MISSOURI COURT OF APPEALS
WESTERN DISTRICT

MIGNON L. LAMBLEY, ET AL.,
APPELLANTS

vs.

KIM L. DIEHL, TRUSTEE, ET AL.,
RESPONDENTS

DOCKET NUMBER WD82645 (Consolidated with WD82652)

DATE: JUNE 9, 2020

Appeal from:

The Circuit Court of Bates County, Missouri
The Honorable Harold L. Dump, II, Judge

Appellate Judges:

Division Three: Anthony Rex Gabbert, Presiding Judge, Edward R. Ardini, Jr. Judge and W. Douglas Thomson, Judge

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Attorneys:

Barry L. Pickens, for Appellants

Daniel P. Wheeler, for Respondents

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

MIGNON L. LAMBLEY, ET AL., APPELLANTS,
v.
KIM L. DIEHL, TRUSTEE, ET AL., RESPONDENTS.

WD82645 (Consolidated with WD82652) Bates County

Before Division Three Judges: Anthony Rex Gabbert, Presiding Judge, Edward R. Ardini, Jr., Judge, and W. Douglas Thomson, Judge

This action involves a dispute between siblings regarding the administration of their late parents' trusts, both of which named Respondent Kim Diehl as successor trustee. In 1995, Phyllis Diehl and Raymond Diehl each executed revocable living trusts. The Phyllis Trust provided that if she died before Raymond, income from her trust's property—which included farm land—was to be paid to Raymond at least annually. The Phyllis Trust also provided that, upon the death of both her and Raymond, the Phyllis Trust property was to be distributed equally among the three children: Kim and his sisters, Appellants Mignon Lambley and Sydney Burch. Phyllis died in 2005.

As originally executed, the Raymond Trust—like the Phyllis Trust—provided that upon the death of both spouses, the Raymond Trust property was to be equally divided among the children. However, in 2010 Raymond amended his trust to substantially favor Kim. Specifically, he left Kim real property, cattle and farm machinery, but directed that Kim encumber the real property in the amount of $250,000 and pay $50,000 to Sydney and $200,000 to Mignon. Raymond died in 2013.

After Phyllis died, but while Raymond was still alive, Kim provided custom farm work to land held by the Phyllis Trust. As a result of this work, crops were harvested from the Phyllis Trust property. The crops went directly to Raymond; he used them to feed his cattle or sold them and deposited the proceeds into his personal bank account. When Raymond died, he owed bank loans, the proceeds of which had been partially used to pay for inputs necessary to grow crops on the Phyllis Trust property. Kim assumed those loans upon Raymond's death. Kim continued to farm the Phyllis Trust property after Raymond died.

Mignon and Sydney filed this action in 2015, seeking to remove Kim as trustee and requesting the trial court order Kim to pay restitution for his personal use of the trusts' assets. Kim filed counter- and cross-claims asserting: (1) a claim of quantum meruit to recover the value of the custom farm services he provided to the Phyllis Trust; (2) a claim of unjust enrichment to recover the amount of loans he assumed that benefitted the Phyllis Trust; (3) a claim of contribution; (4) a request for declaration of rights regarding various trust administration issues, including how much

he owed in rent for farming the Phyllis Trust property after Raymond's death; and (5) a request for instructions regarding the administration of the trusts.

The trial court conducted a six-day bench trial. At the conclusion of trial, the court took the case under advisement. The parties filed proposed judgments and Mignon and Sydney filed a motion for award of prejudgment interest. The trial court entered its Judgment and thereafter entered a First Amended Judgment. The First Amended Judgment denied Mignon and Sydney's claims and granted each of Kim's claims. The trial court declared the amount of rent Kim owed and ordered Kim make the $250,000 distribution to Mignon and Sydney pursuant to the terms of the Raymond Trust. The trial court also awarded Mignon and Sydney prejudgment interest. After entering the First Amended Judgment, the judge who presided over the trial retired.

Kim filed a motion to amend the judgment to remove the award of prejudgment interest. The case was assigned to a new judge who, after hearing argument, granted Kim's motion. The trial court entered a Second Amended Judgment, which removed Mignon and Sydney's prejudgment interest award. This appeal followed.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

Division Three holds:

(1) Relating to Kim's claim for quantum meruit, there was substantial evidence that the Phyllis Trust received and retained a benefit from the custom farm work Kim provided while Raymond was still alive. Kim's custom farm work allowed the Phyllis Trust to earn income and provide that income to Raymond, its beneficiary. Thus, the Phyllis Trust was enriched by $327,557.08—the value of the custom farm work Kim provided that the Phyllis Trust did not have to pay to create income for its beneficiary. Although Kim's farm work also benefitted Raymond because he ultimately received the crops and the income from the crops, that fact does not negate the benefit the Phyllis Trust received. Both a trust and its beneficiary can receive and retain a benefit from the same provision of services.

(2) The trial court erred in concluding, as a matter of law, that the presumption that services rendered to family members are performed gratuitously did not apply. As an affirmative defense to Kim's quantum meruit claim, Mignon and Sydney asserted that services provided to family members are presumed to be rendered gratuitously and Kim failed to overcome this presumption. The trial court refused to apply the presumption, however, finding it inapplicable in trust proceedings. This conclusion was erroneous, as it could be established that services provide to a trust or its beneficiaries by family members of the trust's beneficiaries were intended to be rendered gratuitously. Thus, this matter is remanded to the trial court for a determination as to whether the presumption applies under the specific facts of this case and, if so, whether it has been rebutted by Kim.

(3) Relating to Kim's claim for unjust enrichment, there was substantial evidence that the Phyllis Trust received and retained a benefit from Kim's assumption of Raymond's loans. The loan proceeds were used, in part, to purchase farm inputs for the Phyllis Trust property. The Phyllis Trust could not have produced income for its beneficiary without those inputs.

Thus, the Phyllis Trust retained a benefit from the loan proceeds because it was able to generate income without paying for the inputs necessary to generate that income.

(4) Relating to Kim's claim of unjust enrichment, there was substantial evidence to support the trial court's finding that at least 50% of the loan proceeds were used to purchase inputs for the Phyllis Trust property.

(5) The trial court did not abuse its discretion in refusing to award prejudgment interest to Mignon and Sydney on the $250,000 distribution it ordered from the Raymond Trust. The trial court denied Mignon and Sydney prejudgment interest on the distribution because they had not sought the distribution in their petition; rather, the distribution had been ordered in response to Kim's claim seeking instructions. The trial court was within its discretion to deny them prejudgment interest on this basis.

(6) Mignon and Sydney failed to preserve their claim on appeal that the trial court "rubber stamped" Kim's proposed judgment, and this Court declines to exercise its discretion to consider this unpreserved claim.

Opinion by: Edward R. Ardini, Jr., Judge Date: June 9, 2020

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