

**IN THE COURT OF APPEALS 07/02/96**

**OF THE**

**STATE OF MISSISSIPPI**

**NO. 94-CA-00445 COA**

**JIMMY DALE ODEM**

**APPELLANT**

**v.**

**HELENE FICK ODEM**

**APPELLEE**

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND  
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. JASON H. FLOYD

COURT FROM WHICH APPEALED: STONE COUNTY CHANCERY COURT

ATTORNEYS FOR APPELLANT:

JACK PARSONS, ELIZABETH C. TAYLOR

ATTORNEY FOR APPELLEE:

DAVID B. CLARK

NATURE OF THE CASE: DOMESTIC RELATIONS

TRIAL COURT DISPOSITION: DIVORCE GRANTED ON HABITUAL CRUEL AND  
INHUMAN TREATMENT. WARRANTY DEED SET ASIDE AND CONSTRUCTIVE TRUST  
IMPOSED.

BEFORE FRAISER, C.J., DIAZ, AND McMILLIN, JJ.

DIAZ, J., FOR THE COURT:

The Stone County Chancery Court granted Helene Fick Odem (Helene) a divorce based on habitual

cruel and inhuman treatment. The court set aside a warranty deed for lack of consideration and held that the subject of a second warranty deed was to be held in constructive trust by Jimmy Dale Odem (Jimmy Dale) for Helene. The court ordered Jimmy Dale to immediately execute a warranty deed transferring title of the second deed at issue to Helene. Aggrieved, Jimmy Dale appeals to this Court asserting the following issues: 1) that the chancery court erred in setting aside a warranty deed for lack of consideration; and 2) that the chancery court erred in establishing a constructive trust. Finding no reversible error, we affirm the judgment of the lower court.

## FACTS

Helene first met Jimmy Dale around November 1990 when Jimmy Dale was interested in purchasing a piece of property that Helene owned. Helene testified that Jimmy Dale forced her to marry him, after he had raped her and made several threats. On their way to get married in Pensacola, Helene contends that they stopped at an attorney's office where Jimmy Dale forced her to sign a document drafted by his attorney transferring title of the property in which he was interested, into his name. She testified that she thought she was signing a prenuptial agreement. Jimmy Dale testified that she wanted to transfer title to his name to prevent her children from interfering with her affairs.

Helene testified that after they were married, Jimmy Dale forced her to transfer \$50,000 into his checking account in order to purchase a piece of property at a tax lien sale. She contends that she gave him the money believing that he was purchasing the property for her and that title would be in her name. Jimmy Dale contends that the \$50,000 was a gift from Helene.

Helene filed a complaint for divorce in the Stone County Chancery Court based on habitual cruel and inhuman treatment or irreconcilable differences. Additionally, she also sought to have the two warranty deeds set aside. The chancery court granted Helene a divorce on the grounds of habitual cruel and inhuman treatment. The court set aside the warranty deed executed by Helene to Jimmy Dale before they were married, ordered that the second warranty deed should be held by Jimmy Dale in constructive trust for Helene, and also that he should immediately execute a warranty deed transferring title to Helene. The court subsequently entered two amended judgments. The first amended judgment corrected erroneous legal descriptions of the properties in question. The second amended judgment awarded Helene certain personal property she owned before she was married.

## DISCUSSION

### WARRANTY DEED

The chancellor set aside the warranty deed that Helene executed in favor of Jimmy Dale for lack of consideration. Jimmy Dale now argues that the lower court erred in doing so because Helene failed to meet the burden of proof required in order to set aside a deed.

First of all, in determining the appropriate standard of review, this Court will not reverse a chancellor absent the decision being manifestly wrong or not supported by substantial, credible evidence. *Maslowski v. Maslowski*, 655 So. 2d 18, 20 (Miss. 1995). Moreover, this Court presumes with no

specific findings on the record, the chancellor resolved all such fact issues in favor of the appellee. *Maslowski*, 655 So. 2d at 19.

Jimmy Dale testified that he gave Helene \$45,000 for the land, but has no receipt to prove that payment was made. Helene testified that she never received any money for the land. In the absence of fraud, the argument that the land was taken without consideration is not well founded. *Patterson v. Merchants Truck Line, Inc.*, 448 So. 2d 288, 291 (Miss. 1984). A voluntary conveyance of land can not be set aside at the whim of the grantor simply on the ground that the conveyance was made without any consideration. However, this Court will consider slight instances of fraud or duress to rescind a conveyance given for grossly inadequate consideration. *Patterson*, 448 So. 2d at 292 (citations omitted).

Although the judgment only states that the transfer of the warranty deed should be set aside for lack of consideration, we find it stated in the lower court's opinion:

The facts presented in this case indicate that the mixture of a domineering personality and greed, and a psychologically frail woman, operated to strip Helene of most, if not all, of her assets over a very short period of time. Those assets ending upon the hands of the domineering partner, Jimmy Dale.

The lower court also took the testimony of Dr. William P. Osborne, Helene's psychologist, into consideration. Dr. Osborne testified that Helene suffered from post-trauma stress disorder, caused by a series of traumatic experiences in her life, such as the death of her mother, her second husband's suicide, plus the abuse she received during her marriage to Jimmy Dale. Dr. Osborne testified that characteristics of this disorder may include an inability to concentrate enough to make proper decisions, poor memory, being easily manipulated by others, and hostility towards others among other characteristics. Helene testified on direct that when she executed the deed that Jimmy Dale had his attorney prepared, she thought she was signing a prenuptial agreement.

When determining whether Helene was under duress, the ultimate fact to consider is whether she was deprived of free exercise of her own will. *Duckworth v. Allis-Chalmers Mfg. Co.*, 150 So. 2d 163, 164 (Miss. 1963). The conduct of the dominant party must have been such as to override the volition of the victim. *Duckworth*, 150 So. 2d at 164.

Considering all the evidence supporting the chancellor's finding of Helene's state of mind and Jimmy Dale's dominant personality, and also keeping in mind our standard of review, we do not find that the chancellor erred in setting aside the deed for lack of consideration under these facts.

#### CONSTRUCTIVE TRUST

Jimmy Dale also argues that the chancellor erred in creating a constructive trust because Helene never raised the issue of a constructive trust in her pleadings. Helene testified that Jimmy Dale demanded that she give him \$50,000 in order to purchase a piece of property being sold by the IRS for a tax lien. She transferred \$50,000 into his checking account for him to buy the property. She testified that she thought the title of the property would be in her name; however, it is solely in Jimmy Dale's name. Jimmy Dale stated that the \$50,000 was a gift from Helene.

This Court has applied the equitable theory of resulting or constructive trust to protect the community property interest of a wife in real property acquired in Mississippi solely in the husband's name. *Palmer v. Palmer*, 654 So. 2d 1, 2 (Miss. 1995). Furthermore, in a divorce proceeding, marital property is "subject to equitable division unless it can be shown by proof that such assets are attributable to one of the parties' separate estates prior to the marriage or outside the marriage." *Maslowski*, 655 So. 2d at 20 (citing *Helmsley v. Helmsley*, 639 So. 2d 909, 914-15 (Miss. 1994)). The chancellor also has authority to equitably divide jointly accumulated property and in doing so, look behind the formal state of title. *Carrow v. Carrow*, 642 So. 2d 901, 906 (Miss. 1994). This principle was expanded when the court held that the chancellor has the power to divest title to real property from one spouse and vest it in the other. *Carrow*, 642 So. 2d at 906; *Draper v. Draper*, 627 So. 2d 302, 305 (Miss. 1993) (distinguished on other grounds). Fairness is the prevailing guideline in marital division. *Carrow*, 642 So. 2d at 906; *Ferguson v. Ferguson*, 639 So. 2d 921, 929 (Miss. 1994) (distinguished on other grounds).

The *Ferguson* case set forth the suggested guidelines chancery courts should follow in evaluating the division of marital assets. *See Ferguson*, 639 So. 2d at 928. The first factor listed is direct or indirect contribution to the accumulation of the property. *Id.* In this case, Helene testified that she gave Jimmy Dale the money to purchase the land for her, and that the title of the land should have been in her name. The chancellor was acting well within his discretion when he determined that the land should be held in constructive trust for Helene. We find that there is substantial evidence to support the chancellor's findings and therefore affirm the judgment of the chancery court.

**THE JUDGMENT OF THE STONE COUNTY CHANCERY COURT IS AFFIRMED.  
COSTS OF THIS APPEAL ARE TAXED TO THE APPELLANT.**

**FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, KING,  
McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR.**