

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 5, 2003

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 02-1354
STATE OF WISCONSIN**

Cir. Ct. No. 01-PR-317

**IN COURT OF APPEALS
DISTRICT II**

IN RE THE ESTATE OF ANDREW J. NILLES, DECEASED:

**SOPHIE E. NILLES, MATHIAS J. NILLES,
HANNAH S. NILLES AND ALEXANDRA G. NILLES,
BY THEIR GUARDIAN AD LITEM,
ROBERT J. RIEGELMAN,**

APPELLANTS,

v.

**ESTATE OF ANDREW J. NILLES, JILL MENGESHA
AS PERSONAL REPRESENTATIVE,**

RESPONDENT.

APPEAL from an order of the circuit court for Racine County:
CHARLES H. CONSTANTINE, Judge. *Affirmed.*

Before Brown, Anderson and Snyder, JJ.

¶1 PER CURIAM. Sophie E. Nilles, Mathias J. Nilles, Hannah S. Nilles and Alexandra G. Nilles, by their guardian ad litem, appeal from a circuit court order declining to impose a constructive trust over life insurance proceeds payable upon the death of their father. Because we conclude that the circuit court did not misuse its discretion in declining to impose a constructive trust, we affirm.

¶2 The facts are undisputed. The children's parents, Andrew and Carrie Nilles, were divorced on October 23, 2000. As part of the divorce, Andrew and Carrie agreed in their marital settlement agreement to maintain either a \$500,000 life insurance policy benefiting the children or a trust benefiting the children. Andrew never changed the beneficiary on his 1993 life insurance policy from Carrie to the children. Andrew died testate on August 17, 2001, and the life insurance company, First Colony Life Insurance Company, intervened in the probate proceeding to have the court determine to whom it should pay the proceeds of Andrew's life insurance policy.¹ At the time of his death, Andrew had a revocable trust which solely benefited the children.

¶3 In the absence of an effective beneficiary designation, the life insurance proceeds were payable to Andrew's estate. *See* WIS. STAT. § 854.15(4). As part of the estate, the proceeds are subject to claims against the estate, costs of administration and personal representative fees. *See* WIS. STAT. §§ 857.05, 859.01.

¹ By operation of WIS. STAT. § 854.15(3)(a) (1999-2000), a divorce revokes any revocable disposition of property made by the decedent to the former spouse in a governing instrument. "Governing instrument" includes an insurance policy. WIS. STAT. § 854.01. It is undisputed that Carrie does not have a claim on the life insurance proceeds. All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

¶4 The circuit court initially ordered the life insurance proceeds paid to the guardian ad litem's trust account to be held for the benefit of the children. Thereafter, the children moved the court to impose a constructive trust over the proceeds for their benefit to avoid a reduction in the proceeds for claims against Andrew's estate and to give effect to the judgment of divorce which required Andrew to name the children as beneficiaries of the life insurance policy. The personal representative argued that the estate should receive the proceeds.

¶5 In ruling on the disposition of the proceeds, the circuit court was concerned that if the proceeds were subject to a constructive trust in favor of the children, creditors of Andrew's estate would be unsatisfied. The court found that many of the creditors provided services or goods which benefited the children, e.g., private school tuition and a country club membership used by family members. The court noted that the estate did not contain other readily usable assets to pay creditors. The court considered that Andrew's will and trust documents place his residual estate in trust for the children. Therefore, the proceeds would reach the children at that point. The court denied the guardian ad litem's request to impose a constructive trust and ordered the proceeds paid to the estate. However, the court required the estate to pay a \$4000 monthly allowance to the children for one year. The children appeal.

¶6 Whether to impose a constructive trust is within the circuit court's discretionary equitable power. See *Singer v. Jones*, 173 Wis. 2d 191, 194-95, 496 N.W.2d 156 (Ct. App. 1992). We will affirm a discretionary decision if it results from a rational mental process by which the court considers the facts of record and the applicable law and reaches a reasoned and reasonable determination. *Breuer v. Town of Addison*, 194 Wis. 2d 616, 625, 534 N.W.2d 634 (Ct. App. 1995).

¶7 We summarize the nature of a constructive trust:

The constructive trust is an equitable device created by law to prevent unjust enrichment, which arises when one party receives a benefit, the retention of which is unjust to another. A constructive trust will be imposed only in limited circumstances. The legal title must be held by someone who in equity and good conscience should not be entitled to beneficial enjoyment. Title must also have been obtained by means of actual or constructive fraud, duress, abuse of a confidential relationship, mistake, commission of a wrong, or by any form of unconscionable conduct.

Singer, 173 Wis. 2d at 196 (quoting *Wilharms v. Wilharms*, 93 Wis. 2d 671, 678-79, 287 N.W.2d 779 (1980) (citations omitted)).

¶8 We conclude that the circuit court properly exercised its discretion in refusing to impose a constructive trust on the insurance proceeds. The standard is whether it would be unjust to the children for the estate to obtain the proceeds and whether the estate would be unjustly enriched if it received the proceeds. *See Singer*, 173 Wis. 2d at 196. We agree with the circuit court that requiring the life insurance proceeds to be paid to Andrew's estate is not unjust to the children. The circuit court found that the debts of the estate were largely incurred for the benefit of the children and that it was appropriate for those creditors to be paid.² The court also noted that the balance of the estate would be transferred to a trust of which the children are beneficiaries. Additionally, the court awarded the children a monthly allowance from the estate after funding the estate with the policy proceeds. The

² The record before this court does not contain a list of claims against the estate, but the parties do not argue that the lion's share of those claims arise from debts not incurred on behalf of the children. Accordingly, we assume that the majority of claims against the estate arise from debts incurred on behalf of the children which the circuit court, in the exercise of its discretionary equitable powers, felt it would be appropriate to satisfy.

court considered the facts of record and the applicable law in exercising its discretion on the question of a constructive trust.

¶9 The children argue that declining to impose a constructive trust renders the judgment of divorce, which evidenced the parents' intent to provide for them, meaningless. We disagree. Andrew established a trust of which the children are the sole beneficiaries and he demonstrated his intent to provide for the children by incurring private school tuition and other expenses for them before his death. Therefore, we do not see an inconsistency between funding the estate with the life insurance proceeds and satisfying the terms of the judgment of divorce which evinced an intent to provide for the children. The circuit court essentially determined that paying the life insurance proceeds to the estate meant that the proceeds were being paid to or for the benefit of the children under the facts as found. Andrew's intent vis-à-vis the children is not frustrated by the circuit court's disposition of the life insurance proceeds.

¶10 A constructive trust may only be imposed if there has been some form of unconscionable conduct. *Id.* The court found that Andrew inadvertently failed to change the beneficiary on the policy from Carrie to the children. This type of conduct cannot be characterized as unconscionable.

¶11 Finally, the children argue that they have a vested right in the life insurance proceeds. By statute, the proceeds are payable to Andrew's estate, WIS. STAT. § 854.15(4), and the children's right to the proceeds is governed by the marital settlement agreement incorporated into the judgment of divorce. That agreement required Andrew to keep a \$500,000 policy in effect, which he did. The estate will receive the proceeds and pay claims against the estate consisting largely of debts incurred on behalf of the children. The children's expectations have been preserved

by the existence of a trust to which the remainder of Andrew's estate will be transferred and by the use of the insurance proceeds for their benefit.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

