2015 IL App (2d) 140611-U
No. 2-14-0611
Order filed April 22, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

LINDA MOLITOR,	)	Appeal from the Circuit Court
	)	of Winnebago County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 13-CH-937
	)	
DONNA LUNDQUIST,	)	Honorable
	)	J. Edward Prochaska,
Defendant-Appellee.	)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Hutchinson and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's judgment for defendant on plaintiff's complaint for a constructive trust was not against the manifest weight of the evidence: per the relevant factors, the evidence did not establish that the parties had the necessary confidential or fiduciary relationship.

¶ 2 Plaintiff, Linda Molitor, filed a complaint in the circuit court of Winnebago County against defendant, Donna Lundquist, seeking imposition of a constructive trust on residential property to which defendant held legal title. Following a bench trial, the court entered judgment for defendant. The court found that plaintiff failed to establish, by clear and convincing evidence, either that defendant acquired title to the property through actual fraud or that a

fiduciary relationship existed giving rise to a presumption of fraud. Plaintiff argues on appeal that the judgment is against the manifest weight of the evidence. We affirm.

¶ 3 Plaintiff and defendant are sisters. The property, which is located on Apollo Drive in Machesney Park, had been owned by their parents, Arne and Jane Lundquist, who held title as joint tenants. Arne died in April 2009, having expressed (according to plaintiff's testimony) the desire that plaintiff be given a joint tenancy interest in the Apollo Drive property along with Jane. Plaintiff testified that Arne wanted "to make it easier for [plaintiff and Jane] when he passed." Arne did not indicate that defendant should be made a joint tenant. Nevertheless, after Arne died, Jane and plaintiff decided that the Apollo Drive property should be conveyed to themselves *and to defendant* as joint tenants. Plaintiff testified that she called the "clerk's office" and inquired about how to change the title to the property. The "clerk" told plaintiff that she needed to get forms from a "printer's office." The clerk also explained how to fill out the forms.

¶ 4 Plaintiff prepared a warranty deed conveying the Apollo Drive property from Jane to herself, plaintiff, and defendant, as joint tenants. Jane executed the deed in October 2009. Thereafter, plaintiff experienced financial difficulties giving rise to concerns that the Apollo Drive property might be vulnerable to claims of plaintiff's creditors. Plaintiff testified that she discussed her financial situation with family members, including defendant. Plaintiff testified, "My sister told me that I should take my name off of the deed because the bank might come after my mother for the money that I owed because my—it would be considered an asset to me." Plaintiff prepared a warranty deed conveying the Apollo Drive property to Jane and defendant as joint tenants. Plaintiff, Jane, and defendant executed the deed in May 2011. Plaintiff testified that she did not consult an attorney prior to preparing the deed. Asked whether she consulted

anyone "other than the clerk" with experience in real estate, plaintiff responded that she consulted only defendant, who "was a realtor [*sic*] at one time." Plaintiff denied that defendant ever advised her that, by executing the deed, plaintiff was waiving her rights to the property. Plaintiff testified that, when the deed was recorded, she had a conversation with Jane and defendant about whether plaintiff's interest in the property would later be restored. Plaintiff did not indicate whether any agreement was reached at that point, although she testified that, after the deed was recorded, Jane indicated that plaintiff's name "would go back on the deed" once her financial problems were resolved.

¶ 5 As a result of plaintiff's financial problems, a motor home she owned was repossessed in August 2011, and in 2012, the mortgage on her house was foreclosed. Thereafter, plaintiff lived with her son, but she stored furniture and other belongings at the Apollo Drive property, where Jane still lived. Jane's health declined and she was hospitalized. Plaintiff stayed at the Apollo Drive property during Jane's hospitalization. Jane died near the end of December 2012. Just before Jane's death, defendant told plaintiff to remove her possessions from the property. Defendant indicated that she wanted to sell the property. Shortly after Jane's death, defendant changed the locks on the house. Jane had executed a will, which named plaintiff as executor and divided Jane's estate evenly between plaintiff and defendant. Defendant told plaintiff that only the contents of the Apollo Drive house were part of Jane's estate; title to the Apollo Drive property was in defendant's name alone. Prior to Jane's death, defendant took the May 2011 deed from the house. Defendant later told plaintiff that she took the deed to make sure that nobody tried to alter it. After Jane's death, defendant prepared and recorded a deed, conveying title to the property solely to herself. Although Jane was deceased, her name appears on the deed as a grantor.

¶ 6 Plaintiff testified that defendant had become estranged from Arne and Jane in 2004 but reconciled with them in 2008 when Arne was diagnosed with cancer. Plaintiff helped facilitate the reconciliation. Plaintiff testified that she thought that, prior to 2011, she had a close relationship with defendant. They confided in and helped one another. Defendant had been divorced twice and plaintiff had lent money to defendant to help her pay for the divorces. Defendant repaid the loans. Defendant moved into plaintiff's home in 2004, when plaintiff's husband, who suffered from amyotrophic lateral sclerosis (commonly known as ALS or "Lou Gehrig's disease"), was dying. According to plaintiff, defendant lived in plaintiff's home for at least a year. In order to provide defendant with a source of income, plaintiff briefly employed her to do secretarial work for a business plaintiff and her husband operated. Plaintiff acknowledged that she had never given defendant power of attorney for health care or financial matters, that she had never entrusted defendant to invest money for her, and that her will did not appoint defendant as executor.

¶ 7 Defendant testified that, during the five years prior to Jane's death, defendant's relationship with plaintiff was "[d]efinitely not as close as it was prior to [plaintiff's] husband's death." Defendant stated that she and plaintiff were "[c]lose but not extremely close." Defendant denied that she had done anything that would cause plaintiff to put her faith and trust in defendant over plaintiff's property or finances. Defendant denied participating in any discussion with plaintiff or Jane about the preparation of the October 2009 deed that made the three of them joint tenants. No one explained the reason for the conveyance. With respect to the May 2011 deed conveying the property to Jane and defendant, defendant testified that "[plaintiff] said it was under the advice of her attorney that she was to remove her name." Defendant testified that plaintiff did not explicitly state the purpose for the conveyance, but defendant

"assumed it was because of the financial; [plaintiff] sort of alluded to it." Defendant denied that there was any agreement that plaintiff's joint tenancy interest would be restored when her financial situation improved. According to defendant, the matter was never discussed. While driving to the office of the recorder of deeds, defendant told plaintiff that, by signing the deed, plaintiff would "waiv[e] her rights to the house." Asked how plaintiff responded, defendant testified, "She shrugged her shoulders."

¶ 8 Defendant testified that she lived with plaintiff for about five months, not a full year. During that time, defendant filled in for plaintiff's secretary for about two weeks. Additionally, plaintiff paid defendant to work on some home improvement projects, including finishing the basement and retiling plaintiff's kitchen and foyer. Defendant denied telling plaintiff, after their mother's death, that she was going to "put [plaintiff's] name back on the deed." Defendant denied telling plaintiff that she was going to split the proceeds from the sale of the Apollo Drive property.

¶ 9 Defendant acknowledged that she was licensed as a real estate agent in Illinois and was familiar with deeds to real property. She testified that she had worked in the real-estate business in 1980. Defendant testified that she had considered sharing the proceeds from the sale of the Apollo Drive property with plaintiff but decided not to do so when plaintiff threatened to take legal action against her.

¶ 10 The applicable standard of review in an appeal following a bench trial is whether the trial court's judgment is against the manifest weight of the evidence. *Northwestern Memorial Hospital v. Sharif*, 2014 IL App (1st) 133008, ¶ 25. A judgment is against the manifest weight of the evidence when it appears from the record that the judgment is arbitrary, unreasonable, not based on evidence, or the opposite conclusion is apparent. *Munson v. Rinke*, 395 Ill.App.3d 789,

795 (2009). It is the trial court's responsibility, as finder of fact, to weigh the testimony of the witnesses and determine their credibility. *Hoffman v. Altamore*, 352 Ill. App. 3d 246, 254 (2004). It has been observed that, "[b]ecause the facts in a constructive trust case, including those facts which establish the existence of a fiduciary relationship, are of such consequence, the opinion of the trier of fact must be given especially great weight." *A.T. Kearney, Inc. v. INCA International, Inc.*, 132 Ill. App. 3d 655, 661 (1985).

¶ 11 The following principles guide our review of the trial court's decision that plaintiff was not entitled to a constructive trust on the proceeds of the sale of the Apollo Drive property:

> " 'A constructive trust is an equitable remedy imposed against one who, by some form of wrongdoing such as actual or constructive fraud, breach of a fiduciary duty, duress, coercion, or mistake, has been unjustly enriched.' [Citation.] *** To establish a constructive trust based on the existence of a confidential or fiduciary relationship, the party seeking the constructive trust must prove such a relationship by clear and convincing evidence. [Citation.] The following factors must be taken into consideration: (1) the degree of kinship; (2) the disparity in age, health, mental condition, education, and business experience between the parties; and (3) the extent to which the allegedly servient party entrusted the handling of her business and financial affairs to the 'dominant' party and placed trust and confidence in him. [Citation.]" *Kaiser v. Fleming*, 315 Ill. App. 3d 921, 926 (2000).

¶ 12 Having considered the evidence in light of these factors, we cannot say that the trial court erred in concluding that plaintiff failed to establish grounds for imposition of a constructive trust. Although the parties are sisters, the evidence does not suggest that, as a result of whatever sororal affection, trust, or sense of obligation they shared, one was "dominant" over the other.

Plaintiff did not entrust her finances to defendant or appoint her to any formal fiduciary position. Furthermore, although defendant was a licensed real-estate agent, plaintiff was not a naïf in business matters; plaintiff had operated a business with her husband and sold the business after his death. The evidence does not reveal whether there was a disparity in mental or physical health. Nor does the record appear to show the age difference between the parties. Plaintiff offered no clear evidence that, prior to execution of the May 2011 deed, defendant and plaintiff had reached any agreement about restoring plaintiff's interest in the property. There was conflicting testimony as to whether defendant proposed that plaintiff divest herself of title to the property or whether plaintiff's attorney proposed the idea. There was also conflicting testimony as to whether defendant warned plaintiff of the effect of the May 2011 deed. It was the trial court's responsibility to resolve these conflicts in the evidence.

¶ 13 The cases cited by plaintiff in support of her argument that a confidential or fiduciary relationship existed are readily distinguishable. In *McCartney v. McCartney*, 8 Ill. 2d 494 (1956), the parties were brothers who held title, as joint tenants, to two parcels of property. The defendant conveyed his interest in the property to plaintiff. He apparently did so to defeat the rights of creditors. The plaintiff later conveyed his entire interest in the property to the defendant. The plaintiff insisted, however, that he had intended only to restore the former title under which each brother had an equal undivided interest in the property. Our supreme court upheld a trial court order that the defendant convey an undivided one-half interest in the property to the plaintiff. In affirming the trial court's decision, our supreme court stressed that the evidence "shows that plaintiff relied on defendant in the handling of his affairs and reposed confidence in the latter." *Id.* at 499. Here, the evidence falls short of establishing that plaintiff entrusted her affairs to defendant.

¶ 14 In *Bremer v. Bremer*, 411 Ill. 454 (1952), the trial court found that the defendant, Louis Bremer, had owed a fiduciary duty to his late brother, Fred, and that a conveyance of farm land from Fred to Louis was presumptively fraudulent and that Louis held the property subject to a constructive trust. Louis and Fred had operated the farms together, doing business under the name "Bremer Bros." *Id.* at 458. In affirming the trial court's decision, our supreme court stated as follows:

> "While Fred was a competent businessman and Louis an experienced lawyer, it is evident that in the conduct of their mutual business affairs each brother operated within the sphere of the business to which he was best adapted. Fred handled the practical aspects of their business ventures, while Louis managed the legal and financial aspects. Each operated within his own orbit, and each reposed confidence in the other in his field. Under this method of operation, Fred necessarily reposed the utmost confidence and trust in his brother in the transaction that was designed by Louis and entered into by the parties not only for the stabilization of Fred's financial situation, but for that of Louis's and their farm partnership as well. At the time the disputed deed was executed, the evidence shows that Fred was depending on Louis, as he had done in the past, to provide a way to lead him out of his financial difficulties and embarrassment and to take care of the farm partnership indebtedness to the bank. The fact that the bank approached Louis for assistance with Fred's individual difficulties is persuasive of a belief, as several witnesses testified, that Fred could be relied upon to do as Louis advised." *Id.* at 466-67.

Here, plaintiff and defendant had no similar business relationship.

¶ 15 Plaintiff's reliance on *Neurauter v. Reiner*, 117 Ill. App. 2d 141 (1969), is similarly misplaced. The issue in that case was not whether the plaintiffs had sustained their burden of

proof at trial, but merely whether the plaintiffs had pleaded sufficient facts to survive a motion to dismiss for failure to state a cause of action. The court concluded that the allegations were sufficient to establish that the plaintiffs' sister owed a fiduciary duty to their mother. The plaintiffs alleged that their sister had "maintained the books and records and prepared all financial statements, reports, tax returns, and other required documents for [a family] business." *Id.* at 144. Nothing comparable has been shown in this case.

¶ 16 For the foregoing reasons, the judgment of the circuit court of Winnebago County is affirmed.

¶ 17 Affirmed.