

**CLERK OF COURT OF APPEALS
OF WISCONSIN**

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**STATEMENT OF ISSUES PRESENTED FOR
REVIEW**

- I. IS FINDING AN AMBIGUITY IN THE INSURANCE PROVISIONS OF THE PARTIES' DIVORCE JUDGMENT A PREREQUISITE TO IMPOSING A CONSTRUCTIVE TRUST?

Decided by the trial court: Yes.

- II. SHOULD A CONSTRUCTIVE TRUST BE IMPOSED UPON LIFE INSURANCE PROCEEDS RECEIVED BY A THIRD-PARTY, CONTRARY TO THE PROVISIONS OF A DIVORCE JUDGMENT?

Not addressed by the trial court.

STATEMENT OF THE CASE

This is an appeal from an order entered by Judge Paul Bugenhagen in the circuit court for Waukesha County on January 12, 2018, which denied the Petitioner-Appellant's motion to enforce a marital settlement agreement and impose a constructive trust on life insurance proceeds that were paid out in violation of the martial settlement agreement.

STATEMENT OF FACTS

The Petitioner-Appellant, Joan C. Pulkkila, and Respondent, James M. Pulkkila, were married on October 28, 1996, and divorced on August 25, 2009. (R. 38 at 2-3). They had two minor children at the time of their divorce, Brittany and Grace. (R. 38 at 2). Article V(A) of their marital settlement agreement, incorporated into the divorce judgment, provides:

[b]oth parties shall maintain in full force and pay the premiums on all life insurance presently in existence on their lives or obtain comparable insurance coverage, with the parties' minor children named as sole and irrevocable primary beneficiaries until the youngest minor reaches the age of majority, or until the child has reached the age of 19 so long as the child is pursuing an accredited course of instruction leading to the acquisition of a high school diploma or its equivalent.

(R. 38 at 14). James had a \$250,000 Banner Life Insurance Policy in force at the time of the divorce, which named Joan as the beneficiary (hereafter "the policy"). (R. 210 at ¶ 8). The discovery responses of Other Party – Respondent,

Lynnea Landsee-Pulkkila, indicate that she received \$50,000 from a Sun Life insurance policy through Mid-City Foundry Company, the employer James had at the time of the divorce. (R. 247 at 4, 12; R. 35 at 1).

James married Lynnea in 2013, and made her the beneficiary of the Banner policy on or about November 18, 2014. (R. 210 at ¶¶ 12-13). James died on November 10, 2015. (R. 210 at ¶ 14).

At the time of James' death, Brittany was 17 years old and Grace was 15. (R. 38 at 2). Lynnea made a claim for the proceeds of the policy and Banner Life Insurance paid her \$250,091.60 on December 8, 2015. (R. 247 at 3-4, 14).

On May 17, 2015, Joan filed a motion to join Lynnea to the divorce action, enforce the insurance provision of the judgment, and impose a constructive trust on the proceeds from the policy. (R. 209). The trial court joined Lynnea to the action by an order entered July 14, 2017. (R. 228). A hearing was held on the issues of enforcement and constructive trust on October 20, 2017. (R. 254).

At the hearing, Lynnea's counsel confirmed that Lynnea received the insurance proceeds. (R. 254 at p. 11, l. 16-18). Her counsel also stated that James "is not the first decedent to have changed a beneficiary designation that is anticipated under judgment of divorce," and that "he failed to maintain the insurance." (R. 254 at p. 28, l. 19-21; p. 34, l. 16-17). The trial court stated, in part:

I guess, I'm going to go back to the language of the MSA. **If the language is not ambiguous, we don't get to the next question about the constructive trust, and doing something other than what the agreement states. The first obligation that you have is to convince me that this agreement is somehow ambiguous,** and that there is -- that this action, I guess, of Mr. Pulkkila is not -- was not contemplated and that there should be a remedy for that.

(R. 254 at p. 20, l. 17-25 (emphasis added)). The Court further stated:

... I believe, we have to first examine whether or not there's ambiguity in their agreement before I go any further on this.

(R. 254 at p. 28, l. 3-5). Joan's counsel cited to *Sulzer v. Diedrich*, 2003 WI 90, 263 Wis. 2d 496, 664 N.W. 2d 641, to support its position that it was not necessary for the trial

court to find an ambiguity before considering whether to impose a constructive trust. (R. 254 at p. 42, l. 4-5). The trial court heard the arguments of counsel only, and did not take testimony despite requests from petitioner's counsel. (R. 254). In its findings at the end of the hearing, the trial court stated:

But the Court's job isn't to go back and fix the parties' agreement to make it fair now for the children. It's not fair they're not getting as much money. They lost their father. It is a rotten deal for them. However, this Court has to follow the law on it. The contract is not ambiguous to this Court. That is simply a question of law.

(R. 254 p. 46-47, l. 24 - 5).

The trial court denied Joan's motion to enforce the judgment and impose a constructive trust by an order entered on January 12, 2018. (R. 251). Joan filed a motion for reconsideration on January 31, 2018, (R. 253), which the trial court denied by an order entered on March 20, 2018. (R. 257). This appeal follows.

ARGUMENT

I. THE CIRCUIT COURT IS NOT REQUIRED TO FIND AN AMBIGUITY IN THE INSURANCE PROVISIONS OF THE PARTIES' DIVORCE JUDGMENT IN ORDER TO IMPOSE A CONSTRUCTIVE TRUST.

The trial court's conclusion that it was required to find an ambiguity in the marital settlement agreement as a precursor to considering whether or not to impose a constructive trust over the life insurance proceeds was an error of law.

"The circuit courts have jurisdiction of all actions affecting the family and have authority to do all acts and things necessary and proper in those actions and to carry their orders and judgments into execution as prescribed in [Chapter 767]." Wis. Stat. § 767.01(1) (2015-16). Family courts are courts of equity. *Jeffords v. Scott (Jeffords)*, 2001 WI App 6, ¶15, 240 Wis. 2d 506, 624 N.W.2d 384.

"[A] constructive trust is an invention of equity by which liability is imposed to prevent unjust enrichment and unfairness." *Richards v. Richards*, 58 Wis. 2d 290, 296, 206 N.W.2d 134 (1973). It does not depend upon the intent

of the parties to create an express trust. *Id.* “Rather, it is created by law to equitably prevent unjust enrichment, which arises when one party receives a benefit, the retention of which would be unjust as against the other.” *Id.* at 296-97. “[T]he person equitably entitled to the res becomes the cestui que trust and may obtain possession from the wrongful holder, the constructive trustee.” *Id.* at 297.

The constructive trust doctrine, as laid out in *Richards*, does not impose a requirement that the court find an ambiguity in a marital settlement agreement prior to exercising its authority to impose a constructive trust to enforce that agreement. Courts routinely impose constructive trusts in divorce cases like this one: where a husband makes his second wife the beneficiary of a life insurance policy or of retirement benefits, in violation of a marital settlement agreement, without first finding an ambiguity.

In *Singer v. Jones*, 173 Wis. 2d 191, 496 N.W.2d 156 (1992), the court imposed a constructive trust on life

insurance proceeds where a husband named his new wife the beneficiary of the policy in violation of his marital settlement agreement, without first finding an ambiguity. *Singer*, 173 Wis. 2d at 193-94, 198. In *Richards*, the court imposed a constructive trust on life insurance proceeds where the husband changed the beneficiary of his life insurance from his children to his new wife in violation of the parties' marital settlement agreement, without first finding an ambiguity. *Richards*, 58 Wis. 2d at 292-93, 298-99.

Similarly, in *Sulzer*, the Wisconsin Supreme Court affirmed the court of appeals' imposition of a constructive trust on employee retirement benefits. *Sulzer*, 2003 WI at ¶ 44. The husband had changed the beneficiary designation on his retirement account from his first wife to his second wife in violation of the parties' divorce decree. *Id.* at ¶¶ 5-9. The divorce decree was unambiguous:

We agree with the court of appeals and the circuit court that the divorce judgment, both written and oral pronouncements, *clearly* expressed Sulzer's and Fred's intent to divide equally the retirement accounts as of the date of the divorce. *Id.* To allow Deidrich to retain the funds attributable to Sulzer's portion would thwart the intent of the parties and would be unjust to Sulzer.

Id. at ¶ 22 (emphasis added).

The clarity of the intent of the parties to the divorce decree in *Sulzer* actually assisted the court in imposing a constructive trust. Such clarity is the opposite of the ambiguity prerequisite that the trial court felt necessary it impose in this case.

The trial court in this case relied on a misinterpretation of *Duhamel by Corrigan v. Duhamel*, 154 Wis. 2d 258, 453 N.W.2d 149 (Ct. App. 1989). The trial court in this case stated:

You've based a lot of reliance on the *Duhamel*, D-u-h-a-m-e, case, in which they did create the constructive trust. The court in that case found that -- first found though, that the language was ambiguous in their agreement, because it resulted in a valueless agreement.

(R. 256 at p. 39, l. 5-10).

Duhamé involved a life insurance provision in a marital settlement agreement that was ambiguous as to whether it was support related or employment related. *Duhamé*, 154 Wis. 2d at 266-67. Much like this case, it also involved a husband who changed the beneficiaries on his retirement benefits from his minor children to his new wife in violation of the marital settlement agreement. *Id.* at 263. The court of appeals first addressed the ambiguity in the marital settlement agreement, and then turned its attention to the constructive trust doctrine. *Id.* at 268. The court then affirmed the trial court's imposition of a constructive trust relying, in part, on *Richards*. *Id.* at 267-68.

The trial court in the present case misinterpreted *Duhamé* because it incorrectly treated the ambiguity issue as a precursor to considering whether or not to impose a constructive trust. It should have analyzed the ambiguity issue separately and distinctly, consistent with the court in *Duhamé*. Nowhere in the *Duhamé* decision does the court state that it is required to find an ambiguity in the marital

settlement agreement as a precursor to imposing a constructive trust. This is consistent with the *Sulzer*, *Singer*, and *Richards* cases where constructive trusts were imposed without a finding of ambiguity. Ambiguity is not a necessary component to the determination of whether a constructive trust is appropriate. It was an error of the trial court in this case to hold that it was.

II. THE EQUITIES IN THIS CASE WEIGH IN FAVOR OF IMPOSING A CONSTRUCTIVE TRUST.

“Imposition of a constructive trust requires a showing of (1) unjust enrichment and (2) abuse of a confidential relationship or some other form of unconscionable conduct.” *Gorski v. Gorski*, 82 Wis. 2d 248, 255, 262 N.W.2d 120 (1978). More specifically,

[a constructive trust] is implied by operation of law as a remedial device for the protection of a beneficial interest against one who either by actual or constructive fraud, duress, abuse of confidence, mistake, commission of a wrong, or by any form of unconscionable conduct, has either obtained or holds the legal title to property which he

ought not in equity and in good
conscience beneficially enjoy.

Richards, 58 Wis. 2d at 297 (citing *In re Estate of
Massouras*, 16 Wis. 2d 304, 312, 114 N.W.2d 449 (1962)).

Here again, there is no requirement that the trial court first find an ambiguity in the parties' marital settlement agreement as a precursor to considering whether to impose a constructive trust. Further, the undisputed facts of this case demonstrate unjust enrichment and unconscionable conduct that weigh in favor of imposing a constructive trust.

A. Lynnea was unjustly enriched when she received the proceeds of the Banner Life Insurance Policy.

The first requirement under *Gorski* for imposing a constructive trust is a finding of unjust enrichment. The unjust enrichment necessary to impose a constructive trust "arises when one party receives a benefit, the retention of which would be unjust as against the other." *Id.* at 296–97.

Lynnea's discovery responses and her counsel's comments on the record are revealing. Lynnea does not

dispute that James incorrectly made her the beneficiary of the life insurance policy. She also does not dispute that she made a claim for the proceeds, or that she, in fact, received and retained the proceeds. This is patently unfair to the Pulkkila children. For Lynnea to receive and retain the insurance proceeds is the very definition of unjust enrichment under *Richards*.

Further, in *Duahme*, the court specifically noted “the strong equities in favor of the minor children in light of Clyde’s unlawful removal of them as primary beneficiaries, while he was still employed at American Motors.” 154 Wis.2d at 268 (emphasis removed). Similarly, in this case, James unlawfully bypassed Brittany and Grace as beneficiaries in favor of Lynnea while Grace was still a minor. Lynnea unjustly received the insurance proceeds, which is unfair to Brittany and Grace. The trial court in this case expressly stated at the October 20, 2017, hearing, “[i]t’s not fair they’re not getting as much money. They lost their father. It is a rotten deal for them.” The

requirement of unjust enrichment is clearly fulfilled in this case.

B. James' act of making Lynnea the beneficiary of the policy is unconscionable.

The second requirement for a constructive trust under *Gorske* is abuse of a confidential relationship or some other form of unconscionable conduct which may be shown through commission of a wrong. *Richards* 58 Wis. 2d at 298.

In *Richards*, the husband's act of changing the beneficiary designation from his children to his new wife in violation of the divorce decree constituted wrongful conduct and furnished a "proper foundation for the impressing of a constructive trust upon the insurance proceeds which may be followed and recovered" *Id.* at 298-99.

In this case, the marital settlement agreement required James to make Brittany and Grace the beneficiaries of the life insurance policy until Grace (the youngest child) reached the age of majority or until she reaches the age of nineteen (19) so long as she is pursuing

her high school diploma or its equivalent. James died on November 10, 2015, when Grace was fifteen (15) and Brittany was seventeen (17). The terms of the martial settlement agreement require that the proceeds of the policy should have been paid to Brittany and Grace because they were minors at the time of James' death. James failed to make Brittany and Grace the beneficiaries of the policy and instead made Lynnea the beneficiary. This is the same kind of wrongful conduct that was present in *Richards* where the husband bypassed his children in favor of his second wife. In this case, James bypassed his children, Brittany and Grace, in favor of his second wife, Lynnea. As in *Richards*, James' wrongful conduct in violation of the martial settlement agreement is a proper foundation for imposing a constructive trust on the proceeds from the Banner Life Insurance policy and allowing those proceeds to be followed and recovered from Lynnea. James' actions were not just wrongful, they were contemptuous.

CONCLUSION

The trial court incorrectly imposed a requirement that the parties' marital settlement agreement be ambiguous before imposing a constructive trust. There is no such requirement under Wisconsin law. Rather, the undisputed facts in this case demonstrate that Lynnea has been unjustly enriched as a result of James' violation of the marital settlement agreement. Petitioner-appellant therefore requests the court impose a constructive trust on the proceeds of the Banner Life Insurance policy or, in the alternative, remand this matter to the trial court for a hearing on whether or not to impose a constructive trust.

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CERTIFICATIONS

I. CERTIFICATION AS TO FORM AND LENGTH.

I hereby certify that this brief conforms to the rules contained in Wis. Stat. §809.19(8)(b) and (c) for a brief produced with a proportional serif font as modified by the Court's May 24, 2018, Order. The length of this brief is 3,068 words.

II. CERTIFICATION OF COMPLIANCE WITH RULE 809.19(12).

I hereby certify that I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of 809.19(12). I further certify that this electronic brief is identical in content and format to the printed form of the brief filed as of this date. A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

III. CERTIFICATION AS TO CONFIDENTIALITY.

I hereby certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated at Milwaukee, Wisconsin, this 13th day of June, 2018.

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