IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

IN THE MATTER OF THE REAL ESTATE OF GARY S. SHOCKLEY,	)	
Petitioner,	)	
v.	)	C.A. No. 19716
KIM D. FORAKER (FEDORKOWICZ),	)	
Respondent.	)	

MEMORANDUM OPINION

Submitted: December 10, 2003
Decided: January 6, 2004

Douglas A. Shachtman, Esquire, DOUGLAS A. SHACHTMAN & ASSOCIATES, Wilmington, Delaware, Attorney for the Petitioner.

David J. Ferry, Jr., Esquire, FERRY, JOSEPH & PEARCE, P.A., Wilmington, Delaware, Attorney for the Respondent.

LAMB, Vice Chancellor.

I.

A man and a woman began to cohabit in 1991. In 1995, they purchased a house in Wilmington, Delaware to serve as the primary residence for them and their children from prior marriages. They decided, after some consideration, to take title as joint tenants with rights of survivorship. In 1996, they bought a vacation property in Lewes, Delaware, and again took title in their joint names with rights of survivorship. Both were employed but, although there is evidence that the woman made some contribution, the man contributed the major portion of the funds used to purchase and maintain these properties. The relationship ended in 2001, after which time the man retained sole possession of and became solely responsible for all costs associated with both properties.

The man now brings this action seeking to prove that, in equity, he is entitled to 100% ownership of the property through the imposition of either a resulting or a constructive trust. The question presented is whether the proof that the man contributed overwhelmingly towards both the purchase and the maintenance of the two properties should be given legal significance in light of the parties' intention to take both properties as joint tenants with rights of survivorship. Alternatively, if the court reaches the counterclaim for partition, the question arises whether the parties' unequal contributions over the years should lead to an unequal division of the property.

II.

Gary S. Shockley and Kim D. Foraker (now Fedorkowicz) began to live together in 1991. Shockley was a divorced man with two children from a previous marriage, one of whom lived with him a substantial part of the time. Foraker was a widow with one child.

In 1995, Shockley and Foraker decided to move from the trailer park in which they had been living into a single family home. After several months of searching, they found a house to buy, located at 304 S. Dupont Road, Wilmington, Delaware. They bought that house on September 22, 1995, taking title as joint tenants with rights of survivorship. In November 1996, Shockley and Foraker bought a property, located at 20 Hills Edge Road, Lewes, Delaware, for use as a beach house. They again took title in their joint names with rights of survivorship. Finally, several years later, Shockley bought another property in Lewes, located at 21 Hills Edge Road, but took title in his own name.

The relationship ended in 2001. Since that time, Shockley has enjoyed exclusive use and possession of the properties and has made all payments to maintain them.

The checks used to purchase 304 S. Dupont Road were drawn on Shockley's checking account, titled solely in his name. The testimony from Foraker and her father was that, of the $22,343 cash needed to fund the purchase of this house, Foraker contributed somewhere between $3,000 to $5,000. Shockley contests this contribution

and there is no documentary evidence to support it.[1] Thereafter, Shockley's checking account was the sole source for paying the mortgage, taxes, insurance and other recurrent living expenses relating to that house. Shockley and Foraker jointly signed the note and the mortgage for the balance of the purchase price.

All of the $11,000 in cash used to purchase the 20 Hills Edge Road property also came entirely from Shockley's checking account. There is no documentary evidence that Foraker directly contributed any of those funds. Once again, Shockley and Foraker both signed the note and mortgage.

The 21 Hills Edge Road property was purchased by Shockley using $37,000 of the proceeds of a $50,000 home equity loan taken on 304 S. Dupont Road. Both he and Foraker are signatories to the note and second mortgage.

As previously noted, both Shockley and Foraker worked continuously during the term of their relationship. Their incomes varied from year to year, although he consistently earned more than she. They maintained separate bank accounts and had both separate and joint credit card accounts. Both used their earnings to defray normal household expenses, such as food and other necessities of life. Foraker contributed to the

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[1] Although Foraker produced some canceled checks made payable to Shockley for many of the years between 1994 and 2001, there are no checks for 1995. The parties are in agreement that those checks, totaling $10,555 were deposited into Shockley's account. There are, however, no records showing deposits of other funds by Foraker into Shockley's account. For example, Foraker testified that she routinely put her tax refund check into Shockley's account (the likely source of her contribution to the 304 S. Dupont Road purchase), but produced no documentary evidence of any of those deposits. Similarly, her father testified that he sometimes made the bank deposits for Foraker and that on several occasions he made deposits of Foraker's money into Shockley's account. But no documentary record of those transactions is in the trial record.

support of the household both by direct expenditures of cash and by transferring money to Shockley on a more or less regular basis that he used to pay bills.[2]

Before the closing on the 304 S. Dupont Road property, Shockley and Foraker discussed how to take title and decided to do so in their joint names with rights of survivorship. They also discussed with the closing attorney the question of title. Both understood that, in the event of the death of one of them, title to the property would pass to the other. Shockley testified that he wanted Foraker's name on the deed because "we were boyfriend and girlfriend, thought we'd be together forever."[3] He also testified to his mutual understanding with Foraker that, should one of them die, the other "would still stay involved and help take care of each others kids." Foraker's testimony was much to the same effect.

Not surprisingly, the parties' testimony is divergent about what they thought would happen if they split up. Foraker testified that she thought there would be a friendly, fair and equal division of the properties. Shockley testified that he "always told [Foraker] that I would get the house and the properties."[4] While the court generally found both parties to be reasonably straightforward in their trial testimony, it is unable to credit either party on this point. The testimony was far too "made to order" for the proceeding. Generally speaking, Shockley and Foraker lived and managed their financial

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[2] See n.1, *supra*.

[3] Tr. of Trial Testimony of G. Shockley at 9.

[4] *Id.*

affairs like a married couple. The most likely truth is that when they purchased the properties in question and decided to take title in their joint names neither gave much thought to what would happen in the event they split up.

III.

The record does not support the imposition of either a resulting or a constructive trust. "A resulting trust arises from the presumed intentions of the parties and upon the circumstances surrounding the particular transaction."[5] In contrast, a constructive trust "does not arise from the presumed intent of the parties, but is imposed when a defendant's fraudulent, unfair or unconscionable conduct causes him to be unjustly enriched at the expense of another to whom he owed some duty."[6] Equity will impose a constructive trust "for the purpose of working out right and wrong."[7]

A. Resulting Trust

Courts examining a claim for a resulting trust frequently rely on one or more presumption in discerning the parties' intentions. For instance, equity generally presumes, "absent contrary evidence, that the person supplying the purchase money for property intends that it will inure to his benefit, and the fact that title is in the name of another is for some incidental reason."[8] The nature of the relationship between the

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[5] *Adams v. Jankouskas*, 452 A.2d 148, 152 (Del. 1982); *see also Hudak v. Procek*, 727 A.2d 841, 843 (Del. 1999).

[6] *Adams*, 452 A.2d at 152.

[7] *Id.* (*quoting* 1 POMEROY'S EQUITY JURISDICTION § 166, at 210-11 (5th ed. 1941)).

[8] *Id.*

parties may, however, cause the court to apply a different presumption. For instance, the Delaware Supreme Court has held that, where the person supplying the money is a "[spouse] who places title to the property in the name of [the other spouse]" there should be a rebuttable presumption that the husband intended to make a gift to his wife.[9] That court has applied the same presumption of a gift in transactions between parents and their children.[10]

Shockley and Foraker never married; thus, the court is reluctant to rely upon the presumption of gift that exists in transactions between married persons. Nevertheless, even applying the more general presumption of no gift, the record in this case clearly supports a conclusion that both Shockley and Foraker intended to acquire both the 304 S. Dupont Road and 20 Hills Edge Road properties as joint tenants with rights of survivorship. That intention, ultimately, precludes the imposition of a resulting trust on Foraker's interest in those properties, since she took the interest that Shockley and she intended her to take.

First, Shockley and Foraker had been living together for several years at the time of the first transaction in 1995 and ran their financial affairs more or less as a married couple might do when both spouses work outside the home. While maintaining separate checking accounts, they, nevertheless, commingled their financial resources and both contributed their earnings to the support and maintenance of the household. In addition,

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[9] *Hanby v. Hanby*, 245 A.2d 428 (Del. 1968).

[10] *Hudak v. Procek*, 727 A.2d 841, 843.

at the time of the transactions in question, both parties appear to have expected that their living arrangements would continue indefinitely and, in fact, they continued to living together for a number of years thereafter. These facts, at a minimum, suggest that "the same motives of selfish interest which are found in transactions between strangers" were not at work.[11]

Second, the trial testimony was clear that at the time of the transactions at issue, Shockley intended that Foraker would have a beneficial interest in the properties and, specifically, intended that she would acquire a right of survivorship. In fact, Shockley and Foraker discussed the issue of title, both together and with the lawyer who performed the settlement of the S. Dupont Road property, and agreed to this arrangement.

Finally, Foraker contributed consideration toward the purchase of both properties. Whether or not the court accepts her testimony that her tax refunds were used to make down payments, it is clear that she signed the notes and the mortgages relating to both properties. In *Hanby v. Hanby*, this court observed that it was of "overriding importance" that the signature of the person not providing the cash down payment "was required on the bonds and mortgages in order to finance the purchases."[12] The fact is that she remains liable on those notes, as well as on the note given in support of the second mortgage on the S. Dupont Road property although the proceeds of that loan were used

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[11] *Hudak*, 727 A.2d at 843, quoting *McCafferty v. Flinn*, 125 A. 675, 677 (Del. Ch. 1924).
[12] 245 A.2d at 430.

largely to finance Shockley's purchase of 21 Edge Hill, in which she has no record interest.

For all of these reasons, the court holds that Shockley has failed to carry his burden of proving circumstances to support the imposition of a resulting trust on Foraker's interests in either 304 S. Dupont Road, Wilmington, Delaware or 20 Hills Edge Road, Lewes Delaware.

B. Constructive Trust

"A constructive trust is an equitable remedy of great flexibility and generality. 'The principle is that where a person holds property in circumstances in which, in equity and good conscience, it should be held or enjoyed by another, he will be compelled to hold the property in trust for that other.'"[13] As already stated, a constructive trust is distinguished from a resulting trust in that it does not arise from the intent of the parties, but is imposed by the court to prevent unjust enrichment where the defendant has engaged in conduct that is either fraudulent, unfair or unconscionable. Thus, the inquiry must focus on the nature of the relationship between the parties and the quality of the defendant's conduct.

Here, the facts do not suggest that Shockley's decision to title the properties in joint names with Foraker was the product of any unequal relationship or undue influence. Although they were obviously engaged in an intimate relation that involved trust and

[13] *Cannon v. Sisneros*, 1987 WL 16286 at * 2 (Del. Ch.) (*quoting* Handsburg and Maudsley, Modern Equity (12th ed. by J. Martin, 1985) p. 301).

confidence, there is no suggestion that Foraker used that relationship to procure title to either property. Instead, the record reflects that the two of them discussed the subject of title over a period of time and, for good and sufficient reasons, together decided to take title in their joint names with rights of survivorship. There is also no evidence that Foraker engaged in fraud or inequitable conduct in connection with that decision. In particular, the record does not support a conclusion that Foraker knew that Shockley expected her to relinquish her legal interest in the event they separated, or that she breached any implicit understanding between them to that effect.

For these reasons, the court is unable to conclude that the demands of equity require that Foraker hold her interests in trust for Shockley. On the contrary, at least until Shockley and Foraker separated in 2001, the record strongly supports the conclusion that they both enjoyed the benefits of joint ownership more or less as they expected they would when they took title. For this reason, the court is unable to conclude that any unjust enrichment will result from an order denying Shockley relief.

C. Partition

Foraker asks the court to partition the two properties in question. As a joint tenant, she has a right to seek partition pursuant to 25 *Del . C.* § 721(a). In this case, a partition would likely involve a sale of one or both of the properties, or a monetary settlement between the parties in lieu of a sale accompanied by an extinguishment of the "selling" party's liability on the mortgages. The principal issue left for decision is whether the parties need to account to each other for contributions made to acquire and/or maintain the premises over the years and, if so, the appropriate parameters of that

exercise. In this connection, the court notes that neither party claims to have expended monies on improvements or even substantial repairs to the properties. Instead, Shockley's claim for contribution stems from the fact that all payments on mortgages, insurance, taxes and the like have been made out of his checking account. He also maintains that the down payment monies came from him.

The court is satisfied that no accounting for contributions needs to be made for the period time the parties were living together. Instead, it is a fair inference from the record that Shockley and Foraker had an implied agreement that, on balance, they were both contributing equitably to the support and maintenance of the household, and the court is inclined to leave them where they put themselves. Even the one instance in which there was an evident disagreement over money supports this general conclusion. Shockley testified that, in 1998 or 1999, he learned that Foraker had "lied" to him about the amount of credit card debt the couple owed on both joint and separate accounts. In response, he applied for and obtained a $50,000 home equity loan on the S. Dupont Road property. Shockley then used $10,000 of that amount to pay down credit card debt and approximately $37,000 to purchase the 21 Hills Edge Road property in his sole name. He and Foraker are both signatories on that second mortgage note, which has a balance of approximately $40,000. Foraker did not object to this arrangement at the time and has never claimed an interest in the 21 Hills Edge Road property. Although the record about this transaction is incomplete, Foraker's acquiescence in this arrangement is consistent with the fact that Shockley had contribute most of the money needed to buy and maintain both of the properties in which she received a joint interest.

The court is also satisfied that no accounting is justified with respect to the period after the parties separated in 2001. Neither party made any material improvements or expended any significant sums on repairs to either property during this time. Shockley did make all mortgage and other payments on those properties and undertook sole responsibility to maintain them in good order. However, he has also lived at 304 S. Dupont Road and either used or collected (and retained) rents on 20 Hills Edge Road. On balance, it does not seem likely that an accounting would result in any material adjustment of the parties' respective economic interests. Shockley would receive credit for paying Foraker's half of all the items needed to maintain the premises, but he would also see that credit reduced by a like amount to account for his exclusive use and control of the property.

IV.

For all of the foregoing reasons, the court will enter a judgment in favor of the respondent, Kim D. Foraker (Fedorkowicz), dismissing the claims in the complaint. The court will also order a partition of 304 S. Dupont Road, Wilmington, Delaware and 20 Hills Edge Road, Lewes, Delaware, properties in which the net equity value of the two properties will be divided evenly between the parties. Counsel for the parties are directed to confer and to prepare a form of order in accordance with this opinion for presentation to the court on or before January 20, 2004.