

IN THE COURT OF APPEALS OF IOWA

No. 6-610 / 95-1806

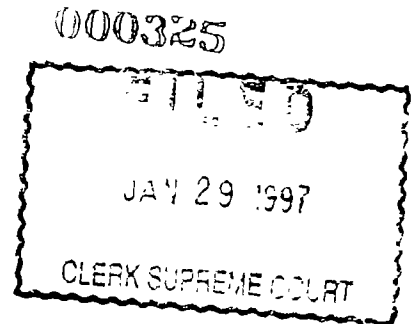
**IN THE MATTER OF THE ESTATE OF
JAMES MICHAEL THOMAS, Deceased,**

JANICE J. SORENSON,
Plaintiff-Appellant,

vs.

**SHAWN DUDIK, Fiduciary of the ESTATE OF
JAMES MICHAEL THOMAS, Deceased,**

Defendant-Appellee.



Appeal from the Iowa District Court for Pottawattamie County, Keith E.
Burgett, Judge.

The plaintiff appeals a district court ruling denying her claims against the
estate of the deceased, James Michael Thomas. **AFFIRMED.**

Michael Gallner of Gallner & Gallner, Council Bluffs, for appellant.

Joseph J. Hrvol, Council Bluffs, for appellee.

Heard by Sackett, P.J., Cady, and Huitink, JJ.

CADY, J.

Janice Sorensen became romantically involved with James Thomas in April 1989. Janice lived in Council Bluffs, at the time, and was employed by an insurance company. She had recently received life insurance proceeds totaling \$110,000, following the suicide of her husband on December 1, 1988. Thomas lived in Carter Lake, Iowa and was known to be involved in the "loan-sharking" business. He had recently ended a relationship with another woman, who gave birth to a child, Nathan, in the fall of 1989. Thomas is the father of Nathan. Janice was aware of the pregnancy and subsequent birth.

Janice and Thomas maintained a long, sometimes turbulent, even abusive, relationship. In August 1989 Janice purchased a Corvette automobile for \$24,988. The vehicle was titled in Thomas' name. With one exception, Thomas was the exclusive driver of the vehicle.

In April 1990 Janice moved into Thomas' house in Carter Lake, and began making the mortgage payments on the home. In April 1991, Janice purchased a house in Council Bluffs from Thomas' mother and sold it in June 1993. She used \$19,241 of the sale proceeds to pay the balance of the mortgage against Thomas' home.

Thomas died on April 30, 1994, following a shooting. Nathan was his only heir.

Janice filed a claim against Thomas' estate seeking reimbursement for the Corvette and the mortgage payments she made on Thomas' home, as well as other

expenses she paid on behalf of Thomas. She claimed a constructive trust should be established based on unjust enrichment because Thomas improperly acquired the automobile and funds through undue influence, duress, and an agreement made in contemplation of marriage.

The district court denied the claim. It determined the Corvette was gifted to Thomas. It also found “no credible evidence” to support the creation of a constructive trust.

Standard of Review

Our review of a claim in probate is typically for the correction of errors at law. *Tierney v. Lantz*, 505 N.W.2d 513, 514 (Iowa App. 1993). This is because claims in probate are tried as “ordinary actions.” Iowa Code § 633.447 (1995); *In re Devine’s Estate*, 255 Iowa 726, 123 N.W.2d 898 (1963). Nevertheless, a probate action may proceed in equity when the underlying claim is equitable in nature. *See Davis-Eisenhart Marketing Co. v. Baysden*, 539 N.W.2d 140, 142 (Iowa 1995). When that is done, our review is de novo.

The legal or equitable nature of a proceeding is determined by the pleadings, relief sought, and nature of the case. *Carstens v. Central Nat’l Bank & Trust Co.*, 461 N.W.2d 331, 333 (Iowa 1990). Actions to establish a constructive trust are recognized to be equitable in nature. *First Nat’l Bank in Sioux City v. Curran*, 206 N.W.2d 317, 320 (Iowa 1973). This is because the trust is imposed to recover

property wrongfully held by another based on the concept of equitable title. *In re Murray's Estate*, 20 N.W.2d 49, 56 (Iowa 1975).

In this case, both parties agree our review is at law. *See* Rule App. P. 14 (a), (b); *In re N.H.*, 383 N.W.2d 570, 573 (Iowa 1986). We acknowledge both legal and equitable relief was sought, and the case was never identified at trial as an action in equity. We ordinarily review a district court decision in the same manner it was tried in district court. *Davis-Eisenhart*, 539 N.W.2d at 142. For these reasons, we review the case for corrections of errors at law. We are bound by the findings of the district court if supported by substantial evidence, but are not bound by its application of the legal principles or conclusions of law. *Atwood v. City of Des Moines*, 485 N.W.2d 657, 659 (Iowa 1992).

Claims for Relief

Unmarried cohabitants may maintain claims against each other for benefits bestowed during the relationship so long as the claims arise independent of the cohabitation. *Shold v. Goro*, 449 N.W.2d 372, 373 (Iowa 1989). In this case, Janice sought recovery of the mortgage payments and Corvette based on the theory of unjust enrichment.

Unjust enrichment rests on the principle that a person should not be permitted to be unjustly enriched at the expense of another or to receive property or benefits without payment. *Smith v. Stowell*, 256 Iowa 165, 173, 125 N.W.2d 795, 799-800 (1964). The theory is not, however, generally available to support the recovery of

property from another following the termination of a personal relationship based on the respective contributions giving rise to the property. *Slocum v. Hammond*, 346 N.W.2d 485, 491-92 (Iowa 1984). Yet, it may be used to establish a constructive trust based on fraud, constructive fraud, or equitable principles other than fraud. *Id.* at 493.

In this case, Janice seeks compensation or return of property based on undue influence, duress, and constructive fraud. She also claims the property and funds were given to Thomas in anticipation of marriage. The undue influence and duress is based on the evidence of Thomas' manipulative, violent and abuse behavior. She also asserts she stood in a fiduciary relationship with Thomas.

We find substantial evidence in the record to support the refusal by the district court to establish a constructive trust. Janice acknowledged she purchased the Corvette because she loved Thomas and wanted to show her affection for him. She also acknowledged fear was not a factor in her decision to purchase the automobile and title it in Thomas' name. We concede there was evidence Thomas was a controlling individual, but the evidence does not compel us to find as a matter of law Janice established her claims of undue influence, duress and constructive fraud.

We conclude there was substantial evidence to support the finding by the district court Janice gifted the automobile and mortgage payments to Thomas. We

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have reviewed all claims asserted by Janice and affirm the decision of the district court.

AFFIRMED.