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Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-002723-MR

RHONDA GAIL NEWMAN — APPELLANT

v.

APPEAL FROM FLOYD CIRCUIT COURT
HONORABLE JOHN DAVID CAUDILL, JUDGE
ACTION NO. 02-CI-00433

LARMAN ROGERS — APPELLEE

OPINION
REVERSING AND REMANDING

** ** ** ** **

BEFORE: BARBER AND JOHNSON, JUDGES; HUDDLESTON, SENIOR JUDGE.[1]

JOHNSON, JUDGE: Rhonda Gail Newman has appealed from an order of proceedings and judgment of the Floyd Circuit Court entered on September 4, 2003, and an amended judgment, entered on November 20, 2003, which granted Larman Rogers an undivided one-half interest in real estate conveyed to Rhonda. Having concluded that the trial court erred in denying Rhonda's motions for a directed verdict, we reverse and remand.

[1] Senior Judge Joseph R. Huddleston sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

In 1983 Rhonda, who was 16, and Larman, who was 33 or 34, were involved in a romantic relationship when Rhonda became pregnant. On January 19, 1984, Rhonda gave birth to the parties' child, Kenneth Wayland Rogers. The parties cohabitated for 18 years, but never married. Initially, the parties rented a mobile home from Larman's brother for one and one-half years. During this time, the U.S. Department of Housing and Urban Development (HUD) made the parties' rent payments.

In September 1985 Rhonda and the child moved out of the rented mobile home and Rhonda's grandmother, Pearl Roberts, purchased a mobile home for Rhonda and the child to live in. The mobile home sat on land titled in Pearl's name. Pearl paid $4,000.00 as a down payment on the mobile home and took out a mortgage for the balance of the purchase price. Rhonda had the HUD payments switched to this mobile home and HUD paid all mortgage payments. After purchase of this mobile home, but prior to Rhonda moving in, she and Larman reconciled and the parties and their child moved into the new mobile home. Larman testified that he was supposed to pay off the debt on the mobile home, but while working in 1985, he got hurt and did not return to work until 1993. He gave Pearl $1,000.00 cash at some point from monies received from a workers' compensation award. It is disputed whether this money was for an interest in the mobile

home or whether it was reimbursement for monies Pearl paid for hook-up fees for the mobile home on her property.

Upon Pearl's death on July 19, 1993, Rhonda inherited the mobile home and the land on which it is situated. Larman testified at trial that there was an agreement that when the mortgage on the mobile home was paid in full, the mobile home would belong to Rhonda and him. However, Larman lost on this part of his claim at trial, and on appeal he makes no claim to any interest in this mobile home, where Rhonda still resides.[2]

After this mobile home was free of debt, Rhonda took out a loan for $3,000.00 with Matewan Banks in her name to purchase and repair another mobile home, owned by Tracy Hamilton. To secure the loan, Rhonda used a vehicle that was titled in her name as collateral, which she testified she purchased with money she had saved. Tracy made out a written receipt to Rhonda for the purchase price of $2,000.00, however he testified at trial that he assumed that both Rhonda and Larman made the purchase. There was no title to the mobile home at the time of purchase. Rhonda later obtained a title in her name. The parties used a Lowe's credit card to purchase items to repair the mobile home. They also poured steps to the mobile

[2] Larman testified that he made improvements on Pearl's land and the mobile home. He installed a new septic system, landscaped, filled land with dirt, built two outbuildings on the land, refloored the kitchen and bathroom of the mobile home, and dug the line for the city water hookup and paid for it to be hooked up.

home. They then rented the mobile home to Terry Tackett, who was still renting the mobile home as of the date of trial. Terry made his rent payments through HUD and Rhonda applied these payments to the bank loan until it was paid in full. Since Rhonda and Larman separated, Rhonda has collected the rent from Terry.

After the loan on the rented mobile home was paid in full, both parties met with Kenneth Roberts regarding a tract of land that he was interested in selling. Larman testified that he was the first to approach Kenneth about buying the property. Using the land as security, Rhonda borrowed $15,000.00 from Bank One, Pikeville, NA and paid Kenneth cash for the land. In return, Kenneth executed a general warranty deed to Rhonda as grantee on September 1, 1995. Larman's name was not on the deed or the mortgage, and he signed no papers involved in the transaction. On September 6, 1995, the deed was recorded in the Floyd County Court Clerk's Office in Deed Book 389, Page 239. Larman admitted that Rhonda acquired the real estate through a bank loan. He claimed that the only reason Rhonda's name was the only name on the deed was because only Rhonda was obligated on the bank loan.

Larman testified that the parties intended to build a house on the land; but that after Rhonda's mother moved on or near the land, Rhonda stated that she would not live near her

mother. The payments from the rented mobile home were used to make all the monthly payments on the real estate mortgage. The parties installed a water line and a septic tank on the land. Larman testified that he paid $2,000.00 for the installation of the septic system, but Rhonda disputes his claim. The land was later rented and Rhonda has collected all of the rent payments since that date. The mortgage on the real estate was paid off in September of 2000. The parties ended their cohabitation in 2001.

During the period that the parties cohabitated, Larman worked from 1983 until 1985 in the mines until he got hurt. He did not return to work until sometime in 1993 or 1994, and had no income during this time. He did receive a lump-sum workers' compensation award of $7,000.00 or $8,000.00 and received benefits of $105.00 per month during this period, and also performed some contract labor. In 1994 he worked for Harold Telephone, and, beginning in 1997, he worked for a landscaping company, making between $10.00 and $11.00 per hour. During the period of cohabitation, Rhonda went to beauty school, but she mainly worked as a housekeeper.

Larman testified that all the bills were paid during the period of cohabitation with his money. However, he also testified that Rhonda earned income as well, but he contends that he made at least $30,000.00 more than she did during this

time. It is undisputed that Rhonda had set up a savings account at the Bank Josephine in the name of the parties' child. Larman did not have a checking account, so he would endorse his paychecks over to Rhonda who would then cash them at the Bank Josephine. Larman testified that Rhonda would pay bills and then give the rest of the money to him. Rhonda testified that Larman only contributed financially to their relationship during the last four years before it ended, by paying the electric bill, phone bill, television bill, and water bill.

Both parties testified as to their understanding regarding their ownership of property during the cohabitation period. Larman stated that Rhonda and he never agreed that he would own items, they just "bought them together."[3] It is undisputed that Larman never asked for any of the property to be titled in his name, and that Rhonda never said Larman was the owner of any of the property. Larman stated, "[w]e planned on building a house together on the hill and so I figured I owned half of it." Larman stated that he always assumed that he and Rhonda shared everything, but there was no written agreement. However, Larman did testify that before their relationship

[3] Larman stated in his answers to interrogatories served upon him by Rhonda that "[t]he parties hereto had an agreement which was that when they bought the first trailer, they would share ownership of it, fix it up, share the rent and that notwithstanding whose name something was put, everything they owned together. Each of the parties made like contributions to the acquisition of the property or to the general upkeep of their relationship."

ended, Rhonda offered to sell a portion of the real estate and to give him one-half of the proceeds. Rhonda testified that Larman never stated that she owed him any money for the land or the mobile homes and that when Larman moved out in 2001 he took whatever he wanted.[4] Rhonda further denied having any financial agreement with Larman. She stated that the land and the mobile homes were not acquired through joint efforts, but solely because of her efforts.

Larman moved out of the mobile home on August 4, 2001. Larman claims to have been "ejected" from the property, while Rhonda testified that the parties had discussed Larman moving out for about six months prior to the time he left. She had helped him set up house in a mobile home on his daughter's property, prior to his move.

On May 1, 2002, almost one year after Larman moved out of the mobile home, he filed a complaint in the trial court alleging that, during the parties' 19-year cohabitation, they acquired various property paid for wholly or partly by him. Larman described his relationship with Rhonda as a joint venture

[4] The items that Rhonda claimed Larman took included: riding lawn mower, ATV (four-wheeler), loading ramps, floor model television, stereo system, records, tapes, Rainbow vacuum cleaner, approximately 75 game cocks, roosters and hens, chicken cages, deep freezer, window air conditioner, chest of drawers, porch swing, tools, meat saw, skill saw, jig saw, camcorder, several guns, long aluminum ladder, binoculars, scanner, deep fryer, electric skillet, coffee maker, alarm clock, pots and pans, dishes, pet carrier, two ice coolers, VCR, weed eater, gas grill, wall pictures, pillows, afghan, bed clothes, cordless phone, clothes, personal items, fishing rods, reels and tackle.

and claimed that the two mobile homes, the real estate, and certain vehicles were purchased by a specific agreement that they would jointly share the property, its income, and its debt.[5] Larman requested an accounting from Rhonda as to profits and assets of the joint venture and an equitable division of property.

On May 29, 2002, Rhonda filed a verified answer denying that Larman contributed to the purchase of the mobile homes, the real estate, or the vehicles. She then filed a counterclaim on February 19, 2003,[6] requesting one-half of the value of all items that Larman removed from the mobile home when he left in August 2001, and reimbursement for credit card charges that he placed on her Lowe's credit card in the amount of $584.30. On March 13, 2003, in reply to Rhonda's counterclaim, Larman admitted that he took some of the items, but denied taking other items. He also admitted charging the purchase of a refrigerator on the credit card, but he claimed that he was paying on the credit card, while Rhonda was adding charges to it.

[5] In his answers to interrogatories served upon him by Rhonda, Larman stated that the two mobile homes had values of $5,000.00 and $2,500.00 and the real estate had an estimated value of $22,000.00.

[6] Rhonda filed a motion on the same date to file the counterclaim, but it does not appear that the trial court entered an order regarding this motion.

A jury trial was held on August 15, 2003. Rhonda's attorney made a motion for a directed verdict at both the close of Larman's evidence and at the close of all evidence. The trial court denied both motions. The jury returned a verdict finding that the two mobile homes and the two vehicles were not subject to an agreement between the parties and belonged to Rhonda. However, the jury found that the real estate was subject to an agreement between the parties, and that Larman was entitled to an interest in that property.[7] In its order of proceedings and judgment, entered on September 4, 2003, the trial court dismissed all of Larman's claims, except as to the real estate, and found that Rhonda and Larman were owners of the real estate "pursuant to the parties[']' previous agreement." The trial court ordered the parties to submit proof of the income from the real estate from August 4, 2001, to date, and all expenditures related to the real estate. The trial court stated that it would then conduct a hearing to determine the parties' percentage of ownership in the real estate. The trial court dismissed Rhonda's counterclaim, "subject to such as she

[7] Specifically, the jury instruction stated: "If the jury believe from the evidence that [ ] Larman [ ] and [ ] Rhonda [ ] made and entered into an agreement whereby the ownership of certain property would be shared by them in equal parts in return for maintaining the same property you will find for [ ] Larman [ ]. Unless you so believe you will find for [ ] Rhonda [ ]. You will say opposite each item claimed by [Larman] whether you believe an agreement was made concerning said item. Checking 'yes' will mean that you have found such agreement and checking 'no' will mean you have not found such an agreement."

may be entitled to by virtue of the previous portions of this Judgment."

Rhonda then submitted her expenditures and receipts and filed a motion to set a hearing on the matter.[8] Larman filed a response stating that he had no report of expenditures with regard to the real estate, but that the percentages of ownership had already been determined by the jury as equal and therefore the trial court should enter an order stating the division as equal. Rhonda then filed a motion for the trial court to clarify the judgment and order as to proportions of ownership so the judgment could be made final and appealable.

On November 20, 2003, the trial court entered an amended judgment ordering the parties to have equal ownership of the real estate and rendered the judgment final and appealable. Then on December 2, 2003, the trial court entered findings of fact, conclusions of law and final judgment ordering the Floyd County Master Commissioner to execute and deliver to Larman a conveyance conveying the undivided one-half interest and also "the sum of $918.46, and one-half of any income from the property in question subject to expenses in the future, from and including October 2003."[9] This appeal followed.

[8] On November 18, 2002, the parties entered into an agreed order as to the expenditures paid by Rhonda after the parties' cohabitation.

[9] Rhonda did not appeal this order. She only appealed the amended judgment entered on November 20, 2003.

Rhonda's sole argument on appeal is that the trial court erroneously denied her motions for a directed verdict, pursuant to CR[10] 50.01,[11] made at the close of Larman's presentation of evidence and her motion made at the conclusion of all evidence. She specifically states in her brief as follows:

> The Appellant's counsel made an appropriate Motion on the ground that the Appellee had failed to produce evidence of title in any form to the parties' property, and that the only evidence in the record is that the Deed of Conveyance was in the Appellant, Rhonda Newman's, name only. The Appellee failed to produce even a scintilla of evidence to the contrary from which the Jury might reasonably infer that the parties had contracted another form of ownership.

The colloquy concerning Rhonda's motion for directed verdict after the close of Larman's case-in-chief was as follows:

> Mr. Webster: Plaintiff closes.
>
> By the Court: Motion?

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[10] Kentucky Rules of Civil Procedure.

[11] CR 50.01 states as follows:

> A party who moves for a directed verdict at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted, without having reserved the right so to do and to the same extent as if the motion had not been made. . . . A motion for a directed verdict shall state the specific grounds therefor. . . .

CR 50.01 applies to jury trials. See Morrison v. Trailmobile Trailers, Inc., 526 S.W.2d 822, 823 (Ky.App. 1975).

Mr. Webb: Your Honor, I would make a directed verdict--is that . . .

By the Court: Do you want to make one or move for one?

Mr. Webb: I will move for one, Your Honor. Based on Kentucky Law, there is no palimony in the State of Kentucky. There is presumption that the person whose name appears on the title and/or deed is presumed to be the owner thereof. Is that there has been no documentary evidence by the Plaintiff showing that there was an express agreement between the parties that they could be co-owners [sic]. And, therefore, based upon the fact that my client's name appears [as] the titled owner on the vehicles as well as the deeds of the property and the mobile homes, I would ask the Court to have the Court to give a directed verdict, she's the owner thereof.

By the Court: Response?

Mr. Webster: The proof is that there's a joint economic venture and that various items were purchased pursuant, and he's the owner of one-half (1/2) of that venture.

By the Court: Well, the Plaintiff has testified in this case. He testified that it was intended that both have it. That's a jury issue. Motion is OVERRULED.

The colloquy concerning Rhonda's motion at the close of all the evidence was as follows:[12]

[12] In her brief, Rhonda's attorney refers to this second motion as a motion for judgment notwithstanding the verdict under CR 52.02. However, we conclude that a motion for judgment notwithstanding the verdict would not have been appropriate at this juncture in the case as she had not moved for a directed verdict at that point. See Hall v. King, 432 S.W.2d 394, 396 (Ky.App. 1968)(citing CR 50.02). While Rhonda stated at trial that the motion was for "judgment," we construe it as a motion for directed verdict under CR 50.01.

By the Court: Let the record reflect we're back in Chambers outside the presence and hearing of the Jury. Motions, Counsel?

Mr. Webb: Yes, Your Honor. At this point, I'll make a motion for judgment. Based upon the testimony of the Plaintiff upon being recalled, he admitted that there had been no expressed agreement or agreement by the parties at the time of acquiring these properties as to its joint ownership. We point Your Honor to the Complaint of the Plaintiff which states specifically the parties hereto bought a mobile home in the early 80s pursuant to a specific agreement between them. Paragraph 5: The second mobile home was acquired by the parties pursuant to the same agreement. Number 6: The parties next bought a tract of property and the property was paid for by rent from the mobile home portion of the same joint venture.

Your Honor, they have maintained from the outset of this that there was a specific agreement by the parties. My client denied that. His client basically supported that by his testimony that there was no agreement nor had they ever discussed it prior to either him moving out or them apparently at one time going to build a home.

By the Court: Response.

Mr. Webster: The parties agreed when they got the first trailer that the rent would pay for it. And then when they had the next trailer, they agreed that they'd go buy this trailer and jointly own it and share the rent. And

> then the proceeds of that paid for the land. It's all part of the same economic venture.
>
> Mr. Webb: I'll point to the Complaint, Your Honor. It says, "Specific agreement", and they've alleged that.
>
> By the Court: I'm going to OVERRULE your motion in that the jury can reach its own conclusions based upon the conduct of the parties as to whether there was an agreement, which is specific by its very nature based upon their conduct. Anything else?
>
> Mr. Webb: No.
>
> Mr. Webster: No.

Our standard of review of the denial of a motion for a directed verdict is to determine whether the trial court erred as a matter of law.[13] "All evidence which favors the prevailing party must be taken as true and [we are] not at liberty to determine credibility or the weight which should be given to the evidence, these being functions reserved to the trier of fact" [citations omitted].[14] There must be "a complete absence of proof on a material issue in the action, or [ ] no disputed issue of fact exists upon which reasonable men could differ"

[13] Taylor v. Kennedy, 700 S.W.2d 415, 416 (Ky.App. 1985).

[14] Lewis v. Bledsoe Surface Mining Co., 798 S.W.2d 459, 461 (Ky. 1990); Humana of Kentucky, Inc. v. McKee, 834 S.W.2d 711, 718 (Ky.App. 1992).

[citation omitted].[15] After reviewing all of the evidence presented at trial and utilizing the required standard of review, we conclude that the trial court erred as a matter of law in failing to direct a verdict as we find no evidence indicating that Larman had any interest in the real estate.

Larman argues to this Court that Rhonda's motions for directed verdict were not properly made because the motions did not address the sufficiency of the evidence, but were instead based upon a lack of an expressed agreement, and because Rhonda failed to file a post-judgment motion challenging any error of law. We disagree. Larman's complaint alleges that there was a specific agreement between the parties. In both motions, Rhonda argues that there was not sufficient evidence to prove this allegation. Further, we know of no authority which requires Rhonda to file a post-judgment motion to properly preserve her motions for a directed verdict. Therefore, we conclude that Rhonda's motions for a directed verdict met the requirements of CR 50.01. Having concluded that Rhonda's appeal is properly before this Court,[16] we will address whether the trial court incorrectly denied her motions for a directed verdict.

[15] Taylor, 700 S.W.2d at 416.

[16] Larman further argues that Rhonda failed to state the issues on appeal in her prehearing statement. Rhonda's prehearing statement lists the issues as "[t]he parties acquired certain property while living together that was not equitably divided" and "lack of support for the judgment in fact and evidence." Rhonda's only argument before this Court is that it should have

Larman argues that Rhonda's appeal has no merit because it is based on a lack of written proof that Larman had an interest in the real estate as required by the Statute of Frauds, but that these issues were never affirmatively pled,[17] nor raised before the trial court. However, Rhonda's argument is not based on lack of written proof, but rather lack of "evidence of title in any form," or lack of proof that "the parties had contracted another form of ownership." Therefore, we reject Larman's Statute of Frauds argument.

As to the central issue on appeal, we begin our analysis by noting that this Commonwealth does not recognize common-law marriage and no contractual rights or obligations arise from mere cohabitation.[18] It has long been the law in Kentucky that "'[r]ecord title or legal title is an indicia sufficient to raise a presumption of true ownership.'"[19] In this case, it is undisputed that there are no written documents

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upheld her motions for a directed verdict. This is adequately covered in her prehearing statement. Therefore, this argument by Larman has no merit.

[17] CR 8.03 requires that certain defenses be affirmatively pled, including the Statute of Frauds, which is defined as "a statute . . . designed to prevent fraud and perjury by requiring certain contracts to be in writing and signed by the party to be charged." Black's Law Dictionary, p. 1422 (7th ed. 1999).

[18] Murphy v. Bowen, 756 S.W.2d 149, 150 (Ky.App. 1988) (stating that "[w]ere it otherwise, the courts, in effect, would be reinstituting by judicial fiat common law marriage which by expressed public policy is not recognized. See KRS 402.020(3)").

[19] Rakhman v. Zusstone, 957 S.W.2d 241, 244 (Ky. 1997) (quoting Tharp v. Security Insurance Co. of New Haven, 405 S.W.2d 760, 765 (Ky. 1966)).

evidencing any agreement between Rhonda and Larman that the real estate deeded in Rhonda's name would be owned equally by them. Therefore, Larman was required to offer evidence of an expressed agreement between the parties or an agreement implied from the actions of the parties.[20]

Larman argues that the long duration of the parties' cohabitation and their having a child is sufficient evidence to support an agreement. Larman further argues that he and Rhonda were in a joint venture[21] or partnership[22] and the real estate was an asset of the partnership. In Murphy, the plaintiff, Murphy, made the same argument regarding her relationship with the defendant, Bowen. This Court found nothing to indicate that either party "expected, understood, and intended that [Murphy] would receive monetary compensation or an interest in [Bowen's] farm, for her work on it" [citation omitted].[23]

In this case, it is undisputed that the two mobile homes titled in Rhonda's name were solely her property. Larman claimed no interest in the mobile home purchased by Rhonda's

[20] See First Security National Bank & Trust Company of Lexington v. Merriman, 440 S.W.2d 256, 257 (Ky. 1969); see also Victor's Executor v. Monson, 283 S.W.2d 175, 176-77 (Ky. 1955).

[21] See Jones v. Nickell, 297 Ky. 81, 179 S.W.2d 195, 196 (1944) (stating that "[a] joint adventure is a special or limited partnership or partnership for a special purpose. Ordinarily, it is an association for a particular transaction, while a partnership contemplates a continuing business" [citations omitted]).

[22] Partnership is defined as "[a]n association of two (2) or more persons to carry on as co-owners a business for profit . . . ." See KRS 362.175(1).

[23] Murphy, 756 S.W.2d at 151.

grandmother. Larman did not appeal the jury's determination that the second mobile home put in Rhonda's name was solely her property. It is undisputed that the second mobile home was paid for through rent received from its tenant. It is undisputed that the real estate was purchased through a loan which was paid in full from the rental payments on the second mobile home, determined solely to be owned by Rhonda. Larman argued, as the plaintiff did in Murphy, that his other contributions during the cohabitation justify his entitlement to one-half the value of the real estate. However, Larman's own testimony indicates that other than one discussion with Rhonda about building a house on the real estate, there was no other discussion about the real estate.

Larman further argues that the real estate was placed in Rhonda's name only as a resulting trust[24] or a constructive trust,[25] while he provided the consideration for the real estate purchase. We conclude under our Supreme Court's holding in Rakhman, that Larman has failed to prove that a trust existed. In Rakhman, the parties had cohabitated in a non-marital

[24] Black's Law Dictionary, p. 1517 (7th ed. 1999) (defining a "resulting trust" by stating, "[a] trust imposed by law when property is transferred under circumstances suggesting that the transferor did not intend for the transferee to have the beneficial interest in the property").

[25] Black's Law Dictionary, p. 1515 (7th ed. 1999) (defining a "constructive trust" by stating, "[a] trust imposed by a court on equitable grounds against one who has obtained property by wrongdoing, thereby preventing the wrongful holder from being unjustly enriched. Such a trust creates no fiduciary relationship").

relationship from 1979 until 1992, and had two children during this time.[26] During this period, a house was purchased with cash supplied by Zusstone, but title to the real estate was placed in Rakhman's name. The cash was placed in a bank account, solely in Rakhman's name and Rakhman wrote a check to the grantor of the real estate and a deed was recorded in Rakhman's name. Just as in this case, Zusstone only asserted a beneficial interest in the real estate after the parties' separation.[27]

The Restatement (Second) of Trusts, Sec. 442 (1959) states as follows:

> Where a transfer of property is made to one person and the purchase price is paid by another and the transferee is a . . . natural object of bounty of the person by whom the purchase price is paid, a resulting trust does not arise unless the latter manifests an intention that the transferee should not have the beneficial interest in the property.
>
> . . .
>
> It is inferred that [the payor] intends to make a gift if the transferee is by virtue of the relationship a natural object of his bounty.
>
> . . .
>
> The fact that the transferee is a . . . natural object of bounty of the payor is

[26] Rakhman, 957 S.W.2d at 243.

[27] Id. at 245.

> more than merely a circumstance tending to rebut the inference of a resulting trust. It is of itself a circumstance sufficient to raise an inference that a gift was intended, and the burden is upon the payor seeking to enforce a resulting trust to prove that he did not intend to make a gift to the transferee.[28]

Our Supreme Court in Rakhman concluded that parties, who have cohabitated for several years and who have raised children together, would qualify as the natural objects of each other's bounty.[29]

As in Rakhman, the only evidence offered by Larman to rebut the presumption was his own testimony. "He offered no corroborating evidence about this particular transaction."[30] Our Supreme Court concluded this evidence was insufficient to rebut the presumption of a gift to Rakhman. In this case, there is no proof that Larman made any contribution to the purchase of the real estate, other than his own testimony, and even if he did, and based on our Supreme Court's holding in Rakhman, we are not persuaded by his trust argument, but conclude that the evidence only supports a finding that his contributions to Rhonda were gifts.

Based on the foregoing reasons, we reverse the judgment and remand this matter for any necessary action to

[28] Rakhman, 957 S.W.2d at 244.

[29] Id. at 244-45.

[30] Id. at 245.

restore fee simple title to the real estate to Rhonda and to reimburse her for any income payments from the real estate made to Larman.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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