STATE OF MINNESOTA
IN COURT OF APPEALS
A09-386

Dale Kannegiesser,
Appellant,

vs.

Darlene Morton-Gratz,
Individually and as Personal Representative
for the Estate of Emma Kannegiesser,
Respondent.

Filed January 19, 2010
Affirmed
Stauber, Judge

Swift County District Court
File No. 76CV0817

Amy J. Doll, Fluegel, Anderson, McLaughlin, & Brutlag, Chtd., Morris, Minnesota (for appellant)

Tara J. Ulmaniec, Wilcox & Ulmaniec, P.A., Benson, Minnesota (for respondent)

Considered and decided by Stauber, Presiding Judge; Stoneburner, Judge; and Huspeni, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

STAUBER, Judge

On appeal in this real-estate-conveyance dispute, appellant challenges the dismissal of his suit under rule 41.02. Appellant argues that the district court erred by concluding that (1) he failed to prove the existence of an oral contract with his parents by clear, positive, and convincing evidence and (2) the imposition of a constructive trust was not justified because appellant failed to prove that the estate would be unjustly enriched as a result of appellant's work on the family farm. We affirm.

FACTS

Appellant Dale Kannegiesser and respondent Darlene Morton-Gratz are siblings, born to George and Emma Kannegiesser. George, a farmer by trade, died in 1990, leaving all of his estate by will to Emma. In 2006, Emma passed away. Emma's will, consistent with George's will, bequeathed $10,000 to appellant, with the remainder of the estate, including the farm real estate, being devised and bequeathed to respondent. Emma's will states:

> I have intentionally limited the bequest to [appellant] to the amount of Ten Thousand Dollars ($10,000.00) since it is my belief that he has been fairly treated by my husband and myself through assistance which we gave him in establishing his farming operation in earlier years. [Respondent] did not receive such assistance in earlier years and I therefore believe it is now fair to provide her with the bulk of my estate.

In March 2007, appellant initiated this action alleging that in the spring of 1953, George and Emma requested that appellant quit school and farm with George. The complaint also alleged that in exchange for agreeing to quit school and farm with his

parents, George and Emma "promised [appellant] that when they both died, he would receive their farming operation, including any and all land, assets, or property related to the farm." Thus, appellant sought specific performance of his oral agreement with George and Emma.

At trial, evidence was presented that in 1951, while living on a leased farmsite located on section 17, George purchased 229 acres of land known as the section 19 land. At about the same time, George developed a skin condition that made him highly sensitive to heat, sunlight, and dust. Appellant claimed that because of this skin condition, George was concerned that he would not be able to keep farming without assistance. Appellant testified that, as a result, George and Emma asked him when he was about 15 years old to quit school and help his father with the farming operations. According to appellant, George told him that "if you quit school . . . you'll have the farming operation." Although appellant acknowledged that George and Emma did not clarify what they meant by the "farming operation," appellant testified that they later indicated that it would "all" be his.

From 1953 until George retired in 1980, appellant helped George with the farming operation. This work consisted of planting crops, caring for the livestock, cleaning the barns, maintaining the machinery, and general farm work. In the meantime, appellant got married and began his own farming operation. Appellant purchased the home on section 17 after his parents built a new home on the section 19 land. When George and Emma moved to section 19, they left old farm and milking equipment on section 17, along with 15 milk cows and a few pigs. Appellant and his wife testified that they compensated

George and Emma for these animals by giving them feeder steers over the years until George indicated that the debt had been satisfied. After George retired, appellant rented the section 19 land from his parents through a crop-sharing agreement at first, but later paid rent of $4,000 per year. Appellant also acquired a substantial amount of land and now owns approximately 580 acres of farm property.

Jack Morton, a good friend of George and Emma, testified that he had many discussions with George concerning the agreement that would give appellant the farm when George and Emma died. Morton testified that he was told by George that "if [appellant] helped him and worked for him and quit school, he would . . . give him the farm when he died." According to Morton, the agreement was premised in part on George's health. But Morton admitted that appellant probably did not like school and would rather have farmed than attended school. Moreover, despite appellant's testimony that he could have finished high school and might have attended "agriculture school," evidence was presented that appellant was a very poor student.

In 1985, George and Emma entered into voluntary conservatorships with respondent appointed as their conservator. In 2004, respondent, acting as conservator for Emma, attempted to sell an eight-acre portion of the section 19 land. Appellant objected to the sale, suggesting instead that the parcel should be sold to his son. Appellant further admitted that, at that time, he made no mention of his purported oral agreement with his father concerning his inheritance of the section 19 land. He did not assert that the parcel was part of what was promised to him.

At the conclusion of appellant's case, respondent moved to dismiss under Minn. R. Civ. P. 41.02(b). The district court granted the motion, concluding that "George and Emma's shared testamentary language speaks for itself," and "[t]he evidence of the existence of an oral contract is not clear, positive, and convincing." The court also concluded that "[t]here is no proof of fraud, oppression, duress, undue influence, or any other wrongful conduct on the part of [respondent] that would necessitate the creation of a construction trust," and appellant "has failed to establish by clear and convincing evidence that it would be morally wrong for [respondent] to retain Section 19." This appeal followed.

D E C I S I O N

Minn. R. Civ. P. 41.02(b) permits a defendant to move for involuntary dismissal of a claim at the close of the plaintiff's case without waiving the right to offer evidence if the motion is denied. In the case of a bench trial, rule 41.02(b)

> permit[s] the trial judge to view plaintiff's evidence in the same light that the judge would view plaintiff's evidence if the defendant rested without submitting any additional proof. In these circumstances, the trial judge, as the finder of fact, must determine credibility, draw factual inferences, and otherwise weigh evidence.

1A David F. Herr & Roger S. Haydock, *Civil Rules Annotated* § 41.21 (4th ed. 2003).

"If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52.01." Minn. R. Civ. P. 41.02(b). The district court's findings of fact are reviewed for clear error, with deference given to the district court's opportunity to judge the credibility of the witnesses. Minn. R. Civ. P. 52.01.

I.

Minnesota law provides that a person may orally contract to will his property to another at his death. *Alsdorf v. Svoboda*, 239 Minn. 1, 3, 57 N.W.2d 824, 826 (1953). Whether such an agreement exists is a question of fact for the district court. *Id.* "It is only where the finding of the [district] court is manifestly and palpably contrary to the evidence that we would be justified in reversing it." *Husbyn v. Lunde*, 283 Minn. 74, 77, 166 N.W.2d 333, 335 (1969).

Appellant argues that there is clear and convincing evidence in the record establishing the existence of an oral agreement between appellant and his parents under which appellant would be entitled to the family farm when his parents died if appellant quit school and helped his father with the farm. Appellant also contends that the evidence establishes that the conditions of this agreement were satisfied. Thus, appellant argues that the district court abused its discretion in denying specific performance.

Ordinarily, an agreement to convey land must be in writing to satisfy the statute of frauds. *In re Guardianship of Huesman*, 354 N.W.2d 860, 862–63 (Minn. App. 1984). The statute of frauds is designed to "'defend against frauds and perjuries by denying force to [certain types of] oral contracts . . . peculiarly adaptable to those purposes.'" *Id.* at 863 (quoting *Alamoe Realty Co. v. Mutual Trust Life Ins. Co.*, 202 Minn. 457, 459, 278 N.W.2d 902, 903 (1938)). However, because the statute of frauds can create hardship and injustice, an oral contact for the transfer of land "may be removed from the purview of the statute of frauds" and specific performance may be granted based on "either the

unequivocal reference theory or on the fraud theory of part performance." *Ehmke v. Hill*, 236 Minn. 60, 68–69, 51 N.W.2d 811, 817 (1952).

Minnesota law provides:

> To warrant specific performance of an oral contract to give real property by will, the contract (a) must be established by clear, positive, and convincing evidence; (b) it must have been made for an adequate consideration and upon terms which are otherwise fair and reasonable; (c) it must have been induced without sharp practice, misrepresentation, or mistake; (d) its enforcement must not cause unreasonable or disproportionate hardship or loss to the defendants or to third persons; and (e) it must have been performed in such a manner and by the rendering of services of such a nature or under such circumstances that the beneficiary cannot be properly compensated in damages.

Id. at 69, 51 N.W.2d at 817 (footnotes omitted).

"In order for a contract to be specifically enforced, it is not necessary that the parties agree on every possible point; rather, the law merely requires that the parties' intent as to the fundamental terms of the contract can be ascertained with reasonable certainty." *LaPanta v. Heidelberger*, 392 N.W.2d 254, 258 (Minn. App. 1986). In situations where the parties "may have expressed an agreement in terms so vague and indefinite as to be incapable of interpretation with a reasonable degree of certainty, they could cure this defect by their subsequent conduct and by their own practical interpretation." *Johnson v. Quaal*, 250 Minn. 154, 157, 83 N.W.2d 796, 798 (1957).

Here, the district court concluded that:

> The evidence of the existence of an oral contract is not clear, positive, and convincing. George allegedly promised to give [appellant] "the farming operation" upon his death. But what does that mean? It could mean "the farm" – but which

> farm? It could mean farm equipment, livestock, seed, crops in storage, good will with neighbors and agricultural business associates, etc. [Appellant] simply failed to establish by clear, positive, and convincing evidence what George meant when he purported to promise to give [appellant] the "farming operation." In addition, . . . as recently as 2004 [appellant] was apparently willing to pay for land that he now claims that he was eventually going to inherit.

The district court further noted that appellant's "request for specific performance is tenuous at best" because appellant testified that "he could probably compute how much time he spent working on George's farming operation without compensation from 1953 until 1980," indicating that an alternative remedy was available.

Appellant argues that the district "court's conclusion that the term 'farming operation' is unclear relies upon an erroneous interpretation of the law, and is contrary to the evidence." To support his claim, appellant cites *Tjanetopoulos v. Margares*, wherein an action was brought by respondent against his aunt for specific performance by the uncle's estate, and others, of the uncle's alleged oral promise to convey or devise his filling station property to respondent if respondent gave up his government job in Greece, moved with his family to Minnesota, and became sufficiently familiar with the English language to transact business at the filling station. 256 Minn. 176, 177-78, 98 N.W.2d 97, 98-99 (1959). In concluding that the evidence supported the existence of the oral contract, the supreme court held that "[n]o inequities exist as a basis for refusing specific performance. The consideration for the contract was adequate and its terms fair. Its enforcement will not cause unreasonable or disproportionate hardship or loss to anyone,

including the defendants. On the contrary, its enforcement will result in substantial justice being done." *Id.* at 179–80, 98 N.W.2d at 99.

Appellant argues that like the "filling station" contemplated in *Tjanetopoulos*, the terms of the contract pertaining to the "farming operation" are clear and definite. Appellant contends that George owned only "one farm" and that pursuant to the alleged oral contract, that farm would be his when George and Emma died. Appellant further argues that Morton's testimony supports his position that appellant is entitled to the "farming operation."

Despite similarities with *Tjanetopoulos*, we conclude that the present case presents clear distinctions. Unlike *Tjanetopoulos*, the district court here found that appellant was unable to establish the terms of the contract with sufficient particularity. Indeed, appellant fails to articulate what exactly constitutes the "farming operation." Rather, appellant simply asserts that George "would not have assumed that the 'farm' or 'farming operation' was some vague or undeniable concept." Moreover, the evidence in the record pertaining to the parties' subsequent conduct offers no further clarity to the parties' intent. Appellant testified that he helped his father with various farm duties and also established his own successful farming operation on section 17 after George moved to section 19. There is simply insufficient evidence in the record to definitively ascertain the parties' intent pertaining to the "farming operation." Thus, the district court did not err in concluding that appellant failed to establish the terms of the alleged oral agreement.

In addition to appellant's failure to definitively establish the terms of the alleged oral contract, the district court expressed doubt as to the existence of the oral agreement,

noting that "as recently as 2004 [appellant] was apparently willing to pay for land that he now claims he was eventually going to inherit." Moreover, the district court concluded that appellant was unable to demonstrate that specific performance was applicable, noting appellant's testimony that he was able to compute how much time he spent working on George's farm without compensation. Although appellant later claimed that he did not keep records of his work on George's farm and, therefore he did not know how he could determine his compensation, the district court apparently did not find this testimony to be credible. *See Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988) (stating appellate courts defer to district court credibility determinations). In light of the deference given to district court's credibility determinations, the record supports the court's conclusion that appellant failed to prove the existence of the alleged oral agreement by "clear, positive, and convincing" evidence. The district court did not err in denying specific performance.

II.

"A constructive trust is an equitable remedy imposed to prevent unjust enrichment and is completely dissimilar to an express or resulting trust." *Freundschuh v. Freundschuh*, 559 N.W.2d 706, 711 (Minn. App. 1997), *review denied* (Minn. Apr. 24, 1997). When imposing a constructive trust, "the court is not bound by a formula, but is free to effect justice to avoid unjust enrichment according to the equities." *Id.* The court 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). A constructive trust is not limited to situations involving fraud or other wrongdoing, but may be imposed when there is clear and convincing

evidence that it would be "morally wrong for the property holder to retain" the property. *Spiess v. Schumm*, 448 N.W.2d 106, 108 (Minn. App. 1989).

Appellant argues that George and Emma's estate would be unjustly enriched if the alleged agreement between appellant and George was not enforced. To support his claim, appellant contends that based on the alleged agreement between him and George, he dropped out of school to assist George with the farm because George had developed a severe skin disease that "crippled him to the point of not being able to care for his farming operation." Appellant argues that in helping his father with the farming operation, he sprayed and harvested George's crops, helped him build a number of farm buildings, contributed feeder calves to his father's farm, and generally provided assistance to his father when needed. Appellant claims that by dropping out of school to help with the farm, he sacrificed the opportunity to graduate from high school and attend agricultural school. Thus, appellant argues that the district court abused its discretion by failing to impose a constructive trust on the property in question because he dropped out of school to help his father with the farm, relying on his father's promise that he would get the farm when George and Emma died.

If believed, appellant's testimony would support the imposition of a constructive trust. But the district court apparently did not find appellant's testimony to be completely credible with respect to the alleged agreement. *See Sefkow*, 427 N.W.2d at 210 (stating appellate courts defer to district court credibility determinations). As the district court noted, "as recently as 2004, [appellant] was apparently willing to pay for land that he now claims that he was eventually going to inherit." Moreover, despite his claims that

appellant sacrificed his education dropping out of school to assist his father with the farming operation, the record reflects that appellant was a very poor student and that appellant would much rather have been farming than attending school. The record further reflects that appellant's parents were instrumental in appellant beginning his farming operation. George and Emma gave appellant some livestock and equipment and appellant was able to rent and farm the section 19 land from 1980 to 1995 at a discounted rate. Finally, the record also reflects that Emma loaned appellant $40,000, of which $30,000 was forgiven. George and Emma's shared testamentary language is clear and unambiguous, and they articulated specific reasons for distributing the estate in the manner specified by the wills. Accordingly, the district court did not abuse its discretion in concluding that a constructive trust was not justified because appellant failed to prove by clear and convincing evidence that George and Emma's estate would be unjustly enriched by appellant's work on the farm.

Affirmed.