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Evidence: Quantum of Proof Required to Establish a Resulting Trust

William J. Lemmon

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them.¹³ Likewise, in Florida, infants are wards of the court.¹⁴ Charged with their welfare,¹⁵ the courts have broad discretion in making orders designed for the protection of infants.¹⁶

In cases of this type the father's liability results from a court decree and not from the mere common law obligation. The purpose of such court decree is for the welfare of children during their minority, and the necessity for support of the minor child remains whether the father is dead or alive.¹⁷ Thus, should the court wish to adopt the more liberal view, there is no sound reason, in view of the Florida statute, why the estate of the father could not be charged with the obligation to provide support for his minor children after his death.

R. THOMAS NELSON, JR.

EVIDENCE: QUANTUM OF PROOF REQUIRED TO ESTABLISH A RESULTING TRUST

Goldman v. Olsen, 31 So.2d 623 (Fla. 1947)

Plaintiff sought to be declared the equitable owner of an undivided half interest in certain lands by reason of an alleged contract under which she furnished part of the purchase price. The cause was referred to a special master, who found that a preponderance of the credible evidence sustained the plaintiff's contentions. This finding was approved by the chancellor, and a decree was entered for the plaintiff. On appeal, HELD, the preponderance of the evidence was insufficient to sustain a decree for the plaintiff. Since the object of the suit was to establish a resulting trust, a more burdensome rule prevails: the evidence must be so strong, clear and unequivocal as to remove from the mind

¹³See *Miller v. Miller*, 64 Me. 484, 487 (1874).

¹⁴*In re Brock*, 157 Fla. 291, 25 So.2d 659 (1946); *Krivitaky v. Nye*, 152 Fla. 614, 12 So.2d 595 (1943); *Riesner v. Riesner*, 151 Fla. 8, 9 So.2d 108 (1942); *Davis v. Davis*, 143 Fla. 282, 196 So. 614 (1940); *Turner v. Andrews*, 143 Fla. 88, 196 So. 449 (1940).

¹⁵*In re Brock*, 157 Fla. 291, 25 So.2d 659 (1946); *Turner v. Andrews*, 143 Fla. 88, 196 So. 449 (1940); *Duke v. Duke*, 109 Fla. 325, 147 So. 588 (1933); *Fisher v. Guidy*, 106 Fla. 94, 142 So. 818 (1932).

¹⁶*Riesner v. Riesner*, 151 Fla. 8, 9 So.2d 108 (1942).

¹⁷See *Smith v. Smith*, 200 Cal. 654, 254 Pac. 567, 569 (1927).

of the chancellor every reasonable doubt as to the existence of the trust. Judgment reversed, Justice Chapman dissenting.

The requirement of proof beyond a reasonable doubt to establish a resulting trust is, as was pointed out in the opinion of the court, well imbedded in the jurisprudence of this state.¹ Nevertheless, the consequences of applying to a civil case a doctrine analagous to the doctrine of reasonable doubt used in criminal proceedings are not clear. The requirement of proof beyond a reasonable doubt first arose as a result of a wave of popular sentiment against the severity of the penal code of England at the close of the eighteenth century.² It may be said, therefore, to have a sound basis in its application to criminal proceedings; but the extension of this rule into civil cases is of a more doubtful foundation.

The requirement of *some* extraordinary degree of proof to establish a resulting trust is well settled in all jurisdictions; however, many different expressions have been used to describe the specific degree of proof required.³ The American Law^v Institute has approved the rule that a person seeking to establish a resulting trust has the burden of proving by clear and convincing evidence that he furnished the purchase price.⁴ The reason for this requirement is that, though the Statute of Frauds expressly permits parol proof of this kind of a trust,⁵ such proof is clearly in conflict with the spirit of the Statute. The plaintiff is proceeding in direct opposition to the recorded title to realty⁶ and is usually depending on oral statements made in the distant past by persons now not available to testify.⁷ An additional reason for this requirement is the ease with which frauds on creditors can be worked by the grantee's admitting that a relative paid the purchase price so as to take the property out of the reach of the grantee's threatening creditors.⁸

¹Frank v. Eeles, 152 Fla. 869, 13 So.2d 216 (1943); Brown v. Brown, 106 Fla. 423, 143 So. 737 (1932); Semple v. Semple, 90 Fla. 7, 105 So. 134 (1925); Geter v. Simmons, 57 Fla. 423, 49 So. 131 (1909).

²*Some Rules of Evidence—Reasonable Doubt in Civil and Criminal Cases*, 10 AM. L. REV. 642 (1875).

³See Note, 23 A. L. R. 1502-1515 (1923).

⁴RESTATEMENT, TRUSTS §458 (1935).

⁵Statute of Frauds, 1677, 29 CHAS. II, c. 3, §8; FLA. STAT. 1941, §689.05.

⁶Boyd v. M'Lean, 1 Johns. Ch. *582, *590 (N. Y. 1815); McWhirter v. McWhirter, 155 N. C. 145, 71 S. E. 59 (1911).

⁷Orear v. Farmer's State Bank and Trust Co., 286 Ill. 454, 122 N. E. 63 (1919).

⁸Copper v. Iowa Trust and Savings Bank, 149 Iowa 336, 128 N. W. 373 (1910).

In more than one-half of the jurisdictions of this country, however, it has been held, at one time or another, that proof must be beyond a reasonable doubt.⁹ The effect of these holdings has been weakened by other cases in many of these same jurisdictions which make use of various other phrases to express the degree of proof required.¹⁰ For example, in Florida it has been held that the degree of proof must be only "full, clear, and unequivocal"¹¹ and "full, clear, and convincing."¹² In other jurisdictions the terms have ranged from "clear"¹³ to "conclusive"¹⁴ with innumerable intermediary terms. Mr. Wigmore takes the position that policy suggests that the measure of persuasion required for criminal cases should be strictly confined to its original field and not introduced into civil cases.¹⁵ Other writers on this subject state that it is very dubious whether the courts really mean to require proof beyond a reasonable doubt, but that they do mean to exact a stronger and clearer proof than in the ordinary equity case.¹⁶ Where proof beyond a reasonable doubt is required to establish a resulting trust, it may well be the only purpose of other courts to mark with judicial emphasis the fact that more than the ordinary quantum of proof is required. However, the decision in the present case leaves little room for doubt that the Florida Court does require actual proof beyond a reasonable doubt.

WILLIAM J. LEMMON

⁹ See Note, 23 A. L. R. 1521-1522 (1923).

¹⁰*Id.* at 1502-1515.

¹¹*Lofton v. Sterrett*, 23 Fla. 565, 2 So. 837 (1885).

¹²*Johnson v. Sherehouse*, 61 Fla. 647, 54 So. 892 (1911).

¹³*Hopkins v. Grimshaw*, 165 U. S. 342 (1897).

¹⁴*Butts v. Cooper*, 152 Ala. 375, 44 So. 616 (1907).

¹⁵9 WIGMORE, EVIDENCE §2498 (3d ed. 1940).

¹⁶2 BOGERT, TRUSTS AND TRUSTEES §464 (1935); 3 SCOTT, TRUSTS §458 (1939).