

STATE OF MICHIGAN
COURT OF APPEALS

WALKER M. RIGBY

Plaintiff-Appellee,

v

ELIZABETH ANN PAKENAS and JOSEPH
HARVEY RIGBY,

Defendant-Appellants.

UNPUBLISHED

August 13, 1996

No. 178185

LC No. 91-005942

Before: McDonald, P.J., and White, and P. J. Conlin,* JJ.

PER CURIAM.

Defendants, who are two of plaintiff's children, appeal from the trial court's judgment imposing a constructive trust in favor of plaintiff on real and personal property held by defendants. We affirm.

On October 5, 1981, after his wife's death, plaintiff executed a quitclaim deed conveying his Roseville residence to himself and defendants as joint tenants with rights of survivorship. Also in autumn, 1981, plaintiff opened a money market account and placed his own and defendants' names on it as joint tenants. Plaintiff stated that he executed these transactions because he was in ill health at the time, and intended that defendants liquidate these assets upon his death and divide the proceeds evenly between his children, and also intended that defendants would use the funds in the money market account for his support in the event he became incapacitated. While defendants presented some evidence to the contrary, other evidence, including a third child's testimony, supported plaintiff's position. At the close of the bench trial, the trial court found that plaintiff did not intend to make inter vivos gifts of these assets to defendants. Moreover, it found that defendants were aware of plaintiff's intentions. Accordingly, the court imposed constructive trusts in plaintiff's favor.

Defendants argue that the trial court erred by imposing constructive trusts in plaintiff's favor on the personal and real property. We review the trial court's findings of fact in an equity action under the clearly erroneous standard. A finding is clearly erroneous if this Court is left with a definite and firm conviction that a mistake has been made. *Ypsilanti Twp v General Motors Co*, 201 Mich App 128,

* Circuit judge, sitting on the Court of Appeals by assignment.

133; 506 NW2d 556 (1993). We review de novo the trial court's conclusions of law. *People v Boughner*, 209 Mich App 397, 399; 531 NW2d 746 (1995).

A constructive trust may be imposed where it is necessary to do equity or prevent unjust enrichment. *Kammer Asphalt Paving Co v East China Twp Schools*, 443 Mich 176, 188; 504 NW2d 635 (1993). Such a trust may be imposed when property has been obtained through fraud, misrepresentation, concealment, undue influence, taking advantage of one's weakness or necessities, or any other circumstances which render it unconscionable for the holder of legal title to retain and enjoy the property. *Id.* The burden of proof is on the person seeking the imposition of such a trust. *Id.*

We are not convinced that the trial court was mistaken when it found that plaintiff had no intention to make a gift to defendants when he executed the quitclaim deed and that defendants knew this. To constitute a valid gift of real property, (1) the donor must intend to pass title to the donee, (2) there must be actual or constructive delivery, and (3) the donee must accept the gift. *Stinebaugh v Bristol*, 132 Mich App 311, 316; 347 NW2d 219 (1988). Whether a person intended to pass title to the donee is a question of fact. *Osius v Dingell*, 375 Mich 605, 611; 134 NW2d 657 (1965). Delivery of the property must be unconditional. *Stinebaugh, supra* at 316. Although physical delivery of a deed raises a presumption of intent to pass title, this presumption is not conclusive and can be rebutted. *Resh v Fox*, 365 Mich 288, 291-292; 112 NW2d 486 (1961). The subsequent conduct of the parties may be taken into consideration in determining whether there was an intent to pass title. *Id.*

Ample evidence was presented at trial that plaintiff did not intend to vest title in defendants and that this was understood by them. Joseph Rigby testified that he never saw the deed and that he did not list his interest in the property as an asset in his divorce proceedings. Plaintiff retained possession of his residence, paid all the bills, taxes and insurance, made mortgage payments on the property, and paid for nearly all its maintenance and upkeep. Plaintiff's continuing control over this property is evidence that he did not intend to make a gift of it to defendants. *Id.* at 290-292. Other witnesses testified that plaintiff did not intend to transfer title to defendants. Viewing this evidence, we are not convinced that the trial court's findings were clearly erroneous.

As for the money market account, to make a valid inter vivos gift of personal property, (1) the donor must intend to pass title to the donee, (2) there must be actual or constructive delivery, and (3) the donee must accept the gift. *In Re Mensinger Estate*, 201 Mich App 290, 291; 506 NW2d 238 (1993). Although Michigan's joint ownership statute, MCL 487.703; MSA 23.303, provides that, in the absence of fraud or undue influence, the creation of a joint account with rights of survivorship is prima facie evidence of the depositor's intention to vest title to the funds in the joint owners, this presumption can be rebutted by reasonably clear and persuasive proof that the depositor did not intend to vest title in his cotenants. *In Re Cullman Estate*, 169 Mich App 778, 786; 426 NW2d 811 (1988).

Ample evidence supported the trial court's finding that plaintiff did not intend to make a gift to defendants of the funds in the money market account. Plaintiff paid income tax on interest from the account and kept the checkbook in his possession. Statements were delivered to plaintiff's address. Defendants rarely, if ever, exercised control over the account. When defendant Pakenas withdrew

\$25,000, she attempted to hide this fact from plaintiff. Viewing this evidence, we are not convinced that the trial court was mistaken when it found that plaintiff had no intention of making an inter vivos gift of the money in the money market account to defendants.

Because in these circumstances it would be inequitable to allow defendants to retain title to plaintiff's residence and account, the trial court was correct in imposing constructive trusts on these properties in plaintiff's favor.

Defendants next argue that the statute of frauds, MCL 566.106; MSA 26.906, bars plaintiff's suit. We do not agree. Parole evidence is admissible to establish the terms of plaintiff's agreement, since the statute of frauds is not a bar to an action for the imposition of a constructive trust. *Arnt v Vos*, 83 Mich App 484, 487-488; 268 NW2d 693 (1978).

Defendants also argue that MCL 600.5805; MSA 27A.5805(8) provides a three-year statute of limitations for plaintiff's action. Again, we disagree. Plaintiff sought equitable relief. The statute of limitations is not applicable to actions in equity. *Badon v General Motors Corp*, 188 Mich App 430, 435; 470 NW2d 436 (1991).

Next, defendants argue that the equitable doctrine of laches bars plaintiff's suit. We reject this contention as well. To assert a laches defense, defendants must show that the passage of time and intervening circumstances render it inequitable to grant equitable relief to plaintiff. *Id.*, 436. Defendants must prove a lack of due diligence on the part of plaintiff resulting in some prejudice to them. *Id.* Evidence was presented at trial that defendants were aware of plaintiff's intentions when he executed the quitclaim deed and created the joint account. Additionally, defendants offered little to support their allegations that they expended substantial sums of money to maintain plaintiff's residence. Moreover, while it is true that the money market account was funded with funds from savings bonds defendants and their children received after the death of plaintiff's wife, testimony showed that the bonds were given to plaintiff for his own use and support. Further, the court observed that plaintiff acted within a reasonable time after defendants took actions inconsistent with his claim that they were only holding the property in trust.

Finally, we disagree with defendants' argument that the doctrine of equitable estoppel precludes plaintiff from denying their joint ownership of the properties. Equitable estoppel arises where one party, by representations, admissions, or silence, intentionally or negligently induces another party to believe facts, the other party justifiably relies and acts on that belief, and the other party would be prejudiced if the first party is allowed to deny the existence of those facts. *Soltis v First of America*, 203 Mich App 435, 444; 513 NW2d 148 (1994). The doctrine operates to prevent the party that made such representations from disproving or withdrawing them. *Commercial Union Ins Co v Medical Protective Co*, 136 Mich App 412, 421; 356 NW2d 648 (1984). Evidence shows that defendants were aware of plaintiff's intentions underlying the execution of the deed and creation of the joint account and that they did not act in reliance on a joint tenancy. The trial court properly determined that defendants failed to establish that application of the doctrine of equitable estoppel was warranted.

Affirmed. Costs to plaintiff.

/s/ Helene N. White
/s/ Gary R. McDonald
/s/ Patrick J. Conlin