

request for leave to appeal this matter to the Supreme Court. Therefore, this argument was waived by Defendant/Appellant and should not be considered in determining such request. In addition, these cases did not involve accounts for which the indicia of ownership were in the possession of the giftor at the time of the attempt and therefore are not applicable.

Additionally, Steve attempted to make a gift of these monies, one-half to Laura and one-half to her sister, Lisa. Lisa had no possession of these monies at any time. Therefore, even if Defendant/Appellant had properly raised the argument that the monies already being in the recipient's possession applied to this case and no indicia of ownership had been in Steve's possession at the time of the attempt, that argument can apply to only 50% of the monies, i.e. those attempted to be gifted to Laura. The remainder of the gift, i.e. the half to Lisa, would not fall into this category.

Therefore, the Appellate Court was correct in reaching its decision that Steve held no interest in the monies granting him any authority to gift those monies at the time he attempted to make a gift, and, even if he had, there was no delivery, constructive or otherwise, of the monies from him to his daughters, Laura and Lisa, with the result that the attempt at gifting was incomplete and therefore ineffective.

CONCLUSION

This case is of relatively minor significance to the state's jurisprudence, involving an issue which have not arisen in the state for many years and is unlikely to arise again. The legal principles involved will apply to few, if any, cases in the future and therefore do not present themselves as significant.

Contrary to Defendant/Appellant's assertion, the decision of the Appellate Court created no confusion and instead is clear, unambiguous and simple. Both the Probate Court and the Appellate Court determined that the funds raised by Laura and the other volunteers equitably belonged to Steve, even though legal title was held by Laura. Both courts further determined that, although Steve attempted to make a gift to his two daughters of the monies shortly before his death, such attempt was ineffectual both because, at the time of such effort, Steve did not hold title to those funds and because there was no delivery, physical or constructive, of the monies.

Furthermore, the Appellate Court decision is not only consistent with prior Supreme Court and Court of Appeals decisions, but is accurate and correct in its legal reasoning and analysis, with the result that the correct decision was rendered. As a result, it cannot be argued that a material injustice will be done.

There are no grounds upon which the Defendant/Appellant can seek leave to appeal to the Supreme Court and such leave should be denied.

RELIEF REQUESTED

Plaintiff/Appellee respectfully requests that this Court deny Defendant/Appellant's application for leave to appeal, awarding Plaintiff/Appellee her costs.

Dated: 8/1/14

Lynette L. Erickson
Lynette L. Erickson, P46216
Attorney for Plaintiff/Appellee