

SUPREME COURT OF NEBRASKA

Simons v. Simons

312 Neb. 136 (2022) · No. No. S-21-599 · Decided August 5, 2022

SUMMARY

The Nebraska Supreme Court reviewed a marital dissolution judgment governed by a valid premarital agreement. The court addressed amendment of pleadings, imposition and valuation of a constructive trust over business interests, property division, a lump-sum payment, life-insurance security, and alimony. The judgment was affirmed in part and vacated in part.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Freudenberg, J.; Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Funke, J.; Papik, J.
JURISDICTION	Nebraska
DECIDED	August 5, 2022
DOCKET	No. S-21-599
DISPOSITION	other
PROCEDURAL POSTURE	Appeal from a decree in a marital dissolution action. The appellant challenged the amendment of the pleadings to conform to the evidence, imposition and valuation of a constructive trust over business interests, enforcement of a premarital agreement, property classification, alimony, and life-insurance security for support.
STANDARD OF REVIEW	Permission to amend pleadings is reviewed for abuse of discretion. Whether procedures satisfy procedural due process is reviewed as a question of law. Imposition of a constructive trust is reviewed de novo on the record, with consideration given to the trial court's opportunity to observe witnesses when evidence conflicts. In dissolution actions, the appellate court reviews de novo on the record for abuse of discretion regarding property division and alimony. Expert-testimony weight and valuation determinations remain principally within the fact finder's province, and a valuation is upheld if it has an acceptable basis in fact and principle.
PRECEDENTIAL VALUE	published precedential opinion

PARTIES

Jonathan B. Simons v. Heather L. Simons

TOPICS

dissolution of marriage

prenuptial agreements

constructive trust

alimony

appellate procedure

PRACTICE AREAS

family law

trusts

contracts

equitable remedies

appellate procedure

QUESTIONS PRESENTED

1. Whether the district court abused its discretion by permitting Heather to amend her pleadings after trial to conform to the evidence and include constructive-trust and unjust-enrichment issues.
2. Whether litigation of the constructive-trust claim violated Jonathan's procedural due process rights.
3. Whether a constructive trust may coexist with and be used to implement a valid premarital agreement.
4. Whether clear and convincing evidence supported imposing a constructive trust over one-half of the business interests.
5. Whether the district court used an acceptable valuation methodology in valuing the LLC interests.
6. Whether the \$375,000 parental gift should have been set off as Jonathan's separate property.
7. Whether the truck was improperly counted twice in the marital estate.
8. Whether the \$150,000 premarital-agreement payment was properly ordered in addition to the marital-estate equalization.
9. Whether the alimony award was an abuse of discretion.
10. Whether requiring life insurance to secure support obligations conflicted with the premarital agreement.

HOLDINGS

1. The district court did not abuse its discretion by permitting amendment of the pleadings to conform to the evidence because the pretrial letter expressly identified constructive trust, unjust enrichment, and ownership issues, Jonathan received the letter, and he did not object or seek a continuance.
2. The constructive-trust litigation did not violate Jonathan's constitutional right to procedural due process because he had timely notice of the issues and an opportunity to defend against them.
3. A constructive trust may coexist with a valid premarital agreement and may establish that property legally titled in one spouse's name is actually co-owned and therefore part of the marital estate under the agreement.
4. Heather established by clear and convincing evidence the factual foundation for a constructive trust in one-half of Backyard Playworld and its associated LLCs.
5. The district court did not abuse its discretion by adopting the expert's fair-value methodology rather than fair-market-value methodology.

6. The district court erred by separately including the truck in the marital estate after its value had already been included in the constructive-trust valuation.
7. The \$150,000 payment required by the premarital agreement was properly ordered in addition to equal division of the marital estate.
8. The district court's award of \$5,500 per month for 72 months was not an abuse of discretion.
9. The order requiring Jonathan to maintain life insurance sufficient to fund child-support and spousal-support obligations did not duplicate or conflict with the premarital agreement.

KEY QUOTATIONS

“Under the facts presented, we hold that the court did not abuse its discretion in ordering amendment of the pleadings pursuant to § 6-1115(b). We relatedly hold that because Jonathan had timely notice of the issues to be tried, the litigation of the constructive trust claim did not violate Jonathan’s constitutional right to procedural due process.” (161)

“A constructive trust can coexist with valid premarital agreements setting forth separate and marital property similarly to the one here presented” (163-164)

“The evidence was sufficient to prove Jonathan would be unjustly enriched if he were allowed to keep for himself the benefit of Heather’s substantial contributions to the business made under that understanding between them.” (172)

“We affirm the decree in all respects with the exception of the court’s itemization of the truck as part of the marital estate, which we vacate. The truck is part of the constructive trust.” (181)

FACTUAL BACKGROUND

The parties married in 2005 and acquired and operated a children's play-business venture during the marriage. Although the business and related entities were titled solely in Jonathan's name, Heather testified that Jonathan represented that they were co-owners, publicly held her out as an owner, and relied substantially on her labor and business contributions. Jonathan later organized or held related business and real-estate interests through LLCs in his sole name without Heather's knowledge, while the parties' premarital agreement provided for equal division of property held in co-ownership. The district court found that these circumstances established a confidential relationship, an implied joint venture, and unjust enrichment sufficient to impose a constructive trust.

PROCEDURAL HISTORY

Jonathan Simons filed for dissolution of marriage. The district court found the premarital agreement valid and enforceable, imposed a constructive trust over one-half of interests in several LLCs, divided the marital estate, ordered a \$150,000 lump-sum payment, awarded alimony, and required life insurance to secure support obligations. The Nebraska Supreme Court affirmed the decree except that it vacated the separate itemization of a truck because the truck's value had already been included in the constructive-trust valuation.

DISPOSITION

CASES CITED

- United Gen. Title Ins. Co. v. Malone, 289 Neb. 1006, 858 N.W.2d 196 (2015)
- Dycus v. Dycus, 307 Neb. 426, 949 N.W.2d 357 (2020)
- ProData Computer Servs. v. Ponec, 256 Neb. 228, 590 N.W.2d 176 (1999)
- Ford v. Jordan, 220 Neb. 492, 370 N.W.2d 714 (1985)
- Vanderveer v. Vanderveer, 310 Neb. 196, 964 N.W.2d 694 (2021)
- Devney v. Devney, 295 Neb. 15, 886 N.W.2d 61 (2016)
- Maria T. v. Jeremy S., 300 Neb. 563, 915 N.W.2d 441 (2018)
- In re Estate of Jakopovic, 261 Neb. 248, 622 N.W.2d 651 (2001)
- Eric H. v. Ashley H., 302 Neb. 786, 925 N.W.2d 81 (2019)
- Denali Real Estate v. Denali Custom Builders, 302 Neb. 984, 926 N.W.2d 610 (2019)
- R & B Farms v. Cedar Valley Acres, 281 Neb. 706, 798 N.W.2d 121 (2011)
- Blinn v. Beatrice Community Hosp. & Health Ctr., 270 Neb. 809, 708 N.W.2d 235 (2006)
- Stephens v. Stephens, 297 Neb. 188, 899 N.W.2d 582 (2017)
- Cook v. Cook, 26 Neb. App. 137, 918 N.W.2d 1 (2018)
- Saff v. Saff, 61 A.D.2d 452, 402 N.Y.S.2d 690 (1978)
- Dreesen Enters. v. Dreesen, 308 Neb. 433, 954 N.W.2d 874 (2021)
- Wait v. Cornette, 259 Neb. 850, 612 N.W.2d 905 (2000)
- In re Koreag, Controle et Revision S.A., 961 F.2d 341 (2d Cir. 1992)
- Anderson v. Bellino, 265 Neb. 577, 658 N.W.2d 645 (2003)
- Manker v. Manker, 263 Neb. 944, 644 N.W.2d 522 (2002)
- Peterson v. Massey, 155 Neb. 829, 53 N.W.2d 912 (1952)
- Janke v. Janke, 47 A.D.2d 445, 366 N.Y.S.2d 910 (1975)
- Leathers and Leathers, 98 Or. App. 152, 779 P.2d 619 (1989)
- Scull v. Scull, 94 A.D.2d 29, 462 N.Y.S.2d 890 (1983)
- Turner v. Turner, 147 Md. App. 350, 809 A.2d 18 (2002)
- Anderson v. A & R Ag Spraying & Trucking, 306 Neb. 484, 946 N.W.2d 435 (2020)
- Bryan v. Bryan, 222 Neb. 180, 382 N.W.2d 603 (1986)
- Doerr v. Doerr, 306 Neb. 350, 945 N.W.2d 137 (2020)
- de Vries v. L & L Custom Builders, 310 Neb. 543, 968 N.W.2d 64 (2021)
- Seivert v. Alli, 309 Neb. 246, 959 N.W.2d 777 (2021)