

No. 1-13-1653

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ANTONIOU MICKSHEA BUILDERS, INC.,)	
)	
Plaintiff-Appellant,)	Appeal from the
)	Circuit Court of
v.)	Cook County.
)	
WESTERN SPRINGS NATIONAL BANK AND TRUST,)	No. 09 CH 17954
a failed national banking association, by its successor)	
assignee, HEARTLAND BANK AND TRUST)	Honorable
COMPANY, an Illinois state bank,)	Rita M. Novak,
)	Judge Presiding.
Defendant-Appellee.)	
)	

JUSTICE ELLIS delivered the judgment of the court.*
Presiding Justice Fitzgerald Smith and Justice Howse concur in the judgment.

ORDER

¶ 1 *Held:* Trial court's judgment denying plaintiff relief on its quiet title and conversion claims was not against the manifest weight of the evidence.

¶ 2 This appeal arises from a loan given to plaintiff Antoniou Mickshea Builders, Inc., from defendant Western Springs National Bank¹ to convert a former church at 5640 South Blackstone

* This case was recently reassigned to Justice Ellis.

¹ After the lawsuit at issue in this appeal began, Western Springs National Bank failed and its assets, including Blackstone, were assigned to Heartland Bank and Trust Company. For purposes of this appeal, there is no need to distinguish between Western Springs and Heartland. Accordingly, we refer to them both as "defendant."

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Avenue in Chicago (Blackstone) into condominiums. As part of the loan, Blackstone was put into a land trust whose beneficiary was Julie Georgiadis (Julie), the girlfriend of plaintiff's president, Konstantinos "Gus" Antoniou (Gus). Eventually, the project went under, and defendant obtained title to Blackstone through foreclosure proceedings.

¶ 3 Plaintiff then filed a suit seeking to regain title to Blackstone. Plaintiff alleged that the 2006 transfer to Julie of the beneficial interest in Blackstone was a mistake, that plaintiff should have remained the beneficiary of the trust after the loan transaction. Plaintiff thus claimed that the foreclosure proceedings, which did not name plaintiff, did not affect its title and that it should retain ownership of Blackstone.

¶ 4 After a bench trial, the court awarded judgment in favor of defendant. The court ruled that the granting of a beneficial interest in Blackstone to Julie was valid and not the product of mistake or fraud. The court deemed credible the testimony from defendant's trust officer, who said that Gus directed him to name Julie as the beneficiary of the trust holding title to Blackstone. The court further found that Gus had motive to transfer the beneficial interest in Blackstone to Julie: he was attempting to avoid having Blackstone characterized as a marital asset during his divorce from his wife, Rose. The court further found that Gus's testimony, in several respects, lacked credibility.

¶ 5 On appeal, plaintiff contends that the trial court's judgment was incorrect because he proved that the transfer was mistaken and unauthorized. We disagree. We defer to the trial court's findings of fact and credibility determinations, which were not against the manifest weight of the evidence and, in fact, were carefully-reasoned and well-supported by the evidence. We affirm the trial court's judgment.

¶ 6

I. BACKGROUND

¶ 7 The facts in this case are largely undisputed. Plaintiff bought Blackstone on July 10, 1997, later conveying the property to a land trust with plaintiff as the sole beneficiary. In 2004, plaintiff defaulted on loans which were secured by two mortgages on Blackstone. Seeking to refinance the property to prevent foreclosure, plaintiff obtained a new loan from defendant that was secured by Blackstone and two other properties.

¶ 8 On July 28, 2006, as part of that new loan, plaintiff transferred Blackstone to a new land trust. Under this new land trust agreement, defendant acted as trustee, and Julie was listed as the sole beneficial interest holder. The agreement also provided that, in the event of Julie's death, her beneficial interest would pass to Gus.

¶ 9 After Blackstone had been transferred, plaintiff defaulted on the loan. On June 19, 2007, defendant initiated foreclosure proceedings. The foreclosure complaint listed the land trusts, Gus, and Julie as defendants but did not name plaintiff. On June 4, 2009, after prevailing on its foreclosure suit and forcing a sale of the property, defendant purchased Blackstone at the sheriff's sale and recorded the sheriff's deed.

¶ 10 On June 3, 2009, the day before defendant bought Blackstone at the sheriff's sale, plaintiff filed the lawsuit from which this appeal arises. Plaintiff sought to quiet title to Blackstone, alleging that the 2006 transfer of the property to Julie was invalid. Plaintiff also asserted a claim of conversion against defendant.

¶ 11 At trial, Gus testified that, shortly after the birth of his and Julie's daughter in March 2006, he and Julie went out to dinner to discuss the future. Gus told Julie that he planned to put the share of profits he received from the development of Blackstone into a trust for their children's education. In exchange, Gus asked her to put up two of her properties as collateral for the loan from defendant.

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¶ 12 Gus acknowledged that he signed the trust agreement at the bank in the presence of Vance Halvorson, defendant's vice president. According to Gus, when he signed the documents, the parties' names had not yet been filled in, so no one had been listed as the beneficiary of the trust yet. Gus testified that Halvorson quickly flipped through various documents, telling him where to sign them. Gus denied receiving copies of the documents he had signed when he left the bank. He said that Halvorson told him there was not enough time to make copies for him. Gus also said that Julie was not present when he signed the trust agreement.

¶ 13 Gus denied knowing of any documents that transferred Blackstone to Julie. He testified that he believed the documents he signed with Halvorson were merely for purposes of refinancing the property. He said that "[t]here was supposed to be no change of ownership of Blackstone," that plaintiff was supposed to be listed as the beneficiary of the trust that held title to Blackstone.

¶ 14 As a result of the closing of the loan transaction, defendant wrote a check made out to Julie in the amount of \$80,945.43. Gus testified that he told Julie to cash the check and give him the money "because it wasn't her money. It was [plaintiff's] money." Eventually, Gus and Julie agreed that she would cash the check, then write Gus a check for \$70,000 and keep the remainder for herself. Plaintiff introduced a copy of the \$70,000 check from Julie, which was made payable to the general contractor on the condominium project.

¶ 15 On cross-examination, Gus testified that he began dating Julie in 2005, while he was still married to Rose. Gus explained that, when he began dating Julie, he and Rose were separated and both were seeing other people. Julie and Gus had two children together.

¶ 16 Gus and Rose divorced on July 27, 2007. Gus conceded that, in the divorce settlement order he signed, he represented that plaintiff did not own any assets. Gus explained that, at the

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time of his divorce, he had received documents in conjunction with defendant's foreclosure suit that showed "that [plaintiff] was no longer the owner of the trust that owned Blackstone." He said that he signed the divorce settlement before seeking to regain ownership of Blackstone because he "wanted [his] divorce over in the wors[t] way." Gus admitted that plaintiff never filed an action in the foreclosure proceedings to prevent the sale of Blackstone.

¶ 17 Defendant called Julie to testify. She testified that Gus told her that he planned to make Blackstone into a "security nest" for her and their children. He told her that he wanted to ensure that, "if something would happen to him, it went to [Julie] and [her] children." He said that he would remain "in control" of the property but that "the children and [Julie] were going to be the beneficiaries if something were to happen to him."

¶ 18 Julie testified that, in July of 2006, Gus took her to the bank "to sign documents" relating to Blackstone. She did not have an opportunity to review the documents before she signed them, and none of the officers of the bank explained the documents to her. Julie testified that her understanding was that, "before and after" the transaction, Blackstone was Gus's property and "he was responsible" for it. She said that she did not know that she was a co-signer on any loans and that she believed she was not responsible for anything relating to the property.

¶ 19 Julie denied going to dinner with Gus soon after the birth of her daughter and discussing Blackstone. She said that, having given birth within the last week to ten days, her physical condition made it impossible for her to leave the house. She acknowledged that she had received a check for \$80,945.43, which Gus told her was for repairs at Blackstone. She cashed the check, kept \$10,000 for herself, and gave the rest to Gus.

¶ 20 Daniel Wlodek, one of defendant's trust officers, testified that, in 2006, he was approached by Halvorson, who said that the bank was interested in financing plaintiff's project at

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Blackstone. According to Wlodek, Halvorson said that the bank wanted to put Blackstone into a land trust.

¶ 21 Wlodek testified that he met with Gus in the middle of July 2006. Gus told him that "the primary beneficiary of the trust was to be Julie," that four children would be the secondary beneficiaries, and that the power of direction for the trust would be in both Julie's and Gus's names. He said that all notices regarding the trust were to be forwarded to Julie.

¶ 22 Wlodek next met with Gus on July 28, 2006, so that Gus could sign the trust agreement. He testified that the trust agreement listing Julie as beneficiary accurately reflected his understanding of Gus's directions regarding Blackstone. Wlodek identified his signature on the trust agreement. He said Gus and Julie also signed the agreement in his presence after he reviewed the document with them. Wlodek testified that Gus and Julie both received copies of the trust agreement.

¶ 23 On cross-examination, Wlodek acknowledged that the certification date for the trust agreement was July 26, 2006, even though the trust agreement was not signed until July 28, 2006. He had no explanation for that discrepancy.

¶ 24 After the close of evidence and closing arguments, the trial court ruled in favor of defendant. In making its findings, the trial court framed the decisive issue as "whether or not [Gus] directed the bank to vest 100 percent of the beneficial interest in the land trust which held title to Blackstone *** in Julie." After recounting Gus's version of events—that he signed the trust agreement while it was blank and that the bank later filled in the parties—the trial court found Gus's testimony to be "inconsistent with the weight of the evidence." The court noted that Gus had a reason to transfer the property to Julie: "He was going through a bitter divorce and the transfer was one way of *** removing [Blackstone] from any claim that it was part of the marital

estate." The court also found that Gus's testimony that the bank refused to provide him with the documents was "not realistic." The court stated that, if Gus's version of the transaction was accurate, there was no reason why he would not seek to correct the mistake after he received a check made out to Julie. The court acknowledged that the certification date of the trust agreement differed from the date on the trust agreement itself; the court found that discrepancy to be minor and, more to the point, in no way suggestive that the bank unilaterally and without authorization changed the documents to list Julie as beneficiary. By contrast, the court found Wlodek to be a credible witness and Julie's testimony to be "generally" consistent with Wlodek's testimony. The court entered judgment in defendant's favor. Plaintiff appeals.

¶ 25

II. ANALYSIS

¶ 26 Plaintiff's sole contention on appeal is that the trial court erred in denying it relief on its quiet title and conversion claims. Defendant urges us to affirm the judgment because it was not against the manifest weight of the evidence.

¶ 27 Much of the parties' dispute concerns the standard of review. Plaintiff argues that we should apply *de novo* review because the material facts are undisputed, and we must simply determine whether those facts proved the elements of plaintiff's causes of action, a question of law. Defendant advocates for a manifest-weight-of-the-evidence standard of review, arguing that this case required the resolution of fact questions.

¶ 28 We agree with defendant. As Judge Novak correctly stated, the outcome of this case hinged on the July 2006 transaction in which the beneficial interest was transferred solely to Julie. If that transaction was valid—if the trust documents properly reflected plaintiff's intention to make Julie the sole beneficiary—then defendant would prevail, because defendant became the title holder after successfully suing Julie for foreclosure and purchasing the property at the

sheriff's sale. If, on the other hand, the transaction was invalid by reason of mistake or fraud, then plaintiff would prevail, because title was never successfully transferred to Julie, and thus the foreclosure action—which did not name plaintiff as a party—would not affect plaintiff's rightful claim to the property.

¶ 29 But that very question required the trial court to resolve disputed issues of fact. There was no question as to what the trust documents said. Plaintiff's only hope of success was to make the inherently *factual* argument that the trust documents were not supposed to say what they indisputably said—that Julie was the sole beneficiary of the land trust. Plaintiff bore the burden of proving to the court that the trust documents were mistaken, and it attempted to do so through Gus's testimony that he signed a blank trust agreement at the bank, only to have the bank fill in the incorrect parties and thwart the purpose of the transaction. Defendant's theory at trial was likewise factual in nature—that the language of the trust documents properly reflected the direction given to Wlodek by Gus to establish Julie as the beneficiary of the land trust holding title to Blackstone.

¶ 30 Thus, we are not called upon to review the trial court's interpretation of the law, but rather its resolution of questions of fact. On appeal from a bench trial, we defer to the trial court's resolution of fact questions unless they are against the manifest weight of the evidence. *Klaskin v. Klepak*, 126 Ill. 2d 376, 389 (1989); *Chicago's Pizza, Inc. v. Chicago's Pizza Franchise Ltd. USA*, 384 Ill. App. 3d 849, 859 (2008). Furthermore, we apply a manifest-weight-of-the-evidence standard to the question of whether sufficient evidence supported a trial court's judgment. *E.g.*, *LaSalle National Bank v. Kissane*, 163 Ill. App. 3d 534, 541 (1987) (applying manifest-weight-of-evidence standard to whether evidence was sufficient to establish mutual mistake); *National Acceptance Co. of America v. Pintura Corp.*, 94 Ill. App. 3d 703, 706 (1981)

(applying manifest-weight-of-evidence standard to whether evidence was sufficient to establish conversion). Accordingly, we apply that standard here.

¶ 31 The trial court found that Wlodek's testimony was credible, and that Julie's testimony was largely consistent with that testimony. From our review of the record, we see no implausibility or contradictions in Wlodek's testimony that would compel us to draw an opposite conclusion. See *Chicago's Pizza*, 384 Ill. App. 3d at 859 (judgment is against manifest weight of evidence only if opposite conclusion is apparent or court's findings are unreasonable, arbitrary, or unsupported by evidence). Nor can we find any error in the court's findings with regard to Gus's testimony. The court found it implausible that Gus would sign a blank trust document to be filled in later by the bank; that he never received copies (or that he would not have demanded copies) of the fully-executed trust documents; and that he would not have realized, when Julie received an \$80,000 check in her name at the closing of the loan transaction, that the trust documents had been set up differently than he had intended. We defer to the trial court's credibility determinations. *Hewitt v. Hurwitz*, 227 Ill. App. 3d 616, 620 (1992). Overall, the court found "overwhelming evidence" that Gus intended to make Julie the sole beneficiary of the land trust. That finding was not against the manifest weight of the evidence.

¶ 32 Once we afford the trial court's factual findings proper deference, the remainder of plaintiff's argument unravels. Because Gus, as plaintiff's president, directed beneficial title to be transferred to Julie, plaintiff cannot establish any mutual mistake in the transfer of Blackstone to Julie. See *LaSalle National Bank v. 850 De Witt Place Condominium Ass'n*, 257 Ill. App. 3d 540, 543 (1994) (to justify reformation of document based on mutual mistake, plaintiff must show that mistake caused agreement to be reduced to writing in manner that did not reflect parties' intent). Moreover, plaintiff cannot establish that the transfer of the beneficial interest in

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Blackstone was unauthorized, a necessary element of its conversion claim. See *Naiditch v. Shaf Home Builders, Inc.*, 160 Ill. App. 3d 245, 269 (1987) (cause of action for conversion requires unauthorized and wrongful assumption of control over personalty of another). We find no error in the trial court's judgment.

¶ 33

III. CONCLUSION

¶ 34 For the reasons stated, we affirm the trial court's judgment.

¶ 35 Affirmed.