

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

Diane D. McGuire,	:	C.A. No. 07-01-0017
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
Shelagh A. McGuire,	:	
	:	
Defendant.	:	

Decision after trial.

Date of Trial: April 9, 2007

Date Decided: April 11, 2007

Judgment for the Plaintiff.

Ronald D. Smith, Esquire, Hudson, Jones, Jaywork & Fisher, 225 South State Street, Dover, Delaware 19901, Attorney for Plaintiff.

Shelagh A. McGuire, 118 Immunity Lane, Magnolia, Delaware 19962, Pro Se Defendant.

Trader, J.

In this civil action I conclude that the defendant, Shelagh A. McGuire, is indebted to the plaintiff, Diane D. McGuire, surviving spouse of John W. McGuire, for the sum of \$18,284.00, plus costs of these proceedings.

The relevant facts are as follows: On August 16, 2004, the plaintiff made a deposit in the amount of \$1,000.00 on behalf of John W. McGuire for the purchase of a 2000 Fleetwood mobile home from Barbara Jean Wintjen. (Plaintiff's Exhibit 3). On August 19, 2004, John W. McGuire paid Barbara Jean Wintjen the balance of \$21,000.00 for the purchase of the mobile home (Plaintiff Exhibit 3), and a bill of sale for the purchase of the mobile home was executed by Barbara Jean Wintjen to John W. McGuire and Shelagh McGuire. (Plaintiff's Exhibit 6). On the same date, the defendant and John McGuire signed a rental agreement with Barker's Landing whereby they leased Lot 155 located at 118 Immunity Lane, Magnolia, Delaware for the placement of the mobile home. On September 27, 2004, a certificate of title to the mobile home was issued by the Division of Motor Vehicles to John W. McGuire. (Plaintiff's Exhibit 3). On December 28, 2005, John W. McGuire wrote two letters to the defendant, setting forth the balance due on the mobile home. (Plaintiff's Exhibits 12 and 13). John W. McGuire died testate on January 22, 2006, and under his Last Will and Testament dated March 13, 2000 (Plaintiff's Exhibit 6) all of his property was bequeathed to the plaintiff.

Defendant made six payments of \$591.00 on the mobile home between 9/11/04 and 2/11/05, a payment of \$6.00 on 4/18/05 and \$10.00 on 5/02/05 and five \$20.00 payments between 2/24/06 and 3/20/06. (Plaintiff's Exhibits 8 and 9). The plaintiff paid the taxes and insurance on the mobile home. On April 21, 2006, the plaintiff filed a claim for summary possession of the mobile home in the Justice of the Peace Court 16.

The case was initially dismissed by the magistrate for failure of the plaintiff to appear at trial, but on appeal to the three-judge panel it was held that the case did not involve a dispute concerning a lease agreement. (Plaintiff's Exhibit 7). Since the case involved a conditional sales agreement, the three-judge panel dismissed the claim for summary possession for lack of subject matter jurisdiction. On December 13, 2006, the plaintiff filed a civil action in this Court to obtain the balance owed to her by the defendant for the purchase of the mobile home.

The defendant contends that the mobile home was a gift to her from her father. The defendant's contention is incorrect. It is true that an unexplained transfer of property by a parent to a child raises a legal inference of a gift. 59 AM. JUR. 2 *Parent and Child*, Sec. 129 p. 265 (1987). But this inference can be overcome and by clear and convincing evidence that leaves no doubt as to the intentions of the parties. *Id.* The plaintiff has established by a preponderance of the evidence that transaction between John W. McGuire and the defendant was a conditional sale rather than a gift.

The only evidence to support the defendant's contention that she is the owner of the mobile home is the bill of sale issued to her and her father on August 19, 2004, and the testimony of Barbara Jean Wintjen. It is true that the defendant was listed as co-owner of the mobile home on the bill of sale, but the policy of Barker's Landing required that the resident who is renting the lot must be the owner of the mobile home. The plaintiff testified that the defendant was listed as a co-owner so that she could rent the lot from Barker's Landing. Barbara Jean Wintjen testified that John McGuire stated he purchased the mobile home for the defendant, but Constance McGuire, the defendant's

sister, testified that she was present when John McGuire stated to the defendant that he was selling her the mobile home.

The circumstantial evidence is overwhelming that the transaction was a conditional sale. The plaintiff's evidence reveals that the defendant made 13 payments for a total sum of \$3,716.00 for the purchase of the mobile home. There are letters written by John McGuire to the defendant indicating that the defendant was delinquent in her payments on the mobile home. A certificate of title was issued from the Motor Vehicle Department to John W. McGuire and after his death the certificate of title was transferred to the plaintiff. The defendant's letter to the plaintiff dated March 8, 2006, indicated that she is aware of her obligation to the plaintiff. (Plaintiff's Exhibit 14). There is evidence that the plaintiff paid the taxes and insurance on the mobile home. Based on the totality of the circumstantial evidence, I conclude that the plaintiff has established by a preponderance of the evidence that the transaction was a conditional sales agreement and that the defendant is indebted to the plaintiff in the amount of \$18,284.00.

Accordingly, judgment is entered in behalf of the plaintiff, Diane D. McGuire, and against Shelagh A. McGuire for the sum of \$18,283.00, plus costs of these proceedings.

IT IS SO ORDERED.

Merrill C. Trader
Judge