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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

KAREN BROWN,

Plaintiff and Respondent,

v.

CORDIE CORTEZ,

Defendant and Appellant.

B232788

(Los Angeles County
Super. Ct. No. KC056943)

APPEAL from a judgment of the Superior Court of Los Angeles County.

Steven D. Blades, Judge. Reversed.

Knickerbocker Law Group, Richard L. Knickerbocker for Defendant and Appellant.

Springer & Pollock, Woodrow W. Pollock, Jr., for Plaintiff and Respondent.

Defendant Cordie Cortez appeals the judgment entered in favor of her sisters, plaintiffs Karen Brown and Cilleana Bradley, following a bench trial. The trial court found that when the parties' mother, Dorothy Sandoz, quitclaimed her residence to herself and defendant as joint tenants, she intended that, after her death, defendant would share the property equally with the plaintiffs. Because the record is devoid of evidence to that effect, we reverse.

FACTUAL AND PROCEDURAL SUMMARY

In 2002, Dorothy¹ wrote a holographic will which devised her residence in Claremont (the Property) to her three daughters. Subsequently, in 2004, Dorothy quitclaimed the Property to herself, Cordie and Karen. All parties agreed that this transfer of the Property was not intended to exclude Cilleana from sharing in her mother's estate after death, but was consummated for some other, unarticulated reason.

In October 2008, Dorothy was involved in two automobile accidents on the same day. This caused Cordie and Karen to be concerned that, by reason of being record owners of the Property, they might incur liability in the event Dorothy was involved in additional automobile accidents. Consequently, Cordie, Karen and Dorothy executed a quitclaim deed which transferred the Property back to Dorothy in her name alone.

In March 2009, Dorothy was hospitalized for treatment of her diabetes. At about this time, she asked Cordie to prepare a new quitclaim deed transferring the Property to the two of them as joint tenants. Dorothy executed this deed – the subject of this lawsuit (the Deed) – and had it duly notarized and recorded in the County Recorder's Office. Dorothy also took actions in contemplation of her death, including purchasing a prepaid funeral plan and buying a dress in which to be buried.

Dorothy died on July 21, 2009. Karen and Cilleana did not learn that Dorothy had executed the Deed and transferred the Property to Cordie until after their mother's death.

¹ We adopt the practice of the parties and refer to them and their mother by their given names.

Cordie listed the Property for sale with a real estate broker. Karen and Cilleana sued to prevent distribution of the proceeds of the sale to Cordie alone.² The complaint contained three causes of action seeking cancellation of the Deed based on lack of capacity, undue influence and forgery; as well as causes of action for fraud, quiet title, and "Damages for Financial Abuse of Elderly Person." In addition to cancellation of the Deed, plaintiffs' prayer for relief included creation of a constructive trust, punitive damages, and attorney fees.

By the time the matter was submitted to the trial court for decision, plaintiffs had abandoned their causes of action for cancellation of the Deed and Damages for Financial Abuse of Elderly Person based on lack of capacity, undue influence and forgery. Multiple witnesses had testified to Dorothy's strong-willed nature and her mental capacity before her death, and the notary public who notarized the Deed testified that Dorothy had personally appeared before her and executed the Deed in her presence. Thus, it appears the only causes of action pending before the court for decision were those contained in count four, "Fraud, creation of constructive trust," and count five, for quiet title.

The fraud allegations contained in the complaint were as follows: "Defendant, after causing plaintiff's name to be removed from title, unbeknownst to plaintiff or other family members, flew to California, met with decedent, and plaintiff is informed and believes and thereon alleges, that defendant relying on her confidential relationship with decedent and representations made to the decedent by defendant, e.g., that defendant, upon the death of decedent, would hold the property in trust and divide it equally with decedent's issue, including plaintiff, and thus avoid probate, was able to obtain decedent's signature on the deed transferring the property to decedent and defendant as joint tenants on July 21, 2009 [sic]. The aforementioned promise by defendant to hold said property in trust for all issue of decedent was in fact false and the defendant knew it to be false at the time she made it. In fact and in truth, defendant intended to take the entire property

² At the time of trial, two-thirds of the sale proceeds were being held in escrow pending the outcome of this case.

for her own use, sell it and keep the proceeds. [¶] . . . The decedent did not know that this misrepresentation was untrue, but on the other hand, believed it to be true. In reliance on the statements of defendant decedent signed the deed. . . ."

In addition to the parties, three witnesses testified at trial concerning Dorothy's testamentary intentions. Desiree Gutierrez, Dorothy's long-time neighbor and a caregiver during her final months, testified that Dorothy told her, at an unspecified time and occasion but during the period between March 5, 2009 and July 21, 2009, that she wanted her estate to be equally distributed among her three daughters. Pam Mangham, a former neighbor, testified that she spoke with Dorothy by telephone four or five times during the year before her death. On one of those occasions, Dorothy mentioned to her "that she had made a will and had already taken care of everything and that the girls were going to get whatever equally." Gertrude Daniel, who considered Dorothy her best friend, testified that, at an unspecified time, Dorothy said that she wanted all of her children to share in her estate, which Ms. Daniels took to mean her home. Dorothy reportedly said, "My niece wants my stuff, but I don't want my niece, I want my children to have my stuff. I have children to think of."

The trial court ruled in favor of plaintiffs. In its Statement of Decision, the court stated: "The Court believes that when Dorothy executed the quitclaim deed on March 5, 2009, she intended to do so to avoid probate and make it easier for [Cordie] to distribute the proceeds from the sale of the house equally among plaintiffs and defendant." Accordingly, the court entered judgment in favor of plaintiffs, ordering that the sum of \$177,004.82, or two-thirds of the net sale proceeds of the Property, be "deemed to be held in constructive trust by defendant for the benefit of plaintiffs."

Cordie appeals the judgment.

DISCUSSION

We begin with Evidence Code section 662, the "form of title" presumption: "The owner of the legal title to property is presumed to be the owner of the full beneficial title. This presumption may be rebutted only by clear and convincing proof."

Plaintiffs' attorney summed up the case in closing arguments as follows:
"[Dorothy] transferred that property to Cordie Cortez on March 5th of 2009 for one purpose only, she did not want her estate to go through probate, and she believed that Cordie would do the right thing and divide the estate among her children, all three daughters, when she dies." Plaintiffs presented absolutely no evidence of why Dorothy deeded the property to Cordie on March 5, 2009. Far from rebutting the form of title presumption with clear and convincing proof, plaintiffs presented no evidence at all that Dorothy did not intend Cordie to be the beneficial owner of the property.

Moreover, if Dorothy deeded the property to Cordie with the hope that she would "do the right thing" and share the proceeds of the sale of the house equally with plaintiffs, they have no cause of action which would entitle them to relief. It is undisputed that Dorothy executed the quitclaim deed to herself and Cordie, knowing that upon her death, Cordie would be the sole record owner of the property. Dorothy's hope that Cordie would share the property with her siblings (if she had that hope), or even a belief that Cordie was required by law to do so (if she had that belief), would not change the legal effect of a duly executed deed transferring the Property.

The fourth cause of action of the complaint, titled "Fraud, creation of constructive trust," sought to impose a constructive trust on the proceeds of the sale. A constructive trust is a remedy available to a court of equity to compel a person who has property to which he or she is not entitled to transfer the property to the person who is entitled to receive it. (*Douglas v. Superior Court* (1989) 215 Cal.App.3d 155, 160; see also Civ. Code, §§ 2223-2224.) The rule applies to agreements to reconvey property. Thus, "where one has voluntarily assumed a relation of personal confidence with another and receives conveyance of the latter's property, paying no consideration therefor, and promising that the property will be held for the benefit of the grantor and will be reconveyed upon demand, and the grantor has no other purpose in transferring the property, a court of equity will decree a trust for the benefit of the grantor." (*Lytle v. Fickling* (1945) 72 Cal.App.2d 383, 388.)

In order to establish the basis for imposition of a constructive trust, plaintiffs were required to prove that Cordie did something wrong. The complaint alleges that Cordie induced her mother to execute the quitclaim by promising that she would hold the property in trust and divide it equally with her sisters upon her mother's death. However, plaintiffs presented no evidence of any kind in support of this allegation. Nor did plaintiffs produce evidence of an express trust; that is, that Dorothy transferred the Property to Cordie for the express purpose of holding it in trust for her sisters. The only evidence before the court concerning the circumstances surrounding Dorothy's decision to deed the property to herself and Cordie as joint tenants was the latter's testimony that her mother, upon her death, wanted Cordie to have sole ownership of the property.³ Even if the court discounted this testimony as not credible, there was no other evidence introduced at trial as to any statements Dorothy made concerning her purpose in executing the quitclaim deed, or as to any promise Cordie made to hold the property in trust, which would support the imposition of a constructive trust.

In sum, there is simply no evidence to support the trial court's finding that Dorothy deeded the Property to Cordie in trust for the benefit of her sisters so as to avoid probate. Rather, the evidence established that in early March 2009, perhaps feeling her mortality as a result of her latest hospital stay, Dorothy took certain actions in contemplation of her death: she prepaid her funeral expenses, purchased a dress to be buried in, and disposed of her largest asset, her home. Had she wanted to leave her residence to her three daughters, she had several options: she could do nothing, as she had a holographic will which directed that her daughters receive equal shares of her property; she could quitclaim the Property to her three daughters as joint tenants, so that they would all share equally in the proceeds of its sale; she could inform her children that she had deeded the

³ The testimony of friends and neighbors that Dorothy mentioned in passing that "she wanted everything to go to her three daughters" and that "she wanted all of her children to share with her estate" is not evidence that, at the time of the transfer of title, Cordie agreed to take title to the Property as trustee for Dorothy's children.

property one of them to hold in trust for all three.⁴ She took none of these actions. Instead, she vested title to the Property in herself and Cordie as joint tenants, with full knowledge of the effects of that action. It is the obligation of the court, if not her children, to honor Dorothy's wishes as expressed in binding legal documents.

DISPOSITION

The judgment is reversed. Defendant is to recover the costs of appeal.

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ARMSTRONG, J.

We concur:

TURNER, P. J.

MOSK, J.

⁴ We note that, had this been her intention, it would have made more sense to put Karen, who lived nearby, rather than Cordie, who lived in Louisiana, on title to the Property.