NOT DESIGNATED FOR PUBLICATION

No. 109,002

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

NANCY A. GROTHE,
Appellee,

v.

MARY J. GROTHE and
ESTATE OF GEORGE W. GROTHE,
Appellants.

MEMORANDUM OPINION

Appeal from Johnson District Court; DAVID W. HAUBER, judge. Opinion filed October 31, 2014. Affirmed.

Michael R. Ong, of Ong Law Firm, of Leawood, for appellant.

Christopher J. Sherman, of Payne & Jones, Chartered, of Overland Park, for appellee.

Before LEBEN, P.J., ATCHESON and SCHROEDER, JJ.

LEBEN, J.: Nancy and George Grothe's 1993 divorce decree stated that George would maintain a $100,000 life-insurance policy naming Nancy as the sole beneficiary. But when George died in 2009, he only had a $250,000 life-insurance policy benefitting his current wife, Mary Grothe. Nancy sued George's estate and Mary within 2 years of his death, and the district court found that George had breached the contract contained in the divorce decree and that Mary had been unjustly enriched. The court imposed a constructive trust on the assets Mary purchased or improved with the insurance proceeds from the $250,000 policy: her house, an insurance policy, and a bank account.

On appeal, Mary makes three arguments—that Nancy's breach-of-contract claim was filed after the 5-year filing deadline, that the district court shouldn't have imposed the constructive trust because Mary's insurance proceeds could not be traced to property that belonged to Mary, and that the district court should not have awarded prejudgment interest from the date Mary received the insurance proceeds. First, we find that Nancy's breach-of-contract claim was timely because in Kansas, when a person is contractually obligated to provide a death benefit and fails to do so, the intended beneficiary's claims accrue when the person obligated to provide the benefit dies. See *Estate of Draper v. Bank of America*, 288 Kan. 510, 533-35, 205 P.3d 698 (2009). Second, as to the constructive trust sought against Mary's property, there's no dispute that George breached his duty to Nancy to maintain a life-insurance policy for her benefit or that he instead purchased insurance benefitting Mary. The only question is whether Nancy can meet any asset-tracing requirement if one applies: Mary argues that Nancy must show that proceeds from the policy George purchased to benefit her ended up being used to purchase the policy that paid benefits to Nancy. If such a requirement applies, it was met. The district court concluded factually that Nancy made that showing, and circumstantial evidence supports its conclusion. George purchased the policy benefitting Mary in part with the assignment of prior insurance policies benefitting Nancy. Third, we affirm the district court's award of prejudgment interest because Mary was entitled to $100,000 at George's death and has been denied the use of that money since that time. Prejudgment interest may be awarded to compensate a party for the loss of use of his or her money. *Varney Business Services, Inc. v. Pottroff*, 275 Kan. 20, 44, 59 P.3d 1003 (2002); *Mitchelson v. Travelers Ins. Co.*, 229 Kan. 567, 573, 629 P.2d 143 (1981).

FACTUAL AND PROCEDURAL BACKGROUND

Nancy and George Grothe were married from 1983 to 1993. Their June 25, 1993, divorce decree, which was filed in their home state of Minnesota, stated that George was

required to maintain a $100,000 life-insurance policy naming Nancy as the sole beneficiary:

> "Life Insurance. That the respondent shall maintain $100,000 life insurance coverage on his own life and designate the petitioner sole beneficiary thereof, so long as petitioner does not predecease respondent.
>
> "The respondent shall not pledge, encumber or permit the insurance to lapse, and shall keep the policy in full force and effect until his demise and/or the petitioner's demise, whichever event first occurs.
>
> "Petitioner shall have the right at any time to communicate directly with the insurance company in order to confirm that the insurance policy required by the decree herein remains in full force, that the premiums are current, that the policy remains unencumbered and unassigned, and that the beneficiary designation is in accordance herewith. Presentation of a copy of the Judgment and Decree herein to the insurance company, or its authorized representatives, shall be, and shall constitute, an authorization to the company to disclose any and all information regarding the policy to petitioner or to her attorney or agent just as if respondent had authorized such disclosure himself."

In October 1993, Nancy's attorney sent George's attorney a letter asking him for information about the $100,000 policy. Nancy testified that she was not aware of any response from George or his attorney, and she did not have her attorney pursue the matter further. But in 1994, she called Ted Simonson, an insurance agent with Massachusetts Mutual Insurance Company (Mass Mutual), from whom George purchased insurance when he and Nancy lived in Nebraska in the early years of their marriage. Simonson told Nancy he could not give her any information about George's policies, and at that point, Nancy stopped trying to get information about the policy.

Mass Mutual's records indicated that George had purchased seven different policies, but Mass Mutual did not have details about them when contacted after George's death because it destroys its policy files 7 years after a policy is terminated.

George married Mary Grothe in 1995. They moved to Kansas in 1996, and George purchased a $250,000 universal-life-insurance policy—which accumulated cash value but also had a death benefit—from Thrivent Financial for Lutherans (Thrivent) in 1998. When George purchased the Thrivent policy, he had three whole-life-insurance contracts with Mass Mutual totaling $120,000 in death benefits (with a cash value of $9,846.96) and had $180,000 in term life insurance. To help pay the Thrivent premiums, he assigned his three whole-life-insurance contracts to Thrivent. Mary was not aware of George's policy with Thrivent during their marriage.

Between April 1998 and May 2009, George paid approximately $6,000 in premiums to Thrivent from his joint checking account with Mary. On two different occasions, the Thrivent policy nearly lapsed because George had failed to pay the premiums on time.

George died on July 17, 2009. At the time of his death, there was no evidence of an insurance policy naming Nancy as the beneficiary. George owned the $250,000 Thrivent policy and a policy from his employer with a death benefit of about $11,000; Mary received the death benefits under both policies.

After Nancy learned of George's death, she opened a probate estate on January 14, 2010, and Mary was appointed its administrator. Nancy asserted a claim against the estate for $100,000. George's estate had no assets that could be used pay Nancy, so on June 28, 2011, Nancy filed suit against George's estate and Mary, claiming breach of contract against the estate and unjust enrichment against Mary.

Aware of Nancy's claim for $100,000, Mary used the proceeds of the Thrivent policy to pay off the mortgage on her home, a line of credit, and the remaining premiums for her life insurance in 2010. She deposited the remaining funds—about $68,000—in her personal checking account.

After a bench trial, the district court found that George had breached the contract contained in their divorce decree and that Mary had been unjustly enriched. The court imposed a constructive trust on Mary's home, life-insurance policy, and bank account and ordered that Nancy receive $100,000 plus prejudgment interest from August 25, 2009. Mary and the estate have appealed to this court.

ANALYSIS

Nancy's Breach-of-Contract Claim Was Not Barred by the Statute of Limitations.

Mary argues that Nancy filed her breach-of-contract claim in the district court out of time and that as a result, the court had no basis to impose a constructive trust, which can only be imposed when there is proof that a defendant has transferred property fraudulently or in violation of a duty. See *Nelson v. Nelson*, 288 Kan. 570, 581, 587, 205 P.3d 715 (2009). Before we consider the merits of Mary's claim, we must apply Kansas choice-of-law rules to determine whether to apply the Minnesota or Kansas filing deadline for property settlements incorporated into divorce decrees. See *ARY Jewelers v. Krigel*, 277 Kan. 464, Syl. ¶ 11, 85 P.3d 1151 (2004).

Kansas applies the Restatement (First) of Conflict of Laws to determine which state's law to apply. *ARY Jewelers*, 277 Kan. 464, Syl. ¶ 10. In this case, because the underlying rights arose from a divorce property-settlement agreement, which is a contract, we apply the Restatement's choice-of-law rules for contract disputes. See *Dozier v. Dozier*, 252 Kan. 1035, 1039, 850 P.2d 789 (1993). Under those rules, all matters of

procedure—such as filing deadlines—are governed by the law of the place the action was filed. See *Garcia v. International Elevator Co.*, 358 F.3d 777, 779 (10th Cir. 2004) (applying Kansas law); *Green v. Kensinger*, 199 Kan. 220, 223-24, 429 P.2d 95 (1967); *Western Video Collectors v. Mercantile Bank*, 23 Kan. App. 2d 703, 705, 935 P.2d 237 (1997); *Muzingo v. Vaught*, 18 Kan. App. 2d 823, 825, 859 P.2d 977 (1993); Restatement (First) of Conflict of Laws § 585 (1934). So we apply the Kansas deadline—which is 5 years from when the cause of action arises. K.S.A. 60-511(1).

The parties disagree about when the cause of action arose. Mary asserts that Nancy's breach-of-contract claim accrued on the date of the divorce decree—June 25, 1993—or shortly after that when Nancy suspected George was not maintaining a life-insurance policy. If that were the case, Nancy's 2011 lawsuit would have been filed well after the 5-year deadline. Nancy asserts that her cause of action arose when George died in 2009.

Nancy is correct. In Kansas, when a person is contractually obligated to provide a death benefit, the cause of action doesn't arise until the person obligated under the contract dies. See *Estate of Draper v. Bank of America*, 288 Kan. 510, 533-35, 205 P.3d 698 (2009); *Engelbrecht v. Herrington*, 101 Kan. 720, 172 P. 715 (1917); see also *Carothers v. Carothers*, 260 Or. 99, 101, 488 P.2d 1185 (1971). While Nancy arguably could have investigated George's insurance coverage further and filed suit sometime before he died, George could have fulfilled his obligations under the terms of the divorce decree at any point before his death. And if Nancy had successfully obtained a court order requiring George to make her a beneficiary on a $100,000 policy, he still might have changed the beneficiary on the policy again before he died, just as he had in 1998. Accordingly, Nancy's lawsuit was not filed out of time in 2011.

Mary further contends, however, that Nancy's claim was time-barred under the Kansas borrowing statute, K.S.A. 60-516. It provides that when a cause of action arises in

another state, Kansas courts cannot consider it if it would have been filed out of time in the state where it arose. See *Garcia*, 358 F.3d at 779. Mary says that Nancy's claim accrued in Minnesota at the time of the divorce and that Minnesota's 10-year filing period under Minn. Stat. §541.04 had passed before George's death in 2009.

But the borrowing statute is applicable only when a cause of action is time-barred in the foreign jurisdiction. *Bendis v. Alexander & Alexander, Inc.*, No. 91-CV-2192, 1995 WL 555833, at *3-4 (10th Cir. 1995) (unpublished opinion); *Goldsmith v. Learjet, Inc.*, 260 Kan. 176, 198, 917 P.2d 810 (1996); *Newell v. Harrison Engineering & Const. Corp.*, 149 Kan. 838, 841, 89 P.2d 869 (1939) (interpreting a prior version of Kansas' borrowing statute); *Muzingo*, 18 Kan. App. 2d at 827. And in Minnesota, like in Kansas, a cause of action under a contract obligating a person to provide a death benefit doesn't arise until the person obligated under the contract dies. *Seitz v. Sitze*, 215 Minn. 452, 10 N.W.2d 426 (1943); *Wold v. Wold*, 138 Minn. 409, 414-15, 165 N.W. 229 (1917); *Jacobson v. Bd. of Trustees of the Teachers Ret. Assn.*, 627 N.W.2d 106, 110 (Minn. App. 2001); *Estate of Johnson*, No. C4-93-1023, 1993 WL 441521 (Minn. App. 1993) (unpublished opinion). As a result, Nancy's claim would not have been time-barred in Minnesota, and the borrowing statute is not applicable.

Mary also argues that the equitable doctrine of laches—which prevents a plaintiff who has failed to diligently assert a claim from recovering at the expense of a defendant who has been prejudiced by the delay—should have prevented the district court from reviewing Nancy's case. See *Carlson v. Ritchie*, 830 N.W.2d 887, 891 (Minn. 2013). We apply Minnesota law when considering laches because under the Restatement, courts use the law of the place where a contract was made to determine whether equitable defenses should apply to it. Restatement (First) of Conflict of Laws § 347 (1934).

For the doctrine of laches to bar a lawsuit, the delay in bringing suit must be so unreasonable and prejudicial to the defendant that it would not be just for the court to

grant the plaintiff relief; the plaintiff must have effectively slept on her rights. *Carlson*, 830 N.W. 2d at 891. Mary contends that she was prejudiced by the fact that Nancy waited so long to file suit that the Mass Mutual's policy information was no longer available to the court.

We review denial of the doctrine of laches for an abuse of discretion. *State ex rel. Stovall v. Meneley*, 271 Kan. 355, 388, 22 P.3d 124 (2001). The district court abuses its discretion if no reasonable person would have taken the view adopted by the court or if its action was based on an error of law or fact. *In re Eminent Domain*, 299 Kan. 37, 45, 320 P.3d 955 (2014).

As we stated previously, Nancy could not be sure that George would fail to fulfill his contractual obligation under the divorce decree until he died, so her breach-of-contract claim did not accrue until George died. Nancy did not delay or fail to diligently assert a claim after his death. She opened a probate estate within approximately 5 months and filed her lawsuit within 2 years of his death. Even though Mass Mutual had destroyed some of its records before suit was filed, the district court did not abuse its discretion by declining to apply laches solely based on the absence of full records from Mass Mutual. Nancy is not responsible for Mass Mutual's records-retention policies, and Nancy had no way to know that those records would be needed until George failed—at his death—to comply with his obligation.

We should add that Mary's only statute-of-limitations argument concerned Nancy's breach-of-contract claim against the estate. She did not separately argue that Nancy's unjust-enrichment claim against Mary was barred. Presumably Mary's position is that the unjust-enrichment claim is itself premised on the breach-of-contract claim such that, if the breach-of-contract claim were time-barred, the unjust-enrichment claim should be as well. In any case, Kansas appears to apply a 3-year limitation period to an unjust-enrichment claim. See K.S.A. 60-512; *Draper*, 288 Kan. at 534; *Stehlik v. Weaver*, 206

Kan. 629, 637, 482 P.2d 21 (1971). The claim against Mary could not have accrued until she received the insurance proceeds, so the unjust-enrichment claim itself was timely filed. Since Nancy's claims were not time-barred, we may consider whether the district court abused its discretion in imposing a constructive trust on Mary's property.

The District Court Did Not Abuse Its Discretion When It Imposed a Constructive Trust on Mary's Home, Life-Insurance Policy, and Bank Account.

Nancy's claim against Mary is the key claim with respect to any ultimate recovery; the estate did not have assets to pay Nancy's claim. Nancy's underlying cause of action against Mary is for unjust enrichment. A constructive trust is a *remedy* for unjust enrichment. *Nelson*, 288 Kan. at 579. We must therefore consider the requirements for unjust enrichment and for the constructive-trust remedy.

"Unjust enrichment arises when (1) a benefit has been conferred upon the defendant, (2) the defendant retains the benefit, and (3) under the circumstances, the defendant's retention of the benefit is unjust." *Draper*, 288 Kan. 510, Syl. ¶ 6. See also *Haz-Mat Response, Inc. v. Certified Waste Services Ltd.*, 259 Kan. 166, 176, 910 P.2d 839 (1996) ("'The substance of an action for unjust enrichment lies in a promise implied in law that one will restore to the person entitled thereto that which in equity and good conscience belongs to [another].'") (quoting *Peterson v. Midland Nat'l Bank*, 242 Kan. 266, 275, 747 P.2d 159 [1987]). In this case, before the district court imposed the constructive trust, it found that Mary's receipt of the full amount of the Thrivent proceeds was unjust enrichment. We apply Kansas law when reviewing a district court's decision to impose a constructive trust because Kansas courts apply the law of the place the suit was filed to unjust-enrichment issues. See *Shutts v. Phillips Petroleum Co.*, 240 Kan. 764, 766-67, 732 P.2d 1286 (1987).

There really is little dispute regarding the underlying facts behind the unjust-enrichment claim itself. A benefit—all the life-insurance proceeds—was given to Mary, and Mary has retained those proceeds (in some cases, in altered form by putting them into an asset, such as her home equity). And under the circumstances, allowing her to keep all the proceeds would be unjust. See *Hile v. DeVries*, 17 Kan. App. 2d 373, 836 P.2d 1219 (1992).

The real question is whether the district court could impose a constructive trust against the proceeds in Mary's control. We review the district court's decision to impose the constructive trust—based on its determination that under the circumstances, it would be inequitable for Mary to retain all of the insurance proceeds—for abuse of discretion. *In re Davis' Estate*, 171 Kan. 605, 612-13, 237 P.2d 396 (1951); *In re Estate of Lane*, 39 Kan. App. 2d at 1062, 1066, 188 P.3d 23 (2008). As stated previously, a court abuses its discretion if no reasonable person would have taken the view adopted by the court or if its action was based on an error of law or fact. *In re Eminent Domain*, 299 Kan. at 45.

When the court imposes a constructive trust, the defendant essentially "holds property in trust" for the plaintiff, who ultimately gets formal legal title to the property in controversy. See 1 Dobbs, Law of Remedies § 4.3(2), p. 589-90. An action for a constructive trust has both in personam (directed toward a particular person) and in rem (determining title to particular property) aspects. *Nelson*, 288 Kan. at 580. It is in personam because it can only be imposed when there is proof that a specific defendant transferred property fraudulently or in violation of a duty. See 288 Kan. at 579-80. It is also in rem because it is res specific, meaning it is tied to a certain piece of property. 288 Kan. at 580. Courts only impose a constructive trust when there is a particular asset or a substitute for the asset that the defendant can hold in trust for the plaintiff. 288 Kan. at 580; 1 Dobbs, Law of Remedies § 4.3(2), p. 589, 591.

Mary argues that Nancy had to trace assets from the time of her divorce to the present, *i.e.*, that funds from an original policy (from Mass Mutual) went into the purchase of the Trivent policy, from which the proceeds went to Mary. Nancy argues that there is no tracing requirement, and she may be right. Our court considered a similar case in *Hile*. There, the husband agreed as part of his divorce to continue his two daughters as beneficiaries on at least $50,000 of his life insurance after the divorce. But when he died, his new wife was the sole beneficiary on $240,000 of insurance benefits, which were paid to her. Our court affirmed the imposition of a constructive trust on $50,000 of the insurance proceeds with no discussion of a tracing requirement in this context. 17 Kan. App. 2d at 374-75. In fact, in several Kansas cases where an insurance policy holder made beneficiary designations contrary to a divorce decree or a contractual obligation, our courts have uniformly granted judgment in favor of the party who was supposed to receive the insurance proceeds under the divorce decree or contractual obligation. See *Peckham v. Metropolitan Life Ins. Co.*, 415 F.2d 312 (10th Cir. 1969) (applying Kansas law); *Tivus v. Hulsey*, 148 Kan. 892, 84 P.2d 862 (1938); *Hile*, 17 Kan. App. 2d at 374-75; *Sykes v. Sykes*, No. 64,061, 1990 Kan. App. Lexis 184 (1990) (unpublished opinion). See also *Rogers v. Rogers*, 63 N.Y.2d 582, 587, 483 N.Y.S.2d 976, 473 N.E.2d 226 (1984) (relaxing the New York tracing requirement for constructive trusts in exceptional circumstances, such as where a spouse fails to maintain insurance as required under a separation agreement). In these Kansas cases, the closest we see to a discussion of a tracing requirement is the statement in *Tivus* that the correct beneficiary had a vested interest in the proceeds such that he or she "was entitled to follow the proceeds . . . and recover them from who obtained them . . . ." 148 Kan. at 895.

Cases discussing tracing say that substitutes for the specific asset must be a converted form of the original asset, and the court must be able to trace the property held in trust back to the specific property that was transferred fraudulently or in violation of a duty. See *Johnson v. Morris*, 175 F.2d 65, 68 (10th Cir. 1949) (finding that traceable trust property must be in its original form or in a form converted from the original); *Nelson*,

288 Kan. at 580 (stating that "a constructive trust is essentially a tracing remedy, allowing recovery of the specific asset or assets taken from the plaintiff, any property substituted for it, and any gain in its value"); *Woods v. Duval*, 151 Kan. 472, 480, 99 P.2d 804 (1940) (declining to impose a constructive trust where the plaintiff could not show that oil royalties improperly paid to a testator could be clearly traced into the hands of her beneficiary). Arguably, the original asset here was the insurance pay-out on George's death, which was not paid until the time at which his duty came due.

So if there is a tracing requirement, it's not at all clear that the tracing would need to go back to a time before George's death. After all, George's actionable breach of duty occurred at the time of his death, when he had no life insurance with Nancy as the beneficiary. He *did* have life insurance at the time of his death, but Mary was the sole beneficiary. Essentially, the payment of $100,000 in insurance proceeds to Mary was the result of George's breach of duty. In our view, only tracing of the $100,000 would be required, and those funds can easily be traced to assets still remaining in Mary's hands. See *Tivis*, 148 Kan. at 895.

Mary argues, however, that Nancy must identify specific property that once belonged to Nancy that Mary must now hold in trust. Mary contends that Nancy cannot do so because there are no records indicating that Nancy was the intended beneficiary of any of George's Mass Mutual policies.

But the district court concluded that Nancy has demonstrated that the insurance proceeds Mary received could be traced back to a Mass Mutual policy naming Nancy as a beneficiary. If there is a tracing requirement, we conclude that the district court's tracing conclusion is supported by sufficient evidence.

No Kansas case has specifically discussed the evidentiary standard applicable to the tracing, *i.e.*, must it be proved by clear and convincing evidence or only by a preponderance of the evidence? Here is where we believe that the distinction between the cause of action and the remedy is significant. A party generally must prove the unjust-enrichment claim by clear and convincing evidence. *Nelson*, 288 Kan. 570, Syl. ¶¶ 4-5. But some courts have applied the preponderance-of-the-evidence standard to the showing of tracing needed to impose the constructive-trust remedy. *E.g.*, *Flournoy v. Wilz*, 201 S.W. 3d 833, 836-37 (Tex. App. 2006), *rev'd on other grounds*, 228 S.W. 3d 674 (Tex. 2007); but see *In re Estate of Redpath*, 224 Neb. 845, 846, 849, 402 N.W.2d 648 (1987). We will review the trial court's factual findings on tracing under our normal preponderance-of-the evidence standard to determine whether there is legal and relevant evidence that a reasonable person could accept as adequate to support the court's conclusion. *City of Wichita v. Denton*, 296 Kan. 244, 255, 294 P.3d 207 (2013) (the function of an appellate court is to determine whether the trial court's findings of fact are supported by substantial evidence and whether the findings support the trial court's conclusions of law); *State v. May*, 293 Kan. 858, 862, 269 P.3d 1260 (2012).

Here there is circumstantial evidence that a reasonable person could accept as adequate to support the conclusion that the life-insurance proceeds Mary received could be traced to a Mass Mutual policy naming Nancy as sole beneficiary. It is undisputed that George assigned $9,846.96 in Mass Mutual policies to pay for 60% of the initial Thrivent premiums. As the district court pointed out, the fact that George purchased life insurance to benefit his wife Mary is circumstantial evidence—which can be used to prove any fact—that the insurance policies he purchased while married to Nancy would have been purchased for Nancy's benefit. The evidence that George complied with the other terms of the divorce decree further suggests that the Mass Mutual policies benefitted Nancy. If George complied with the other terms of the divorce decree, it is likely that he complied with the insurance term and initially retained Nancy as the beneficiary of the Mass

Mutual policies. Thus, even if there is a tracing requirement going back to a time before George's death, it would not bar the imposition of a constructive trust in this case.

Mary also contends that the court should not have imposed a constructive trust on her assets because she was a bona fide purchaser of the life-insurance policy naming her as a beneficiary. Thus, she contends that she paid value to purchase the property held in constructive trust without notice of any wrongdoing. The law protects bona fide purchasers; a court cannot impose a constructive trust when a bona fide purchaser has purchased the property to be held in constructive trust. See Restatement (First) of Restitution § 208, comment a (1937). Mary had the burden to show by a preponderance of the evidence that she was a bona fide purchaser. See *Perkins v. Gregory*, 87 Kan. 303, Syl. ¶ 3, 124 P. 168 (1912) ("One who . . . makes an affirmative defense on the ground that he is a purchaser in good faith . . . has the burden of proving the fact."); *Demoulas v. Demoulas Super Markets, Inc.*, 424 Mass. 501, 549, 677 N.E.2d 159 (1997); *Stephenson v. Golden*, 279 Mich. 710, 769, 276 N.W. 849 (1937); *LeBlanc v. Cahill*, 3 Fed. Appx. 98, 101 (4th Cir. 2001) (unpublished opinion).

Mary argues that we should follow the reasoning in several cases from other states where courts refused to impose constructive trusts on insurance proceeds because the named beneficiaries were bona fide purchasers. See *Berryman v. Adams*, 883 So. 2d 214 (Ala. Civ. App. 2003); *Greenberg v. Greenberg*, 264 Cal. App. 2d 896, 71 Cal. Rptr. 38 (1968). But in those cases the named beneficiaries were aware of the policies and actively paid the premiums. Here George made ongoing premium payments with funds from his joint account with Mary. And the district court found factually that George paid for the Thrivent premiums with his income and converted insurance equity from polices in effect during his marriage with Nancy. Mary's lack of knowledge of the Thrivent policy while he was paying for it is circumstantial evidence that the money he took out of the joint account to pay the premiums was solely his money that he deposited there from his

pension payments and his business income. The evidence that George paid for the Thrivent premiums using only his money is sufficient to support the district court's conclusion that Mary was not a bona fide purchaser. Accordingly, Mary is not protected from the imposition of a constructive trust.

Because the district court did not err in imposing a constructive trust, we will consider its award of prejudgment interest on the property held in trust.

The District Court Did Not Abuse Its Discretion When It Awarded Nancy Prejudgment Interest from the Date Mary Received the Thrivent Proceeds.

Mary's final argument is that the district court should not have awarded Nancy interest on the Thrivent proceeds starting from the date Mary received them—August 25, 2009. Mary says that she was unaware of the divorce decree and Nancy's claim to the Thrivent proceeds until Nancy filed her claim against George's estate nearly 5 months later on January 14, 2010. As a result, she argues that it would be unreasonable for her to pay interest for the time she was unaware that anyone had a claim to the Thrivent proceeds.

The district court has wide discretion in deciding whether to award prejudgment interest and in deciding when the interest should start accruing. *Varney Business Services, Inc. v. Pottroff*, 275 Kan. 20, 44, 59 P.3d 1003 (2002); *Mitchelson v. Travelers Ins. Co.*, 229 Kan. 567, 573, 629 P.2d 143 (1981). It considers all of the facts and equities of the case when making its decision and only abuses its discretion if no reasonable person would have taken its view on the award or its award is based on a legal or factual error. *In re Eminent Domain*, 299 Kan. at 45; *Mitchelson*, 229 Kan. at 573.

When a court awards prejudgment interest on a sum of money due under a contract, the interest is generally calculated from the date the money was due. *Kilner v. State Farm Mut. Auto. Ins. Co.*, 252 Kan. 675, 687, 847 P.2d 1292 (1993). This is

because the purpose of prejudgment interest is to compensate plaintiffs for the loss of use of their money. *Varney*, 275 Kan. at 44 (finding no abuse of discretion in awarding prejudgment interest because the defendant had deprived plaintiff of use of his money since its due date); *Vernon v. Commerce Financial Corp.*, 32 Kan. App. 2d 506, 511-12, 85 P.3d 211 (2004) (stating that the purpose of interest is ""to fairly compensate plaintiffs for their inability to use the money during the period in question""); see also *Mitchell v. Mitchell*, 876 S.W.2d 830, 832 (Tenn. 1994) (finding that interest compensates the plaintiff for the loss of use of his or her funds when a defendant fails to pay as required under a contract).

In this case, we recognize that Mary was not aware of Nancy's claim to the Thrivent proceeds when Mary received them but cannot find that the district court abused its discretion in awarding prejudgment interest. Under the terms of the divorce decree, Nancy was entitled to $100,000 in insurance proceeds upon George's death. Nancy has not been able to make use of the money she has been entitled to since that time, and it was not unreasonable for the court to compensate Nancy for that loss with interest from the date Mary received the proceeds.

The district court's judgment is affirmed.