IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

DARRELL BILLINGS,	)	
	)	
Plaintiff-Below	)	
Appellant,	)	
	)	
v.	)	C.A. No. 03-10-728
	)	
CYNTHIA DODSON,	)	
	)	
Defendant-Below	)	
Appellee.	)	

Submitted: April 19, 2004
Decided: May 24, 2004

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DECISION AFTER TRIAL

This is a replevin action on appeal by plaintiff from a decision in defendant's favor before the Justice of the Peace Court. Plaintiff alleges he is the owner of a diamond ring purchased from Barsky Diamonds, 724 Sansom Street, Philadelphia, Pennsylvania 19106, for the sum of $9,275.00. It is plaintiff's contention that this ring was given to the defendant in express anticipation of

marriage. Therefore, since the parties have broken off the engagement, he is entitled to the return of the ring.

Defendant alleges that the ring was not in contemplation of marriage, but rather an unsolicited gift and she is entitled to retain the ring because the gift was unconditional. Following a trial on this matter on April 19, 2004, the Court reserved decision. This is the Court's decision following trial in these proceedings.

A decision in this matter requires the Court to resolve the following questions:

1. Whether the ring was given by plaintiff as an unconditional gift or in anticipation of marriage?

2. If the ring was given in anticipation of marriage, was the engagement terminated as the result of actions by plaintiff donor or defendant donee?

3. Whether the analysis stated in *Elliott v. Hunter*, 1967 WL 90379 (Del. Super.) unpublished opinion, cited by both parties relying on the first restatement of restitution § 58(c) is still the prevailing standard for determining whether the donee of a ring must return the ring where it was given in anticipation in marriage?

The facts in these proceedings are not complicated. The plaintiff's first witness Jacqueline Wade testified she has known the defendant and the plaintiff for a period of two and one-half years. During this time period, she

owned property which was located directly behind the property owned and occupied by the parties, and occasionally socialized with them. During this period, she recalls seeing the defendant wearing the ring and was excited. She further recalls the defendant making statements regarding anticipation of marriage and she offered to use part of her yard for a reception. Specifically, she testified that she was informed by the defendant that the ring was given to her as an engagement ring, but did not speak to her specifically about a marriage date. She further recalled the parties were having problems before she observed the ring, but believed that they were attempting to resolve their issues. However, shortly after she saw the ring, the relationship began to deteriorate further. She does not recall who asked whom to leave the dwelling, but believed that it was a mutual decision to dissolve the relationship.

Plaintiff called as his second witness, Harold Barsky, a jeweler in the city of Philadelphia who testified regarding the value of the ring and that it was sold as an engagement ring.

Plaintiff, Darrell Billings testified he works for Dymler Chrysler and has been in the sanitation business for over thirty years. He testified that he has known the defendant for a long period of time and she pursued him for several years and finally was able to catch him. Specifically, he stated that they met in a bar sometime in 1999 and the relationship developed thereafter. They first were living on 34th Street in the city of Wilmington, but later moved in September 2000 to a house in Bear, Delaware. Six months after purchasing the house, he added the

defendant's name to the deed. It was his belief that they would live together for a while, but he did tell the defendant they were going to get married. The proposal of marriage was made because the defendant was urging him to get married for an extended period of time. This occurred sometime around April 2001. Thereafter, they went to Philadelphia where he purchased the ring for $9,275.00. At this time, he also purchased the defendant a second ring for $650 as a gift.

During the relationship and prior to their engagement, plaintiff testified that there were problems because the defendant was seeing other men when he was working. After the ring was given to the defendant, she was still seeing other men which further caused problems. After the relationship deteriorated, plaintiff asked the defendant to leave and return the ring, which she refused on two occasions.

During cross-examination, plaintiff testified that during the relationship, he contributed $8,000 towards the defendant's purchase of a motorcycle. The defendant paid the remaining balance in installments. He further testified, he was not in the habit of purchasing defendant expensive jewelry. Plaintiff further testified that after he gave the ring to defendant, she stated to him that everyone liked her ring and hers was bigger than any other female on the Wilmington Police Department. Towards the end of the relationship, both the defendant and plaintiff were living in the same residence, but were sleeping in different rooms. This arrangement continued until the house was finally sold December 2003. Plaintiff testified he did not ask the defendant to leave the house.

The defendant testified that she and plaintiff lived together for a total of four years and the breakup occurred around January or February 2003. She testified that the ring was given because they were having problems and plaintiff felt guilty. During the relationship, there were several physical confrontations and plaintiff would give her gifts following those confrontations. Defendant testified that it was plaintiff's custom and practice to give her expensive gifts to replace those which he believed to be cheap. She testified that plaintiff paid $12,000 towards her motorcycle and not the $8,000 as he alleged. Defendant testified that on the date that the ring was purchased, they traveled to Philadelphia so that he could purchase earrings. While in Philadelphia, there was a set of earrings that he attempted to purchase for her but only wanted to purchase one of a set. Defendant stated, she indicated to plaintiff that if he was going to buy a five-caret diamond, then she did not want earrings, but she wanted a ring. Therefore, the ring was purchased and they reset it in another band because she did not like the original. Defendant further testified that there was no discussion regarding engagement, and the ring was not given in anticipation of marriage.

Further, she testified that when she saw Jacqueline Wade, she stated that the ring was a guilty present from plaintiff because of his past indiscretion. Defendant also testified after she received the ring, the relationship further deteriorated. During these incidents, defendant repeatedly told her to get out of his house. Defendant presented a tape of one of the incidents in June or July where plaintiff allegedly stated on several occasions that he would kill her. The

voices on the tape are not clear, oftentimes inaudible and were very difficult to understand. Defendant testified plaintiff was accusing her of going around telling people that they were married or getting married. She testified that plaintiff asked her to leave both before and after the ring was given. Defendant testified that they both stayed in the house until December 10, 2003 when the house went to settlement, and then each moved out and took some of the furniture. Finally, defendant testified that she was first informed of plaintiff's demand for the return of the ring when she got a letter from plaintiff's attorney.

During cross-examination, defendant testified that plaintiff wanted her to move and that he wanted to buy her out of the house. When asked about the nature of the relationship, defendant testified that plaintiff indicated to her during the early stages of the relationship that one day they would get married if she acted right. Further, she did show Jackie the ring but never said that it was an engagement ring or given in anticipation of marriage. However, she knew the ring came from the engagement section of the jeweler's display and that on her birthday, she got a tennis bracelet.

My research indicates this issue has been considered by Delaware Court on only one occasion, in *Elliott v. Hunter*, *supra.* In that case when considering plaintiff's motion for summary judgment demanding the return of a dog which had been given to the defendant in anticipation of marriage, the court held as follows: "Many courts which have dealt with this problem have held that, in the absence of fraud, a gift of personal property is recoverable by the donor

when there is an express agreement that the gift is conditional or when the gift is of such symbolic significance or value that the law will imply that it was given in contemplation of marriage." Dodson argues that this language which relies upon the First Restatement of Restitution § 58(c) which states; "gifts made in anticipation of marriage where the marriage does not subsequently occur without the fault of the donee, the gift cannot be recovered" defeats Billing's position. Therefore, Dodson reasons that since the relationship was mutually terminated, Billing's claim for the ring has no merit.

Billings however argues that the ring was given in anticipation of marriage, and that he is entitled to its return because the marriage did not occur, not as a result of his fault, but as mutual consent of the parties. Therefore, Billings argues a no-fault approach to the analysis regarding whether a marriage ring or gift given in anticipation of marriage is to be returned. In making this argument, Billings relies in part upon the revision of the Delaware marriage laws found in Chapter 15 of Title 13, which was amended in 1974 and became known as the "Delaware Divorce and Annulment Act." The essence of this statute is to make no-fault divorce a basis for dissolving the marriage without regard to marital misconduct. In making this argument, Billings relies upon an analysis set forth by the Pennsylvania Supreme Court in *Lindh v. Surman*, (Pa. Supr.) 742 A.2d 643 (1999). The court in that case said that if an analysis was done on a fault approach, then the court is required to delve into the various activities of the parties and would be forced to reach a conclusion regarding the termination of the

engagement. Thus, the return of the ring would depend on an assessment of who broke the engagement and a determination of why. If, however, the court adopted a no-fault approach as the Divorce and Anullment Act, it would involve no investigation into the motive or the reasons for the termination of the engagement and it would require the return of the ring simply upon the non-occurrence of the marriage.

When considering this identical issue, the Supreme Court of Montana in *Albinger v. Harris*, (Mont. Supr.) 48 P3d, 711 (2002) adopted a different approach. The Court in that case, after discussing the various issues with respect to fault, the difficulties of delving into the activities of the parties, and the issue regarding the no-fault approach to marriage termination, rejected both of these analyses. The Court after commenting on the issue involving gender bias, treated the issue as one involving laws governing *inter vivos* gifts. The Court specifically said, "We decline to adopt the theory that an engagement ring is a gift subject to an implied condition of marriage." Under this court's analysis, the giving of the ring was a gift which is completed upon delivery and an intention that it would not be revoked.

In this instance, it is clear that Billings gave the ring to Dodson, but it is unclear whether it was in anticipation of marriage or it was a conditional gift. The witness for Billings testified that the ring was taken from the display section where engagement rings are housed in his business. Further, a witness for Billings testified that Dodson showed her the ring and indicated that it was in anticipation

of marriage, or that they were going to get married. Dodson, however, testified that the ring was a gift, even though she had received another item of substantial value on the same day as a gift. There is ample evidence to support both allegations.

However, from the evidence in the record, it is clear that the parties had a tumultuous relationship over several years and there were several separations and reconciliations. Therefore, I am unable to conclude that the ring was given in anticipation of marriage. Because I am unable to conclude that the ring was given in anticipation of marriage, I find that it was a gift, not subject to conditions.

Accordingly, judgment is hereby entered for Dodson.

SO ORDERED this 24th day of May, 2004

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Alex J. Smalls
Chief Judge

Billings-OP Apr 04