[Cite as *Admr., State Medicaid Estate Recovery Program v. Miracle*, 2015-Ohio-1516.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
WASHINGTON COUNTY

ADMINISTRATOR, STATE OF OHIO MEDICAID ESTATE RECOVERY PROGRAM,	:	
Plaintiff-Appellant,	:	
v.	:	Case No. 14CA1
CHERYL A. MIRACLE,	:	
and	:	
RONALD M. MIRACLE,	:	DECISION AND JUDGMENT ENTRY
Defendants-Appellees.	:	RELEASED 04/03/2015

APPEARANCES:

James S. Huggins and Daniel P. Corcoran, Theisen Brock, L.P.A., Marietta, Ohio, for Appellant.

Andrew C. Woofter, III, Parkersburg, West Virginia, for Appellees.

Hoover, P.J.

{¶ 1} Plaintiff-appellant, the Administrator, State of Ohio, Medicaid Estate Recovery Program filed suit against defendants-appellees Cheryl A. Miracle and Ronald M. Miracle, seeking to recover the value of Medicaid benefits provided to Doris Reed, the decedent and mother/mother-in-law of the appellees. A Civ.R. 12(B)(6) judgment was granted in favor of the appellees and the case was dismissed. Appellant appeals, raising the question of whether the value of an Ohio Medicaid recipient's life estate interest, in property located in West Virginia, is recoverable under the Medicaid Estate Recovery Program, the Ohio Uniform Fraudulent

Transfer Act, or the doctrine of unjust enrichment, and if so, whether such claims can be filed against the remaindermen of the property that was subject to the life estate interest.

I. FACTS

{¶ 2} By deed dated September 28, 2005, Ermine Reed and Doris Reed, as husband and wife, gratuitously conveyed all their right, title, and interest in property situated at 118 E. 6th Street, Williamstown, West Virginia, to the appellees, reserving a joint life estate in the property for their natural lives. Thereafter, Ermine died, and the joint life estate vested solely to Doris.

{¶ 3} From October 2009, through January 13, 2013, Doris was a recipient of Ohio Medicaid benefits totaling $147,845.27. The appellees helped Doris enroll in the Ohio Medicaid program. On September 23, 2009, the Ohio Department of Jobs and Family Services informed the appellees "that the life estate currently owned by Doris will have to be listed for sale with a Realtor once she has been in the LTCF [long-term care facility] for 13 months * * *." [*See* First Amended Complaint at ¶ 9, Exhibit C.] On that same day, appellee Cheryl Miracle received and acknowledged Ohio Medicaid Estate Recovery Form JFS 07400, explaining the Ohio Medicaid Estate Recovery program. McCarthy Realty listed the property for sale in 2010 and 2012, but it was not sold at that time.

{¶ 4} Doris died on January 13, 2013. Appellant filed a claim for $147,845.27 against Doris's probate estate in Wood County, West Virginia, but the claim was rejected by appellee Cheryl Miracle, in her role as personal representative of her mother's estate. Appellant then filed this suit in the Washington County Court of Common Pleas.

{¶ 5} Appellant's initial complaint alleged that the appellees sold the West Virginia property for approximately $105,000.00, but failed to pay it $29,632.05, the value of the life estate at the time of Doris's death. Thus, appellant alleged that appellees were unjustly enriched

and that they violated appellant's lien rights against the real property of the decedent under the Ohio Medicaid Estate Recovery program. The appellees filed a motion to dismiss the complaint, but before the motion was ruled upon, the appellant filed an amended complaint. The amended complaint alleged that appellant was entitled to recover the paid Medicaid benefits under R.C. 5111.11(A) and (B)[1] (the Ohio Medicaid Estate Recovery Program), the Ohio Uniform Fraudulent Transfer Act, and the doctrine of unjust enrichment. Appellant demanded damages in the amount of $29,632.05, as well as statutory interest, punitive damages, attorney's fees, and court costs.

{¶ 6} The appellees again filed a motion to dismiss the amended complaint, alleging that the trial court lacked subject matter jurisdiction and personal jurisdiction; that the claims were barred by the doctrine of res judicata given the denial of the probate claim in the West Virginia court; that the complaint was not properly served upon them; and that the appellant failed to state a claim upon which relief can be granted and failed to join an indispensable party to the suit, to wit, the Estate of Doris M. Reed. The trial court entered a decision and judgment entry denying in part, and granting in part, the appellees' motion to dismiss the amended complaint. Specifically, the trial court denied the motion to dismiss with respect to: lack of subject matter jurisdiction, lack of personal jurisdiction, insufficient service of process, and res judicata. However, the trial court, by its decision and final judgment entry, granted the appellees' motion to dismiss for failure to state a claim upon which relief can be granted under Civ.R. 12(B)(6). The trial court reasoned that Doris's life estate interest was not recoverable because "[a] life estate in West Virginia is a non-probate asset and is not subject to the Medicaid Estate Recovery

[1] The Ohio Medicaid Estate Recovery Program was renumbered effective September 2013 from R.C. 5111.11 to R.C. 5162.21. The relevant statutory provisions of R.C. 5162.21 are nearly identical to how they existed in R.C. 5111.11 when this lawsuit was filed. Thus, this decision and judgment entry cites the current version of the Ohio Medicaid Estate Recovery Program. We further note that any changes made to the statutory language during the renumbering process do not affect our analysis of the pertinent issues on appeal.

Act." The trial court also determined that appellant's fraudulent transfer claim failed because neither appellee was a "debtor" of the State of Ohio.[2] Given its finding that the amended complaint failed to state a claim upon which relief can be granted, the trial court denied as moot the appellees' argument that the amended complaint failed to join an indispensable party. It is from the decision and final judgment entry dismissing the complaint that the appellant now appeals.

II. ASSIGNMENT OF ERROR

{¶ 7} Appellant assigns the following error for our review:

> THE TRIAL COURT ERRED IN GRANTING THE DEFENDANTS' MOTION TO DISMISS THE FIRST AMENDED COMPLAINT FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.

III. STANDARD OF REVIEW

{¶ 8} Because it presents a question of law, we review a trial court's decision regarding a motion to dismiss independently and without deference to the trial court's determination. *See Roll v. Edwards,* 156 Ohio App.3d 227, 2004-Ohio-767, 805 N.E.2d 162, ¶ 15 (4th Dist.); *Noe v. Smith*, 143 Ohio App.3d 215, 218, 757 N.E.2d 1164 (4th Dist.2000). "A motion to dismiss for failure to state a claim upon which relief can be granted is procedural and tests the sufficiency of the complaint." *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.*, 65 Ohio St.3d 545, 548, 605 N.E.2d 378 (1992). A trial court may not grant a motion to dismiss for failure to state a claim upon which relief may be granted unless it appears "beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him to recovery." *O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242, 327 N.E.2d 753 (1975), syllabus; *see also Taylor v. London*, 88 Ohio St.3d 137, 139, 723 N.E.2d 1089 (2000). Furthermore, when considering a Civ.R. 12(B)(6) motion to dismiss, the trial court must review only the complaint, accepting all

[2] The trial court did not offer any reasoning as to why appellant's unjust enrichment claim was insufficient.

factual allegations as true and making every reasonable inference in favor of the nonmoving party. *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192, 532 N.E.2d 753 (1988); *Estate of Sherman v. Millhon*, 104 Ohio App.3d 614, 617, 662 N.E.2d 1098 (10th Dist.1995); *see also JNS Ents., Inc. v. Sturgell*, 4th Dist. Ross No. 05CA2814, 2005-Ohio-3200, ¶ 8. The court, however, need not presume the truth of legal conclusions that are unsupported by factual allegations. *McGlone v. Grimshaw*, 86 Ohio App.3d 279, 285, 620 N.E.2d 935 (4th Dist.1993), citing *Mitchell* at 193.

IV. LAW & ANALYSIS

A. Ohio's Medicaid Estate Recovery Program

{¶ 9} In support of its sole assignment of error, appellant first contends that it sufficiently pled a claim for relief under the Ohio Medicaid Estate Recovery Program.

{¶ 10} Medicaid is a joint state and federal program that was established in 1965 under Title XIX of the Social Security Act and provides federal financial assistance to states that choose to reimburse certain costs of medical treatments for needy persons. *Cook v. Ohio Dept. of Job and Family Servs.*, 4th Dist. Jackson No. 02CA22, 2003-Ohio-3479, ¶ 10, citing *Schweiker v. Gray Panthers*, 453 U.S. 34, 36, 101 S.Ct. 2633, 69 L.Ed.2d 460 (1981), and *Harris v. McRae*, 448 U.S. 297, 301, 100 S.Ct. 2671, 65 L.Ed.2d 784 (1980); see also *Arkansas Dept. of Health and Human Servs. v. Ahlborn*, 547 U.S. 268, 275, 126 S.Ct. 1752, 164 L.Ed.2d 459 (2006). The federal government requires states that participate in the Medicaid program to recover certain Medicaid benefits paid to certain Medicaid recipients from the recipients' "estates". *See* 42 U.S.C. 1396p(b)(1) and 42 U.S.C. 1396a(a)(18). To comply with federal estate recovery requirements, each participating state must define a recipient's "estate" to include at a minimum "all real and personal property and other assets included within the [recipient's] estate, as defined

for purposes of State probate law." 42 U.S.C. 1396p(b)(4)(A). However, participating states may adopt a broader definition of "estate" that also includes:

> any other real and personal property and other assets in which the individual had any legal title or interest at the time of death (to the extent of such interest), including such assets conveyed to a survivor, heir, or assign of the deceased individual through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement.

42 U.S.C. 1396p(b)(4)(B).[3]

{¶ 11} Ohio has elected to participate in the Medicaid program and its Medicaid Estate Recovery Program is codified in R.C. 5162.21. Specifically, Ohio's Medicaid Estate Recovery Program seeks adjustment or recovery [from an individual's estate] of any medical assistance correctly paid on behalf of the individual under the state plan who was a permanently institutionalized individual or who was an individual 55 years of age or older when the individual received such medical assistance. R.C. 5162.21(B). Ohio has also elected to implement the broader definition of "estate" to include non-probate assets. *See* R.C. 5162.21(A)(1)(b). In fact, "Ohio's laws on recovery of estate assets for Medicaid reimbursement are among the most aggressive in the country." *In re Estate of Centorbi*, 129 Ohio St.3d 78, 2011-Ohio-2267, 950 N.E.2d 505, ¶ 26, citing William J. Browning & Richard F. Meyer, *H.B. 66 and Medicaid Recovery*, 16 Ohio Prob.L.J. 42 (2005).

{¶ 12} The appellees do not dispute that Doris, the recipient/decedent, was either a "permanently institutionalized individual" or was 55 years of age or older when she received the medical benefits. Rather, the appellees argue - and the trial court apparently agreed - that because

[3] We also note that participating states are required to establish procedures for the waiver of recovery of Medicaid benefits where recovery would work an "undue hardship." 42 U.S.C. 1396p(b)(3).

the property that was subject to Doris's life estate interest was located in West Virginia, then West Virginia Medicaid Estate Recovery law applies to this case. And because West Virginia has not adopted the broader definition of "estate", appellees contend that the life estate interest is not probate property subject to recovery and appellant's claim must fail. We disagree, and conclude that Ohio Medicaid Estate Recovery law applies to the case sub judice. Taking the allegations of appellant's amended complaint as true, as we are required to do under the applicable standard of review, it is clear that Doris applied for and received Medicaid benefits from the Ohio Medicaid program. Thus, Doris subjected her "estate" to recovery and adjustment under the laws of Ohio. We also note that the amended complaint establishes that Doris and the appellees were informed of the Ohio Medicaid Estate Recovery Program upon applying for Medicaid benefits from the state. Having determined that Ohio law applies, we must next determine whether the value of the recipient's life estate interest is recoverable under the Ohio Medicaid Estate Recovery Program.

{¶ 13} As before mentioned, the General Assembly has enacted legislation in compliance with the federal mandates requiring adjustment and recovery from the recipient's estate, of medical benefits paid on behalf of certain Medicaid recipients. *See* R.C. 5162.21(B)-(E). And as mentioned *supra*, the General Assembly has chosen to implement the broader definition of "estate" for purposes of Medicaid recovery. Specifically, "estate" is defined in the statute as follows:

> (1) "Estate" includes both of the following:
>
> (a) All real and personal property and other assets to be administered under Title XXI of the Revised Code [the Probate Code] and property that would be

> administered under that title if not for section 2113.03 or 2113.031 of the Revised Code;
>
> (b) Any other real and personal property and other assets in which an individual had any legal title or interest at the time of death (to the extent of the interest), including assets conveyed to a survivor, heir, or assign of the individual through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement.

R.C. 5162.21(A)(1)(a)-(b).

{¶ 14} Even with such broad language, the appellees argue that Doris's life estate interest in the West Virginia property was not within her "estate" when she died and is therefore exempt from Medicaid recovery. Appellees apparently rely upon the common law notion that a life estate interest is extinguished at the moment of death, and thus is not a part of a probate "estate". However, the statute's broad definition of "estate" applies to this case, not the common law definition.

{¶ 15} " 'The primary goal of statutory construction is to ascertain and give effect to the legislature's intent in enacting the statute. The court must first look to the plain language of the statute itself to determine the legislative intent. We apply a statute as it is written when its meaning is unambiguous and definite. An unambiguous statute must be applied in a manner consistent with the plain meaning of the statutory language.' " *State v. Bundy*, 2012-Ohio-3934, 974 N.E.2d 139, ¶ 46 (4th Dist.), quoting *State v. Lowe*, 112 Ohio St.3d 507, 2007-Ohio-606, 861 N.E.2d 512, ¶ 9. "Thus, if the meaning of a statute is unambiguous and definite, a court must apply it as written and no further interpretation is necessary." *Id.* at ¶ 47.

{¶ 16} Here, the language used in R.C. 5162.21(A)(1)(a)-(b) expressly, clearly, and unambiguously defines an individual's estate to include interests in non-probate assets held at the time of death, including a recipient's interest in a "life estate". Moreover, the General Assembly has clarified that the phrase "time of death", as used in the statute's definition of "estate", "shall not be construed to mean a time after which a legal title or interest in real or personal property or other asset may pass by survivorship or other operation of law due to the death of the decedent or terminate by reason of the decedent's death." R.C. 5162.21(A)(5). Thus, the General Assembly has chosen to define "estate" in the Medicaid Estate Recovery Program more broadly than required by federal law, and to include assets that would not otherwise be included within a recipient's estate under state probate law. We must follow the plain language of the statute as written, and therefore we conclude that estate, as broadly defined in the Ohio Medicaid Estate Recovery Program, includes interests in real property that would normally be extinguished by death - such as life estates.[4]

{¶ 17} Next, the appellees argue that even if Ohio law applies, and even if a recipient's life estate interest is recoverable under the Ohio Medicaid Estate Recovery Program, appellant still cannot recover against Doris's life estate interest because the property is located in West Virginia. However, the statute uses the words "[a]ll real * * * property" and "[a]ny other real * * * property * * * in which an individual had any legal title or interest at the time of death" when defining real property that is included in the "estate" of a Medicaid recipient. *See* R.C. 5162.21(A)(1)(a)-(b), *supra*. Thus, the plain language of the statute indicates that any and all real property, regardless of location, is subject to Medicaid estate recovery. If the General Assembly had intended to remove real property located in foreign lands from the reach of the statute, it

[4] We note, however, that the statute expressly limits recovery to the extent of the value of the recipient's interest in the property at the time of the recipient's death. *See* R.C. 5162.21(A)(1)(b).

could have easily inserted language to that effect. *See Cincinnati Community Kollel v. Testa*, 135 Ohio St.3d 219, 2013-Ohio-396, 985 N.E.2d 1236, ¶ 25 (When construing a statute, courts "may not delete words used or insert words not used.").

{¶ 18} Moreover, to interpret the statute as appellees suggest would frustrate the purpose of the Medicaid Estate Recovery Program – which is to recover from those recipients with an ability to pay so as to make future funds available for the most needy. *See Belshe v. Hope*, 33 Cal.App.4th 161, 173, 38 Cal.Rptr.2d 917 (1995) ("Allowing states to recover from the estates of persons who previously received assistance furthers the broad purpose of providing for the medical care of the needy; the greater amount recovered by the state allows the state to have more funds to provide future services."). Accordingly, we conclude that real property located in foreign lands is subject to the Ohio Medicaid Estate Recovery Program.

{¶ 19} Finally, the appellees contend that the Ohio Medicaid Estate Recovery Program does not create a direct cause of action against them, the remaindermen of the recipient's life estate interest. Rather, the appellees argue that only Doris's probate estate can be sued under the statute.

{¶ 20} In Ohio, the General Assembly has delegated the authority to adopt rules regarding the provision of medical assistance under Medicaid to the director of the Department of Medicaid. R.C. 5162.02. In turn, Ohio Adm.Code 5160:1-2-10 has been implemented to help describe Ohio's Medicaid Estate Recovery Program. That rule mandates that a claim for recovery made after a recipient's death "must be served on the person responsible for the estate [of the recipient] *or, if there is no person responsible for the estate, any person who received or controls probate or non-probate assets inherited from the individual*." (Emphasis added.) Ohio Adm.Code 5160:1-2-10(E)(2)(a). "Person responsible for the estate" is defined as "the executor,

administrator, commissioner, or person who filed pursuant to section 2113.03 of the Revised Code for release from administration of an estate." R.C. 2117.061(A)(2). Thus, where no probate estate has been opened for a Medicaid recipient, recovery of paid medical benefits can come from "any person who received or controls probate or non-probate assets inherited from the individual." Here, appellant attempted to make a claim with Doris's West Virginia probate estate, but the claim was denied. And, because no probate estate was opened in Ohio, appellant was permitted to seek a direct claim from the appellees, the remaindermen of the property that was subject to Doris's life estate interest.

{¶ 21} Appellant's amended complaint alleged that it was entitled under the Ohio Medicaid Estate Recovery Program to recover Medicaid benefits paid on behalf of Doris from the value of her life estate interest as it existed at the moment before her death, from appellees, the remaindermen of the life estate property. The appellant further alleged that Doris's life estate interest is part of the "estate" subject to recovery as broadly defined by the statute. Appellant also alleged that the appellees violated its claim under the recovery program by selling the property and failing to reimburse the value of the life estate interest. Given these allegations, and the foregoing legal analysis, we believe that the appellant has sufficiently pled a claim for relief under the Ohio Medicaid Estate Recovery program and that the trial court erred in dismissing the claim.

B. Ohio's Uniform Fraudulent Transfer Act

{¶ 22} Appellant also argues in support of its sole assignment of error that it sufficiently pled a claim for relief under Ohio's Uniform Fraudulent Transfer Act ("UFTA").

{¶ 23} Under the UFTA, a transfer that is made by a debtor is fraudulent as to a creditor if the transfer was made (1) with actual intent to hinder, delay, or defraud any creditor of the

debtor, or (2) without receiving a reasonably equivalent value in exchange for the transfer or obligation and if other conditions exist. R.C. 1336.04(A); R.C. 1336.05. To the extent that a transfer is voidable under the UFTA, the creditor may choose to recover a judgment for the value of the asset transferred, or the amount necessary to satisfy the claim of the creditor, whichever is less, against the first transferee of the asset. R.C. 1336.08(B)(1).

{¶ 24} In its amended complaint, appellant simply alleged that the appellees were liable under the UFTA. [*See* First Amended Complaint at ¶ 19.] The amended complaint did not identify which transfer it alleged to be in violation of the UFTA. The amended complaint also did not indicate whether appellant alleged that the disputed transfer was made with (1) with actual intent to hinder, delay, or defraud; or (2) without receiving a reasonably equivalent value in exchange for the transfer or obligation.

{¶ 25} If appellant's claim is related to the 2005 conveyance of the property, which created the life estate and remainder interests, then appellant's claim for fraudulent transfer is barred by the statute of limitations. The statute of limitations with respect to appellant's fraudulent transfer claim is set forth in R.C. 1336.09, which provides:

> A claim for relief with respect to a transfer or an obligation that is fraudulent under section 1336.04 or 1336.05 of the Revised Code is extinguished unless an action is brought in accordance with one of the following:
>
> (A) If the transfer or obligation is fraudulent under division (A)(1) of section 1336.04 of the Revised Code, within four years after the transfer was made or the obligation was incurred or, if later, within one year after the transfer or obligation was or reasonably could have been discovered by the claimant;
>
> (B) If the transfer or obligation is fraudulent under division (A)(2) of section

> 1336.04 or division (A) of section 1336.05 of the Revised Code, within four years after the transfer was made or the obligation was incurred;
>
> (C) If the transfer or obligation is fraudulent under division (B) of section 1336.05 of the Revised Code, within one year after the transfer was made or the obligation was incurred.

{¶ 26} Here, the 2005 transfer occurred more than four years before this action was filed. Moreover, appellant became aware of the transaction in 2009 when Doris applied for Medicaid benefits. Thus, appellant discovered the transfer more than one year before this action was filed. Accordingly, to the extent that appellant's complaint relates to the 2005 transfer, the trial court did not err in concluding that the claim was insufficient.

{¶ 27} In its appellate brief, appellant contends that the fraudulent transfer actually occurred when Doris, the debtor, died, and her life estate interest was extinguished as a matter of law. Specifically, appellant states that: "An interest in real property was 'transferred' to [appellees] upon the death of Doris M. Reed." Appellant further argues that the transfer was made with actual intent to hinder, delay, and defraud it in its attempt to collect the debt, and that the "transfer" was made without any consideration.

{¶ 28} We disagree with appellant's contention that an interest in the property was transferred from Doris to the appellees upon her death. The UFTA defines "transfer" as "every direct or indirect, absolute or conditional, and voluntary or involuntary method of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance." R.C. 1336.01(L). Here, Doris's death did not operate to pass any interest in the property to the appellees. Rather, Doris and her then husband transferred a vested remainder interest to the appellees in 2005, when the life estate was

originally created. *See Lane v. Lane*, 116 Ohio App. 100, 103, 187 N.E.2d 71 (2nd Dist.1961) (Noting that the law favors vesting of estates at the earliest possible moment and that it is generally accepted law that a remainder after a life estate vests in the remainderman at the time of conveyance, unless an intention to postpone the vesting to some future time is clearly expressed). Appellees merely were entitled to take possession of the property upon Doris's death. *See Simpson v. Walsh*, 44 Ohio App. 115, 118, 184 N.E.2d 242 (5th Dist.1932) ("[A]n estate in remainder is an estate limited to take effect in possession [until] immediately after the expiration of a prior estate created at the same time and by the same instrument."). Thus, Doris's death did not act to dispose of an asset.

{¶ 29} Even accepting all factual allegations in the amended complaint as true and making every reasonable inference in favor of the appellant, we find, that the appellant can prove no set of facts entitling him to recovery under the UFTA. Consequently, the trial court correctly dismissed appellant's fraudulent transfer claim.

C. Unjust Enrichment

{¶ 30} Finally, appellant contends that the trial court erred in dismissing the amended complaint because it sufficiently pled a claim for relief under the doctrine of unjust enrichment.

{¶ 31} Appellant's amended complaint alleged that it had a valid claim under the Medicaid Estate Recovery Program against the value of Doris's life estate interest in the West Virginia property, but that the appellees sold the property upon the termination of the life estate for $105,000 and "failed to pay over the portion of such sales proceeds allocable to the Decedent's life estate." [First Amended Complaint at ¶ 16.] Thus, appellant alleged that the appellees "unjustly enriched themselves to [its] detriment." [First Amended Complaint at ¶ 18.]

{¶ 32} The appellees, on the other hand, contend in their appellate brief that an unjust enrichment claim asserted against them must fail because "there is no allegation, and can be no showing, that the [a]ppellant conferred any benefit upon [them]." The appellant, meanwhile, argued in its brief that the appellees held the sales proceeds attributable to the value of the life estate in constructive trust, and that their failure to account for and pay over the portion of the sales proceeds due the appellant unjustly enriched the appellees.

{¶ 33} A constructive trust is a remedial device used to prevent fraud and unjust enrichment. *Estate of Cowling v. Estate of Cowling*, 109 Ohio St.3d 276, 2006-Ohio-2418, 847 N.E.2d 405, ¶ 19, citing *Ferguson v. Owens*, 9 Ohio St.3d 223, 226, 459 N.E.2d 1293 (1984), and *Aetna Life Ins. Co. v. Hussey*, 63 Ohio St.3d 640, 642, 590 N.E.2d 724 (1992). The *Ferguson* court further described it as follows:

> "A constructive trust is the formula through which the conscience of equity finds expression. When property has been acquired in such circumstances that the holder of the legal title may not in good conscience retain the beneficial interest, equity converts him into a trustee. * * * A court of equity in decreeing a constructive trust is bound by no unyielding formula."

Ferguson at 225–226, quoting *Beatty v. Guggenheim Exploration Co.*, 225 N.Y. 380, 386, 389, 122 N.E. 378 (1919). " '[A] constructive trust may also be imposed where it is against the principles of equity that the property be retained by a certain person even though the property was acquired without fraud.' " *Estate of Cowling* at ¶ 19, quoting *Ferguson* at 226, citing 53 Ohio Jurisprudence 2d, Trusts, Section 88 at 578-579 (1962); V Scott on Trusts (3d Ed.1967) 3412, Section 462. " 'By imposing a constructive trust, a court orders a person who owns legal title to property to hold or use the property for the benefit of another or to convey the property to

another to avoid unjust enrichment.' " *Bishop v. Bishop*, 188 Ohio App.3d 98, 2010-Ohio-2958, 934 N.E.2d 420, ¶ 17 (4th Dist.), quoting *Groza–Vance v. Vance*, 162 Ohio App.3d 510, 2005-Ohio-3815, 834 N.E.2d 15, ¶ 15 (10th Dist.). " 'Ordinarily a constructive trust arises without regard to the intention of the person who transferred the property.' " *Bilovocki v. Marimberga*, 62 Ohio App.2d 169, 172, 405 N.E.2d 337 (8th Dist.1979), quoting V Scott, Section 404.2. However, " '[t]he duty to convey the property may arise because it was acquired through fraud, duress, undue influence or mistake, or through a breach of a fiduciary duty, or through the wrongful disposition of another's property. The basis of the constructive trust is the unjust enrichment which would result if the person having the property were permitted to retain it.' " *Id*. at 171–172, citing V Scott, Section 404.2. " 'In applying the theories of constructive trusts, courts also apply the well known equitable maxim, "equity regards [as] done that which ought to be done." ' " *Estate of Cowling* at ¶ 19, quoting *Ferguson* at 226, quoting V Scott at 3412, Section 462.

{¶ 34} Here, appellant alleged in its amended complaint that the appellees were aware of its intent to recover the Medicaid benefits provided to Doris from the life estate interest. In fact, the amended complaint alleges that the appellees were first made aware of the Medicaid Estate Recovery Program and appellant's intent to recover the value of the life estate interest in 2009, when they helped Doris apply for Medicaid benefits. Despite this alleged knowledge, appellant contends that the appellees sold the property following Doris's death and retained the entire sales proceeds – proceeds that include the value of the life estate interest. Under these circumstances, we believe that the amended complaint sufficiently pled an unjust enrichment claim through the theory that the appellees held the portion of the sales proceeds attributable to the life estate

interest, in constructive trust for appellant. Accordingly, the trial court erred in dismissing the unjust enrichment claim.

V. CONCLUSION

{¶ 35} Based on our review of the amended complaint, we conclude that the appellant failed to state a claim for which relief can be granted under the UFTA. As a result, the trial court properly dismissed the UFTA claim.

{¶ 36} However, as indicated above, the appellant has sufficiently pled claims under the Ohio Medicaid Estate Recovery Program and the doctrine of unjust enrichment. Therefore, the trial court erred in dismissing this action.

{¶ 37} With the foregoing in mind, we sustain the appellant's sole assignment of error with respect to its claims brought under the Ohio Medicaid Estate Recovery Program and the doctrine of unjust enrichment. Accordingly, we affirm the judgment of the trial court, in part, and reverse the judgment of the trial court, in part. And we remand this case for proceedings consistent with this opinion.

JUDGMENT AFFIRMED, IN PART, AND REVERSED, IN PART, AND CAUSE REMANDED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED, IN PART, AND REVERSED, IN PART, and the CAUSE BE REMANDED to the trial court for further proceedings consistent with this opinion. Appellant and Appellees shall split the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Washington County Court of Common Pleas to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Abele, J.: Concurs in Judgment and Opinion.
McFarland, A.J.: Concurs in Part and Dissents in Part as to UFTA claim.

For the Court

By:_____
Marie Hoover, Presiding Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.