

2010 WL 9572323 (Ky.App.) (Appellate Brief)  
Court of Appeals of Kentucky.

Linda ROSE a/k/a Linda Webb, Defendant/Appellant,

v.

Jon ACKERSON, Administrator of the Estate of William Bale, and Sherry Graff, Plaintiffs/Appellees.

No. 2010-CA-001094.

November 15, 2010.

Appeal from Jefferson Circuit Court

Hon. Brian C. Edwards, Judge

Case No. 08-CI-7860

**Brief for the Appellees**

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**\*i I. INTRODUCTION**

On February 26, 2010, Judge Brian C. Edwards, Jefferson Circuit Court Judge, Division 11, presided over a bench trial pertaining to the proceeds of an annuity, totaling \$30,734.89. At the conclusion of that bench trial, Judge Edwards, based upon the evidence presented, found that a constructive trust had been established between the decedent, William Bale, and the Appellant, Linda Rose a/k/a Linda Webb, pertaining to the annuity beneficiary proceeds, and that under the principles of equity, awarded the annuity beneficiary proceeds to the Appellee, the Estate of William Bale. Appellant, Linda Rose a/k/a Linda Webb, has appealed the findings and verdict of the February 26, 2010 bench trial.

**\*ii II. STATEMENT CONCERNING ORAL ARGUMENT**

The Appellees do not request oral arguments in this matter, as it is the position of the Appellees that the issues presented herein are straightforward and based upon well settled principles of law and equity that can be determined by the Court upon submissions of the briefs.

#### \*1 IV. COUNTER STATEMENT OF THE CASE

The Appellees/Plaintiffs are residents of Jefferson County, Kentucky. The Estate of William Bale is located in Jefferson County, Kentucky. The Appellant/Defendant, Linda Rose a/k/a Linda Webb is a resident of Riverdale, New York. At time factually relevant to this case, the Appellant was a resident of the Commonwealth of Kentucky.

William Bale (hereinafter "Bale"), now deceased, worried about his **financial** affairs in his **elderly** years and worried about being debt free when he passed away. (*Testimony of Sherry Graff*, VR 02/26/2010 at 10:53:06 a.m., and *Testimony of Jon Ackerson*, VR 02/26/2010 at 11:44:10 a.m., and *Testimony of Appellant*, VR 02/26/2010 at 1:52:47 a.m.). On February 14, 2000, Bale executed a Power of Attorney naming Sherry Graff (hereinafter "Graff") as his attorney-in-fact, whereby a fiduciary relationship was created between Bale and Graff. (*Plaintiff's Exhibit 2, App.1, and Testimony of Sherry Graff*, TR 02/26/2010 at 10:55:55 a.m.). Subsequent to Graff's fiduciary relationship with Bale, Bale and Graff entered into an oral agreement of trust over his annuity beneficiary proceeds whereby Graff agreed to: (i) utilize Bale's annuity to handle his affairs while Bale was living, and (ii) then Graff would use the remainder of the annuity to pay Bale's debts after his death. It was further agreed between Bale and Graff that if after paying Bale's debts after his death any proceeds of the annuity remained unspent, then Graff would be entitled to keep said funds for her own benefit. (*Testimony of Sherry Graff* VR 02/26/2010 at 10:55:55 a.m., and *Testimony of Sherry Graff*, VR 02/26/2010 at 11:21:20 a.m., on cross examination).

In order to facilitate this agreement of trust pertaining to the use of the annuity funds to pay Bale's debts at the time of his death, Bale asked Graff for her social security number and date of birth for the annuity beneficiary form. (*Testimony of Sherry Graff*, VR 02/26/2010 at \*2 11:03:40 a.m.). On January 22, 2001, pursuant to and in reliance upon the agreement of trust, Bale designated Graff as the beneficiary of his annuity, and thereby placed said funds in trust with Graff. (Plaintiff's Exhibit 1, App. 2). This annuity beneficiary form was witnessed and notarized by Sandra Green (hereinafter "Green"), a Chase Bank Personal Banker. (*Testimony of Sandra Green*, VR 02/26/2010 at 2:55:38 p.m., and *Plaintiff's Exhibit 1, App. 2*). Bale additionally informed his attorney, Jon Ackerson, about his intentions relating to his entry into the agreement of trust relating to his annuity. (*Testimony of Jon Ackerson*, VR 02/26/2010 at 11:50:15 a.m.).

Towards the end of the calendar year 2001, Graff's time and attention was primarily given to two friends who were suffering from M.S. and Parkinson's disease. (*Testimony of Sherry Graff* VR 02/26/2010 at 11:04:15 a.m.). This took time away from caring for Bale. (*Testimony of Sherry Graff*, VR 02/26/2010 at 11:04:55 a.m.).

On January 28, 2002, the Appellant was named as an additional Power of Attorney for Bale, thereby entering into a fiduciary relationship with him, helping with his **financial** matters and medical needs. (*Testimony of Appellant*, VR 02/26/2010 at 1:40:01 p.m. and *Plaintiff's Exhibit 3, App. 3*). While serving as Bale's fiduciary, the Appellant and Bale discussed how his debts would be paid at the time of his death. (*Testimony of Appellant*, VR 02/26/2010 at 1:54:08 p.m.).

Subsequent to Rose's fiduciary relationship with Bale, Bale and Rose entered into an oral agreement of trust whereby Rose agreed to: (i) utilize Bale's annuity to handle his affairs while Bale was living, and (ii) then Rose would use the remainder of the annuity to pay Bale's debts after his death. It was further agreed between Bale and Rose that if after paying Bale's debts after his death any proceeds of the annuity remained unspent, then Rose would be entitled to \*3 keep said funds for her own benefit. The Appellant confirmed such to Jon Ackerson after Bale's death. (*Testimony of Jon Ackerson*, VR 02/26/2010 at 11:53:58 a.m. through 11:54:52). In order to facilitate this agreement of trust pertaining to the use of the annuity funds to pay Bale's debts at the time of his death, Bale needed the Appellant's social security number and date of birth for the annuity beneficiary form. Prior to July 26, 2002, Bale asked the Appellant for her social security number and date of birth in order to name her as the beneficiary of his annuity. (*Testimony of Appellant*, VR 02/26/2010 at 1:58:01 p.m.). The Appellant also testified that Bale

wanted her to be the beneficiary of his certificates of deposit. (*Testimony of Appellant, VR 02/26/2010 at 1:59:00 p.m.*) Bale told the Appellant that he didn't want the annuity paid to his Estate because he didn't want the Appellant to have to pay any type of monies on it. (*Testimony of Appellant, VR 02/26/2010 at 2:26:34 p.m.*)

On July 26, 2002, Bale executed a change of beneficiary designation to his annuity, which was witnessed and notarized by Green. (*Testimony of Sandra Green, VR 02/26/2010 at 2:55:38 p.m., and Plaintiff's Exhibit 11, App. 4.*) On July 26, 2002, Bale also executed a document in Green's presence, which she notarized, expressing his intention that his annuity and certificates of deposit be part of his estate. (*Testimony of Sandra Green, VR 02/26/2010 at 2:57:57 p.m. through 2:59:35 p.m., and Plaintiff's Exhibit 14, app. 5.*) Bale's intention of the constructive trust, as related to the annuity funds being used to pay the Estate's debts at the time of his death, was exhibited at the time he named the Appellant the beneficiary trustee of such funds (*See Plaintiff's Exhibit 11, App. 4, and 14, App. 5, which were executed the same day*) . Graff continued to utilize her Power of Attorney to care for Bale during the last few years of Bale's life. (*Testimony of Sherry Graff VR 02/26/2010 at 11:05:15 a.m. through 11:08:00*). In \*4 August 2006, the Appellant moved to New York and lived there through the time of Bale's death. (*Testimony of Appellant, VR 02/26/2010 at 2:07:35 p.m. through 2:08:02*).

Bale died February 27, 2008. (*Testimony of Appellant, VR 02/26/2010 at 2:07:35 p.m.*) After Bale's death, Graff spoke with Jon Ackerson about handling the affairs, the annuity and Bale's debts. (*Testimony of Sherry Graff VR 02/26/2010 at 11:08:13 a.m. through 11:08:48 a.m.*) Jon Ackerson attempted to contact the annuity company about the annuity but even after sending his qualification as Executor, the annuity company would not inform him who the beneficiary was. (*Testimony of Jon Ackerson, VR 02/26/2010 at 11:52:52 a.m.*) The Appellant was unaware of Bale's death until she was contacted by the annuity company about her being named as the beneficiary of the annuity. (*Testimony of Appellant, VR 02/26/2010 at 2:08:02 p.m. through 2:08:32 p.m.*) The Appellant immediately then called Jon Ackerson to inform him that she was the beneficiary of the annuity. (*Testimony of Appellant, VR 02/26/2010 at 2:08:32 p.m. and Testimony of Jon Ackerson, VR 02/26/10 at 11:53:30 a.m.*)<sup>1</sup> This was the first time Jon Ackerson learned of who the beneficiary was. During this telephone conversation, the Appellant and Jon Ackerson discussed the constructive trust of Mr. Bale's beneficiary proceeds of the annuity and that such were to pay his Estate's debts and that the balance if any would then go to the beneficiary, the Appellant. (*Testimony of Jon Ackerson, VR 02/26/10 at 11:53:58 a.m. through 11:54:51 a.m.*) The Appellant confirmed on two separate occasions that Bale and the Appellant had an understanding that she as beneficiary was to use the money to pay his debts at his death and then keep whatever was left, if any. (*Testimony of Jon Ackerson, VR 02/26/2010 at 12:27:21 p.m.*) Jon Ackerson sent the Appellant a letter confirming the conversation and a power of attorney for the Appellant to sign so the Estate could use the funds to pay its debts. He also sent a letter to the annuity company regarding such. (*Testimony of Jon Ackerson, VR \*5 0 at 11:54:52 a.m. through 12:00:30 and Plaintiff's Exhibits 5, App. 6, and 6, App. 7*)<sup>2</sup> The Appellant got Plaintiff's Exhibit 5 after her call to Jon Ackerson. (*Testimony of Appellant, VR 02/26/2010 at 2:13:40 p.m.*) Approximately 3 weeks after the Appellant received Plaintiff's Exhibit 5, she was called by Jon Ackerson to inquire if the document had been sign and if the Appellant was going to return it, and the Appellant stated she had been busy but was going to get it done. (*Testimony of Jon Ackerson, VR 02/26/2010 at 12:01:40 p.m.*) The Appellant then went to the bank to sign the documents sent by Jon Ackerson in May 2008, regarding the annuity funds being used to pay the Estates debts, but the line was too long and she left. (*Testimony of Appellant, VR 02/26/2010 at 2:09:26 p.m.*) It is after this that the Appellant cut off all contact with Jon Ackerson and the Estate of William Bale, and this action ensued.

At the time of Bale's death, his only assets of real value were a home and the annuity at issue here. (*Testimony of Jon Ackerson, VR 02/26/2010 at 11:48:45 a.m.*) Bale's Last Will and Testament was a standard simple form style Will. (*Testimony of Jon Ackerson, VR 02/26/2010 at 12:36:51 p.m.*) Kentucky law would require the Estate debts, valid claims against the Estate, to be paid by a solvent Estate. The Estate could not pay out to an heir without paying the valid claims, testate or intestate. (*Testimony of Jon Ackerson, VR 02/26/2010 at 12:36:40 p.m.*) Had the annuity beneficiary funds been used to pay the Estate's debts, said debts would have then been reduced and/or offset. The Appellee's, Estate of William Bale's, debts/valid claims against the Estate, were greater than the annuity's beneficiary value, and thus the debts of Bale would still be, pursuant to Kentucky law and his Last Will & Testament, paid from the balance of the Estate. This is not a case of trying to bring a non-probate asset

into the probate, but instead a \*6 collateral debt payment source which would have offset the debt of the Estate. Why Bale decided to handle his post death debt payments in the manner he did, via the constructive trust with the Appellant, is unknown. Tax considerations as relate to Estates may have been a consideration. The Appellant did testify that Bale had told her that he named her as beneficiary so it would not go through the Estate because he didn't want her to pay any monies on it. (*Testimony of Appellant, VR 02/26/2010 at 2:26:34 p.m.*). Bale suffered, in addition to physical poor health, from anxiety, depression, and worried about dying. (*Testimony of Appellant, VR 02/26/2010 at 1:43:20 p.m.*). Bale's health declines noticeable in the last few years of his life. (*Testimony of Tom Rose, VR 02/26/2010 at 2:52:10 p.m.*).

After a bench trial on February 26, 2010, the Court found by clear and convincing evidence, including weighing the credibility of the witnesses and the contradicting testimonies, that a constructive trust had been established between the decedent, Bale, and the Appellant, as related to the use of the annuity beneficiary funds. The Court further found that under the principles of equity that the funds belonged to the Appellee, the Estate of William Bale, to reimburse it for debts it should not have had to incur, and that the Appellant would be unjustly enriched if allowed to retain said funds. The debts of the Estate were greater than the annuity beneficiary balance, and therefore the Court awarded the entire annuity balance to the Appellee, the Estate of William Bale.

### \*7 V. ARGUMENT

The Jefferson Circuit Court entered an order on May 17, 2010 finding by clear and convincing evidence, including weighing the credibility of witnesses and testimony, that (1) the Appellant had agreed to use the annuity beneficiary funds to pay the debts of the Estate of William Bale, (2) that the Appellant's failure to use the annuity funds to first pay the debts of the Estate of William Bale renders it unconscionable for her to retain said funds, (3) that the Appellant would be unjustly enriched if she retained said funds, and (4) that the Appellant's retention of said funds without first paying the debts of Estate of William Bale was contrary to the intent of William Bale.

The Appellant argues that the Trial Court **abused** its discretion, committed error in finding that the evidence was clear and convincing, and misinterpreted the law as applied to the evidence.

Actions tried upon facts without a jury and the court's findings in such shall be reviewed under the clearly erroneous standard set forth in [CR 52.01](#). [Keeney v. Keeney, 223 S.W.3d 843, 848 \(Ky. App. 2007\)](#). The findings of fact shall not be set aside unless clearly erroneous. *Id.* Due regard shall be given to the trial court's judgment of the credibility of witnesses. *Id.* The trial court's application of the law to the facts shall be *de novo* review. *Id.*

The Court in [Keeney](#) stated “we are prohibited from substituting our judgment for that of a trial court sitting as finder of fact, even when much of the testimony is presented to the trial court by deposition.” *Id.* at 851. The Court, while recognizing that evidence must be clear and convincing for the establishment of a trust, went on to quote that it is a “well-recognized rule that the findings by the chancellor will not be disturbed unless they are against the preponderance of the evidence.” *Id.* at 850 (quoting [Roche v. Roche, 188 Ky. 327, 222 S.W. 86, 88 \(1920\)](#)). \*8 Evidence establishing a constructive trust is governed by a clear and convincing standard, but that does not mean that it must be entirely free from contradictions. *Id.*

The Court in [Keeney](#), quoting [Moore v. Terry, 293 Ky. 727, 170 S.W.2d 29, 32 \(1943\)](#), stated:

These texts and authorities state the rule to be that a constructive trust is created by equity regardless of any actual or presumed intention of the parties to create a trust where the legal title to property is obtained through fraud, misrepresentation, concealment, undue influence or taking advantage of one's weakness or necessities, **or through similar means or circumstances rendering it unconscionable for the holder of legal title to retain the property.** (emphasis added by the Court).

*Id.* at 849.

Unconscionable includes the breach of a “confidential relationship” or “fiduciary relationship”, which includes “among others the relation of trustee and beneficiary, guardian and ward, agent and principal, attorney and client.” *Appleby v. Buck*, 351 S.W.2d 494, 496 (Ky. 1961).

A party seeking to establish the imposition of a constructive trust must establish a confidential relationship between the parties. *Keeney* 223 S.W.3d at 849. Execution of a power of attorney creates a form of agency. *Ingram v. Cates*, 74 S.W. 3d 783, 786 (Ky. App. 2002). “[W]here a person acquires legal estate in property as the agent of another, or upon trust and confidence that he will acquire it for the benefit of another, equity will imply a trust in favor of the latter.” *Antle v. Haas*, 251 S.W. 2d 290, 295 (Ky. 1952) (citing 65 C.J., Trusts § 227, p. 481). For purposes of raising a constructive trust and violation thereof, such relationships or confidences are to be construed liberally in favor of the confider and against the confidant. *Appleby*, 351 S.W. 2d at 496. (citing 54 AmJur 178-179 (Trusts, § 233)).

\*9 Even where legal title is not obtained wrongly, the Court may impose a constructive trust to prevent a party from being unjustly enriched or in any way violating equity in good conscience. *Kaplon v. Chase*, 690 S.W.2d 761, 763 (Ky. App. 1985).

The Court's May 17, 2010 Findings of Fact, Conclusions of Law, and Order of Final Judgment in this case clearly stated:

(i) The Plaintiffs had shown by clear and convincing evidence that the Appellant entered into an agreement with Bale to use the annuity fund, which she was the beneficiary of, to pay the debts of Bale's Estate at the time of his death.

(ii) The Plaintiffs make no claim fro breach of contract; and

(iii) That the Plaintiffs sought only the Court to use its equity powers.

The Trial Court reasoned the Appellant's failure to use the annuity funds in the manner which she had been entrusted rendered it unconscionable for her to retain the funds. (citing *Horn v. Horn*, 562 S.W.2d 319, 321 (Ky. App. 1978) and *Moore*, 170 S.W.2d at 32). When testimony is corroborated, even if only in part, and therefore does not consist solely of the testimony of the person trying to establish the trust, the “definite, clear, and convincing” burden has been satisfied. *Horn*, 562 S.W. 2d at 321.

The Trial Court heard the evidence and testimonies, and based upon the facts presented to it found by clear and convincing evidence that equity required the imposition of a constructive trust as related to Bale's annuity funds. The Evidence demonstrates the intention of Bale, as related to his annuity proceeds. The Appellant's actions and admissions, while in a fiduciary relationship with Bale, substantiate that she agreed to serve in a trustee or fiduciary capacity over the annuity funds for Bale's intended purpose. Her change of mind and/or heart after Bale's death to fulfill her responsibility and fiduciary duty to Bale and his Estate, the Appellee, is \*10 unconscionable and warrants the Trial Court's use of its equitable powers. The Trial Court did not **abuse** its discretion when it found that clear and convincing evidence was present

The Trial Court did not **abuse** its discretion when it denied the Appellant's motion to dismiss for failure to state a claim. The Appellant was fully aware of the Plaintiff's claims seeking the Trial Court to impose a constructive trust. Such was argued by the Plaintiffs/Appellees in response to the Defendant's/Appellant's September 15, 2008 Motion to Dismiss and the Defendant's/Appellant's February 19, 2010 Motion to Dismiss. The Appellant even acknowledged the Appellee's claims for the Trial Court to use its equity powers, seeking the imposition of a constructive trust, while explaining its Motion to Dismiss prior to the bench trial. (*Appellant's Pretrial Motion to Dismiss*, VR 02/26/2010 at 10:36:20 a.m.).

Under C R 8.01 the Appellees only have to assert a claim for relief (which was done in this case). In *Pierson Trapp Company v Peak et al*, 340 S. W. 2d 456 (Ky. 1960) follows a long line of Kentucky judicial authorities regarding the sufficiency of pleadings. More specifically, the Court stated on page 460 of *Pierson Trapp Company*, supra:

Under the theory of ‘notice’ pleading adopted by the Civil Rules a complaint will not be dismissed for failure to state a claim unless it appears to a certainty that the plaintiff would not be entitled to relief under any state of facts which could be proved in support of his claim. [Spencer v Woods, Ky 282 S. W. 2d 851; Clay, CR 12.02](#). It is immaterial whether the complaint states ‘conclusions’ or ‘facts’ as long as fair notice is given. Moore's Federal Practice, Vol. 2, p. 1647.

In the Appellee's Amended Complaint, it has clear alleged that the Appellant, while in her fiduciary capacity, agreed to the use of the annuity funds to pay Bale's debts upon his death, with the remainder, if any, going to her. Additionally it is pled that she failed to do so. The Amended Complaint states that the Appellant acknowledged that she was to use the funds as they were intended by Bale and for which she was entrusted. Her failure to do so is \*11 unconscionable. The Court in *Keeney* stated “even if defrauding Barabar of her beneficial interest was not Winfried's and Ruth's original intention, it became so when she decided to divorce their son.” [Keeney 223 S.W.3d at 850](#). Here, the Appellant acknowledged her responsibility as related to the funds. She even went to the bank to take steps to fulfill her entrusted duty, but then changed her mind.

The Court did not **abuse** its discretion when it denied the Appellant's Motion to Dismiss.

The Trial Court did not commit reversible error when it allowed parol evidence in the examination of the facts related to this case.

As the Trial Court noted in its May 17, 2010 Findings of Fact, Conclusions of Law, and Order of Final Judgment, the Appellees were not making a claim for breach of contract. (*May 17, 2010 Findings of Fact, Conclusions of Law, and Order of Final Judgment, page 4, App. 8*).

Parol evidence is admissible when evaluating whether or not to impose a constructive trust. The concept of the constructive trust is to set aside legal documents in favor of the equitable remedy. Such requires parol evidence.

The Kentucky statute of frauds, has never applied to trusts, whether express, implied in fact, or raised by implication of law. [Appleby, 351 S.W.2d at 496](#). Accordingly, a constructive trust does not fall within the statute of frauds and need not be in writing. *Id.* at 496,498.

Fraud can be implied in cases where parol conditions attached to a conveyance make it clear that the grantee is to perform or comply with those conditions and the grantee fails to do so. As explained by the court, “when the grantee by act or word has induced the grantor to make the conveyance under an agreement or promise that certain parol conditions attached to it will be complied with, the law will imply a fraud from the failure of the grantee to perform the annexed conditions.” [Stiefvater v Stiefvater, 53 S.W.2d 926, 927 \(Ky. 1932\)](#) (citing \*12 [Becker v. Neuration, 149 S.W. 857 \(Ky. 1912\)](#)). Bale, as he had done previously with Graff, required the Appellant to use the annuity funds to pay his debts at the time of his death before he executed the beneficiary designation form designating the Appellant as the beneficiary. Bale's intentions and parol conditions pertaining to how the annuity beneficiary funds were to be used are evidenced by the testimonies at trial and Plaintiff's Exhibit 14, which was signed and notarized the same day and by the same Chase Bank notary as the beneficiary designation form, Plaintiff's Exhibit 11.

It is a longstanding and “settled rule” in Kentucky that a constructive trust in real estate may be created by a parol agreement made prior to, or contemporaneous with, the execution of the conveyance. [Moore, 170 S.W.2d at 31](#). In *Terrill v. Estate of Terrill*, the court implicitly recognized the applicability of constructive trusts to cases involving an inheritance, admitted oral testimony, and applied the same rules regarding constructive trusts relating to real property, although it did ultimately deny imposition of a constructive trust due to the plaintiff's failure to satisfy his evidentiary burden. [Terrill v. Estate of Terrill, 217 S.W. 3d 858 \(Ky. App. 2006\)](#). Constructive trusts, therefore, need not involve real estate and a parol agreement or evidence thereof is admissible, provided that the evidence is “definite, clear, and convincing”. [Horn, 562 S.W. 2d at 320](#).

The Trial Court did not committed error by allowing parol evidence to alter the terms of a Last Will & Testament, because the Trial Court did not alter the terms of the Will. Nor was sought relief sought by the Appellees.

The Appellees have not sought to alter the terms of Bale's Last Will & Testament, nor have they sought to bring the annuity funds into the probate of the Estate. The Appellee, the Estate of William Bale, sought to enforce the terms of the constructive trust between Bale and the Appellant related to the use of the annuity funds, for which the Appellee, the Estate, would \*13 be the beneficiary of. Had the Appellant fulfilled her fiduciary commitment to the Bale and his Estate, such would have been a collateral source of reducing the claims against the Appellee. In this particular case, the annuity proceeds were insufficient to cover all the claims against the Appellee, and therefore the Appellee would still be required by Kentucky law to resolve said claims. The annuity proceeds were a collateral benefit to the Estate. The constructive trust does not alter the Last Will & Testament of William Bale.

The Trial Court did not **abuse** its discretion in failing to find that the doctrine of “unclean hands” applied to Bale or the Appellees. No evidence was presented to warrant a finding of “unclean hands” on the part of Bale or the Appellees. As noted in the Appellees' Statement of the Case, it is unclear exactly why Bale decided to have the annuity paid to an individual who was then obligated to use it to pay his debts. While during the trial a speculative possibility was referenced as possibly avoiding tax issues related to it, such has not been proven to be a crime or contrary to law and was merely speculation. People everyday partake in **financial** planning with the goal of reducing or avoiding taxes. No evidence was presented that Bale or the Appellees broke the law or had “unclean hands” in this matter. The Appellant's have attempted to mislead this Court by claiming that there was “admitted testimony of one of the Appellees that the purpose behind their annuity scheme was a tax dodge.” (*See Appellant's Argument, page 21*). It has been clear what Bale wanted from his fiduciaries, Graff & the Appellant, as related to the use of the annuity to pay his debts, however, why he chose such a path is speculative. The Trial Court did not commit reversible error related to the doctrine of “unclean hands.”

#### **\*14 VI. CONCLUSION**

The Trial Court did not commit any reversible error or **abuse** its discretion. This Court should defer to and uphold the Trial Court's finding of facts and conclusions of law.

WHEREFORE, the Appellees respectfully request that This Court affirm the May 17, 2010 Judgment of the Trial Court.

#### Footnotes

- 1 Noteworthy is that she had not had contact with Jon Ackerson for 18 months.
- 2 Noteworthy is that the Appellant on 2/26/10 was questioned about the contradiction between her trial testimony that she never confirmed to Jon Ackerson that she was under a trust agreement to utilize the funds to pay the debts of the Estate, in comparison to her deposition testimony, just 21 days prior, that she had no recollection of what she and Jon Ackerson discussed during this phone call. (*Testimony of Appellant, VR 02/26/2010 at 2:12:32 p.m.*).