

NO. A05-2569

STATE OF MINNESOTA

IN COURT OF APPEALS

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Kelly Danielson,

Appellant,

vs.

Shane Danielson,

Respondent.

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**RESPONDENT'S BRIEF**

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### Statement of the Case

Respondent agrees with Appellant's Statement of the Case.

### Statement of Facts

Respondent and his brother, Mark Danielson, inherited an undivided one-half interest in a farmstead from their parents in 1994. T-II. 30. The farmstead was built by their parents in 1986. T-I. 25; T-II. 3.

In 1996, the parties agreed to go into an ostrich farming operation together. T-I. 89; T-II. 37, 122. The parties needed to obtain a loan to capitalize the venture. T-I. 15, 18, 89; T-II. 37. Respondent was unable to obtain a loan in his name due to his bad credit history and outstanding debts. T-I. 89; T-II. 39-40. The parties eventually found a lender that would loan them money based on Appellant's good credit history. T-II. 41, 122. In order for the lender to approve the loan, Appellant had to have an equity interest in the farmstead owned by Respondent and his brother. T-I. 90-91; T-II. 41-42.

The parties discussed putting Appellant onto the title for the property so that they could acquire the loan. T-II. 42, 122. The parties also discussed buying out Respondent's brother's interest in the property by giving him some

acreage, building him a house and giving him cash. T-I. 93; T-II. 43, 46.

Respondent asked his brother to sign over his interest to the parties so they could obtain the loan for the ostrich farming operation. T-II. 14. Respondent's brother agreed to do so to help his brother obtain the loan as a friend and as a family member. T.II. 5-6, 13. Respondent's brother signed a quitclaim deed conveying all of his interest in the farmstead to the parties on August 22, 1996. T-II. 10. Neither Respondent nor his brother intended on gifting their interest in the farmstead to Appellant. T.II. 6, 47. Appellant was never told that the transfer to her was a gift. T-II. 47. The parties paid no consideration to Respondent's brother for the transfer of his interest. T-II. 43. The sole purpose was out of good faith to assist the parties in obtaining their loan. T-II. 14, 47.

The quitclaim deed was signed in the office of the attorney for the closing company that closed the ostrich loan for the lender. T-II. 49. The attorney did not represent either of the parties or Respondent's brother. T-II. 49; T.II. 154. Respondent did not talk with an attorney prior to signing the deed. T-II. 125-126.

The parties were not married at the time of the transfer. T-II-12. Appellant understood that the purpose of the quit claim deed was to get the loan financing to be able to go through with the ostrich farming operation. T-I. 91. Prior to the quitclaim deed being signed, Appellant told Respondent that she would not try and take the farmstead away from Respondent and his brother. T-II. 48. Appellant subsequently made similar representations to Respondent after the deed was delivered. T-I. 95; T-II. 48. In the dissolution trial, Appellant requested that the trial court impose equity to award her a portion of the farmstead if it determined that the property was Respondent's non-marital property. T-I. 28.

### Argument

#### **I. PAROL EVIDENCE WAS PROPERLY ADMITTED TO PROVE THE NECESSITY OF A CONSTRUCTIVE TRUST.**

##### **A. Standard of Review.**

Procedural and evidentiary rulings are within the district court's discretion and reviewed for an abuse of the district court's discretion. Braith v. Fischer, 632 N.W.2d 716, 721 (Minn. Ct. App. 2001), review denied (Minn. Oct. 24, 2001).

**B. The trial court did not abuse its discretion by admitting evidence of the circumstances surrounding execution of the farmstead deed.**

The establishment of a constructive trust does not set aside the title to property, but instead proceeds on the theory that, even though legal title rests in the grantee of the deed, equity will declare that such title is held in trust for someone else to whom it rightfully belongs. Borsgard v. Elverum, 248 Minn. 405, 412, 80 N.W.2d 604, 609 (1957). Because a constructive trust does not set aside title to property, parol evidence is admissible to show the establishment of a constructive trust. In Re Estate of Vittorio, 546 N.W.2d 751, 755 (Minn.Ct.App. 1996).

Both parties and Respondent's brother testified regarding the intent of the farmstead deed and the fact that Respondent's brother deeded his interest to the parties solely to enable them to obtain an ostrich loan. T.I. 91; T.II. 5-6, 13-14, 43, 47. Under the holdings in Borsgard and Vittorio, parol evidence was properly admitted regarding the facts leading up to the conveyance, which ultimately and correctly lead to the creation of a constructive trust.

**II. THE TRIAL COURT DID NOT ERR AS A MATTER OF LAW IN FINDING A CONSTRUCTIVE TRUST IN FAVOR OF A NONPARTY.**

**A. Standard of Review.**

The existence of a constructive trust is question of

fact for the trial court. Freundschuh v. Freundschuh, 559 N.W.2d 706 (Minn.Ct.App. 1997). The findings of a trial court will not be set aside unless clearly erroneous. Minn.R.Civ.P. 52.01. Where the trial court's factual findings are reasonably supported by the evidence, they are not clearly erroneous and must be affirmed. Hilton v. Nelsen, 283 N.W.2d 877, 881 (Minn.1979).

**B. Imposing a constructive trust in favor of a nonparty is not an error of law.**

The trial court imposed a constructive trust finding that one-half of the farmstead was nonmarital property held by the parties in trust for Respondent's brother, who was not a party to the lawsuit. A.10. The remaining one-half interest was held to be marital and was divided equally between the parties. A.10-11. Respondent's brother was a witness at trial and Appellant had the opportunity to cross-examine him. T-II. 10-15.

Appellant cites the case of Sammons v. Sammons, 624 N.W.2d 450 (Minn.Ct.App. 2002), for the proposition that the trial court "errs as a matter of law in imposing a constructive trust against property owned by a non-party." App. Brief, p. 10. Appellant then argues: "Thus, it follows that a district court cannot impose a constructive trust in favor of a non-party." App. Brief, p.10. However, Appellant

cites no authority for the latter statement.

The Sammons case does not support Appellant's argument. Sammons involved a dissolution where the trial court imposed a constructive trust in favor of the former wife upon property belonging to the former husband's mother. The Sammons court held that the district court could not enter a judgment against mother's interest, as the court lacked jurisdiction over mother to impose a constructive trust on her property and any assertion of quasi-in-rem jurisdiction violated mother's right to due process. 642 N.W.2d 450, 457 (Minn.Ct.App. 2002). Sammons did not involve the imposition of a constructive trust in favor of a nonparty.

Appellant cites In Re Ferlitto for the proposition that a district court does not have jurisdiction over a nonparty. 565 N.W.2d 35 (Minn.Ct.App. 1997). Ferlitto involved a court order requiring a wife's attorney to pay to husband money that wife had taken from their home. Id. at 36. The order to pay was overturned on the basis that the attorney did not appear on his own behalf, was not included or named in the pleadings, made no argument on his own behalf, and had no personal stake in the litigation. Id. at 37. Ferlitto did not involve a constructive trust.

The cases cited by Appellant in support of her argument

deal with the use of a constructive trust against a non-party's interest. The constructive trust imposed in this case was in favor of a non-party. Contrary to the cases cited by Appellant, Respondent's brother did not contest the award, nor were any rights or property interests taken away from him.

Respondent has been unable to locate any authority to support the imposition of a constructive trust in favor of a nonparty. However, the very nature of a court's broad power to impose equity to prevent an injustice should allow a constructive trust to arise, when there are no rights taken away from the nonparty. The trial court did not exercise jurisdiction over Respondent's brother. Most significantly, the trial court awarded the farmstead to Respondent. Nothing the trial court did negatively affected any interest in the brother.

As between the parties, equity requires that Respondent be entitled to the one-half nonmarital interest. Respondent and his brother are then left to work out a fair resolution of the brother's claim. This is exactly the result that the trial court reached and the reason for the constructive trust.

### III. THE TRIAL COURT PROPERLY IMPOSED A CONSTRUCTIVE TRUST IN FAVOR OF RESPONDENT'S BROTHER.

#### A. Standard of Review.

District courts have broad discretion over the division of marital property and appellate courts will not alter a district court's property division absent a clear abuse of discretion or an erroneous application of the law. Sirek v. Sirek, 693 N.W.2d 896, 898 (Minn. App. 2005) (citing Chamberlain v. Chamberlain, 615 N.W.2d 405, 412 (Minn. App. 2000), review denied (Minn. Oct. 25, 2000) and Ebnet v. Ebnet, 347 N.W.2d 840, 842 (Minn. App. 1984)). A district court abuses its discretion regarding a property division if its findings of fact are "against logic and the facts on [the] record." Rutten v. Rutten, 347 N.W.2d 47, 50 (Minn. 1984).

Appellate courts "will affirm the trial court's division of property if it had an acceptable basis in fact and principle even though [the appellate court] might have taken a different approach." Antone v. Antone, 645 N.W.2d 96, 100 (Minn. 2002). The appellate court defers to the trial court's findings of fact and will not set them aside unless they are clearly erroneous. Id.; see Servin v. Servin, 345 N.W.2d 754, 758 (Minn. 1984).

A trial court's authority in dissolution actions is

limited to that provided by statute, but the trial court also had inherent power to grant equitable relief. DeLa Rosa v. DeLa Rosa, 309 N.W.2d 755, 757-58 (Minn. 1981). A constructive trust is a judicially created equitable remedy imposed to prevent unjust enrichment of a person holding property under a duty to convey it or use it for a specific purpose. Wright v. Wright, 311 N.W.2d 484, 485 (Minn. 1981).

Granting equitable relief is within the sound discretion of the trial court. Nadeau v. County of Ramsey, 277 N.W.2d 520, 524 (Minn. 1979). Only a clear abuse of that discretion will result in reversal. Id.

**B. The trial court did not abuse its discretion by imposing a constructive trust over a one-half interest in the farmstead to prevent unjust enrichment.**

Whenever a legal title to property is obtained through fraud, oppression, duress, undue influence, force, crime, or similar means, or by taking improper advantage of a confidential or fiduciary relationship, a constructive trust arises in favor of the person equitably entitled to the property. Wright v. Wright, 311 N.W.2d 484, 485 (Minn. 1981). Constructive trusts are designed to correct abuses of fiduciary relationships and force a conveyance to prevent unjust enrichment. PJ Acquisition Corp. v. Skoglund, 453

N.W.2d 1, 20 (Minn. 1990). A fiduciary relationship in the strict sense is not a prerequisite to a constructive trust, and any relationship giving rise to justifiable reliance or confidence is sufficient. Freundschuh v. Freundschuh, 559 N.W.2d 706 (Minn.Ct.App. 1997). In decreeing a constructive trust, the court is bound by no unyielding formula, but is free to effect justice, according to the equities peculiar to each transaction. Thompson v. Nesheim, 280 Minn. 407, 159 N.W.2d 910 (Minn. 1968); In re Estate of Vittorio, 546 N.W.2d 751, 755 (Minn.Ct.App. 1996). The court, however, must be persuaded by clear and convincing evidence that the imposition of a constructive trust is justified to prevent unjust enrichment. In re Estate of Eriksen, 337 N.W.2d 671, 674 (Minn.1983).

There is significant evidence in the trial testimony to support the trial court's imposition of a constructive trust in favor of Respondent's brother:

- 1) Respondent and his brother inherited an undivided one-half interest in a farmstead from their parents in 1994.

T-II. 30.

- 2) In 1996, while engaged to be married, the parties agreed to invest in an ostrich farming operation and needed

a loan capitalize the venture. T-I. 15, 18, 89; T-II. 37, 118, 122.

3) Respondent was unable to obtain a loan in his name due to his bad credit history and outstanding debts. T-I. 89; T-II. 39-40.

4) The parties subsequently found a lender that would loan them money based on Appellant's good credit history. T-II. 41, 122.

5) As a condition of the loan, the lender required that Appellant have an equity interest in the farmstead. T-I. 90-91; T-II. 41-42.

6) Respondent asked his brother to deed his interest in the farmstead to the parties so that they could obtain the loan for the ostrich farming operation. T-II. 14.

7) Respondent's brother agreed to do so to help his brother obtain the loan and conveyed all of his interest in the farmstead to the parties on August 22, 1996. T-II. 5-6, 10, 13.

8) Neither Respondent nor his brother intended on gifting their interest in the farmstead to Appellant. T-II. 6, 47.

9) Appellant was never told that the transfer to her was a gift. T-II. 47.

10) Appellant paid no consideration to acquire title to the farmstead. T-II. 43.

11) Appellant understood at the time the transfer was made that the sole reason she was put onto title was to obtain the loan to be able to finance the ostrich farming operation. T-I. 91.

12) Prior to Appellant taking title to the farmstead, she told Respondent that she would not try and take the farmstead away from Respondent or his brother. T-II. 48.

13) Appellant subsequently made similar representations to Respondent after she took title to the farmstead. T-I. 95; T-II. 48.

Appellant did not pay any consideration for her interest in the property and understood the sole reason that she was put onto title was to obtain a loan. The transaction was between parties who were in a close and trusting relationship. Respondent conveyed his interest solely to help the parties obtain a loan.

Allowing Appellant to have an interest in Respondent's brother's one-half interest would allow her to take improper advantage of a confidential and fiduciary relationship between herself, Respondent and Respondent's brother. It would allow Appellant to take advantage of Respondent's

brother's good faith attempt to help the parties financially. A constructive trust was properly imposed in favor of Respondent's brother, who is equitably entitled to this one-half interest in the farmstead.

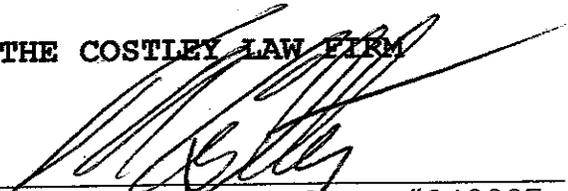
Appellant has not shown how the trial court's findings of fact are clearly erroneous. Here the trial court had full opportunity to adjudge the validity of the testimony and none of the findings are clearly erroneous. The imposition of the equitable remedy should be affirmed.

**CONCLUSION**

The trial court properly determined that one-half of the farmstead was non-marital property and imposed a constructive trust to prevent unjust enrichment to Appellant.

Dated at Two Harbors, Minnesota, this 28th day of March, 2006.

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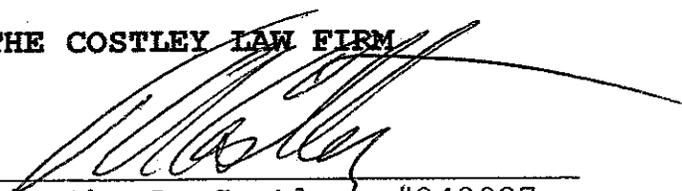
**CERTIFICATION OF BRIEF LENGTH**

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I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subs. 1 and 3, for a brief produced with a proportional font. The length of this brief is 2,922 words. This brief was prepared using Microsoft Word.

Dated this 28th day of March, 2006.

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