

of Marion County, which imposed a constructive trust on 64 acres of land, referred to in the order as Tract 4, partitioned the land among certain parties, and invalidated certain deeds that had been executed conveying the land to Lyndell R. Heinzmann, and later to Henry Bennett. The plaintiff, Rhonda Julius, cross-appeals that portion of the order which granted Bennett and Ronald an easement for ingress and egress over that portion of the land the circuit court granted to her. For the reasons that follow, we reverse and remand with instructions that the circuit court enter a judgment in favor of the defendants on the plaintiffs' complaint, rendering Rhonda's cross-appeal moot.

¶ 3

FACTS

¶ 4 On February 3, 2010, the plaintiffs, Dorothy McCarty and Rhonda Julius, filed a chancery complaint in the circuit court of Marion County.¹ The complaint alleged that Dorothy and Lawrence McCarty were the parents of the plaintiff, Rhonda Julius, as well as defendants Ronald McCarty, Roger McCarty, and Gwen Reid. Dorothy and Lawrence held title to a 64-acre tract of land prior to 2005. Rhonda moved a mobile home onto one portion of the land in 1991 or 1992 and has been residing there ever since. According to the complaint, Dorothy and Lawrence always assured Rhonda that, upon their death, she would get a share of the 64 acres, to include that portion of the land on which she resided.

¶ 5 The complaint alleges that in 2005, Dorothy and Lawrence were concerned about losing the land if they ended up in a nursing home on public aid. Dorothy and Lawrence deeded the property to Ronald. The complaint alleged that though the deed was absolute on its face, Dorothy and Lawrence intended to preserve a life estate for themselves and for the property to be split equally between the children, with Rhonda to receive the 16 acres where her home was located. According to the complaint, Ronald understood and acknowledged

¹Dorothy McCarty is deceased, was dismissed as a party in the circuit court, and is not a party to this appeal.

Dorothy and Lawrence's intentions in deeding the property to him.

¶ 6 The complaint alleges that Lawrence died in 2007, and in 2008 Dorothy and Rhonda learned that Ronald planned to sell approximately 51 acres of the property, including that portion on which Rhonda resided, to Lyndell Heinzmann for \$102,000. The exhibits to the complaint show that on August 26, 2008, a contract for the sale of this land was executed between Ronald and Heinzmann. On October 9, 2008, Dorothy recorded an "affidavit of constructive trust" attesting that the property had been deeded to Ronald after they had made it clear to him that it was their intent and desire for the real estate to be divided equally among the children upon their death, with Rhonda to receive the 16 acres including her mobile home. In the affidavit, Dorothy further attested that Ronald understood their intent and desire and told them he would honor their wishes, and the deed was executed on the express condition that Ronald would honor those wishes. On October 22, 2008, Heinzmann recorded the contract for sale of the 51 acres.

¶ 7 The exhibits to the complaint further show that on November 14, 2008, Heinzmann recorded a general warranty deed executed to him from Ronald. That same day Heinzmann executed a general warranty deed of the same property to Henry Bennett. According to the complaint, Ronald executed the warranty deed to Heinzmann upon his payment of \$65,000 of the \$102,000 purchase price. The complaint claimed no information as to whether Bennett paid consideration to Heinzmann for the deed. The complaint alleged that neither Heinzmann nor Bennett was a *bona fide* purchaser of the 51-acre tract because they were on notice of Rhonda and Dorothy's claims regarding the property. The complaint requested that the circuit court impose a constructive trust on the entire property, void the deeds to Heinzmann and Bennett, and declare Rhonda the owner of the 16-acre portion of the land to include her mobile home, and any further equitable relief necessary to enforcing the constructive trust.

¶ 8 On April 3, 2010, a suggestion of Dorothy's death was filed, and she was later dismissed as a plaintiff. A trial was held in October 2010, with the Honorable George C. Lackey presiding. The evidence established the truth of the allegations surrounding Ronald's sale of the property to Heinzmann. The contract price was \$102,000, of which Heinzmann paid Ronald \$5,000 down at the time the contract was signed and \$60,000 upon delivery of the deed, leaving an unpaid balance of \$37,000. Heinzmann testified that he executed the warranty deed to Bennett in consideration for Bennett loaning Heinzmann the \$60,000 to pay Ronald for the property. As of the time of trial, Heinzmann had not paid the remainder of the purchase price to Ronald, and had not repaid Bennett the \$60,000. Heinzmann disclaimed any present interest in the property and was dismissed as a defendant. Heinzmann later testified that he would not have been interested in buying the land absent the farm buildings and location where Rhonda's mobile home sits. Heinzmann felt that some portions of the land were worth more per acre than others, as the location where Rhonda's mobile home sat was the only access point with improvements, another portion of the land was tillable farmland, and another portion was timber.

¶ 9 The bulk of Rhonda's case-in-chief consisted of a series of family friends and acquaintances who all testified that Rhonda helped Lawrence on the farm a great deal over the years and recounted various conversations they witnessed between Rhonda and Lawrence wherein Lawrence assured Rhonda that she would receive a piece of the property at issue. Witnesses also testified about a conversation between Rhonda, Ronald, and their nephew Kevin Reid and his wife Bobbie Reid wherein Rhonda, Kevin, and Bobbie offered to buy Gwen and Ronald's part of the property with the understanding that Rhonda and Roger would keep their parts of the property. One family friend, Gerald Masey, testified to a conversation he witnessed between Rhonda and Lawrence wherein Lawrence told Rhonda that he put the property in Ronald's name because he would be fairest in dividing it equally.

¶ 10 Ronald testified that he was never told why Lawrence and Dorothy deeded the land to him but that Lawrence told him that he did not deed the property to Rhonda because Lawrence was concerned she would not fairly divide it among the siblings. Ronald always considered the land to belong to his parents until their death even though they deeded the property to him, and he would have deeded it back to his parents had they asked. Ronald testified that he had talked to Rhonda about dividing the property but they could not agree on a fair division and so all the siblings agreed to sell the property and divide the proceeds equally, except for Roger's share. Roger was in the penitentiary and Ronald intended to reserve the remaining 13 acres for him. Ronald intended to divide the proceeds of the sale equally between himself, Gwen, and Rhonda. He used the \$5,000 down payment he received to pay Lawrence's funeral bill. He divided the \$60,000 remaining balance between himself and Gwen.

¶ 11 Ronald admitted that Rhonda had not received any proceeds because Heinzmann had demanded a deed disclaiming any interest in the land from all the siblings upon learning of the dispute between them and claimed to be withholding the remaining balance because Rhonda refused to sign. A deed from Gwen and Dorothy to Heinzmann was admitted into evidence, but there was conflicting testimony regarding the genuineness of Dorothy's signature. Upon questioning, Ronald testified that he had not decided what he would do with the remaining balance if he ever collected it. Ronald testified that he was going to split the proceeds from the sale of the property and reserve the remaining portion for Roger to be fair, and was not under any instructions from Dorothy and Lawrence to do so.

¶ 12 Rhonda testified that she moved her trailer onto the property in 1992. She did not pay lot rent to her parents but helped with the farm throughout the years. Lawrence told her that he had deeded the property to Ronald but not to worry, Ronald "knows what to do with it." Rhonda testified that Lawrence reassured her many times that she would get a share of the

property, and she always assumed she would receive the portion that included her trailer. When she heard that Ronald had decided to sell the farm, she told Dorothy that she wanted to keep her part, and Dorothy said that "was only fair." She offered to buy out Ronald and Gwen's portion of the property, but Ronald sold it to Heinzmann before she could apply for a loan. She received no proceeds from the sale, and when she asked for her share of the proceeds, Ronald told her she needed to sign a paper, and she refused. She then commenced this litigation seeking the imposition of a constructive trust.

¶ 13 Gwen testified that the siblings tried to get together and agree on how to split the farm, but they could not come to an agreement. At one point in time, Rhonda agreed to sell the property and split the proceeds, but later changed her mind and decided she wanted to keep the developed portions, which Gwen and Ronald felt was unfair. Gwen testified that Dorothy did not understand the affidavit of constructive trust she had filed, and when Gwen told Dorothy it had the effect of preventing Ronald from selling the property, Dorothy asked her to take her to the attorney's office to have it voided, and Gwen thought she had done so. Gwen acknowledged receipt of \$30,000 in proceeds from the sale of the 51 acres but testified that it was her understanding that Ronald was not obligated to share the proceeds with her but was doing so gratuitously.

¶ 14 At the close of all the evidence, the circuit court issued a ruling from the bench. The court found that Heinzmann judicially admitted he has no interest in the land, and that Bennett had constructive notice of Rhonda's claim to the land due to her living on the land and the affidavit of constructive trust filed by Dorothy. The court stated that there had been no counterclaim for the remaining \$37,000 of the purchase price, and that the court was assuming that this amount would never be recouped. The court found that Dorothy and Lawrence had trusted Ronald to divide the property. Accordingly, the court ordered the parties to draft an order whereby Gwen and Ronald kept the \$30,000 they had received as

proceeds, a constructive trust was imposed on the land, and the deeds were voided and/or reformed such that Bennett would be the owner in fee simple of a 50-foot strip and the south 34.8 acres of the land, Rhonda would be the owner in fee simple of the 16 acres including the buildings, access driveway, and the location of her mobile home, and Ronald would receive the remaining wooded acreage in trust for Roger. The court took under advisement the issue of how to provide access to the portions of property it ordered to be partitioned for Bennett and Ronald in trust for Roger. After written submissions by the parties claiming that building an access road would be prohibitively expensive for Ronald and about various environmental-impact concerns regarding potential locations for access roads to be built, the circuit court entered an order on November 16, 2010, memorializing the above findings and granting easements to Bennett and Ronald in trust for Roger for ingress and egress over Rhonda's driveway, said easements to terminate "in the event alternative access is established."

¶ 15 On December 15, 2010, the defendants filed a motion to reconsider, which was heard and denied by the circuit court on June 7, 2011, with the Honorable James J. Eder presiding. The defendants filed a timely notice of appeal on June 29, 2011, and Rhonda filed a timely notice of cross-appeal on July 7, 2011.

¶ 16 ANALYSIS

¶ 17 Our standard of review regarding the circuit court's judgment following a bench trial is to determine whether the judgment is against the manifest weight of the evidence. *Avenaim v. Lubecke*, 347 Ill. App. 3d 855, 862 (2004). Here, the defendants argue that the circuit court erred in imposing a constructive trust on the property. "Constructive trusts are divided into two general classes, one being where actual fraud is considered as equitable ground for raising the trust, and the other being where the existence of a confidential relation and the subsequent abuse of the confidence reposed is sufficient to establish the trust."

Peters v. Meyers, 408 Ill. 253, 259 (1951). "To create a constructive trust, fraud must exist at the time of the transaction, or be brought about by undue influence arising from a fiduciary relation." *Evans v. Berko*, 408 Ill. 438, 444 (1951).

¶ 18 Here, as in *Peters*, 408 Ill. at 260, there is no claim that Ronald committed any type of fraud or in any way coerced his parents into conveying the subject property to him by absolute deed. Instead, the plaintiff argued, and the circuit court found, that Dorothy and Lawrence deeded the property to Ronald intending that he divide the property equally among the siblings and trusting that he would be fair in doing so, and that Ronald somehow breached an oral agreement in his chosen method of carrying out his parents' wishes. However, Dorothy and Lawrence's intent was never put in writing, and absent fraud or breach of a fiduciary relationship at the time of the transaction by which the grantee obtained title, "[a] constructive trust does not arise where land is conveyed by deed absolute, where no condition or reservation is made therein" (*Evans*, 408 Ill. at 443). If our courts were in a position to impose constructive trusts in all cases where an absolute deed accompanied an oral agreement on how the property was to be disposed of, there would be no need for express trusts or wills. Public policy dictates that the wishes of grantors in these situations be put in writing according to the formalities required by law.

¶ 19 Even if it could be said that a constructive trust was imposed upon Ronald by virtue of his parents conveying the property to him by absolute deed with the orally expressed intent that he divide the property among his siblings upon the death of his parents, the evidence shows that by selling the 51 acres to Heinzmann, Ronald was attempting to carry out his parents' wishes. The evidence shows that it was Ronald's intent, at least initially, to sell the 51 acres, split the proceeds equally among himself, Gwen, and Rhonda, and reserve the remaining 13 acres for Roger. Although Ronald's deeding of the property to Heinzmann prior to collecting the unpaid \$37,000 of the purchase price was less than prudent, the

evidence does not support any intentional wrongdoing on Ronald's part. There is simply no basis, in law or in equity, for the court to void the deeds to Heinzmann and Bennett and to partition the property between the siblings as it saw fit.

¶ 20

CONCLUSION

¶ 21 For the foregoing reasons, we reverse the judgment of the circuit court and remand with instructions that the circuit court enter judgment in favor of the defendants on the plaintiff's complaint, rendering the plaintiff's cross-appeal moot.

¶ 22 Reversed and remanded with directions; cross-appeal rendered moot.