

IN THE SUPREME COURT OF OHIO

<b>CHARLES JAMISON et al.,</b>	:	
	:	On Appeal from the Cuyahoga
<b>Appellees</b>	:	County Court of Appeals,
<b>v.</b>	:	Eighth Appellate District
	:	
<b>CAROLINE H. JAMISON, et al.,</b>	:	Court of Appeals
	:	Case No. CA-17-106185
<b>Appellants</b>	:	

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**MEMORANDUM IN SUPPORT OF JURISDICTION  
OF APPELLANTS CAROLINE H. JAMISON, et al.**

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**TRUSTEE OF SUIT**  
Unknown Heirs

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***EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT  
GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL  
QUESTION***

The institution of marriage is permanently damaged and a surviving spouse suffers unconscionable losses and penalties where a probate court deprives the spouse of her vested dower interest in real property titled to her deceased husband without due process guaranteed by Ohio Constitution Article 1, Sections 1 and 16, and Ohio's statute of descent and distribution.

This cause presents two issues in the administration of an intestate estate: (1) whether a surviving spouse is mandated to receive a statutory distribution from her deceased spouse's intestate estate, as a matter of public policy expressed in R.C. §2105.06(D), and (2) whether a probate court has power to remove real property titled in fee simple in decedent's sole name from the inventory of an intestate estate and place the property into a "constructive trust."

The core operative fact in this case is that the Probate Court ordered removal of decedent Ralph Jamison's single parcel of real estate that was listed in his inventory and schedule of assets and failed to approve the inventory (Ohio standard probate forms 6.0 and 6.1), leaving the estate in *de facto* insolvency. The court placed the parcel into a constructive trust on the ground that the surviving spouse, Fiduciary Caroline Jamison, "will be unjustly enriched if the subject property is considered to be an asset of the decedent's estate."

If such deprivation without due process of law of the surviving spouse's just distribution per R.C. §2105.06(D) becomes final, decedent's estate will also become insolvent. The surviving spouse will incur wrongful loss of her statutory dower interest and cause damages from unrecoverable fiduciary advancements made to the estate to cover estate funeral and burial bills,

real estate taxes, estate bond and house insurance premiums, medical bills, costs, and legal expenses, all reported in the fiduciary's first partial account.

Ohio's statute of descent and distribution, R.C. §2105.06, is a century-old, wisely refined public policy statement where the Ohio legislature mandated distribution of estate assets in a fair manner. See former GC §10503-4; rev. 10/1/53; 11/9/59; 1/1/76; 5/26/76; 12/17/86; 3/22/2001; 1/23/2012. If the Probate Court applied the Ohio public policy mandate of R.C. 2105.06(D), all vested interests in decedent's estate would be affirmatively addressed with distributions to all vested intestate heirs.

The lower courts abused their discretion and erred in law by failing to approve the inventory and disregarding Ohio law associated with (a) plain, adequate, and complete remedies at law that prevail over probate suits in equity, (b) the statutory relation of vested interests of the surviving spouse against those of next-of-kin, (c) statutory regulation of real property chain-of-title, and (d) application of the Ohio Trust Code, R.C. Chapter 5810. In their summary judgments of constructive trust and unjust enrichment issues, the probate and appellate courts may have lost their way.

#### ***STATEMENT OF THE CASE AND FACTS:***

In February 2016, Ralph's surviving spouse and second wife, Caroline Jamison, filed an application in Cuyahoga Probate Court Case No. 2016EST214171 for authority to administer his estate, which the court granted. Subsequently, she filed an inventory and schedule of assets that listed only one estate asset, residential property valued at \$265,240, and posted a bond to protect the property asset by the Probate Court.

The Probate Court then issued a citation upon the surviving spouse of her right to continue her twenty-three (23) prior years of residence in the marital premises and live another year free of charge. R.C. §2106, §2106.15. The notice listed other vested rights of the surviving spouse including R.C. §2106.10 [right to receive the mansion house] and §2016.11 [right to place charge on real estate where assets insufficient to distribute specific monetary share].

Appellees, three (3) natural adult children of Ralph but not natural or adoptive children of Caroline, filed exceptions to the inventory and a motion for a constructive trust. Appellees then filed a complaint for declaratory judgment in Case No. 2016ADV221788. Caroline, individually and as administrator of Ralph's estate, answered the complaint and filed counterclaims for declaratory judgment, unjust enrichment, and sanctions. Upon Appellees filing a motion for summary judgment, the Probate Court ordered that the real property shall be removed from the inventory of the estate (Case No 2016EST214171), and be placed into a constructive trust to avoid unjust enrichment by the surviving spouse (Case No. 2016ADV221788).

Caroline appealed the judgments in both cases. The Cuyahoga Court of Appeals in Case No. CA17-106185 treated the appeal as a *de novo* summary judgment and affirmed the Probate Court judgments by journal entry and opinion dated April 26, 2018.

Appellees have argued throughout that: (a) The Lake County Domestic Relations Court ordered into execution on November 30, 1992, Ralph's contractual promise to transfer the real property into a trust, for the contingent benefit of his first wife (Myra), children, and grandchildren. (b) The Probate Court's plenary jurisdiction at law and in equity under R.C. §2101.24(C) authorizes "any relief required to fully adjudicate the subject matter with the Probate Court's exclusive jurisdiction." (c) Ralph never transferred title to the real property. (d)

The surviving spouse “never had any ownership or other interest in the property” and, by including the premises in Ralph’s estate, “Caroline was trying to acquire an interest in the property as Ralph’s surviving spouse.” (e) The dissolution decree barred any future surviving spouse from acquiring any interest in the property to Ralph. (f) The surviving spouse would be unjustly enriched if the property were “awarded” to Ralph’s estate.

By electing to enforce a 1992 divorce decree that created a trust contract and disregarding Ohio’s statutes of descent and distribution, common and statutory law of dower, and the Ohio Trust Code, the lower courts abused their discretion and erred in law by reasoning tautologically that a constructive trust will avoid unjust enrichment by the surviving spouse.

***ARGUMENTS IN SUPPORT OF PROPOSITIONS OF LAW:***

**Proposition of Law No. 1: Real property titled in fee simple to a married spouse becomes an asset of the inventory of the spouse’s estate as of the date of married spouse’s death.**

**Proposition of Law No. 2: A surviving spouse has a contingent interest (inchoate dower) in real property titled in fee simple to the deceased spouse as of the date of their marriage and a vested interest (statutory dower) in the real property as of the date of decedent’s death.**

**Proposition of Law No. 3: A probate court is mandated by law to approve decedent’s fee simple title to real property in decedent’s inventory (Standard Ohio Probate Form 6.0) and Schedule of Assets (Form 6.1).**

Ohio probated estates shall be closed after mandatory distribution of vested interests of (a) the surviving spouse including statutory dower, (b) all other next-of-kin, (c) decedent’s creditors and debts including, but not limited to, funeral and burial debts, tax liens of the county treasurer, estate bonds and real property insurance premiums. This case features an unnecessary clash of contingent interests of the surviving spouse against the contingent, beneficial (equitable)

interests of the spouse's three adult stepchildren, and how these interests become vested as of the date of Ralph's death. Ohio probate and real estate title law adequately resolves clashing contingent, beneficial, equitable, inchoate and vested interests by distributing estate assets among *all* vested interests in accordance with Ohio public policy expressed in R.C. §2105.06. See *Goodman v. Gerstle*, 158 Ohio St. 353, 358, 109 N.E.2d 489 (1952).

The nature of the surviving spouse's inchoate dower and statutory dower rights and the step-children's contingent beneficial interests in an unfunded trust requires particular focus in this case. Dower interests have been recognized in common law for centuries. The Ohio legislature's statement of dower rights of a surviving spouse appears in R.C. §2103.02:

A spouse who has not relinquished or been barred from it shall be endowed of an estate for life in one third of the real property of which the consort was seized as an estate of inheritance at any time during the marriage. **Such dower interest shall terminate upon the death of the consort except:**

**(A) To the extent that any such real property was conveyed by the deceased consort during the marriage, the surviving spouse not having relinquished or been barred from dower therein;**

(B) To the extent that any such real property during the marriage was encumbered by the deceased consort by mortgage, judgment, lien, except tax lien, or otherwise or aliened by involuntary sale, the surviving spouse not having relinquished or been barred from dower therein. If such real property was encumbered or aliened prior to decease, the dower interest of the surviving spouse therein shall be computed on the basis of the amount of the encumbrance at the time of the death of such consort or at the time of such alienation, but not upon an amount exceeding the sale price of such property.

**In lieu of such dower interest which terminates pursuant to this section, a surviving spouse shall be entitled to the distributive share provided by section 2105.06 of the Revised Code.** (Emphasis added.)

R.C. §2103.02 recognizes Caroline's contingent dower interest (inchoate dower) throughout her 23-year marriage to Ralph. The interest attached as of date of their marriage, or December 24, 1992. The surviving spouse's dower rights became vested and mandatorily a part of her deceased husband's intestate estate as of the date of Ralph's death, January 27, 2016.

The Supreme Court of Ohio has ruled that a court “cannot by its decree either preserve or bar inchoate dower rights or dower burdens. Such rights or burdens are not determined by the court’s orders. They exist and persist by the force of statutes. . . A person does not acquire a vested right to a dower interest in the property of his spouse until the latter’s death.” Goodman, *supra* at 360.

The Probate Court cited Caroline’s multiple statutory dower rights that became effective on the date of Ralph’s death. R.C. §2106.02. The Probate Court further recognized her fiduciary duty to protect the real property as an estate asset by order that bond be posted on the sole asset that appeared on her application for authority to administer her husband’s estate (standard probate form 4.0).

A wife’s contingent inchoate dower interest has little material application during the life of her husband, except that husband’s transfer of fee simple title into another legal entity (i.e., an unfunded trust) mandates that the wife execute a release of her dower rights in the deed of conveyance. R.C. §5301.04. Otherwise, without her execution of dower release, Caroline’s contingent interest continues in the new trust title and remains an enforceable statutory dower interest after Ralph’s death. R.C. §5301.071; §2103.02(A). The Appellate Court faulted the fiduciary by finding unjust enrichment accrued where “Caroline tried to assert ownership of the property on behalf of Ralph’s estate by listing it on the estate inventory.”

Caroline had absolutely no legal duty to release her dower interests to satisfy a prior divorce separation agreement to which she was not a party. The lower courts set aside evidence of Appellees’ unclean hands: their ugly pressure on Caroline during Ralph’s final week of life to execute such a release. Appellees’ intentional campaign of infliction of emotional distress

severely aggravated her grief and misery over her husband's passing. Enforcement of the 1992 trust contract failed where husband's promised performance to transfer title was rendered impossible without Caroline's release executed on a recordable deed.

Genuine questions of material fact remain whether (a) Ralph's inaction breached the trust contract or (b) the trust contract failed as the result of impossibility of promised performance. As Appellees were summary judgment movants against non-moving Appellants, Ohio Civil Rule 56(C) required that all evidence be construed most strongly in the non-moving party's favor.

Caroline performed her fiduciary duties as a surviving spouse strictly in accordance with Ohio title and probate law. R.C. §2115.02 mandates that within three months after the date of the appointment, the "administrator shall file with the court an inventory of the decedent's interest in real property located in this state" and "shall set forth values as of the date of death of the decedent." See also R.C. §2109.58 and R.C. §2115.05. A probate court is mandated by law to approve decedent's real property in the inventory, where the property is titled in fee simple in his sole name as of his date of death without any recorded liens or clouds on title.

By comparison, the step-children moved by summary judgment in the Probate Court to enforce their contingent beneficial ("equitable") interests into an inactive trust to obtain full title non-trust property without consideration or showing of fraud and to extinguish all dower rights of the surviving spouse. The lower courts misapplied equity rather than rule of law in ruling that the real property be placed into a constructive trust to protect Appellees' "equitable" interests.

Since the subject property was titled in fee simple in decedent's sole name without any recorded liens or clouds upon title, the Probate Court was mandated by law to approve the

subject property in schedule of inventory assets (Probate Form 6.1). Inventory approval would fund the estate, distributed of all vested interests per R.C. §2105.06(D), and avoided insolvency.

**Proposition of Law No. 4: R.C. §2101.24(C) grants a probate court plenary jurisdiction and power at law and equity unless expressly limited or denied by R.C. §2105.06(D), R.C. §2103.02, and the Ohio Trust Code (R.C. Chapter 5810).**

In failing to consider *any* of the statutory law mentioned above, both lower courts relied exclusively upon R.C. §2101.24(C), for the proposition that a probate court’s “plenary jurisdiction at law and in equity under R.C. §2101.24(C) authorizes any relief required to fully adjudicate the subject matter within the probate court’s exclusive jurisdiction.” Appellees and the lower courts overlooked the balance of R.C. §2101.24(C):

(C) The probate court has plenary power at law and in equity to dispose fully of any matter that is properly before the court, **unless the power is expressly otherwise limited or denied by a section of the Revised Code.** (Emphasis added.)

The Supreme Court of Ohio ruled in *State ex rel. Lewis v. Moser*, 72 Ohio St.3d 25, 28, 647 N.E.2d 155 (1995), that special remedies are insufficient where there exists a “plain and adequate remedy in the ordinary course of law.” As R.C. §2105.06(D), §2103.02, and the Ohio Trust Code (R.C. Title 58) expressly provide plain, adequate, and complete remedies in the ordinary course of law for disposition of all contingent and vested interests in trust enforcement, *inter vivos* title, and intestate estates, the Revised Code sections expressly limit and deny claimed plenary powers of R.C. §2101.24(C).

Plenary powers granted by R.C. §2101.24(C) are further expressly limited by the Ohio Trust Code, Revised Code Title 58, et seq. eff. 1/1/07. R.C. §5801.04(A) provides “Chapters 5801. to 5811 of the Revised Code govern the duties and powers of a trustee, relations among

trustees, and the rights and interests of a beneficiary.” Title 58 gives contract law structure to centuries of trust common law, particularly with remedies for trust enforcement.

The lower courts acted beyond the powers granted by R.C. §2101.24(C) and abused discretion by opting to enforce a 1992 trust contract ordered into execution in the decree of dissolution of marriage between Ralph and his first wife, Myra, in Lake County Domestic Relations Case No. 92DI000934. The Probate Court favored awarding 100% of the real property in protection of the step-children’s contingent, beneficial (equitable) interests in the unfunded trust over the vested interests of the surviving spouse *and* the step-children.

On November 30, 1992, the Lake Domestic Relations Court Decree of Dissolution of Marriage expressly ordered title to the subject real property located at 1333 Cedar Point Road, Sandusky, Ohio, shall be placed into the sole name of Ralph Jamison by deed with release of Myra’s dower interest. Ex-wife Myra signed the quitclaim deed, which was recorded on December 9, 1992, giving Ralph title in fee simple to the property.

Fee simple title remained solely in Ralph’s name through his date of death on January 27, 2016, where it vested in his intestate estate pursuant to R.C. §2115.02. Since 1992, Ralph appeared to be a reluctant trust settlor by taking no action to transfer title out of his name. during his twenty-three years of happy marriage to Caroline. The lower courts did not find fraud in Ralph’s inaction. To avoid “unjust enrichment” by the surviving spouse the Probate Court elected to enforce the trust and not the estate it had created. The Court failed to apply chain-of-title statutes by suggesting it could avoid applying R.C. §2105.06(D) as the asset was never an asset of Ralph’s estate. See R.C. §5301.01(B)(1)(b); §5301.07.

Enforcement of an Ohio trust must be by application of principles of contract law adapted by the Ohio Trust Code. A broad range of remedies were available to Appellees for Ralph's failure to perform his promise and are listed in R.C. §5810.01. However, R.C. §5810.01 specifically limits availability of the remedy of "constructive trust" to recovery of *trust* property:

(B) To remedy a breach of trust that has occurred or may occur, the court may do any of the following: . . .

(9) Subject to section 5810.12 of the Revised Code [protection of person dealing with trustee], void an act of the trustee, **impose a lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds** (Emphasis added.)

In its chain-of-title history, the subject property was never titled as a trust asset or wrongly disposed trust property. At all times, the duly-recorded subject property titled in fee simple has been decedent's non-trust property and the result of his 1992 divorce court decree that divided all marital real property per R.C. §3105.171(I).

A constructive trust is an equitable remedy that protects against unjust enrichment and is usually invoked when property has been obtained by fraud. In *Estate of Cowling v. Estate of Cowling*, 109 Ohio St.3d 276, 280-81, 2006-Ohio-2418 (2006), citing *Ferguson v. Owens*, 9 Ohio St.3d 223, 225 (1984), the Supreme Court of Ohio defined a constructive trust as:

Trust by operation of law which arises contrary to intention and in *invitum*, against one who, by fraud, actual or constructive, by duress or abuse of confidence, by commission of wrong, or by any form of unconscionable conduct, article, concealment, or questionable means, or who in any way against equity and good conscience, either has obtained or hold the legal right to property which he ought not, in equity and good conscience, hold and enjoy. It is raised by equity to satisfy the demands of justice.

The record in this case contains no evidence or lower court findings of fraud, or that decedent retained title by duress, abuse of confidence, commission of a wrongdoing by any party, unconscionable conduct, artifice, concealment, or other questionable means.

The divorce court trust could not function as an active *inter vivos* until it had an asset titled in the name of the trust (trust *res*). Until title is transferred and recorded into the trust, the trust denied Appellees of any vested interests in the real property. Restatement, Trusts 2d §76 Comment a [“A trust is not created if the identity of the subject matter remains wholly in the control of the settlor”].

At all times prior to Ralph’s death, Appellees had a contingent, beneficial (“equitable”) interest in the trust but no vested, or enforceable, interest in the property. They therefore lacked standing to enforce a constructive trust over the settlor’s non-trust property. As his next-of-kin, Appellees first obtained on his date of death vested interests in their father’s intestate estate, but not specifically in title to the property. At his death, they first appeared before the Probate Court with vested interests equal to that of the surviving spouse, which became subject to the plain, adequate, and complete remedy in the ordinary course of law of R.C. §2105.06(D).

Assuming *arguendo* that Appellees had standing to enforce their contingent equitable interests during the life of their father, they would have had to seek enforcement of the trust contract in the Lake Domestic Relations Court due to its exclusive original jurisdiction. R.C. §3105.171(I). However, such right to trust enforcement is subject to various statutes of limitation.

The Ohio Trust Code imposes statutes of limitation barring beneficiary actions against a trustee for breach of a trust at R.C. §5810.05:

(A) A beneficiary may not commence a proceeding against a trustee for breach of trust more than two years after the date the beneficiary, a representative of the beneficiary, or a beneficiary surrogate is sent a report that adequately discloses the existence of a potential claim for breach of trust and informs the beneficiary, the representative of the beneficiary, or the beneficiary surrogate of the time allowed for commencing a proceeding against a trustee.

(B) A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or the representative of the beneficiary knows of the potential claim or should know of the existence of the potential claim.

(C) If division (A) of this section does not apply, notwithstanding section 2305.09 of the Revised Code, a judicial proceeding by a beneficiary against a trustee for breach of trust must be commenced within four years after the first of the following to occur:

- (1) The removal, resignation, or death of the trustee;
- (2) The termination of the beneficiary's interest in the trust;
- (3) The termination of the trust;
- (4) The time at which the beneficiary knew or should have known of the breach of trust.

(D) Nothing in Chapters 5801. to 5811. of the Revised Code limits the operation of any principle of law or equity, including the doctrines of laches, unclean hands, estoppel, and waiver, that can bar claims. (Emphasis added.)

The record reveals that the step-children were specifically aware of and communicated their father's alleged breach of the trust agreement in 1999-2002, 2010, and during Ralph's final week of hospice care. Although fraud was never alleged in this case, R.C. §2305.09(C) imposes a 4-year statute of limitation on fraud actions. R.C. §2305.04 provides, "An action to recover the title to or possession of real property shall be brought within twenty-one years after the cause of action accrued." See also *Bergholtz Coal Holding Co v. Dunning*, 11<sup>th</sup> District Lake No. 2004-L-209, 2006-Ohio-3401 [Quiet title claim subject to 21-year statute of limitation period of R.C. §2305.04]. Statutes of limitations bar Appellees from enforcing after Ralph's death in 2016 their alleged contingent, beneficial (equitable) interests, which may have accrued twenty-four years earlier in 1992.

The equitable doctrine of laches further bars trust enforcement action at any time after Ralph's date of death on January 27, 2016. Due process requires notice to the decedent and an opportunity to be heard. Appellees' motion for constructive trust exposed an (a) unreasonable delay to assert their claim for breach of trust contract, as the decedent was not alive to give

testimony on genuine issues of material fact: Did decedent breach the trust agreement? Was his contractual promise rendered impossible to perform due to Caroline's failure to release her dower interests voluntarily into a recordable deed of title transfer? The lower court judgments have (b) caused the estate material prejudice by forcing an insolvency proceeding and Fiduciary Caroline's claim on her estate bond. See *In re Estate of Dinsio*, 159 Ohio App.3d 98, 102, 2004-Ohio-6036, 823 N.E.2d 43 (2<sup>nd</sup> Dist. Mahoning).

**Proposition of Law No. 5: A probate court is mandated to apply the statute of descent and distribution (R.C. §2105.06) in lieu of equitable remedies in distribution of vested interests in an intestate estate.**

Creation of a constructive trust is a remedy in equity, not in law. R.C. §2105.06(D) provides a plain, adequate, and complete remedy in the ordinary course of law: a statutory framework for allocating vested interests in an interstate estate. A constructive trust "remedy" that ignores Ohio probate and title statutes undermines historic public policy set forth in the law. The institution of marriage is severely damaged where dower interests in marital support and shelter are ignored or extinguished and violate public policy.

In referencing the Judiciary Act of 1789, the United States Supreme Court held in *Root v. Ry. Co.*, 105 U.S. 189, 213, 26 L.Ed. 975, 1881 U.S. LEXIS 2106 (1882) that, "suits in equity shall not be sustained in either the courts of the United States in any case where plain, adequate, and complete remedy may be had at law."

The lower courts abused discretion by enforcing Appellees' contingent interests and extinguishing Appellants' vested statutory interests without due process of law. Their judgments ignored and impliedly overturned the seminal Cuyahoga Probate Court case,

*Campbell v. Musart Soc. of Cleveland Museum of Art*, 2 Ohio Op.2d 517, 131 N.E.2d 279, 1956

Ohio Misc. LEXIS 368 (1956). *Campbell* stated in its Syllabus ¶¶1-3:

1. The statutes of descent and distribution are not to be construed and administered on equitable principles, but by rules of law. (Sec. 2105.06 R.C.)
2. Courts cannot, by reason of any real or imagined equities, qualify or annul rights granted by the legislature.
3. The laws of descent are mere arbitrary rules for the transmission of property, enacted by the legislature, and cannot be modified by courts by reason of equitable consideration. (Sec. 2105.06 R.C.) (Emphasis in original.)

Where the primary or paramount relief sought is legal and the equitable redress merely incidental, the action is at law, not in equity. *Borton v. Earhart*, 144 Ohio St. 334, 59 N.E.2d 37 (1945); *Eggers v. Morr*, 162 Ohio St. 521. 529, 124 N.E.2d 115, 1955 Ohio LEXIS 610 (1955) [“The whole theory of equitable actions is based upon the principle that they are necessary for the attainment of justice in a situation where there is no adequate remedy at law as to an aggrieved person”].

### ***CONCLUSION***

All engaged and married persons in Ohio may be alarmed if their vested, statutory dower rights in an intestate estate are denied without due process of law. Dower interests are not dead. At stake are unalienable Ohio Constitutional rights to acquire, possess, and protect real property and rights to just remedies in due course of law.

Appellants seek reversal of the Appellate Court judgment and remand to the Cuyahoga Probate Court with order that the Ralph Jamison Estate inventory and schedule of assets (standard probate forms 6.0 and 6.1) be approved. The facts and law in this case require inventory approval as a routine matter of law. Only after inventory approval will *all* vested

rights and interests and *all* estate debts and claims be properly allocated by due process of law and distributed from a solvent estate in conformance with long-standing public policy.

Respectfully submitted,

  
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***CERTIFICATE OF SERVICE***

I certify that a true and accurate copy of the foregoing Memorandum in Support of Jurisdiction of Appellants Caroline H. Jamison, et al., was sent by ordinary U.S. mail, postage prepaid, and by email transmission to **MARIA L. SHINN, Esq.** at The Shinn Law Firm, LLC, 12511 Madison Avenue, Lakewood, Ohio 44107-5004, and maria@shinnlawfirm.com, and to **AMY L PAPESH, Esq.** at Elk & Elk Law Firm, 6105 Parkland Boulevard Ste. 200, Mayfield Heights, Ohio 44124, and apapesh@elkandelk.com, respectively, on the 4th day of June, 2018.

  
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# APPENDIX

APR 26 2018

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 106185

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CHARLES JAMISON, ET AL.

PLAINTIFFS-APPELLEES

vs.

CAROLINE H. JAMISON, ET AL.

DEFENDANTS-APPELLANTS

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JUDGMENT:  
AFFIRMED

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Civil Appeal from the  
Cuyahoga County Court of Common Pleas  
Probate Court Division  
Case Nos. 2016 ADV 221788 and 2016 EST 214171

BEFORE: Keough, J., S. Gallagher, P.J., and Blackmon, J.

RELEASED AND JOURNALIZED: April 26, 2018



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KATHLEEN ANN KEOUGH, J.:

{¶1} Caroline H. Jamison (“Caroline”), individually and as administrator of the estate of Ralph E. Jamison (“Ralph”), appeals from the probate court’s judgment in Case No. 2016 ADV 221788 that granted the motion for summary judgment of plaintiffs-appellees, Charles Jamison, David Jamison, and Carolyn Dandrea (collectively “appellees” or the “children”), and dismissed Caroline’s counterclaims, and from the probate court’s judgment in Case No. 2016 EST 214171 that granted the exceptions to inventory filed by the children, and ordered that the real estate at issue is not an asset of Ralph’s estate. For the reasons that follow, we affirm.

### **I. Facts and Procedural Background**

{¶2} In February 2016, Caroline, as Ralph’s surviving spouse, filed an application in Case No. 2016 EST 214171 for authority to administer his estate. The probate court granted the application. Caroline subsequently filed an inventory and schedule of assets that listed only one estate asset: a vacation cottage with a value of \$265,240 located in Sandusky, Ohio.

{¶3} Appellees, who are the decedent’s grown children, subsequently filed their exceptions to the inventory and a motion for constructive trust. In their motion, appellees asserted that before he married Caroline, Ralph and his ex-wife Myra S. Jamison, executed a separation agreement in Lake County Domestic Relations Court that required him to transfer the cottage to a living

trust "to insure keeping the Cottage 'in the family,' for the use of Husband, Wife, Children, and Grandchildren of this marriage, regardless of dissolution, divorce, remarriage, or other circumstances." The separation agreement further provided that upon Ralph's death, "the Children will be the only remaindermen (beneficiaries after the death of Husband), receiving equal shares of the trust value, in no less than two years after the death of the Husband \* \* \*."

{¶4} The children argued that Ralph's failure to transfer the cottage into the trust after the dissolution of his marriage to Myra and before his death deprived them of their equitable interest in the cottage, and that by including the cottage in Ralph's estate, Caroline was trying to acquire an interest in the property as Ralph's surviving spouse. The children asked the court to therefore impose a constructive trust over the cottage for their benefit, and to exclude the cottage from the inventory of Ralph's estate.

{¶5} The children then filed a complaint for declaratory judgment in Case No. 2016 ADV 221788 asking the court to declare and determine whether the cottage should be held in constructive trust for the children's benefit or included in the inventory of Ralph's probate estate. Caroline, individually and as administrator of Ralph's estate, answered the complaint and filed counterclaims for declaratory judgment, unjust enrichment, and sanctions. The children subsequently filed a motion for summary judgment in this case, arguing that there was no genuine issue of material fact that equity required

the imposition of a constructive trust over the cottage for the children's benefit, and that Caroline would be unjustly enriched if the cottage was awarded as an asset of Ralph's estate. Caroline filed a brief in opposition to the motion.

{¶6} The trial court granted the motion for summary judgment. It found that the dissolution decree "was very specific in its instructions with regard to the disposition of the subject property and to the terms of the trust that was ordered to be established." The court found that the decree "named the Trustee and the Successor Trustee, stated who could use the subject property, mandated that the decedent's children would be the only beneficiaries after his death and gave Plaintiff David Jamison the right of first refusal to buy the subject property from the trust before the trust is terminated by the final trustee." It further found that "the decedent's failure to formally transfer the subject property into the Trust before his death will result in a denial of the Plaintiffs' equitable interest in the property if a constructive trust is not imposed by this Court." The court further found that Caroline "will be unjustly enriched if the subject property is considered to be an asset of the decedent's estate." Accordingly, the court ordered a constructive trust imposed over the cottage. It further found that imposing a constructive trust over the cottage necessarily removed it as an asset of Ralph's estate and defeated Caroline's counterclaims. The court therefore granted judgment to the children on Caroline's counterclaims and dismissed the counterclaims.

{¶7} The court subsequently entered judgment in Case No. 2016 EST 214171 granting the children's exceptions to inventory, and ordering that the cottage be removed from the inventory of the estate. This appeal followed.

## II. Law and Analysis

{¶8} In her first assignment of error, Caroline asserts that the trial court erred in granting the children's motion for summary judgment and imposing a constructive trust over the cottage. She further contends that the trial court abused its discretion by granting the children's exceptions to inventory and ordering the cottage removed from Ralph's estate. In her second assignment of error, she contends that the trial court erred in finding that she would be unjustly enriched if the cottage remained an asset in Ralph's estate and in dismissing her counterclaims. We consider the assigned errors together because they are related.

{¶9} Civ.R. 56(C) provides that summary judgment is appropriate when (1) there is no genuine issue of material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) after construing the evidence most favorably for the party against whom the motion is made, reasonable minds can reach only a conclusion that is adverse to the nonmoving party. *Zivich v. Mentor Soccer Club, Inc.*, 82 Ohio St.3d 367, 369-370, 696 N.E.2d 201 (1998); *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317, 327, 364 N.E.2d 267 (1977). We review the trial court's judgment de novo, using the same standard that the

trial court applies under Civ.R. 56(C). *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996).

{¶10} The party moving for summary judgment bears the burden of demonstrating that no material issues of fact exist for trial. *Dresher v. Burt*, 75 Ohio St.3d 280, 292-293, 662 N.E.2d 264 (1996). The moving party bears the initial responsibility of informing the trial court of the basis for the motion, and identifying those portions of the record that demonstrate the absence of a genuine issue of facts on a material element of the nonmoving party's claim. *Id.* The nonmoving party has a reciprocal burden of specificity and cannot rest on mere allegations or denials in the pleadings. The nonmoving party must set forth specific facts by the means listed in Civ.R. 56(C) showing that there is a genuine issue for trial. *Id.* The reviewing court evaluates the record in a light most favorable to the nonmoving party. *Saunders v. McFaul*, 71 Ohio App.3d 46, 50, 593 N.E.2d 24 (8th Dist.1990). Any doubts must be resolved in favor of the nonmoving party. *Murphy v. Reynoldsburg*, 65 Ohio St.3d 356, 358-359, 604 N.E.2d 138 (1992).

{¶11} The children attached a copy of the separation agreement entered into by Ralph and Myra in September 1992 to their motion for summary judgment. They also attached a copy of the decree of dissolution of marriage entered by the Lake County Domestic Relations Court on November 30, 1992.

The dissolution decree incorporated the separation agreement as part of the decree, and specifically ordered Ralph and Myra "to fulfill this Agreement."

{¶12} The separation agreement provided that Myra would convey her interest in the cottage by quitclaim deed to Ralph. The separation agreement further provided that:

Husband shall, after recording of the Quit Claim deed to the Cottage, executed by Wife and Husband, and refinancing in his name only or otherwise holding Wife harmless on the current mortgage debt, convey the Cottage to a living trust (hereinafter, "the Trust").

*The Trust will have been created by husband to insure keeping the Cottage "in the family" for the use of Husband, Wife, Children, and Grandchildren of this marriage, regardless of dissolution, divorce, remarriage, or other circumstances.* Husband will be the Trustee or Co-trustee, and Income Beneficiary; and, with son David E. Jamison as the first Successor Trustee or Co-Trustee and a commercial bank as the second and final Trustee will, with proper maintenance and improvements, and by limiting mortgage debt sustain the currently appreciating market value of the Cottage and of the Trust. The Children will be the only remaindermen (beneficiaries after the death of Husband), receiving equal shares of the trust value, in no less than two years after the death of the Husband, at which time the trust will terminate with son David E. having right-of-first-refusal to buy the Cottage from the Trust before termination of the Trust by the final Trustee.

The joint bank account currently in the names of both Husband and Wife, from which Cottage mortgage payments are now being made, will be transferred to the Trust. For record keeping and tax purposes, all Cottage-related mortgage, real estate tax, utility and maintenance payments, formerly the obligation of both Husband and Wife, will be paid from this account, and the balance will be maintained by the Trustees at a level sufficient to insure smooth successions [sic] of trusteeship and termination.

Some household goods and some personal property in Husband's possession and not in the Cottage and some funds may be added to the Trust at any time.

Any taxes assessed to the Husband as a consequence of the Trust creation, and any taxes, penalties or interest arising out of the Husband's and Wife's joint tax returns for any year will be paid by the Trust. (Emphasis added.)

{¶13} The evidence demonstrated Myra complied with the dissolution decree and transferred her interest in the cottage to Ralph by a quitclaim deed. The evidence further demonstrated that as provided by the dissolution decree, Myra, the children, and grandchildren used the cottage after the dissolution of the marriage and Ralph's remarriage to Caroline. Nevertheless, despite the order of the domestic relations court to fulfill the separation agreement, Ralph never transferred the cottage into the trust, as ordered by the court.

{¶14} In their motion for summary judgment, the children asserted that because the dissolution decree was clear that Ralph's children were to be the beneficiaries of the cottage after Ralph's death and that his remarriage would have no bearing on his agreement to keep the cottage in the family, there was no genuine issue of material fact that Caroline would be unjustly enriched if the cottage were awarded to Ralph's estate. Accordingly, they asked the court to impose a constructive trust over the cottage. Upon our de novo review, we find that the trial court properly granted summary judgment to the children and imposed a constructive trust over the cottage.

{¶15} First, we reject Caroline's argument that the probate court lacked jurisdiction to impose a constructive trust. The probate court's plenary jurisdiction at law and in equity under R.C. 2101.24(C) authorizes any relief required to fully adjudicate the subject matter within the probate court's exclusive jurisdiction. *State ex rel. Lewis v. Moser*, 72 Ohio St.3d 25, 29, 647 N.E.2d 155 (1995). A probate court has exclusive jurisdiction to direct and control the conduct of fiduciaries, such as Caroline, and settle their accounts. R.C. 2101.24(A)(1)(m). Accordingly, in resolving the children's exceptions to the estate inventory submitted by Caroline, the probate court had plenary jurisdiction to determine that the cottage was not properly included in Ralph's estate and to impose a constructive trust to protect the children's interest in the cottage.

{¶16} We also reject Caroline's argument that a constructive trust was not an appropriate remedy in this case. A constructive trust is an equitable remedy used "when property has been acquired in such circumstances that the holder of the legal title may not in good conscience retain the beneficial interest." *Ferguson v. Owens*, 9 Ohio St.3d 223, 225, 459 N.E.2d 1293 (1984). It is an appropriate remedy against unjust enrichment and may be imposed when a party retains money or benefits that in justice and equity belong to another. *Groza-Vance v. Vance*, 162 Ohio App.3d 510, 2005-Ohio-3815, 834 N.E.2d 15, ¶ 25 (10th Dist.), citing *Liberty Mut. Ins. Co. v. Indus. Comm. of*

*Ohio*, 40 Ohio St.3d 109, 111, 532 N.E.2d 124 (1988). A constructive trust may also arise when the holder of property obtained such property from a person attempting to avoid an obligation imposed by a court decree. *Id.* at ¶ 29.

{¶17} The evidence was undisputed that Ralph was ordered by the Lake County Domestic Relations Court to transfer the cottage into a trust for the benefit of his ex-wife Myra, and their children and grandchildren. Ralph's failure to carry out the necessary acts to transfer the cottage into the trust, an act to which he agreed and which the court ordered, cannot defeat the trust requirement that the trust remain "in the family" (i.e., the children and grandchildren of Ralph and Myra) despite Ralph's remarriage to Caroline.

{¶18} Caroline argues that the trial court erred in granting summary judgment because there was no evidence that the two conditions precedent to transferring the cottage into the trust — (1) recording of the quitclaim deed signed by Ralph and Myra, and (2) refinancing of the cottage mortgage in Ralph's name only — ever occurred, and consequently, Ralph had no duty to transfer the cottage into the trust. This argument fails. A copy of the signed and filed quitclaim deed was attached to Caroline's brief in opposition to the children's motion for summary judgment. Further, in her affidavit attached to her brief in opposition, Caroline averred that the cottage was titled solely in Ralph's name during their marriage. She also averred that Ralph paid off the mortgage on the cottage, as required by the separation agreement. Thus, as

the trial court found, although Caroline acknowledges Ralph's compliance with some of the trust requirements, she "chooses to disregard the balance of the decree that sets forth in detail the requirement that the property be titled to a family trust in which the decedent's children would be the only remaindermen."

{¶19} Moreover, Caroline's argument that the requirement that he transfer the cottage to the trust "was not an enforceable court order" is specious. Having been incorporated into the divorce decree, Ralph and Myra's agreement requiring him to transfer the cottage into the trust "acquired the sanctity of a court order." *Vance*, 162 Ohio App.3d 510, 2005-Ohio-3815, 834 N.E.2d 15, at ¶ 32 (10th Dist.). Ralph's failure to transfer the cottage into the trust had the effect of avoiding his court-ordered obligation and depriving the children of their equitable interest in the property.

{¶20} Caroline also argues that the trial court erred in granting summary judgment because, since title to the cottage was never transferred to the trust, the children do not have a vested interest to enforce. This argument is similar to an argument raised and rejected by this court in *Shaheen v. Vassilakis*, 82 Ohio App.3d 311, 612 N.E.2d 435 (8th Dist.1992).

{¶21} In *Shaheen*, as part of their separation agreement, Husband and Wife agreed that certain real property would be placed in a trust for the benefit of their children, and granted the trustee the authority to sell the property. The judgment entry of divorce incorporated the agreement and ordered its terms

"into execution." Despite the language of the judgment entry, no deeds to the property were ever delivered to the trust. When the trustee sold the property, Husband refused to convey the property. The purchaser filed a complaint against Husband and the trustee, seeking specific performance. Wife subsequently moved to intervene.

{¶22} On appeal of the trial court's judgment ordering specific performance of the purchase agreement and that Husband and Wife convey the property to the trust pursuant to the divorce decree, Wife argued that there was no valid trust because she and Husband had never conveyed any property into the trust and, therefore, the trustee had no authority to sell the property. This court found, however, that the separation agreement and trust agreement were made part of the judgment entry of divorce, which unequivocally directed that the property be placed in the trust. *Id.* at 317. It further found that Wife's failure to convey the property, as ordered by the court, did not undermine the validity of the trust. *Id.* This court stated, "[Wife's] only defense is that she did not do that which the court ordered her to do, *i.e.*, place the property in trust for the benefit of her children. However, equity regards as done 'that which ought to be done.'" *Id.*

{¶23} Furthermore, this court found that to the extent the trust was technically deficient because of Husband and Wife's failure to transfer the property into the trust, a constructive trust was established. The court found

there was "no ambiguity" concerning the trust property; the court had ordered that it be placed in trust with a specific trustee with power in the trustee to sell. Accordingly, this court affirmed the trial court's judgment. *Id.*

{¶24} The same can be said of this case. There is no doubt that Ralph agreed, and was ordered by the domestic relations court, to convey the cottage into a trust for the benefit of his ex-wife, children, and grandchildren. That he did not do so does not defeat the children's interest in the cottage, nor vest any rights in the cottage to Caroline.

{¶25} Caroline next argues that the children's claim is barred by the statute of limitations and the doctrine of laches. She cites R.C. 5810.05, which limits actions against a trustee by a beneficiary to two to four years, depending on the circumstances. She contends that the children were aware of Ralph's breach of the trust agreement as early as 1999, and therefore, their claims are now barred by the statute of limitations. We disagree. As admitted by Caroline, Ralph followed the terms of the trust during his lifetime, even though the property was never formally transferred to the trust. The children's claim for unjust enrichment accrued on August 3, 2016, when Caroline tried to assert ownership of the property on behalf of Ralph's estate by listing it on the estate inventory. The children filed their exceptions to the inventory 22 days later, well within any statute of limitations.

{¶26} Likewise, the doctrine of laches is not applicable to this case. Laches is “an omission to assert a right for an unreasonable and unexplained length of time, under circumstances prejudicial to the adverse party.” *Connin v. Bailey*, 15 Ohio St.3d 34, 35, 472 N.E.2d 328 (1984). Delay in asserting a right does not of itself constitute laches. *LeCrone v. LeCrone*, 10th Dist. Franklin No. 04AP312, 2004-Ohio-6526, ¶ 22. The party asserting the laches defense must demonstrate that he or she has been materially prejudiced by the delay. *Smith v. Smith*, 168 Ohio St. 447, 156 N.E.2d 113 (1959), paragraph three of the syllabus.

{¶27} Caroline cannot demonstrate any such prejudice. By her own admission, she had the use and enjoyment of the cottage during her 23-year marriage to Ralph. She never had any ownership or other interest in the cottage, however, and therefore cannot be prejudiced by keeping it out of Ralph’s estate.

{¶28} Caroline next contends that the trial court erred in finding that she would be unjustly enriched if the cottage were to remain in Ralph’s estate and that, to the contrary, the children will be unjustly enriched by the imposition of a constructive trust over the cottage in their favor. We cannot agree.

{¶29} The imposition of a constructive trust does not unjustly enrich the children. It instead enforces the intended and agreed-upon terms of the trust as ordered in the dissolution decree, and prevents the children from being

deprived of their vested remaindermen interest in the family cottage. To find otherwise would unjustly enrich and unfairly benefit Caroline, who was specifically excluded from any interest in the family cottage pursuant to the dissolution decree.

{¶30} Caroline next asserts that the trial court erred in finding her argument that the children “appear[ed] before the court with unclean hands” to be irrelevant. Specifically, in her brief in opposition to the children’s motion for summary judgment, Caroline argued that the children pressured her during Ralph’s final hospice stay to sign a release regarding the cottage, that they never helped to maintain the cottage, and that one of the children allegedly broke into the cottage after Ralph changed the locks. We agree with the trial court that such arguments are irrelevant to the issue at hand: whether Ralph wrongfully failed to transfer the cottage to the trust for the benefit of his children, as ordered by the domestic relations court. As the trial court found, “[h]ad the decedent done what he was required to do and what he agreed to do in the 1992 decree of dissolution, the plaintiffs would not have been required to invoke the jurisdiction of this court to retain what is rightfully theirs pursuant to the prior court order.”

{¶31} Last, we reject Caroline’s argument that the cottage is marital property subject to a dower interest under R.C. 2103.02. Even though the cottage was titled in Ralph’s name when he died, Caroline never had an interest

in the cottage; the dissolution decree was very clear that the cottage was to be conveyed to a trust to ensure that it would remain "in the family" for use by Ralph, his ex-wife, and their children and grandchildren regardless of any remarriage by Ralph. Further, the decree ordered that the children would be the "only remaindermen" of the trust upon Ralph's death. And the trust terms did not allow for the trust to be terminated during Ralph's lifetime, nor was any agreement to terminate ever reached between Ralph, his ex-wife, and the children. The dissolution decree specifically barred Caroline from acquiring any interest in the cottage upon her marriage to Ralph; accordingly, she is not entitled to any statutory share.

{¶32} There is no genuine issue as to any material fact, and appellees are entitled to judgment as matter of law. The cottage is not an estate asset, and Caroline would be unjustly enriched if it were included in Ralph's estate. Accordingly, the trial court properly granted appellees' motion for summary judgment, dismissed Caroline's counterclaims, and imposed a constructive trust over the cottage. The trial court also properly granted the exceptions to inventory filed by appellees and ordered that the cottage is not an asset of Ralph's estate.

{¶33} Judgment affirmed.

It is, therefore, considered that appellees recover of appellants their costs herein.

It is ordered that a special mandate be sent to said court 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.

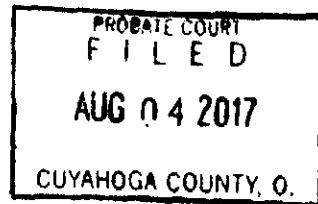
FILED AND JOURNALIZED  
PER APP.R. 22(C)

Kathleen Ann Keough  
KATHLEEN ANN KEOUGH, JUDGE

SEAN C. GALLAGHER, P.J., and  
PATRICIA ANN BLACKMON, J., CONCUR

APR 26 2018  
CUYAHOGA COUNTY CLERK  
OF THE COURT OF APPEALS  
By Snayder Deputy

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO  
PROBATE DIVISION



CHARLES JAMISON, et al.

CASE NO. 2016ADV221788

Plaintiffs

vs.

CAROLINE H. JAMISON et al.

Defendants

**JUDGMENT ENTRY**

This matter is before the Court upon the Motion for Summary Judgement filed May 25, 2017, the Notice of Alignment of Interests filed by the Trustee for Suit on June 6, 2017, Fiduciary's Brief Opposing Summary Judgment filed June 22, 2017 and Plaintiff's Reply Brief filed July 10, 2017.

Plaintiffs move this Court for an entry of Summary Judgment in favor of the Plaintiffs, imposing a constructive trust over the real property located at 1333 Cedar Point Road, Sandusky, Ohio 44871 and dismissing Defendant's Counterclaims.

The Defendant's Counterclaims arise from her contention that the subject property is an asset of the estate and that she has been damaged by her inability to sell the property and to use proceeds from the sale to pay debts of the estate. If the Court determines that the property is not an asset of the Estate the Counterclaims must be denied.

Plaintiffs have set forth, as the basis for their motion, the provisions of a Lake County Decree of Dissolution (Decree) wherein the subject property is Ordered into a family trust.

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The Decree, attached as Exhibit A of the Plaintiffs' Motion, sets forth in detail the agreement between decedent Ralph Jamison and Myra Jamison as to the division of marital property, including the subject property at Cedar Point Road. Section B of the Separation Agreement, which is incorporated into the Decree, sets forth the Family Trust Requirements with regard to the Cedar Point Road property. Defendant attaches to his Opposition Brief Fiduciary's Exhibit A which is the quit claim deed showing that Myra Jamison complied with the Decree.

Defendant objects to the inclusion of Plaintiffs' Exhibit A in their Motion for Summary Judgment, arguing that the Decree of Dissolution is not proper Rule 56(C) evidence. The Court finds that Rule 56(C) allows the Court to consider "transcripts of evidence" in ruling on a motion for summary judgment. The Court further finds that the Comments to Civ. R. 56(C) indicate that "The 1999 amendment deleted "in pending case" so that transcripts of evidence from another case can be filed and considered in deciding the motion". The Court further finds that Civ. R. 56(E) requires that sworn or certified copies of all papers or parts of papers referred to in an affidavit shall be attached to or served with the affidavit. The Court finds that Defendant refers to the Decree of Dissolution in paragraphs two and six of her affidavit. Although she cites the Decree's requirement that the subject property be quitclaimed to decedent, she fails to attach the Decree which clearly sets out decedent's obligations with regard to the property. The Court finds that the certified copy of the decedent's Decree of Dissolution and Separation Agreement constitute a transcript of evidence and therefore allows the evidence to be considered in support of the Plaintiffs' Motion for Summary Judgment.

Defendant argues that Decedent Ralph E. Jamison acquired sole title in fee simple absolute to the subject property by order of the divorce decree. Although she acknowledges the

Trust requirements of the Decree and avers that the decedent complied with the requirements that his ex-wife, children and grandchildren have access to the property, Defendant chooses to disregard the balance of the Decree that sets forth in detail the requirement that the property be titled to a family trust in which the decedent's children would be the only remaindermen.

The Plaintiffs cite numerous cases in support of their contention that the subject property be placed into a constructive trust. The underlying premise for allowance of a constructive trust, as set forth in those cases, is to prevent a surviving spouse from being unjustly enriched if the property was awarded to the decedent's estate. Further, several of the cases cited by the Plaintiffs have specifically allowed a court to impose a constructive trust to uphold provisions of decrees of dissolution and divorce (*Graza -Vance v. Vance* (2005) 162 Ohio App.3d 510, *Aetna Life Ins. Co. v. Hussey*, 62 Ohio St. 3d 640 (1992), *Thomas v. Ferguson*, 83-LW-1278(9<sup>th</sup>).

The Lake County Domestic Relations Court ordered the decedent to convey the subject property to a living trust to insure that it would be kept in the family for the use of the decedent and his ex-wife and their children and grandchildren "regardless of dissolution, divorce, remarriage, or other circumstances". The Decree set forth the terms of the Trust and all that remained to be done was for the decedent to transfer title of the subject property to the Trust. The Defendant's affidavit makes clear that she was aware of this provision of the Decree and she avers that her husband complied with the terms of the Trust, other than the transfer of the property.

The Court finds that the Defendant never had an interest in the subject property, which was the decedent's marital property properly distributed according to the terms of his Decree of Dissolution. The Court further finds that pursuant to the Decree the Defendant is precluded from

having an interest in the property and that Defendant would be unjustly enriched if the property was allowed to be an asset of decedent's estate.

The Court finds that Defendant's assertion that Plaintiffs had an adequate remedy available to them due to their "mother's right to enforce the separation agreement" is not well taken. The Plaintiffs were not parties to their parents' dissolution nor could they force their mother to return to the domestic relations court to enforce the terms of the dissolution. The rights of the Plaintiffs did not become an issue until their father's death at which time his surviving spouse determined that the subject property was an asset of his estate.

The Court further finds that Defendant's attempt to argue adverse possession is not well taken and finds that not only do the facts of this case fail to establish adverse possession but that any such argument is irrelevant to the issue of decedent's failure to transfer the property into the family trust as required by the Decree of Dissolution.

The Court also finds that Defendant's attempt to show that Plaintiffs "appear before this Court with unclean hands" to be irrelevant. Had the decedent done what he was required to do and what he agreed to do in the 1992 Decree of Dissolution the Plaintiffs would not have been required to invoke the jurisdiction of this Court to retain what is rightfully theirs pursuant to the prior court order.

The Court finds it curious that in her Opposing brief the Defendant objects to the "Undisputed Material Facts" recited in Plaintiffs motion brief (Paragraphs A-1 through A15). Defendant has set forth no evidence contrary to any of those listed facts and relies on several of the listed facts herself in her Opposing Brief.

The Court finds that there is no genuine issue as to any material fact. The Court finds that the Decree of Dissolution was very specific in its instructions with regard to the disposition

of the subject property and to the terms of the trust that was ordered to be established. It named the Trustee and the Successor Trustee, stated who could use the subject property, mandated that the decedent's children would be the only beneficiaries after his death and give Plaintiff David Jamison the right-of-first-refusal to buy the subject property from the trust before the trust is terminated by the final trustee.

The Court further finds that the decedent's failure to formally transfer the subject property into the Trust before his death will result in a denial of the Plaintiffs' equitable interest in the property if a constructive trust is not imposed by this Court. The Court further finds that Defendant will be unjustly enriched if the subject property is considered to be an asset of the decedent's estate.

The Court finds and **Orders** that the Motion for Summary Judgment is granted in favor of the Plaintiffs and further **Orders** that a constructive trust is imposed over the real property located at 1333 Cedar Point Road, Sandusky, Ohio 44871, Parcel Number 55-00175 for the benefit of the Plaintiffs. The Court further finds that Summary Judgment in Plaintiffs' favor imposing constructive trust over the subject property necessarily removes the property as an asset of decedent's estate and defeats Defendant's Counterclaims. The Court finds and Orders that Summary Judgment is granted in Plaintiffs' favor on the Counterclaims and the Counterclaims are hereby **denied and dismissed**.

**IT IS SO ORDERED.**

  
**JUDGE LAURA J. GALLAGHER**

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO  
PROBATE DIVISION

PROBATE COURT  
FILED  
AUG 18 2017  
CUYAHOGA COUNTY, O.

ESTATE OF RALPH E. JAMISON  
DECEASED

CASE NO. 2016 EST 214171

**JUDGMENT ENTRY**

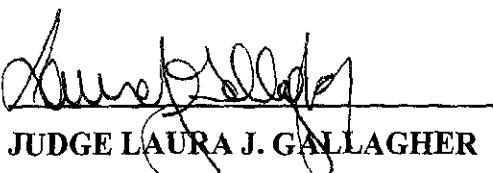
This matter is before the Court upon the Exceptions to Inventory filed August 25, 2016.

The Court finds that Exceptions to Inventory were filed objecting to the inclusion of real estate located at 1333 Cedar Point Road, Sandusky, Ohio 44871 as an asset of the Estate.

The Court finds that subsequent to the filing of Exceptions, a civil case was filed in this Court, Case no. 2016 ADV 221788. The Court further finds that by Entry dated August 4, 2017 this Court found that the subject real estate should be removed as an asset of decedent's estate.

The Court hereby finds and **Orders** that the Exceptions to inventory is granted. The Court further finds and **Orders** that the subject real estate is not an asset of this Estate and that it should be removed from the inventory and any further accountings.

**IT IS SO ORDERED.**

  
JUDGE LAURA J. GALLAGHER

2016EST214171

