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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

ALVIN D. OLTMANNS and JUDY)	Appeal from the Circuit Court
HAGEMANN, as Guardian of Bryce)	of Ogle County.
Hagemann and Bryant Logan Hagemann,)	
Minors,)	
)	
Plaintiffs-Appellants,)	
)	
v.)	No. 09-CH-224
)	
VALDENE SNODGRASS, as Successor)	
Trustee of the Lavonne A. Oltmanns)	
Trust dated May 18, 2004, BRADLEY A.)	
SARGENT, and DEBRA K. WILSON,)	Honorable
)	Michael T. Mallon,
Defendants-Appellees.)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices McLaren and Birkett concurred in the judgment.

ORDER

Held: The trial court properly denied rescinding the wife's trust where the couple's prenuptial agreement did not bar future transfers of property. It also properly found in favor of defendants on plaintiffs' claim of conversion and to quiet title. The judgment of the trial court was therefore affirmed.

¶ 1 Plaintiffs, Alvin D. Oltmanns and Judy Hagemann, as Guardian of Bryce and Bryant Logan Hagemann, Minors, appeal the verdict that found in favor of defendants, Valdene Snodgrass, as

Successor Trustee of the Lavonne A. Oltmanns Trust dated May 18, 2004, Bradley A. Sargent, and Debra K. Wilson. Plaintiffs contend that the trial court erred in failing to rescind Lavonne's trust and in failing to impose a constructive trust for the benefit of her surviving spouse, plaintiff Alvin Oltmanns. Plaintiffs further contend that the trial court abused its discretion in failing to find that conversion of several pieces of Alvin's property occurred, the change of beneficiary form on Alvin's IRA account was forged, and failing to quiet title to 40 acres of farmland that was transferred to Lavonne's trust. We affirm.

¶ 2

I. BACKGROUND

¶ 3 On January 19, 2010, plaintiffs filed a second amended complaint that requested an accounting and rescission of decedent's trust, alleged conversion of Alvin's assets to fund decedent's trust, sought imposition of a constructive trust for Alvin's benefit, and sought to quiet title to 40 acres of farmland. The complaint alleged the following facts. Alvin and Lavonne married in 1984. Lavonne had two children from a prior marriage: defendants Bradley Sargent and Debra Wilson. Alvin had been previously married but had no children. The couple had a prenuptial agreement, which showed that Lavonne brought about \$35,000 from a house sale to the marriage. Alvin owned 170 acres of property in Ogle county, 28 shares of Winnebago Bank stock, \$120,000 in savings and bank accounts, and farm equipment valued around \$125,000.

¶ 4 The complaint alleged that on May 18, 2004, Lavonne executed an inter vivos trust without Alvin's knowledge. The trust was not funded at the time the trust was executed. Lavonne died on November 24, 2008, at which time Alvin learned about the trust. Under the trust, half of the trust estate went to Debra and the other half to Bradley. The contingent beneficiary was the Ebenezer Church of Oregon; Alvin was not named as a beneficiary in Lavonne's trust. Alvin was named

successor trustee to the trust. After Lavonne's death, Alvin learned that several of his assets had been transferred into Lavonne's trust without his consent or knowledge. As a result, Alvin resigned as trustee due to a conflict of interest. Alvin's sister, Valdene Snodgrass, became successor trustee.

¶ 5 According to the complaint, Lavonne transferred a \$50,000 certificate of deposit that was in the couple's joint name into her name only, and then transferred that money to her trust in 2004. These funds originated from an inheritance Alvin received from his mother. Six other certificates of deposit were also allegedly transferred to Lavonne's trust without Alvin's consent. The money in these accounts allegedly were derived from Lavonne depositing Alvin's agricultural proceeds into her name instead of their joint account, without Alvin's knowledge or consent. The total of the certificates amount to approximately \$280,000. Plaintiffs allege that these transfers were done without Alvin's knowledge or consent. Similarly, plaintiffs allege that Lavonne changed the beneficiary on her IRA account at Amcore Bank without Alvin's consent. According to the complaint, the beneficiary could not be changed to anyone but the account holder's spouse without the spouse's written consent. Plaintiffs allege that Alvin's signature was forged on the change of beneficiary form.

¶ 6 The complaint further alleges that in 1997, the couple opened accounts under the Uniform Gift to Minor Act (UGMA) (760 ILCS 20/1 *et seq.* (West 2010)), for the benefit of Bryce Hagemann, which Alvin funded. A similar UGMA account was created in 2000 for the benefit of Bryant Logan Hagemann, which Alvin also funded. Additional UGMA accounts were created for these beneficiaries in the years of 2000 and 2003. Lavonne was named as the custodian for these accounts.

According to the complaint, Lavonne transferred these accounts into her trust without the knowledge or consent of Alvin or Judy Hagemann¹, the parent and guardian of Bryce and Bryant.

¶ 7 Count I of the complaint sought rescission of the trust and imposition of a constructive trust for the benefit of Alvin and the minors. Count II of the complaint alleged conversion of assets, including the several certificates of deposits and the UGMA accounts. Count III alleged that the funds in the UGMA accounts were irrevocable gifts to minors, and the transfers to the trust violated the statute. Count IV alleged breach of contract, alleging that under the IRA account at Amcore Bank, he was the beneficiary of the account. Count V sought to quiet title to 40 acres of farm property in Ogle County.

¶ 8 Plaintiffs alleged that on or about May 18, 2004, Lavonne and Alvin met with an attorney for estate planning purposes. After the consultation, Lavonne became extremely angry with Alvin because he owned all the assets in the marriage pursuant to the prenuptial agreement. On the way home, she threatened to jump out of the moving car unless Alvin deeded the 40 acres to Lavonne. Alvin had never seen Lavonne display this kind of temperament, according to the allegations. The argument continued at their home, and Alvin felt threatened. Alvin advised Lavonne that he would provide her an interest in the land but that he wanted the land to remain in his family. Alvin deeded the property to Lavonne, retaining a life estate in the property, and with the understanding that Lavonne would deed it back or otherwise leave it to Alvin's family upon her death. According to the complaint, Alvin was induced by coercion to execute a deed transferring the title to the property to Lavonne. The complaint alleges that Alvin only transferred the property based upon Lavonne's

¹ Judy is Alvin's stepdaughter from a previous marriage.

representations that she would leave the property to his family upon her death and that Lavonne knew her representations were false.

¶ 9 Relevant to the resolution of this appeal, the prenuptial agreement contained the following provision:

“4. Section Four: Transfers to Each Other. Nothing herein contained shall, in any manner, bar or affect, the right of either party to claim and receive any property of any nature or character that the other party hereto, by last will, or by any other instrument, may give, devise, bequeath, transfer or assign to the other party hereto.”

¶ 10 The matter went to trial on September 28, 2011. Alvin testified that he lived in Byron on Barker Road for 75 years. He married Lavonne on May 6, 1984, and he identified the couple’s prenuptial agreement. Alvin testified that he worked in farming his entire life, focusing on general grain and livestock. His farming operation generated income by selling crops and livestock. Alvin testified that when he received checks from the sale of grain or the sale of livestock, he would endorse them and give them to Lavonne to deposit in a separate farming account at Stillman Valley Bank. Alvin thought Lavonne kept track of the account and always showed him balances at the end of each month. It was not a joint account but Lavonne had check-signing privileges on the account. Lavonne worked at various banks at times during their marriage. At age 62, she received Social Security benefits. Alvin testified that Lavonne never made much money when she was employed.

¶ 11 Alvin testified that he acquired some, but not all, of his Winnebago Bank stock prior to marrying Lavonne. The stock was only ever held in his name. He sold the stock and deposited the approximately \$130,000 in Winnebago Bank. The money was deposited in his name only, but he did not recall where the money was deposited after Winnebago Bank. He testified that he inherited

approximately \$35,000 sometime after his mother died. Alvin could not recall when she died but thought it was about 1992. The inheritance, he testified, “disappeared.” Alvin testified that he took the money out of the bank in the form of a cashier’s check. He thought he signed the check, and Lavonne did something with the money, but he never found out what she did.

¶ 12 Alvin denied that he ever agreed to open certain accounts in joint tenancy. He testified that he “did put a couple accounts in joint tenancy, but there were no agreements.” He testified that he “just did one or two [accounts] for convenience purposes,” meaning so Lavonne could handle the household finances. He thought the joint accounts were valued at \$10,000 and \$25,000 with Forreton and Stillman Valley Banks, but he was not sure.

¶ 13 Alvin testified that he and Lavonne met with attorney David Guest in March 2004 for the purpose of creating a trust for Alvin’s assets. Alvin testified that he told Guest that he wanted to put his land in a land trust. Lavonne was with Alvin when they met with Guest. He admitted that Guest explained to him how trusts worked and how they were funded. He testified that Guest prepared a trust agreement for him and for Lavonne. Alvin received a copy of the proposed trust prepared by Guest in the mail. He admitted that he reviewed it and signed it. Alvin testified that Lavonne saw this trust agreement and became mad because she felt that he should leave more to her kids than Judy. On a second visit to Guest’s office in May for the signing of the trust, Alvin testified that Lavonne drove separately because she was mad. Alvin signed his trust. He assumed Lavonne signed her trust, but it was not supposed to be funded because she had no assets. Alvin denied that Guest advised him what assets would be funding Lavonne’s trust. He understood that his trust would be funded with his real estate.

¶ 14 Alvin met with Guest again in June 2004 to sign the papers for his land trust. Alvin admitted that he did not review the papers he signed, but testified that Guest told him that they were papers to transfer the real estate into his trust. Alvin believed that the land to be put in his trust included the 40 acres of farmland, which he purchased after his marriage and which was titled in joint tenancy. Alvin testified that he did not know that Guest put that 40 acres of land into Lavonne's trust. Alvin denied agreeing to this. Alvin testified that Guest and Lavonne met separately, without him, on three or four occasions. He then admitted that he signed the deed to transfer the 40 acres from joint tenancy into Lavonne's trust. Alvin also admitted telling Lavonne that he would put some of his real estate in her name, but he did so when she was angry in order to quiet her down. Alvin testified that she knew he would never change the title to her, and "this was all David Guest's idea."

¶ 15 Upon Lavonne's death, Alvin learned what assets were held in her trust. Alvin testified that he served as trustee of Lavonne's trust for about three months, at which time he resigned because he realized she took his money and put it in her name. Alvin stated that his sister, Valdene Snodgrass, was successor trustee.

¶ 16 Alvin denied signing any document agreeing to have Lavonne's retirement account at Amcore Bank transferred to her trust. He denied signing any document at Amcore Bank in front of a notary. Upon being shown the change of beneficiary form, Alvin denied that it was his signature on the document.

¶ 17 On cross-examination, Alvin could not recall when he married his first wife and did not remember the name of his first wife. He admitted he had no children from his first marriage, but that he adopted Judy. He admitted having joint accounts, but denied he gave the money to Lavonne to spend. He admitted he put her name on some accounts so Lavonne would have money in case he

died. Alvin admitted he chose Guest to help with an estate plan. Alvin admitted discussing his real estate with Guest at their first meeting, but he denied discussing any of his bank accounts. Alvin testified that at the second meeting, they discussed other assets besides real estate. Alvin could not recall when the second meeting with Guest occurred, and he could not remember when he signed his trust document. When asked if he had been able to calculate how much money Lavonne took from Alvin's agricultural proceeds, Alvin said no because she took a little at a time. Alvin admitted that Lavonne inherited some money from her parents' estate shortly before she died and admitted that it was probably around \$87,000. He admitted they put that money in their joint account. He admitted some of that money also went into a certificate of deposit in Lavonne's trust. During his deposition, Alvin claimed the money was put into one certificate of deposit in Lavonne's trust, and at trial, he testified there were two. Alvin could not remember which banks or the amounts of the certificates. When asked how his signature differed from the signature on the change of beneficiary form, Alvin could not say. He just knew that he did not sign the document and that Lavonne was good at signing his name.

¶ 18 David Guest testified that he has practiced in estate planning, real estate, and taxation law for 56 years. In 2004, Guest met with Alvin and Lavonne. Guest believed that Alvin had a will and a land trust for part of his land but the couple came in to revise the estate plan. Guest explained the process, interviewed them regarding their assets, and took notes. Guest noted what real estate and bank accounts existed and how the assets were titled. He asked about retirement accounts, life insurance, vehicles, and Alvin's farm equipment. Guest did not recall any discussion about a prenuptial agreement. He did not become aware of a prenuptial agreement until the time the lawsuit was filed.

¶ 19 Guest identified his handwritten notes from his initial meeting with Alvin and Lavonne. The notes indicated the couple's various assets, including real estate, bank accounts, retirement accounts, life insurance, and farm equipment. He advised the couple that he thought it would be best if they each had a separate trust with pour-over wills. He explained the process and documents involved to Alvin and Lavonne. He explained that the trusts would have to be funded after they were formed. Guest denied that they told him the purpose of their visit was to prepare an estate plan only for Alvin. He denied that they discussed only setting up a land trust. Guest recalled that he was told at the initial meeting to prepare the documents and to mail the documents to them for review.

¶ 20 Guest did not recall when he discussed what assets would be used to fund each trust, but he recalled that property held in each party's name would be used. He knew the 40 acres of property was titled in joint name, and he recommended that property be transferred only to Lavonne's trust because it appeared that Alvin's estate had more value. Guest stated that he wanted to get some balance between the trusts for tax purposes. Guest testified that he lets his clients transfer assets to the trust if the client seems capable, as a way for them to save money. If they are not able, Guest has his office staff handle the paperwork. In this case, Guest felt that Lavonne was very capable and willing to do the leg work.

¶ 21 After the documents were prepared, the signing took place at Guest's office on May 18. Both Alvin and Lavonne came to the office that day to sign the trust and will papers. Guest prepared the deed for the 40 acres to be transferred from joint name to Lavonne's trust. Guest had no indication that Alvin did not agree to the transfer. He based this opinion on the fact that Alvin signed the deed. Guest identified a copy of the deed, which was signed and notarized in Guest's office in July 2004. Guest could not recall whether he went through each deed and explained them to Alvin at the time

that Alvin signed. Regarding the first amendment to Lavonne's trust, which gave Alvin a life estate interest in the 40 acres, Guest was unaware whether Alvin and Lavonne discussed this change. To the best of Guest's memory, Lavonne was handling the funding of the trust and maintained communications with his office regarding what she was doing. Guest had no specific knowledge that Lavonne had spoken to Alvin about the changes to the accounts that she was handling in order to fund the trusts. The trust agreements did not contain a list of assets; Guest testified that his practice was to just include a dollar figure. He testified that one could not pick up either party's trust agreement and know what assets made up the figure. When asked if Guest thought it was unusual that Lavonne was not leaving anything to Alvin, he testified that he did not because Alvin had a greater value of assets than Lavonne. Guest was not aware of Lavonne being upset that so many assets were titled to Alvin.

¶ 22 On cross-examination, Guest admitted that while Lavonne verbally reported to him the couple's assets at their consultation, Alvin was present. He testified that he recommended separate trusts because he did not like joint trusts. He agreed that to have the trusts leave all assets to the surviving spouse could be self-defeating in the sense it could cause the surviving spouse's eventual estate to incur a higher tax liability. He denied that either Alvin or Lavonne did anything to cause him to think that one was trying to hide assets from the other. They seemed open about disclosing their assets to him. Regarding Alvin's signing of the paperwork, Guest testified that there were two deeds: one associated with the 170-acre property, which went into Alvin's trust, and two for the 40-acre property because it was originally in a land trust. For the land trust, Alvin had signed a change of ownership of the beneficial interest and power of direction in the land trust. Guest testified that he always explains what the effect of the deed has on the property before a client signs. He assumed

that he explained the deeds to Alvin before he signed. Guest denied that Alvin ever expressed any confusion about what he was signing. Guest testified that Alvin always appeared alert and coherent when he was in his office. Guest testified that he has dealt with clients with varying degrees of confusion depending on their age and physical condition over the course of his career. He testified that if he ever felt someone did not understand what they were doing, he would not allow the person to sign the documents.

¶ 23 Guest further testified that Alvin asked him to prepare paperwork to give Lavonne power of attorney over his affairs. Alvin also had Guest make Lavonne his successor trustee for his trust in the event he became disabled or died. Lavonne requested the same. Guest denied that Lavonne ever told him that any information she provided was not to be told to Alvin. She never expressed to Guest that she was withholding any information from Alvin.

¶ 24 Valdene Snodgrass, Alvin's sister, testified that after Alvin resigned as trustee to Lavonne's trust, she was asked by their attorney to take over as successor trustee, which she did. Snodgrass was a retired bank president for a local bank. She testified that the trust's value as of November 24, 2008, was \$327,756.62, except for the IRA account, which Snodgrass did not have the value of by that date. After expenses were paid out and a \$60,000 distribution was paid to Lavonne's children, the value of the trust as of November 30, 2009, was \$256,476.97. Snodgrass resigned as trustee at the end of November 2009 because she thought there was a conflict of interest as Alvin's sister and a potential beneficiary in his trust. The lawyer recommended that Snodgrass resign.

¶ 25 Snodgrass knew Alvin received nothing under Lavonne's trust and thought that was unusual. Snodgrass handled their mother's estate, and she distributed \$37,000 in the form of three certificates of deposit to Alvin in 1993. She did not know what happened to that money. Snodgrass also knew

that Alvin owned shares in First National Bank of Winnebago, where she was employed as president of the bank. She knew Alvin's shares were sold in 1997 and that he received close to \$200,000 for them. She knew that some of the money went into a money market account at Beloit Bank and part went into his accounts at the Winnebago bank. Snodgrass did not know where the money went after that.

¶ 26 Maria Bolhous, a marketing officer at Byron Bank, testified that in May 2004, she was a customer service agent and public notary at the bank. When notarizing a document, Bolhous testified that she followed certain procedures or policies. She explained that if the person already signed the document, she would ask the person to sign another piece of paper so that she could verify the signature on the document. Bolhous also required that the person show a form of picture identification.

¶ 27 Bolhous identified the Beneficiary Designation Form for Lavonne's IRA account with Amcore Bank. She identified her signature as the notary and that she signed the form on June 10, 2004, notarizing Alvin's signature. Alvin dated the form May 21, 2004. Bolhous testified that she would have verified Alvin's identity and signature before notarizing the document. Bolhous testified that she did not specifically remember Alvin or that he signed anything on that date.

¶ 28 Bolhous testified that she probably notarized five to eight documents in a year. She had no independent recollection of notarizing the beneficiary form for Alvin in 2004. However, she testified that she would not have notarized the document had Alvin not signed in front of her or without having verified his signature and checked his identification.

¶ 29 Bradley Sargent testified that he lived with Alvin and Lavonne for two or three years at different times. He then lived about eight miles from them and visited them often. He never

observed any marital discord. Sargent testified that he saw them bicker only one time over kitchen wallpaper. The couple was inseparable from his observations. Sargent testified that his relationship with Alvin was close. He often did errands for Alvin and had the opportunity to observe Alvin's signature on checks for the farm. Sargent testified that the signature on the beneficiary designation form appeared to be Alvin's signature. He admitted that he did not see Alvin sign the form and that no one told him that Alvin signed the form. He did not know whether his mother, Lavonne, ever signed Alvin's name on documents.

¶ 30 On rebuttal, Alvin testified that Guest did not explain and describe the deeds or the assignment of beneficial interest in the land trust before he signed them. Guest simply handed the documents to Alvin and told him to sign his trust deeds. Alvin also denied having anything notarized at Byron Bank. He denied signing anything in front of Bolhous. Alvin testified that he never saw Bolhous before.

¶ 31 Following the close of witnesses, the parties resolved the issues concerning the UGMA accounts by a stipulation.

¶ 32 On October 25, 2011, the trial court issued its decision in court. It said that it reviewed the testimony and exhibits in reaching its conclusions. The court stated that it did not find any showing of some special fiduciary responsibility to Alvin by his wife. The court acknowledged that the couple had a prenuptial agreement, but there were transfers of property after the couple married. It found that the 40 acres was certainly joint property, purchased after they were married. The court stated that Alvin admitted that he transferred the 40 acres to keep his wife quiet. It did not find anything improper in the transfer. The court declined to rescind the trust because it found no conversion and no breach of contract regarding the IRA. The court accepted Bolhaus's testimony

that she would not have notarized the change of beneficiary form had Alvin not been before her. The court did not find anything improper in the preparation and signing of the deeds. The court therefore found in favor of defendants and against plaintiffs. Plaintiffs timely appealed.

¶ 33

II. ANALYSIS

¶ 34 Plaintiffs first argue that the trial court erred in refusing to rescind Lavonne's trust where it conflicted with the language and intention of the parties' prenuptial agreement. Plaintiffs also unclearly argue that Lavonne breached a fiduciary duty to Alvin by transferring assets out of joint named accounts into her trust. They argue a constructive trust should have been imposed to rectify defendants' unjust enrichment. We disagree with plaintiffs.

¶ 35 We review a trial court's determination that the facts do not support imposition of a constructive trust under the manifest weight of the evidence standard. See *Pottinger v. Pottinger*, 238 Ill. App. 3d 908, 918 (1992). We reverse a trial court's factual findings only if they are against the manifest weight of the evidence, meaning the opposite conclusion is apparent or when the findings appear to be arbitrary, unreasonable, or not based upon the evidence. *Goldberg v. Astor Plaza Condominium Association*, 2012 IL App (1st) 110620, ¶ 60. This deferential standard applies because the trial court is in a superior position to determine and weigh the credibility of the witnesses, observe the demeanor of witnesses, and resolve conflicts in the testimony. *Id.*

¶ 36 Regarding plaintiffs' first argument that Lavonne's trust was funded with assets covered by the couple's prenuptial agreement, we apply the same rules that govern the interpretation of contracts to the interpretation of the prenuptial agreement. *In re Marriage of Murphy*, 359 Ill. App. 3d 289, 300-01 (2005). In construing a contract, the primary objective is to give effect to the intention of the parties. *Thompson v. Gordon*, 241 Ill. 2d 428, 441 (2011). A court will first look

to the language of the contract itself to determine the parties' intent. *Id.* A contract must be construed as a whole, viewing each provision in light of the other provisions. *Id.* The parties' intent is not determined by viewing a clause or provision in isolation, or in looking at detached portions of the contract. *Id.* If the contract is ambiguous, the court may consider extrinsic evidence. *Id.*

¶ 37 In this case, the prenuptial agreement provided that nothing in the agreement prevented or barred either party from receiving property from the other in the future. We agree with the trial court that because of this provision, the prenuptial agreement had no effect on the subsequent transfers. We point out that the case plaintiffs rely upon does not support their argument but only reinforces the trial court's conclusion. In *In re Estate of Hopkins*, 214 Ill. App. 3d 427, 430 (1991), the provision in the prenuptial agreement provided that neither party would have any rights to the estate or property of the other, including the decedent's Borg Warner retirement account, when the marriage was terminated by death or legal proceedings. Following the prenuptial agreement, Borg Warner's plan changed its rule to require a spouse to sign a beneficiary designation form when the beneficiary was someone other than the employee's spouse; if the form was not signed, the spouse would receive the benefits. *Id.* at 430-31. The decedent had his daughter listed as the beneficiary, but he never had his wife sign the beneficiary designation form. *Id.* at 431. The wife then tried to collect the money after her husband's death, arguing that she was the default beneficiary under the plan's rule because she never signed the form. *Id.* at 431-32. The trial court determined that the wife was not entitled to collect on the retirement account because the prenuptial agreement contained the provision barring all *future* claims to the account. *Id.* at 432-33. The appellate court agreed and affirmed the trial court, holding that the wife was not entitled to rely upon the retirement plan's rule change because she waived her right to any future claim she might have to that account in the

prenuptial agreement. *Id.* at 435-36 In this case, the prenuptial agreement's provision states the opposite of that in *Hopkins*—that the agreement does not bar future property transfers of any kind—and thus, Alvin cannot rely upon the prenuptial agreement to invalidate the subsequent property transfers. Accordingly, the trial court did not err in refusing to invalidate Lavonne's trust on the basis of the existence of the prenuptial agreement.

¶ 38 Moving on, plaintiffs seem to argue that Lavonne breached a fiduciary duty she owed to Alvin to deal fairly with their assets. A fiduciary relationship exists where there is a special confidence placed in one, who by reason of such confidence, must act in good conscience and good faith and with due regard to the interests of the person placing such confidence in him. *In re Estate of Glogovsek*, 248 Ill. App. 3d 784, 792-93 (1993). Fiduciary relationships may arise out of law, as in the relationships of attorneys-clients, guardians-wards, and trustees-beneficiaries. *Id.* at 793. Where the special relationship does not exist as a matter of law, the party claiming such status must prove it by clear and convincing evidence. *Id.* While a marital relationship alone may not establish a fiduciary relationship, a fiduciary relationship may arise in a marital one as the result of special circumstances of the couple's relationship, where one spouse places trust in the other so that the latter gains superiority and influence over the former. *Nessler v. Nessler*, 387 Ill. App. 3d 1103, 1111 (2008); see *Glogovsek*, 248 Ill. App. 3d at 796-998 (finding no fiduciary relationship or undue influence where facts only showed that the wife paid household bills out of a joint account, drove the couple to a law office to discuss estate plan, and that the wife notified the attorney that her husband changed his mind about the contingent beneficiaries; the court held that there was a lack of evidence to show that the wife dominated the husband to a degree where a fiduciary relationship may be found).

¶ 39 Plaintiffs rely on *Williams v. Estate of Cross*, 85 Ill. App. 3d 923 (1980), for their proposition that Lavonne mishandled the couple's assets. We do not find *Cross* comparable to the facts of this case. In *Cross*, the trial court found that the plaintiff and his mother perpetrated a constructive fraud upon the defendant and ordered the plaintiff to convey certain properties back to the defendant. *Id.* at 924. The plaintiff's mother and the defendant were married. *Id.* One property was purchased by the couple with joint funds and a mortgage. *Id.* The second property was purchased by the couple, but the plaintiff obtained a mortgage for them to pay for it. *Id.* The defendant paid the mortgage at all times. *Id.* at 925. Later, the mother placed the properties in joint tenancy with both her husband (defendant) and son (plaintiff). *Id.* The defendant testified that his wife talked him into the conveyances before a vacation, so that the properties would transfer should both of them meet joint disaster. *Id.* The defendant testified that she never reconveyed the properties as promised. *Id.* The court found sufficient evidence in the record showing that the wife managed all financial matters that arose during the marriage and that he acted only because of his wife's assurances. *Id.* at 926. Additionally, the court found that the wife did not treat the defendant fairly because she instructed the sellers of the second property to deed the property only to herself and her son. *Id.* The appellate court therefore affirmed the trial court's finding that the plaintiff had no interest in the properties. *Id.*

¶ 40 Unlike in *Cross*, there was no evidence presented that Lavonne misled Alvin in any of the transactions. Alvin himself admitted that he agreed to transfer some properties into her name because she was angry. He admitted that he put Lavonne's name on some accounts so that she had access to the money. He also admitted that he hired Guest to help with an estate plan and that he was present at the couple's initial meeting in which they discussed their assets with Guest. Alvin

admitted that Guest sent him the trust paperwork and that he signed the trust papers. He also admitted that he signed the deeds to transfer the properties into Lavonne's trust. While Alvin denied that Guest explained the documents that he signed or that the plan was to move assets into Lavonne's trust, Guest testified to the opposite. Further, there is no evidence Alvin ever brought the prenuptial agreement to Guest's attention or expressed any confusion as to what the estate plan entailed. It is the function of the trier of fact to resolve conflicts in testimony (*Goldberg*, 2012 IL App (1st) 110, ¶ 60), and here the trial court obviously found Guest more credible than Alvin, who was unable to recall many details on the witness stand. Further, the fact that Lavonne was responsible for handling the household finances does not establish a fiduciary relationship. The evidence showed that it was Alvin who sought the advice of Guest and that he was always present and involved in the meetings and signed the papers without the influence of Lavonne. Alvin did not establish by clear and convincing evidence that Lavonne had dominated him in such a way that one could conclude that a fiduciary relationship existed. Therefore, we do not find that the trial court's conclusion that there was no special fiduciary duty owed to Alvin was against the manifest weight of the evidence.

¶ 41 Additionally, plaintiffs failed to establish that a constructive trust, an equitable remedy imposed to rectify unjust enrichment, was warranted. Constructive trusts may be imposed when one party receives property belonging to another under circumstances in which the receiver would be unjustly enriched if allowed to retain the property. *In re Estate of Beckhart*, 371 Ill. App. 3d 1165, 1169 (2007). When a person's property has been wrongfully appropriated and converted into a different form, equity allows imposition of a constructive trust, even where the person in possession of the property was innocent of collusion. *Jackson v. Callan Publishing, Inc.*, 356 Ill. App. 3d 326, 334 (2005). Here, plaintiffs have not established that Alvin's property was wrongfully appropriated

by violation of the prenuptial agreement or a breach of fiduciary duty. Therefore, we affirm the trial court's denial to impose a constructive trust.

¶42 Next, plaintiffs contend that the trial court erred in finding in favor of defendants on the claim of conversion regarding the trust checking account balance. To prove conversion, the plaintiff must establish that (1) he has a right to the property; (2) he has an absolute and unconditional right to the immediate possession of the property; (3) he made a demand for possession; and (4) the defendant wrongfully and without authorization assumed control, dominion, or ownership over the property. *Loman v. Freeman*, 229 Ill. 2d 104, 127 (2008). Plaintiffs merely argue that the beneficiaries do not have a right to the property because the property was “wrongfully acquired by the decedent.” We agree with the trial court that plaintiffs have failed to prove that Lavonne misappropriated the assets under any theory raised—the existence of the prenuptial agreement or a breach of a fiduciary duty. Therefore, we affirm the trial court's judgment in favor of defendants on the conversion claim.

¶43 Now we address plaintiffs' argument regarding the alleged forgery of the beneficiary designation form. Plaintiffs claim that because Alvin testified that he did not sign the form and because Bolhous could not independently recall notarizing the form, the trial court should have found in his favor. Alvin testified that he did not appear before Bolhous to sign this form, but he also could not explain how his signature was different from the one on the form. Bolhous testified that although she could not independently recall Alvin, he would have been in front of her in order for her to have notarized the document. She testified to her routine procedures that she followed when notarizing a document at the bank. Sargent also testified that he was familiar with Alvin's signature and that the signature on the form appeared to be his signature. The trial court obviously found Bolhous and Sargent more credible than Alvin, and it is the function of the trier of fact to

determine and weigh the credibility of witnesses and resolve conflicts in testimony. Therefore, we affirm the trial court's judgment on this issue.

¶ 44 Finally, plaintiffs argue that the trial court erred in failing to quiet title to the 40 acres of farmland that he deeded to Lavonne's trust. Plaintiffs argue that Alvin deeded the property to Lavonne's trust only because he thought they agreed that in the event of her death, the property would revert back to him. Deeds are interpreted in order to give effect to the grantor's intent. *Warren-Boynton State Bank v. Wallbaum*, 123 Ill. 2d 429, 436 (1988). Intent is found by analyzing the specific words used in conjunction with the circumstances under which they were drafted. *Id.* The entire document must be considered. *Id.* When intention is not clear, the courts may resort to rules of construction to determine the meaning, but these rules are only to govern where the language is so ambiguous as to place the testator's intention in doubt. *Id.*

¶ 45 Here, plaintiffs presented no evidence of an agreement to include a reversionary interest, other than Alvin's testimony. Alvin admitted that he agreed to deed the 40 acres of land to Lavonne's trust, and he admitted to signing the deed. The deed, however, which was prepared by counsel that Alvin retained to draft an estate plan, contained no language regarding any reversionary interest. He did not testify that he told Guest about the reversionary interest agreement that he allegedly had with Lavonne. Guest testified that he explained the estate plan to the couple together, and the couple went over their assets with Guest together. Alvin knew he and Lavonne would have individual trusts and that the deed transferred the 40 acres into Lavonne's trust. Lavonne later amended her trust to provide a life estate interest in the 40 acres for Alvin, which Guest prepared and had her sign. While Guest did not know if the couple discussed the change, he testified that he had no reason to believe that Lavonne was withholding information from Alvin. Given that the language

of the deed unambiguously transferred the property into Lavonne's trust and that Alvin admitted that he knew he was signing over the property into Lavonne's trust, we agree with the trial court that there was no reason established to quiet title to the property. It seems that Alvin's real issue is that Lavonne's trust did not leave him the property, which is an issue not raised in the trial court or on appeal. Even so, there was no evidence suggesting that Lavonne withheld her beneficiary information from him, misled Alvin in any way regarding the estate plan, or that Guest had not discussed the overall estate plan with both parties present. Based on the evidence presented, the trial court's decision not to quiet title was not against the manifest weight of the evidence.

¶ 46

III. CONCLUSION

¶ 47 For the reasons stated, we affirm the judgment of the circuit court of Ogle County.

¶ 48 Affirmed.