Local Rule 39-1801 was adopted to promote the prompt disposition of cases. Extensions of time may be granted, but only where good cause is shown. When an extension is granted, the court must set a new time limit. 39th Jud. Dist. R. Jud. Adm. 39-1801.5

Prompt disposition of cases and the objectives of good court administration are not achieved by promoting multiplicity of suits. So where a plaintiff has alleged a §201(c) divorce and it cannot proceed, we believe that it is a good cause for the extension of time if in the request for such extension the plaintiff alleges a §201(d) cause will come into being on a particular date. An extension of time granted for a reasonable period beyond that date meets the objectives of Rule 39-1801.

In such cases, the Prothonotary is in a position to advise the court when the new date has passed, and if action has not been taken within the time limit, the case can then be dismissed or other action taken.

The rule is for the convenience of the court and does not necessarily confer any right on the other party, and this is particularly so where the other party cannot show that he has been in any way disadvantaged by the extension. An extension will not harm the defendant because in this case a new cause of action could be filed to bring a §201(d) divorce action.

We will make an order in the usual form.

UNGER v. UNGER, C.P. Franklin County Branch, Volume 7, Page 298, In Equity

Equity - Constructive Trust - Confidential Relationship - Husband and Wife

1. A constructive trust may arise against one who has been unjustly enriched.

2. A constructive trust may arise from a breach of confidential relationship by the transferee, or out of circumstances evidencing fraud, duress, undue influence or mistake.

3. A close family relationship per se does not create a confidential relationship; however, where one spouse occupies a position that reasonably inspires confidence in the other as to his good faith, a confidential relationship exists.

John F. Nelson, Esq., Counsel for Plaintiff

Thomas J. Finucane, Esq., Counsel for Defendant

OPINION AND ADJUDICATION

EPPINGER, P.J., January 15, 1985:

Dolores and Richard Unger were married in the spring of 1953. At the time Dolores was working at a men's clothing manufacturing firm and Richard was working on a dairy farm. The two lived on that dairy farm where Richard continued to work for a matter of two or three years and then moved to Greencastle where they rented another farm. Later they rented and moved onto a farm near Shippensburg which was owned by Dolores' great uncle, Samuel Nye and his wife. After Nye died in June of 1958, his widow agreed to sell it, as Dolores thought, to both of them. The sale price was $20,000 but the rent that had been paid over the years was $5,000 to be credited to the purchase price, leaving a balance of $15,000. The balance was to be paid to Mrs. Nye by a bond of $15,000 secured by a mortgage on the real estate.

A settlement on these terms occurred in a lawyer's office. Both Richard and Dolores attended the settlement. The note was to mature in three years, and there were to be monthly payments of $100. Both Richard and Dolores signed the bond and mortgage.

Without telling Dolores, Richard had entered into the agreement for the purchase of the land in his own name. And when it came time to settle, the title was placed in Richard's name alone, though as indicated, Dolores signed both the bond and mortgage.

The parties separated in 1977 and were later divorced. After the divorce, Richard sold the property for $115,000, and now Dolores asks us to declare a constructive trust for her benefit in one-half of the proceeds of the sale of the farm. She makes two claims to support the constructive trust. The first is that the farm was paid for from funds derived from their joint labors, and the second that she believed the title to the farm was to be in both names and was not told the deed was to him alone. She claims she did not learn of this until after the property had been conveyed to Richard. Her argument is that a constructive trust may arise as a result of an abuse of a confidential relationship, fraud, mistake or undue

LEGAL NOTICES, cont.

KIRKPATRICK: First and final account, statement of proposed distribution and notice to the creditors of Chambersburg Trust Company, Robert L Kirkpatrick and James B. Kirkpatrick, co-executors of the Estate of Pearl B. Kirkpatrick, late of the Borough of Chambersburg, Franklin County, Pennsylvania, deceased.

LINDSEY: First and final account, statement of proposed distribution and notice to the creditors of Ethel Lindsey, Executrix of the Estate of Lawrence E. Lindsey, late of Washington Township, Franklin County, Pennsylvania, deceased.

MCCLAIN: First and final account, statement of proposed distribution and notice to the creditors of Glenn C. McClain, Jr., Executor of the Estate of Glenn C. McClain, late of Township of Quincy, Franklin County, Pennsylvania, deceased.

SNOWBERGER: First and final account, statement of proposed distribution and notice to the creditors of Robert F. Snowberger and Patricia A. Mowry, Executors of the Estate of M. Louise Snowberger, late of the Borough of Waynesboro, Franklin County, Pennsylvania, deceased.

STONER: First and final account, statement of proposed distribution and notice to the creditors of Harold F. Gsell and Marlin O. Wagner, Executors of the Estate of Mary Jane Stoner, late of the Borough of Chambersburg, Franklin County, Pennsylvania, deceased.

VESSA: First and final account, statement of proposed distribution and notice to the creditors of Nicholas C. Vessa, Executor of the Estate of Dorothy C. Vessa, late of Township of Antrim, Franklin County, Pennsylvania, deceased.

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influence. *Yohe v. Yohe,* 466 Pa. 405, 411, 353 A.2d 417, 421 (1976). Under Pennsylvania law, a constructive trust may arise against one who has been unjustly enriched. *Proctor v. Sagamore Big Game Club,* 265 F.2d 196, 202 (3rd Cir. 1959), certiorari denied, 361 U.S. 831, 80 S. Ct. 81, 4 L.Ed.2d 73, *Chambers v. Chambers,* 406 Pa. 50, 54-55, 176 A.2d 673, 675 (1962).

Chambers tells us that a constructive trust arises where one holding title to property is subject to an equitable duty to convey it to another on the ground that if permitted to retain it, the title holder would be unjustly enriched and that such a trust may arise from a breach of confidential relationship by the transferee, or out of circumstances evidencing fraud, duress, undue influence or mistake. *Chambers* goes on to say that when the holder of title may not in good conscience retain the beneficial interest, equity converts him into a trustee, and in doing so, the court is bound by no unyielding formula.

In *Shapiro v. Shapiro,* 424 Pa. 120, 129, 224 A.2d 164, 168 (1960), the court found in a case between husband and wife, that a confidential relationship existed marked by the great reliance of the wife on the husband in business transactions and the burden rested on the husband to show that he took no advantage of her. While the court in finding a constructive trust is bound by no unyielding formulas, *Shapiro* reminds us that the chancellor's findings, approved by the court en banc are generally controlling in the absence of an abuse of discretion. The same is not true where the underlying facts are not actually established and are a matter of inference and deduction. *Id.* at 127, 168. So the evidence in the case must support the court's conclusions.

Guiding us also is *Truver v. Kennedy,* 425 Pa. 294, 229 A.2d 268 (1967), where the court held that the existence of a close family relationship per se does not justify recognition of a confidential relationship. However, there is a confidential relationship where one occupies a position that reasonably inspires confidence in the other that he will act in good faith for the other's interest. *Id.,* at 305-6. This results as a matter of fact where the parties do not deal with each other on equal terms, either because of an overmastering dominance on one side or weakness, dependence or justifiable trust on the other. *Busher v. Keeler,* 33 Leh.L.J. 29, 34 (1968).

Though Dolores produced evidence that she worked most of the time during their marriage and used the money for the maintenance of the family household, and even signed over income tax refunds partly derived from her earnings, this alone would not justify a finding she is entitled to have Richard declared a constructive trustee. There must be may cases where business property is in the name of one party to a marriage and the other makes contributions of labor or money which inures to the benefit of the entire family. We believe that where the party who is making the contribution knows that the property is in the other's name, the contributing party cannot thereby obtain an interest in the property by having the court declare a constructive trust. So we conclude that by her labors alone, Dolores does not have the right to the relief she prays for.[1]

As to Dolores' argument that her labor earned her an interest in the farm, Richard has made an appropriate response that this kind of effort, if successful, would result in the engrafting of the Divorce Code doctrines of equitable distribution to a divorce which occurred prior to the adoption of the code. See 23 P.S. §401(d).

However, in the marriage, Richard handled the business affairs and was doing so at the time of the property settlement. Dolores had had a child of her own and the couple had taken one of Richard's nephews into their home. At that time, Richard was running the farm while Dolores, believing he would obtain the title in joint names, was engaged in homemaking and child-rearing.

Dolores was called into the lawyer's office for the settlement. There is testimony that she was never advised that she was not a grantee on the deed and she believed she was to be. Her belief that title was to be in both names was reasonable. In the first place their opportunity to live on the farm came because her grandfather made arrangements with her great uncle for them to move there. Secondly, she could rightly conclude that the reason the great uncle's widow gave them what appears to have been a very good deal was because of her relationship with her great aunt.

[1] We note this farm is not merely a dwelling house. It is a business property and may be distinguished as such.

DICKER: First and final account, statement of proposed distribution and notice to the creditors of Valley Bank and Trust Company, Executor of Myrtle H. Dicker, late of Peters Township, Franklin County, Pennsylvania, deceased.

HESS: First and final account, statement of proposed distribution and notice to the creditors of Mellon Bank (East) N.A. (formerly known as Girard Bank), Executor of the Estate of Harold A. Hess, late of the Township of Waynesboro, Franklin County, Pennsylvania, deceased.

HOWARD: First and final account, statement of proposed distribution and notice to the creditors of Valley Bank and Trust Company, Executor of the Estate of D. Lyman Howard, late of Letterkenny Township, Franklin County, Pennsylvania, deceased.

KIRKPATRICK: First and final account, statement of proposed distribution and notice to the creditors of Chambersburg Trust Company, Robert L Kirkpatrick and James B. Kirkpatrick, co-executors of the Estate of Pearl B. Kirkpatrick, late of the Borough of Chambersburg, Franklin County, Pennsylvania, deceased.

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LEGAL NOTICES, cont.

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When she went to the settlement she had the two children with her. She was not shown the deed. She signed the mortgage and the bond. No where in the mortgage and bond, except in the recital of title to the mortgage, is there even a suggestion that she was not an owner of the real estate. In the usual form the mortgage names Richard O. Unger and Dolores E. Unger, his wife, as mortgagors. There is no testimony that it was explained to her that she was joining in the mortgage only for the purpose of defeating her dower interest, if that was the case. See *Cancilla v. Bondy,* 353 Pa. 249, 252, 44 A.2d 586 (1945). Thus, Richard did not meet his burden of showing he took no advantage of her. *Shapiro,* supra, 129, 169.

An argument is made, however, that she could have discovered the fact that the property was being conveyed to her husband alone had she read the entire mortgage, and that a person who can read cannot be heard to say she did not read. *Yohe v. Yohe,* 466 Pa. 405, 410, 353 A.2d 417, 420 (1976).

We think that doctrine is inapplicable here. Dolores was in a lawyer's office with two children. She was handed the mortgage and bond to sign. She never saw the deed. It is significant that the mortgage is a three-page document. On the first are the usual mortgage terms and then commences a description of the real estate. That description, a long one, carries over onto the second page. The second page which ends at the bottom with the recital of title does say that the mortgaged property is the same that Mrs. Nye conveyed to Richard O. Unger. Richard asks us to find that had she read that recital she would have known that he alone was the grantee. We do not think that is obvious at all. Had she read it, and she didn't, she would not necessarily have thought that her name was omitted as a grantee. Richard has not shown in his case that she had the ability to comprehend this. Furthermore, this does not compare at all with a situation where a person fails to read a deed in which she actually conveys the property and is listed as a grantor at the beginning of the deed as in *Yohe v. Yohe,* supra, at 410, 420.

Then we go to the third page, again a form page, and at the bottom the signatures of Richard and Dolores appear witnessed by the attorney. Dolores had no reason to believe that she was not to be an owner of the property and Richard had a duty to tell her

that she was not and that she was only required to join in the mortgage for the mortgagee's purpose. This, it seems to us, is a case where Richard was dominant, Dolores was weak, and Dolores justifiably depended on him to transact the business of purchasing the real estate in both their names.

The defendant argues that such cannot be the result because Dolores had opportunities, in addition to reading the mortgage recital, to discover afterwards that she was not a grantee. The facts are that she signed some deeds conveying portions of the real estate and the property was remortgaged in 1965 to a bank. She says she understood she was signing them because she was an owner of the property. In these conveyances she was listed as one of the grantors or mortgagors and in each case she intended to join in the conveyance, as she intended to join in the subsequent mortgage. Actually, her conclusion that she was an owner was fortified by this activity. On occasions when Richard attempted other sales and she did not agree, she withheld her signature and the sales did not go through. So the execution of these deeds did not by themselves operate to give Dolores notice that something was not right. He says the deeds clearly showed, again in the recital, that he had taken title in his own name, and she could have discovered this by reading the recitals in the deeds and mortgage. Nor did the advertisements which appeared in a newspaper in which Richard, in his own name, offered the land for sale put her on notice.

All of this evidence is interesting but hardly determinative of the issues in this case. Once Richard had succeeded in getting the property conveyed to him in his own name, the situation could not have changed absent his willingness to transfer the title to both of them. So it would make no difference at all that she could have learned after the initial conveyance that she was not a grantee. The damage had already been done. It was only when he was freed from Dolores by divorce that he was able to sell the property on May 5, 1978, for the sum of $115,000 without her joinder.

While we did not find a Pennsylvania case directly on point, we find support for our conclusion in *Genter v. Genter,* 270 So.2d 389 (Florida 1972), *Newton v. Newton,* 312 S.E.2d 228 (North Carolina 1984) and *Cline v. Cline,* 255 S.E.2d 399 (North Carolina 1979).

LEGAL NOTICES, cont.

IN THE COURT OF COMMON PLEAS
OF THE 39TH JUDICIAL DISTRICT
OF FRANKLIN COUNTY,
PENNSYLVANIA —
ORPHANS' COURT DIVISION

The following list of Trustees, Guardians of Minors, Guardians of Incompetents and Custodians Accounts will be presented to the Orphans' Court Division of the Court of Common Pleas, Franklin County, Pennsylvania for Confirmation on November 7, 1985.

HESS: First and final account, statement of proposed distribution and notice to the creditors of Mellon Bank (East) N.A. (formerly known as Girard Bank) Trustee for the Trust Agreement of Harold A. Hess, deceased.

George B. Heefer,
Acting Clerk of Orphans' Court
of Franklin County, Pennsylvania

10-25, 11-1

In *Genter* the parties borrowed money for a downpayment and the wife understood she was to have an interest in the property. Like here, the husband took title in his own name. The court found a confidential relationship had been violated and for the husband to retain the property to his sole benefit was unconscionable. A constructive trust was declared.

In *Newton* husband purchased land from his own funds and he took title alone, despite discussions between the parties that they would build a home on the lot and wife's understanding that her name would be on the deed. When the time came to borrow the money to build the home, the wife signed the note and deed of trust. The court held those facts were sufficient to give rise to a constructive trust in the wife's favor.

In *Cline* the parties bought and moved onto land owned by the husband's mother. The wife understood that if they paid off the mortgage the land would be theirs. From there the case is much like ours and the court concluded the husband was unjustly enriched and declared him a constructive trustee of the wife's proper share of the farm.

ADJUDICATION

January 15, 1985, the within opinion, containing a narrative of the facts, discussion of the law, and the court's conclusion as to each having been filed,

IT IS ADJUDGED

(1) That Richard O. Unger, defendant, is held to be a constructive trustee for the benefit of Dolores E. Unger, plaintiff, in the real estate described in the deed from Barbara M. Nye, widow, to Richard O. Unger, dated July 1, 1958, and recorded in Franklin County Deed Book Volume 510, page 446, a copy of which is attached to the complaint in this case, and in the proceeds of the sale of the same;

(2) That the defendant, Richard O. Unger, account to Dolores E. Unger within sixty (60) days for all monies received for the sale of the said property, and commissions and other expenses charged;

(3) That when an account is stated and approved by the court, that Richard O. Unger shall pay over to Dolores E. Unger the amount found due to the plaintiff by virtue of the constructive trust, together with interest; and

(4) the defendant shall pay the costs of these proceedings.

ESTATE OF EARL R. PATTON, DECEASED, C.P. Franklin County Branch, No. 116 - 1983

Will - Lack of Testimentary Capacity - Undue Influence

1. Every person is presumed to be competent and whether he is competent is determined as of the date a will is executed.

2. The burden is on the person claiming incapacity to show incapacity conclusively.

3. While evidence of capacity distant in time may be considered, evidence closest in time is more persuasive.

4. To show undue influence on a testator, evidence must establish that testator was of weakened intellect at time of executing his will, a confidential relationship existed and that the person exerting undue influence received a substantial benefit.

William C. Cramer, Esq., Counsel for Petitioner

Kenneth F. Lee, Esq., Counsel for Respondent

OPINION AND ORDER

EPPINGER, P.J., January 30, 1985:

Earl R. Patton died leaving a will dated March 29, 1983. Under that will, if Nancy E. Yocum (Nancy) survived the testator, she was to receive his motor vehicle, household furnishings, and his house. Nancy survived him. But if she had not, the motor vehicle and the furnishings would have gone to Marietta R. Brunner, and the house would have lapsed into the residue which testator left to his son, John M. Patton (John).