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Sidney G. Dunagan

John Turner

RESULTING TRUSTS: QUANTUM OF EVIDENCE REQUIRED

Under present case law a resulting trust may be established to defeat the intended distribution of a decedent's estate. Thus, when a party intervenes in the distribution of an estate and is able to show a right in the decedent's estate in the form of a trust which is paramount to a devisee or legatee, he may be able to take more of the estate than was intended by the decedent or the laws of intestate succession.

It is generally accepted that a resulting trust depends greatly upon whether the resulting corpus can be attributed to the parties in a clear, cogent and convincing manner. But the matter becomes perplexing when a husband and wife make initial investments which are contributed in an aliquot part; the investments are managed solely by one spouse in his name; and the investments result in a compilation of property having a greater value than the original investments. Therefore, the question is drawn to what is clear, cogent and convincing when increments to investments are part of the resulting trust.

The Oklahoma Supreme Court has defined a resulting trust as being"... one which arises where the legal estate in property is disposed of, conveyed, or transferred, but the intent appears or is inferred from the terms of the disposition, or from the accompanying facts that the beneficial interest is not to go with the legal title, or to be enjoyed by the holder thereof."[1] The Oklahoma Court has placed a large burden upon the claimant of a resulting trust and has generally required that the proof of its existence be "clear, cogent and convincing."[2] The same court has varied its

[1] McGill v. McGill, 189 Okla. 3, 4, 113 P.2d 826 (1941). *See generally* RESTATEMENT (SECOND), TRUSTS § 404 (1959); BOGERT, TRUSTS AND TRUSTEES § 451 (2d ed. 1964).

[2] *See* Kemp v. Strnad, 268 P. 2d 255 (Okla. 1954); Lawrence v. Lawrence, 195 Okla. 610, 159 P. 2d 1018 (1945); Maynard v. Taylor, 185 Okla. 268, 91 P. 2d 649 (1939); Coryell v. Marrs, 180 Okla. 394, 70 P. 2d 478 (1937); Beall v. Fergeson, 177 Okla. 216, 58 P.2d 598 (1936); Foster v. Shirley, 170 Okla. 373, 40 P.2d 1083 (1935); McGann v. McGann, 169 Okla. 515, 37 P. 2d 939 (1935); Star v. Star, 94 Okla. 225, 221 Pac. 721 (1923); *and* Babcock v. Collison, 73

language at times to "clear, unequivocal and decisive"[3] but has retained the same requirements as to the quantum of evidence required. This strict requirement has been the general rule in the establishment of the existence of this type of trust especially when the claimant's right to a trust was based upon a partial contribution of initial capital or property.[4] A Vermont court, in observing the "clear and convincing" rule, stated: "Nothing more can be meant by the rule than this, that the trier of the case, whether it is the court or one of its masters, must be reasonably satisfied of the fact which the evidence tends to prove."[5] The reasons for the strictness of the courts in requiring this quantum of evidence have been threefold. The main concern has been the almost inevitable involvement of real property and the resulting trust's effect upon that property.[6] Usually, a party has held a deed or evidence of title; and in order to establish the trust, the court must set aside such title — something which they have long been reluctant to do.[7] In *Copper v. Iowa Trust & Savings Bank*,[8] the Iowa Supreme Court expressed another reason for the strictness of evidence required when it stated: "We do not overlook the fact that a claim of this kind might easily be established as against an execution creditor by the collusion and concurrent testimony of both husband and wife. For that reason, the testimony should be scrutinized with great care for the purpose of thwarting mere collusion."[9] The last reason has been based on the primary reliance upon oral testimony.[10]

Presumptions may exist which will cause a resulting trust to be declared or cause what might ordinarily be considered a resulting trust to fail. THE RESTATEMENT (SECOND), TRUSTS

Okla. 232, 175 Pac. 762 (1918).

[3] *See* Perdue v. Hartman, 408 P.2d 293 (Okla. 1965); Wadsworth v. Courtney, 393 P.2d 530 (Okla. 1964); *and* Copenhaver v. Copenhaver, 317 P.2d 756 (Okla. 1957).

[4] BOGERT, TRUSTS AND TRUSTEES § 464 at 643 (2d ed. 1964).

[5] Williams v. Wager, 64 Vt. 326, 331, 24 A. 765, 766 (1892).

[6] BOGERT, *supra* note 4, at 647.

[7] BOGERT, *supra* note 4, at 647 n.89.

[8] Copper v. Iowa Trust & Savings Bank, 149 Iowa 336, 128 N.W. 373 (1910).

[9] *Id.* at ——, 128 N.W. at 373.

[10] BOGERT, *supra* note 4, at 649 n.99.

§ 442 (1959) states:

> Where a transfer of property is made to one person and the purchase price is paid by another and the transferee is a wife, child or other natural object of bounty of the person by whom the purchase price is paid, a resulting trust does not arise unless the latter manifests an intention that the transferee should not have the beneficial interest in the property.

Therefore, when a husband conveys property to his wife, the natural object of his bounty, such conveyance is presumed a settlement or gift. Despite this general rule of a presumption of a gift or settlement, where there is a conveyance from one party to another for consideration and where one is a natural object of the other's bounty, a resulting trust is presumed established where the consideration comes from a wife and the conveyance is to her husband, or where the consideration comes from a child and the conveyance is to the family.[11]

The gift presumption has been conclusive where there was not an allegation of facts sufficient to rebut it. This would tend to support the holding of *O'Brien v. O'Brien.*[12] The *O'Brien* case propounded the theory that the taking of a deed in the wife's name "solely as a matter of business expediency" does not necessarily exclude such conveyances from the realm of a gift or advancement. The phrase apparently could not have stood alone and have been a sufficient allegation to overcome the contention of the wife that she held the property as her own and not in trust for her spouse. A person in whose name the legal title is vested has generally been considered to be the absolute owner. Thus to produce evidence of such a magnitude to overturn such a presumption, the courts have demanded testimony which required the precise amount or proportion of the consideration furnished by the complainant as well as the amount for which the purchase or purchases were made.[13] Yet, Bogert expressed the opinion that it would seem "... very dubious whether the courts really mean to require proof beyond a reasonable doubt. They do, however, in all probability, exact somewhat

[11] 54 Am. Jur. *Trusts* § 205 (1945).
[12] O'Brien v. O'Brien, 73 R.I. 1, 53 A.2d 501 (1947); *accord,* Dallmeyer v. Dallmeyer, 274 S.W.2d 250 (Mo. 1955).
[13] McQuin v. Rice, 88 Cal. App. 2d 910, 199 P.2d 742 (1948) *citing* Woodside v. Hewel, 109 Cal. 481, 42 Pac. 152 (1895).

stronger and clearer proof than in the ordinary equity case."[14]

Where facts showed that the spouses had turned their earnings into a common fund and both had worked at a jointly managed business, all the property in question having come from their joint funds, no resulting trust could be established by either spouse since neither could account for the specific amount placed therein.[15] But, "... if the purchase price is paid out of partnership or community property, with the consent of all partners or both spouses, naturally the trust results to the partnership or the community."[16]

What are the necessary requisites to a clear, convincing and unequivocal approach to the establishment of a resulting trust between a husband and wife who make initial investments, either as partners in a family business or strictly as husband and wife, where such investments increase in value due to the sole management by one spouse?

To have proved a resulting trust, the evidence must have been more than vague or meager. Even where a wife contended that she had turned over her earnings to her husband "in trust" for twenty-five years and that he invested such with his own funds in joint accounts, the court held that no resulting trust was created.[17] "The mere fact that the wife contributed in the husband's name did not give rise to a trust."[18] A similar situation, involving a father, mother, and son, produced the same holding in the Idaho Supreme Court.[19] The majority pointed to the fact that the evidence had failed to disclose facts and circumstances as to the terms of the various property transactions into which the three had entered. The court suggested that the evidence must be indicative of an intention on the part of either the mother or the son that the properties, or any part thereof, were to be owned by the mother.

[14] BOGERT, *supra* note 4, at 646. *But cf.* Dalsoren v. Olsen, 247 Miss. 778, 157 So.2d 60 (1963); Logan v. Johnson, 72 Miss. 185, 16 So. 231 (1894); *and* Carter v. Carter, 14 N.D. 66, 103 N.W. 425 (1905).

[15] O'Brien v. O'Brien, 256 Mass. 308, 152 N.E. 80 (1926); *accord,* Hammer v. Hammer, 16 Misc. 2d 749, 183 N.Y.S.2d 754 (1959).

[16] BOGERT, *supra* note 4, § 454.

[17] Campagna v. Campagna, 337 Mass. 599, 150 N.E.2d 699 (1958).

[18] *Id.* at ——, 150 N.E.2d at 701.

[19] Shurrum v. Watts, 80 Idaho 44, 324 P.2d 380 (1958).

Even though evidence showed that through the endeavor of the mother and son a surplus common fund was created from which a subtantial amount of real and personal property was acquired, the court maintained that it was impossible to determine from the evidence the extent of the claimed interest of the mother in the properties.

To be established, a resulting trust must have been proven by the tracing of the original funds placed in the hands of the other spouse through the various subsequent investments, pointing out at each interval the amount held for the resulting trust claimant. Such was the situation in *Holt v. Johnson*[20] where the court stated: "... the burden ... assumed by the appellants, was to trace funds of Mrs. Holt into the hands of Mrs. McEvoy, and to follow those funds into the purchases and expenditures before indicated."[21] Again the court concluded that if the property of the two women was to be treated as common property, the extent to which the trust claimant was entitled was a matter of pure conjecture and probably could never be made certain to any specific degree. An Oklahoma case, *Ward v. Ward*,[22] created a like situation in which a party sued to establish a trust in the real estate of his brother's estate to the extent of a one-half interest therein and to recover one-half of certain personal property in the hands of his brother's estate. The facts showed the brothers had operated as partners, as had the parties in the *Holt* case, with no formal partnership agreement and, for a number of years, drawn from a common checking account. The Oklahoma Court noted that even though certain properties were purchased from the common accounts both had personal accounts. According to the majority, it is presumed that where partners in a type of business not invloving real estate have purchased real estate in their own name such property is individually owned in the manner in which title is held. The minority admitted that there was no direct evidence in the record as to the extent of the interest in the partnership property owned by each of the brothers; but they purported to find that under Oklahoma Statutes the interest is presumably coequal and each

[20] Holt v. Johnson, 166 Ala. 358, 52 So. 323 (1910).
[21] *Id.* at ——, 52 So. at 325.
[22] Ward v. Ward, 197 Okla. 551, 172 P.2d 978 (1946).

partner is entitled to share in the proceeds of the partnership property on that basis.

Woodside v. Hewel[23] was found most relevant to the problem of the attempted establishment of a resulting trust in the increments of an original investment by a husband and wife. The case arose from an action brought against the husband of a decedent by her children of a prior marriage. The children sought to impose a resulting trust upon all the property purchased by the husband after his marriage to their mother, as well as that purchased before her death, and such property purchased subsequent thereto. The children alleged that said property had been purchased with the proceeds of her separate estate and was therefore held in trust by the husband. Rejecting the arguments of the plaintiffs, the court concluded that the record failed to show the amount of money which was paid by her for any single parcel of land purchased; the only evidence was of total amounts paid as recited in the deeds. Further, the opinion indicated there was no testimony given concerning the circumstances under which the parcels of land were purchased.[24]

An obscure case, but most important to the matter in question, was *Doneen v. Doneen*.[25] The case involved a short lived partnership between two brothers. It was the plaintiff's contention that all of the considerable property acquired by his brother was acquired either directly from the money taken by his brother out of the profits of the partnership business, one-half of which was his property, or it came from the increment of the money so taken. The opinion noted that the person who had aided in the various investments of the defendant brother admitted that it was his understanding that the money sent him for investment by the deceased was the common property of both the brothers. The court further pointed out that the plaintiff brother and one time partner had over the years procured large sums of money from his brother following the dissolution of the partnership. The court concluded that there could be no trust established in favor of the claimant. "There can, of course, be no balancing of accounts: no way of

[23] Woodside v. Hewel, 109 Cal. 481, 42 Pac. 152 (1895).
[24] *Id.* at ——, 42 Pac. at 154.
[25] Doneen v. Doneen, 134 Wash. 271, 235 Pac. 797 (1925).

knowing with certainty whether the sums returned by Michael the appellant equalled the excess share of the profits of their enterprise which concededly Michael did take."[26]

In *Ward v. Ward*,[27] the Oklahoma court showed its willingness to accept oral testimony and proof of past transactions to establish the course of initial investments but, at the same time, did not establish a resulting trust in their decision. Powered by a desire not to disturb decedent's will or his continued sole use of the property, the court best stated its reasoning in Syllabus 11, saying:

> When a citizen of this state dies, holding title to real estate in his own name, which he has so held and managed and occupied for several years as exclusive owner, and another appears and claims an interest therein from the time of acquisition thereof by the decedent, the courts are required to leave the title in the decedent, as the parties themselves had left it, unless the adverse claimant can establish his interest therein by evidence which is clear, unequivocal, and decisive.[28]

Later in *Buxbaum v. Priddy*,[29] the Oklahoma court cited the above syllabus from *Ward* and held that an allegation that the decedent's wife had placed money in the bank and decedent's real property was purchased with those funds was not supported by clear, cogent and convincing evidence. The evidence in *Buxbaum* showed that the wife received a large sum of money as headrights but did not show what became of it. There was also evidence of extensive cattle and real estate dealings by the decedent husband; however, the only link between the wife's income and the decedent's compilation of the estate in controversy was oral testimony of statements made years earlier by persons who were deceased at the time of trial. The trial court had refused to establish a resulting trust and the supreme court, applying the principle that the trial court was in a better position to observe the witnesses, affirmed.

The Oklahoma courts have accepted the general rule requiring a strong showing of evidence to establish a resulting trust. They

[26] *Id.* at ——, 235 Pac. at 799.
[27] *Supra* note 22.
[28] *Id.* at 552, 172 P.2d at 780.
[29] 312 P.2d 961 (Okla. 1957).

have recognized the existence of a trust when the evidence is sufficient or when dealing with the transfer of real property, thus giving heed to the presumption established by statute[30] where the consideration is paid by or for another in favor of the person paying. In *Guyer v. London*,[31] the Oklahoma Supreme Court established a resulting trust where the wife had contributed one-half of the consideration for the property in dispute, and, at the time the deed was taken, she was not aware that her name was omitted from the deed. The defendant, executor of the estate of the decedent husband, had admitted in his answer that two properties standing in the names of the husband and wife were traded for the property in dispute. Thus, the presumption was that a trust resulted in accordance with the value of the consideration attributable to her.

Another major problem involved in an attempt to establish a resulting trust is that of tracing the funds through a number of transactions. Oklahoma follows the rule that equity will follow trust money through any number of transactions and restore it to the owner so long as it can be identified.[32] The degree of identification required has been satisfied where a *cestue que* trust was able to show the particular fund or mass into which the trust money had gone.[33] To say, however, just what is necessary to identify the increments of a trust has appeared impracticable. As one authority has stated: "This becomes primarily a question of the sufficiency of identification of the claimed property as either trust property or its product."[34]

The problem of establishing a resulting trust in property which is an increment of an original investment is an extremely difficult task. The claimant must show the amount of the original investment, trace the funds through subsequent investments and

[30] OKLA. STAT. tit. 60, § 137 (1961).
[31] 187 Okla. 326, 102 P.2d 875 (1940).
[32] *See* Fourth National Bank of Tulsa v. Edison, 205 Okla. 145, 236 P.2d 491 (1951); Fidelity National Bank of Oklahoma City v. Copeland, 138 Okla. 19, 280 Pac. 273 (1929); *and* Pollack v. Leonard & Braniff, 112 Okla. 276, 241 Pac. 158 (1925).
[33] *See* Boroughs v. Whilley, 263 P.2d 150 (Okla. 1961); *and* Ayers v. Fay, 187 Okla. 230, 102 P.2d 156 (1940).
[34] BOGERT, TRUSTS AND TRUSTEES § 921 at 300 (2d ed. 1962).

prove that the increments of the original investment are those which are now being claimed. The period of time between the initial investment and the attempted recognition of the trust as well as the number of transactions involved tend to make it nearly impossible to prove in a clear, cogent and convincing manner that a resulting trust has been established.

Sidney G. Dunagan, and
John Turner