

Constructive Trust Remedy

Take-Away: A probate court can impose a constructive trust to restrain the use or transfer of assets as an equitable remedy to prevent unjust enrichment if the court believes that property is wrongfully obtained or held.

Background: A constructive trust is a *remedy* that is sometimes used in probate court proceedings where claims of undue influence or breach of promise occur. As noted, it is not really a ‘trust,’ but a powerful judicial remedy to ‘address a wrong.’ Michigan probate courts possess the authority to impose a constructive trust to determine property rights or to compel an individual who holds property to convey it to the ‘rightful’ owner. [MCL 700.1303.] The Michigan Supreme Court has described a constructive trust as:

“A constructive trust may be imposed whenever ‘the circumstances under which property was acquired make it inequitable that it should be retained by him who holds legal title. Constructive trusts have been said to arise through the application of the doctrine of equitable estoppel, or under the broad doctrine that equity regards and treats as done what in good conscience ought to be done.’ Kent v. Klein, 352 Mich 652 (1958.)

The remedy of a constructive trust issued by a probate court was surprisingly again the subject of a recent Michigan Court of Appeals decision.

In re Estate of Frieda Mae Chapman Estate, Michigan Court of Appeals No. 373055 (February 12, 2026)

Facts: Leonard and Frieda Chapman had three sons: Glenn, Kurt, and Chris. The parents had a joint trust. It was unclear from the record if the parents formally transferred title to their real property to their trust in 2016. One son, Chris, was named as the initial trustee and beneficiary of the joint trust; the trust expressly excluded sons Glenn and Kurt as beneficiaries. Leonard died in 2017.

Apparently, Frieda at that time and continuing afterwards, suffered from dementia, and Chris held her power of attorney. Frieda owned four financial accounts which were

transferred of by beneficiary designation (TOD) on her death, with her three sons named as equal beneficiaries of these financial accounts. In 2020, Frieda changed the beneficiary designations of these financial accounts so that Chris was to receive 43%, Kurt was to receive 37% and Glenn was to receive 20%. Frieda died in 2021. Four months after Frieda's death the four financial accounts were distributed, \$309,631 to Chris, and \$152,000 to Glenn. Glenn was later appointed the Personal Representative of Frieda's estate.

Dispute: Acting as Personal Representative of Frieda's estate, Glenn filed a petition with the probate court to quiet title to the real estate ostensibly held in the joint trust. Glenn claimed that the real estate was never transferred to the joint trust, such that it was therefore part of Frieda's probate estate. The probate court entered a 'status quo' order that directed that no one dispose of the real estate until further order of the court.

Breach of Fiduciary Duty: Glenn then filed yet another civil action that alleged that Chris had breached his fiduciary duties regarding the joint trust, at which point the probate court consolidated both the estate and trust proceedings. The parties were then ordered to participate in mediation, but that did not resolve the dispute.

Constructive Trust: Glenn then asked the probate court to impose a constructive trust, alleging that the 2017 power of attorney given to Chris by Frieda had been used by him to transfer funds from her accounts to his own where the funds were then used by him for his personal use, Glenn also claimed that Chris had facilitated Frieda's change of the beneficiary designations for her financial accounts for his own benefit. Glenn then amended his civil action regarding the joint trust to allege Chris' breach of fiduciary duty, embezzlement, conversion, undue influence, and unjust enrichment among other claims.

Probate Court: The probate court ordered Chris to file an accounting of the financial funds that had belonged to Frieda within 45 days from the time that he was given her power of attorney. The court ordered that a constructive trust be established and funded with the amounts that were identified in Glenn's petition, unless it was clearly demonstrated by Chris' accounting or otherwise that the funds were properly distributed by him.

Appeal-Venue: Chris then moved the probate court to set aside the order, remove the constructive trust, and determine the ownership of the real property. Chris argued that the probate court had no authority to put a restraint of funds, and that the funds in question were the subject of a civil action that Glenn had filed in another county. Based on this claim, venue was changed and the probate court proceeding was moved to the other county. The new probate court denied Chris' motion to remove the restraint on Frieda's assets. Chris then appealed the order determining that a constructive trust was appropriate. Chris had argued that the probate court lacked the authority to impose the constructive trust because no action was then pending regarding the ownership of the financial funds or expressly challenging the beneficiary designations.

Court of Appeals: The Court of Appeals rejected Chris' arguments that the probate court did not have the authority to impose a constructive trust.

EPIC: The Court noted initially that MCL 700.1303(g) expressly gives a probate court concurrent legal and equitable jurisdiction to determine a property right or interest or to impose a constructive trust. [MCL 700.1303 (a)(g).]

Court Discretion: The Court then noted that a constructive trust can be implemented when property has been acquired in such circumstances that the holder of the legal title may not in good conscience retain beneficial interest. Accordingly, equity is a matter of grace and discretion that is applied to particular circumstances of each particular case, which can be used to remedy a breach of fiduciary duty that has occurred *or that may occur in the future*.

Circumstances Warranted the Constructive Trust: Because of the pending question of whether the real estate was part of Frieda's probate estate, and that Chris was in possession of Frieda's assets 'and that certain irregularities had occurred that placed into question whether the assets were properly in his [Chris's] possession' which he had yet to account for, and also unknown was if Frieda's funds were dissipated, and whether Chris had the financial ability to make whole the other beneficiaries if ordered to do so, these facts all justified the use of the restraint imposed using the constructive trust.

Reasoning: *“The probate court was well within its authority to impose a restraint on the funds in question while the proceedings were pending to determine the assets of the estate, which depended upon whether the real estate was in fact placed in the Chapman Trust and whether respondent [Chris] had breached his fiduciary duty when exercising the power of attorney over Frieda’s financial accounts, which presumably would be part of the estate if the beneficiary designations were determined to be fraudulent.”*

Conclusion: It was surprising to read that Chris claimed that the probate court did not possess the authority to impose a constructive trust to restrain the transfer or use of assets when the Estates and Protected Individuals Code (EPIC) expressly give the court that concurrent authority. A constructive trust can be a powerful tool, if used reasonably by the probate court, to prevent the dissipation of estate or trust assets, especially where there are claims of breach of fiduciary duty or undue influence.

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