

## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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Cassandra Fischer, Dalaina  
Hutchins, Thomas Hutchins, and  
Jessica Newland,

*Appellants,*

v.

Margaret Hutchins,  
*Appellee*

April 8, 2021

Court of Appeals Case No.  
20A-ES-1691

Appeal from the Steuben Circuit  
Court

The Honorable Allen N. Wheat,  
Judge

Trial Court Cause No.  
76C01-2002-ES-19

**May, Judge.**

[1] Cassandra Fischer (“Cassandra”), Dalaina Hutchins (“Delaina”), Thomas Hutchins (“Thomas”), and Jessica Newland (“Jessica”) (collectively, “Children”) appeal the trial court’s order in favor of Margaret Hutchins (“Margaret”). Children raise several issues for our review, and we find one dispositive: whether the trial court erred when it determined that, prior to his death, their deceased father, Fredrick Hutchins (“Fredrick”), fraudulently conveyed inherited real property (hereinafter, “the Farm”) to Children. We affirm.

## Facts and Procedural History

[2] Fredrick is the father of Children. Margaret is the stepmother of Thomas and the mother of Dalaina, Cassandra, and Jessica. Fredrick and Margaret were married for approximately thirty-five years. On December 8, 2005, Fredrick executed a Last Will and Testament (“Will”) that transferred the entirety of his estate to Margaret. Under the Will, Children would inherit Fredrick’s estate if Margaret did not survive him.

[3] At issue in this case is the Farm, which consists of two parcels of land totaling approximately one hundred acres in Steuben County. Fredrick’s father, Louis D. Hutchins (“Louis”), originally owned the Farm, and the Farm had been owned by the Hutchins family for many years. Louis died on October 16, 1997. Fredrick, Louis’ sole surviving devisee, opened Louis’ estate on October 26, 1998, as the estate’s personal representative. Shortly after Louis’ death, Fredrick and Margaret began residing on the Farm. Fredrick closed Louis’

estate on April 23, 2012. The Farm was not conveyed as part of the probate action.

- [4] On February 19, 2019, Frederick and Margaret separated, and Margaret ceased living on the Farm. On March 25, 2019, Fredrick reopened Louis' estate. On August 8, 2019, Fredrick recorded a Personal Representative's deed with the Steuben County Recorder, transferring title to the Farm to himself. The same day, Fredrick filed a Warranty Deed with the Steuben County Recorder, conveying the Farm to Children, but reserving for himself a life estate in the Farm. At the time of the transfer, the Farm was worth approximately \$300,000.00. Children each paid \$2.50 for their respective shares in the Farm.
- [5] On December 5, 2019, Margaret filed a petition for dissolution of marriage. On January 7, 2020, the dissolution court held a hearing on Margaret's petition for dissolution during which Margaret discovered that Fredrick had conveyed the Farm to Children. On February 8, 2020, Fredrick died. The dissolution court dismissed the dissolution action on February 11, 2020.
- [6] On February 25, 2020, Margaret opened Fredrick's estate in probate court and filed a verified petition for the appointment of personal representative of the estate. In that petition, Margaret alleged she had been unable to secure a copy of Fredrick's will because the attorney who had the will would not provide it to Margaret. On March 6, 2020, Margaret retracted that allegation and filed Fredrick's will with the probate court.

[7] On April 23, 2020, Margaret filed a “Complaint to Set Aside Fraudulent Conveyance to Impose Constructive Trust and for Accounting” (“Fraud Complaint”) alleging Fredrick transferred ownership of the Farm to Children “for the purpose of preventing [Margaret] [from] obtaining a fair division of the marital assets and was a fraudulent conveyance which should be set aside and ordered placed in the estate of her husband” and the conveyance “would have constituted a dissipation of assets had [Fredrick] not died and the fact of his death should not deprive [Margaret] of the right of redress for his wrongful actions.” (Appellee’s App. Vol. II at 80-1.) She additionally alleged that she believed she was the co-owner of the Farm based on Fredrick’s representations while alive, based on her contributions to the maintenance and improvement of the Farm while Fredrick was alive, and because Children would be “unjustly enriched if [Margaret] was not reimbursed for her contributions to the property and if she was not given the ownership interest [Fredrick] told her she had.” (*Id.* at 82.) Margaret asked the probate court to order Children to “account for all monies, profits, income and other benefits received by them from the property since it was improperly conveyed to them by their father in order to deprive [Margaret] of a fair division of the martial [sic] estate and for all expenses they claim to have paid on such property.” (*Id.*)

[8] On May 5, 2020, Children filed their answer to Margaret’s petition. On May 19, 2020, Children filed an “Emergency Petition to Remove Personal Representative and Appoint Successor Personal Representative,” asking the probate court to remove Margaret as personal representative of Fredrick’s estate

because “Margaret Hutchins abandoned Fredrick Hutchins in February 2019.” (*Id.* at 98.) Children argued this abandonment “without just cause” precluded Margaret from taking part of Fredrick’s estate pursuant to Indiana Code. (*Id.*)

[9] On September 1, 2020, the probate court held a hearing on all pending issues. On September 10, 2020, the probate court issued an order concluding:

1. Ind. Code 32-18-2-14 provides, in relevant part, that:

“A transfer made or an obligation incurred by a debtor is voidable as to a creditor, whether the creditor’s claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation: (1) with actual intent to hinder, delay, or defraud any creditor of the debtor; or . . .”

2. Fredrick wanted to keep the 100 acre parcel of real estate in his family.

3. With a divorce proceeding on the horizon the only way to accomplish Fredrick’s wish would be for him to remove the 100 acre parcel of real estate from the marital pot. This transfer of the 100 acre parcel of real estate had to occur prior to Margaret’s filing her divorce petition.

4. Fredrick’s transfer of the 100 acre parcel of real estate on August 8, 2019 to his four (4) children reserving a life estate unto himself was done with fraudulent intent of preventing Margaret from making any claim to any part of the 100 acre parcel of real estate during the course of the divorce proceeding.

5. Fredrick’s death prior to the conclusion of the divorce proceeding does not negate Fredrick’s fraudulent intent to deny

Margaret her right to assert a claim against the 100 acre parcel of real estate as part of Fredrick's estate proceeding.

6. Applying Ind. Code 32-18-2-14 to the facts in the case at bar the court concludes that Margaret was a creditor and Fredrick was a debtor at the time that Fredrick transferred title to the 100 acre parcel of real estate, and, it was Fredrick's actual intent to defraud Margaret.

(*Id.* at 134-5.) Based thereon, the probate court voided the Warranty Deed that conveyed the Farm to Children and ordered the Farm to be transferred to "Margaret M. Hutchins as Personal Representative of the Estate of Fredrick L. Hutchins." (*Id.* at 135.) The probate court further ordered that the Farm be administered as a probate asset. The probate court scheduled an additional hearing to determine the other pending issues such as Children's request that Margaret be removed as personal representative.<sup>1</sup>

## Discussion and Decision

[10] The probate court entered findings of fact and conclusions of law sua sponte. Our review of findings and conclusions entered sua sponte is well-settled:

Where, as here, the trial court enters findings of fact and conclusions thereon without an Indiana Trial Rule 52 written request from a party, the entry of findings and conclusions is

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<sup>1</sup> Because it does not address all issues as to all parties, the probate court's September 10, 2020, order is not a final order. *See* Indiana Appellate Rule 2(H)(1) (final judgment "disposes of all claims as to all parties"). However, we have jurisdiction over this appeal as an interlocutory appeal of right because the September 10, 2020, order concerns the "delivery of the possession of real property[.]" Ind. App. R. 14(A)(4).

considered to be sua sponte. Where the trial court enters specific findings sua sponte, the findings control our review and the judgment only as to the issues those specific findings cover. Where there are no specific findings, a general judgment standard applies and we may affirm on any legal theory supported by the evidence adduced at trial.

A two-tier standard of review is applied to the sua sponte findings and conclusions made: whether the evidence supports the findings, and whether the findings support the judgment. Findings and conclusions will be set aside only if they are clearly erroneous, that is, when the record contains no facts or inferences supporting them. A judgment is clearly erroneous when a review of the record leaves us with a firm conviction that a mistake has been made. In conducting our review, we consider only the evidence favorable to the judgment and all reasonable inferences flowing therefrom. We will neither reweigh the evidence nor assess witness credibility.

*Samples v. Wilson*, 12 N.E.3d 946, 949-50 (Ind. Ct. App. 2014) (internal citations omitted). Additionally, when reviewing the probate court's decision, unchallenged findings are "accepted as correct." *Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992).

[11] In determining whether Fredrick fraudulently transferred the Farm to Children, the probate court relied upon the Uniform Fraudulent Transfer Act ("UFTA"), which states, in relevant part:

(a) A transfer made or an obligation incurred by a debtor is voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(1) with actual intent to hinder, delay, or defraud any creditor of the debtor . . . .

Ind. Code § 32-18-2-14(a)(1). Regarding Fredrick's transfer of the Farm to Children, the probate court found, in relevant part:

1. Louis D. Hutchins was the father of Fredrick Louis Hutchins ("Fredrick").
2. Louis D. Hutchins died on October 16, 1997 leaving a Last Will and Testament.
3. Fredrick was the sole surviving devisee and personal representative of his father's estate which was opened on October 26, 1998.
4. Louis D. Hutchins, at the time of his death, was the owner of 100 total acres (2 parcels) of real estate located in Steuben County, Indiana. The court hereinafter will refer to the real estate as the 100 acre parcel of real estate.
5. The Estate of Louis D. Hutchins was closed on April 23, 2012.
6. The 100 acre parcel of real estate was not transferred by Fredrick to himself during the course of the administration of his father's estate.
7. Shortly after the death of Fredrick's father Fredrick and Margaret began residing on the 100 acre parcel of real estate.

\* \* \* \* \*



9. On February 19, 2019, Margaret vacated the marital residence in contemplation of filing a divorce petition.

10. Fredrick was aware that it was Margaret's intention to commence a divorce proceeding.

11. On March 25, 2019, Fredrick filed a Petition to Reopen his father's estate.

12. On August 8, 2019, Fredrick recorded a Personal Representative's Deed which transferred title to the 100 acre parcel of real estate to himself. The Personal Representative's Deed was filed in the office of the Steuben County Recorder as Document Number 19080240.

13. On August 8, 2019, Fredrick filed in the office of the Steuben County Recorder as Document Number 19080241 a Warranty Deed conveying the 100 acre parcel of real estate to his and Margaret's four (4) adult children Cassandra, Dalaina, Thomas and Jessica, reserving unto himself a life estate.

14. The four (4) children knew it was their mother's intention to commence a divorce proceeding against their father.

15. The real estate that was transferred by Fredrick to the four (4) children had a value of at least \$300,000.00.

16. The four (4) children each paid Fredrick the sum of \$2.50 for their respective interest in the real estate.

17. On December 5, 2019, Margaret filed her Petition for Dissolution of Marriage.

18. On December 5, 2019, Margaret did not know that Fredrick had transferred title to the 100 acre parcel of real estate to their four (4) children.

19. Fredrick died testate on February 8, 2020. Fredrick's Last Will and Testament, dated December 8, 2005, transferred the entirety of his probate estate to Margaret, and if she failed to survive him, to his four (4) children.

20. Fredrick's estate was opened on February 25, 2020.

(Appellee's App. Vol. II at 130-3.) Children argue the probate court erred when it determined that the Farm was a probate asset because Fredrick fraudulently transferred ownership of the Farm to Children.

[12] The UFTA defines the following relevant terms:

(2) "Claim", except as used in "claim for relief", means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(3) "Creditor" means a person that has a claim.

\* \* \* \* \*

(5) "Debtor" means a person that is liable on a claim.

\* \* \* \* \*

(9) "Person" means an individual, an estate, an association, a trust, a business or nonprofit entity, a public corporation, a

government or governmental subdivision, agency, or instrumentality, or another legal or commercial entity.

\* \* \* \* \*

(13) “Transfer” means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and included payment of money, release, lease, license, and creation of a lien or another encumbrance.

Ind. Code § 32-18-2-2.

[13] As an initial matter, Children argue the probate court improperly considered Margaret’s claim under the UFTA because it did not have jurisdiction to do so. In her petition, Margaret claimed that Fredrick fraudulently transferred the Farm to Children in an effort to remove it as a marital asset, as the parties were contemplating divorce at the time of the transfer. The probate court based its order on Margaret’s argument that the Farm was a marital asset, and not a probate asset, though its order ultimately names the Farm a probate asset by virtue of Fredrick’s death. The probate court’s consideration of the Farm as a marital asset was incorrect.

[14] “The decree of dissolution is the only vehicle available to distribute marital assets.” *Johnson v. Johnson*, 653 N.E.2d 512, 516 (Ind. Ct. App. 1995), *reh’g denied*. Further, it “has long been the law of this state that as a general rule the trial court in a divorce action loses jurisdiction over the case upon the death of one of its principals.” *Id.* at 514. There are three exceptions to this rule –

fraudulent underreporting of assets in the dissolution action, attorney's fees, and payment of child support arrearages to the decedent's estate. *Id.* As the parties had not yet gotten to the stage of the dissolution proceeding wherein assets were reported, none of these exceptions apply. However, as application of the UFTA is not limited to dissolution actions, the probate court's error in considering the Farm as a marital and not a probate asset does not create reversible error.

- [15] Fredrick executed a Will on December 8, 2005. Fredrick's Will states, in relevant part, "[a]fter the payment of my legal obligations and funeral expenses, I hereby give, devise and bequeath all of my property, real, personal and mixed, of every kind and nature whatsoever and wheresoever situate, to my beloved wife, Margaret M. Hutchins, if she survives me, absolutely and in fee simple." (Appellee's App. Vol. II at 74.) Prior to the transfer at issue in this case, the Farm was real property Fredrick owned by virtue of Louis' bequest and Fredrick's receipt, albeit delayed, of that property. As the sole beneficiary of Fredrick's Will, Margaret has a claim to the Farm. *See Kitchen v. Estate of Blue*, 498 N.E.2d 41, 48 (Ind. Ct. App. 1986) (holding decedent's son had a legitimate claim against his father's estate for property bequeathed to him under the father's will that was sold without the son's consent). Thus, despite the fact that Margaret does not have a claim under UFTA by virtue of the dissolution action, she has one as the sole beneficiary of Fredrick's estate. *See* Ind. Code § 32-18-2-2 (defining the terms "claim," "creditor," and "debtor"). Margaret contends Fredrick's transfer of the Farm to Children was fraudulent under the

UFTA and was an effort to remove the asset from his estate, of which she is the sole beneficiary.

[16] As we hold that Margaret is a creditor under the UFTA by virtue of her status as the sole beneficiary under Fredrick's Will, we next apply the statutory and common law factors to determine if Fredrick's conveyance of the Farm to Children was done with fraudulent intent. In determining actual intent under the UFTA, we consider whether:

- (1) the debtor retained possession or control of the property transferred after the transfer;
- (2) the transfer or obligation was disclosed or concealed;
- (3) before the transfer was made or the obligation was incurred, the debtor had been sued or threatened with suit;
- (4) the transfer was of substantially all the debtor's assets;
- (5) the debtor absconded;
- (6) the debtor removed or concealed assets;
- (7) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;
- (8) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred; and

(9) the transfer occurred shortly before or shortly after a substantial debt was incurred.

Ind. Code § 32-18-2-14(b). In addition to those factors, historically we have also considered “badges of fraud”:

1. the transfer of property by a debtor during the pendency of a suit;
2. a transfer of property that renders the debtor insolvent or greatly reduces his estate;
3. a series of contemporaneous transactions which strip a debtor of all property available for execution;
4. secret or hurried transactions not in the usual mode of doing business;
5. any transaction conducted in a manner differing from customary methods;
6. a transaction whereby the debtor retains benefits over the transferred property;
7. little or no consideration in return for the transfer;
8. a transfer of property between family members.

*Otte v. Otte*, 655 N.E.2d 76, 81 (Ind. Ct. App. 1995), *reh’g denied*, *trans. denied*.

“[N]o single indicium constitutes a showing of fraudulent intent per se, the facts

must be taken together to determine how many badges of fraud exist and if together they amount to a pattern of fraudulent intent.” *Id.*

[17] Here, Fredrick and Margaret lived on the Farm for approximately twenty years. While Fredrick took possession of the Farm as beneficiary under the will of his father, Louis, in 1998, he did not transfer the deed to the Farm into his name until 2019, after Margaret left the Farm and began living at another residence. When Fredrick transferred the deed to the Farm into his name, he immediately conveyed the Farm to Children, retaining a life estate. The probate court found the Farm to be worth approximately \$300,000 at the time of its conveyance, and the Warranty Deed indicated Children paid \$2.50 each for their interest in the property.

[18] Further, the Farm was the primary asset in Fredrick’s will. During the hearing on Margaret’s fraudulent transfer petition, Jessica testified that upon Fredrick’s death, she found a notice regarding pension benefits from Fredrick’s thirteen-years at Simpson Industries to be paid to Margaret, and Dalaina testified that after Fredrick stopped working at Simpson Industries, he “worked for the Amish.” (Tr. Vol. II at 72.) Thomas, Cassandra, Jessica, and Dalaina all testified that they, at various times, paid taxes on the Farm and completed multiple repairs. Finally, Fredrick did not tell Margaret about the transfer of the Farm to Children; she discovered the conveyance when she “stepped into court for our first hearing [in the dissolution action]” on January 7, 2020. (*Id.* at 113.)

[19] Fredrick's transfer of the Farm to Children exhibits many of the factors that indicate a fraudulent conveyance under the UFTA – the transfer was made to family members, it was secret, the consideration given for it was considerably less than its value, Fredrick maintained an interest in the Farm after the transfer, and the Farm constituted a majority of Fredrick's estate, such that its exclusion therefrom would likely leave the estate insolvent. Based thereon, we conclude Fredrick's transfer of the Farm to Children was a fraudulent transfer under the UFTA. *See Hernandez-Velaquez v. Hernandez*, 136 N.E.3d 1130, 1138 (Ind. Ct. App. 2019) (holding conveyance of property was fraudulent based on evidence of several badges of fraud including a secret transfer for little or no consideration between family members and the fact that the transfers were the main assets in the marital pot). Therefore, the trial court did not err when it found as such and ordered the Farm to be included as a probate asset.

## Conclusion

[20] Because Fredrick's transfer of the Farm to Children in an apparent effort to preclude Margaret from receiving the Farm at any time in the future was fraudulent under the UFTA, the trial court did not err in finding and concluding as such. Accordingly, we affirm the trial court.

[21] Affirmed.

Kirsch, J., and Bradford, C.J., concur.