STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2022 CA 0194

DAMON MATHERNE

VERSUS

WEBB POLITE, JR.

Judgment Rendered: NOV 0 4 2022

Appealed from the
Twenty-First Judicial District Court
In and for the Parish of Livingston
State of Louisiana
Docket Number 157745, Division B

Honorable Charlotte H. Foster, Judge Presiding

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BEFORE: WHIPPLE, C.J., GUIDRY, AND WOLFE, JJ.

Wolfe, J., concurs

WHIPPLE, C.J.

Plaintiff, Damon Matherne, appeals the trial court's judgment, which declared that his deceased mother, Kathie Polite, donated certain personal injury settlement checks to her husband, Webb Polite, Jr., defendant herein. For the reasons that follow, we affirm in part, reverse in part, and render judgment.

FACTS AND PROCEDURAL HISTORY

Mr. and Mrs. Polite (collectively, the Polites) were married at the time of Mrs. Polite's death on March 17, 2017. Prior to their marriage, they executed a prenuptial agreement in August 2001, providing for a separate property regime. Mrs. Polite died intestate, and thereafter, in a separate probate proceeding, Mr. Matherne was recognized as the sole heir of Mrs. Polite's estate and placed into possession of her property. In 2013, Mrs. Polite was injured in an automobile accident. As a result of this accident and the subsequent lawsuit, Mrs. Polite received three settlement checks in the amount of $52,113.34 in March 2015, $25,200.19 in November 2016, and $1,130.07 in February 2017. Mrs. Polite deposited all three of these checks into a joint savings account that she shared with Mr. Polite. Through two different transactions prior to Mrs. Polite's death, Mr. Polite withdrew most of the settlement funds from the joint savings account. Mr. Polite also removed all of the remaining funds from the joint savings account after Mrs. Polite's death.

In December 2017, Mr. Matherne filed a Petition for Partition of Community/Marital Assets and for Possession of Separate Property, seeking a declaration that the prenuptial agreement was invalid, a partition of all property acquired by their community, and the return of any of Mrs. Polite's separate property still in Mr. Polite's control, including, *inter alia*, the settlement proceeds stemming from the 2013 automobile accident. Mr. Polite answered the petition, averring that the prenuptial agreement was valid and that he was entitled to

reimbursement from Mrs. Polite's estate because he used his separate property to "support" Mrs. Polite and "improve" her separate property during their marriage. After a hearing, the trial court found that the prenuptial agreement was valid and thus, the Polites were subject to a separate property regime during their marriage.

As pertinent to this appeal, in June 2020, Mr. Matherne filed a motion for partial summary judgment, seeking a ruling that the settlement funds received by Mrs. Polite were her separate property, which should be returned to Mr. Matherne as her sole heir. Mr. Polite opposed the motion for partial summary judgment and maintained that "the transfer of [Mrs. Polite's] separate property to him was in the nature of a gift or donation in recompense for the separate obligations of the decedent that he paid throughout the course of the marriage." The trial court denied Mr. Matherne's motion for partial summary judgment and the matter proceeded to a bench trial on March 29, 2021, after which the trial court took the matter under advisement and left the record open for the parties to submit post-trial memoranda. The trial court issued written reasons for judgment on April 19, 2021, and on October 6, 2021, the trial court signed a judgment in favor of Mr. Polite, finding that Mrs. Polite had donated the settlement checks to him and thus, dismissed Mr. Matherne's claims to the proceeds of the settlement checks. The trial court's judgment further ordered Mr. Polite to pay $5,000.00 in damages to Mr. Matherne as compensation for the loss of Mrs. Polite's separate personal property.[1]

Mr. Matherne now appeals, contending that the trial court erred in finding that a donation occurred and awarding the settlement funds to Mr. Polite when:

(1) Mrs. Polite's oral donative intent was predicated upon a future legacy, which is null and void in Louisiana;

[1] In addition to the personal injury settlement funds, Mr. Matherne sought the return of various other items, including clothing, jewelry, paintings, art supplies, and other items belonging to Mrs. Polite. The portion of the judgment which awards damages to Mr. Matherne is not at issue in this appeal.

(2) Mr. Polite did not prove the donation by clear and convincing evidence; and

(3) Mrs. Polite deposited the settlement funds into a joint account rather than giving Mr. Polite the money directly or negotiating the checks to Mr. Polite.

LEGAL PRECEPTS

A donation inter vivos is a contract by which a person, called the donor, gratuitously divests himself, at present and irrevocably, of the thing given in favor of another, called the donee, who accepts it. LSA-C.C. art. 1468. Unless an exception applies, a donation inter vivos must be by authentic act. LSA-C.C. art. 1541.

Further, the donation of an **incorporeal** movable "evidenced by a certificate, document, instrument, or other writing, and that is transferable by endorsement or delivery, may be made by authentic act or by compliance with the requirements otherwise applicable to the transfer of that particular kind of incorporeal movable." LSA-C.C. art. 1550. In contrast, a donation inter vivos of a **corporeal** movable may be completed by manual delivery of the thing to the donee, without observing any other formalities. LSA-C.C. art. 1543. However, there is no requirement that the donor physically hand over funds to the donee to perfect a manual gift. See LSA-C.C. art. 1544. Cash withdrawn from a bank account is considered a corporeal movable and can be subject to a manual gift. Succession of Miller, 405 So. 2d 812, 813 (La. 1981).

The donee has the burden of proving the donation, and this proof must be strong and convincing. In order for a donation to be valid, there must be a divestment, accompanied by donative intent. Successions of Wayne, 2018-1177 (La. App. 1st Cir. 5/31/19), 2019 WL 2332357, *3 (unpublished); Schindler v. Biggs, 2006-0649 (La. App. 1st Cir. 6/8/07), 964 So. 2d 1049, 1053. When the

donor is deceased, the intention of the donor is to be inferred from the relation of the parties and from all the facts and circumstances of the case. See Succession of Zacharie, 43 So. 988, 990 (La. 1907).

Donative intent is a question of fact that is subject to the manifest error standard of review. See Schindler, 964 So. 2d at 1053. Thus, a court of appeal may not set aside a trial court's factual finding unless it is manifestly erroneous or clearly wrong. A trial court's factual finding is manifestly erroneous/clearly wrong when, after review of the entire record, the appellate court finds that no reasonable factual basis exists for the finding and that it is manifestly erroneous or clearly wrong. See Stobart v. State through Dep't of Transp. and Dev., 617 So. 2d 880, 882 (La. 1993). If, in light of the record in its entirety, the trial court's findings are reasonable, then the appellate court may not reverse, even if convinced it would have weighed the evidence differently sitting as the trier of fact. Washington v. OneBeacon Am. Ins. Co., 2018-0248 (La. App. 1st Cir. 11/2/18), 265 So. 3d 8, 12, writ denied, 2018-1967 (La. 1/28/19), 262 So. 3d 887. Where the factfinder's determination is based on its decision to credit the testimony of one of two or more witnesses, its finding can virtually never be manifestly erroneous. Montz v. Williams, 2016-145 (La. 4/8/16), 188 So. 3d 1050, 1051. Statutory interpretation is a question of law subject to *de novo* review. Baack v. McIntosh, 2020-01054 (La. 6/30/21), 333 So. 3d 1206, 1211.

DISCUSSION

In his three assignments of error, Mr. Matherne asserts that the trial court erred in finding that Mr. Polite was entitled to the settlement funds because Mrs. Polite donated them to him during her lifetime. Specifically, Mr. Matherne challenges the timing of Mrs. Polite's donative intent, whether the evidence was sufficient to meet the applicable burden of proof, and whether the proper form requirements were met to perfect a donation inter vivos.

To prove there was a valid donation inter vivos perfected by manual delivery, the burden is on the donee to show by strong and convincing proof that the donor possessed donative intent to irrevocably divest herself of the thing, coupled with delivery of the thing to the donee. See Schindler, 964 So. 2d at 1053.

Mr. Matherne first challenges the timing of Mrs. Polite's alleged donative intent and whether Mr. Polite produced sufficient evidence to meet his burden at trial, i.e., to demonstrate, by strong and convincing proof, that Mrs. Polite had the requisite donative intent and irrevocably divested herself of the funds in order to complete the donations inter vivos. Relying on LSA-C.C. art. 1529, Mr. Matherne maintains that an oral contract for the donation of a future legacy is null and void and avers that "[e]ven if [Mrs. Polite's] alleged statement[s were] indicative of donative intent, the only testimony presented by [Mr. Polite] and his witnesses was limited to statements made prior to [Mrs. Polite's] receipt of any money." Mr. Matherne further avers that Mr. Polite's "self-serving testimony" is insufficient to prove donative intent.

Conversely, Mr. Polite maintains that Mr. Matherne's argument "conflates the issues of donative intent with the act of donation itself," as the statements made prior to receipt of the funds are merely indicative of Mrs. Polite's donative intent, and do not constitute the donation itself, as the donation only occurred when the money was deposited along with Mrs. Polite's donative intent. Mr. Polite also avers that the trial court's ruling that Mrs. Polite had donative intent cannot be overturned under the manifest error standard of review because, after hearing all of the evidence, the trial court essentially made a credibility determination.

At trial, Mr. Polite, Ginger McCray, and Curtis Blanchard all testified that, at some point in time, Mrs. Polite had expressed her intent to give the settlement funds to Mr. Polite. Mr. Polite testified that before Mrs. Polite ever received the funds or knew the settlement amount, she "commented several times of how much

[he financially] helped her," and "that she wanted to gift the money to [him] to do what [he] wanted to do with the money." Mr. Polite further stated that Mrs. Polite knew he was going to use the money to buy some property, tires, shop tools, and other items.

Ms. McCray, Mr. Polite's sister, testified that she and Mrs. Polite were very good friends who spoke "at least... four or five times a week." Ms. McCray testified that before Mrs. Polite received the settlement or knew how much the settlement was going to be, Mrs. Polite told her she wanted to give the money to Mr. Polite "to do whatever he needed to do with it" and that she never heard Mrs. Polite complain about how Mr. Polite used the money. Finally, Mr. Blanchard, a longtime friend of Mr. Polite, testified that he knew Mrs. Polite since before she married Mr. Polite and that he spent a lot of time with both of them. Mr. Blanchard also testified that, although he did not remember precisely when he had the conversation with Mrs. Polite, his understanding was that Mrs. Polite was "signing over the settlement" to Mr. Polite to pay him back for various expenses.

The trial court also heard testimony from Mr. Matherne and Jason Melancon, Mrs. Polite's attorney in the personal injury lawsuit stemming from the 2013 automobile accident. Mr. Matherne testified that Mrs. Polite talked about using the settlement funds "to do something for the grandkids" and that she never gave any indication that she wanted to give the money to Mr. Polite. Mr. Melancon testified that he and Mrs. Polite discussed the difference between separate property and community property and that he advised her that the best course of action was to keep separate property separate. Mr. Melancon testified that he specifically recommended to Mrs. Polite that she open a separate bank account to put the money into, but Mrs. Polite expressed to him that she was worried that Mr. Polite would be upset with her if she did that. Mr. Melancon further stated that she did not indicate an intent to give the money to Mr. Polite.

Based upon the record before us, and considering the conflicting testimony at trial, we are unable to say that the trial court committed manifest error in determining that the factual evidence established Mrs. Polite's donative intent. The trial court clearly afforded greater weight to the testimony of Mr. Polite, Ms. McCray, and Mr. Blanchard. See Montz, 188 So. 3d at 1051 (when a trial court decides to credit the testimony of witnesses, that finding is virtually never manifestly erroneous). Their testimony collectively conveyed that they each had at least one conversation with Mrs. Polite in which she indicated that she intended to donate the settlement funds to Mr. Polite, which the trial court found to be clear and convincing evidence of her intent to donate the settlement funds to Mr. Polite.

Additionally, we note that despite Mr. Matherne's arguments on appeal, the trial court did not rely solely on Mr. Polite's testimony in concluding that Mrs. Polite intended to donate the settlement funds to him. Cf. Successions of Wayne, 2019 WL 2332357, *4 (where this court found that the trial court erred in finding donative intent when the only testimony in support of the donation of funds from a joint savings account was the testimony of the purported donee, a joint owner of the account). Accordingly, we cannot say that the trial court was manifestly erroneous in making credibility determinations and finding that Mrs. Polite had the requisite donative intent.

Mr. Matherne further contends that the alleged donation of the funds nonetheless did not meet the form requirements for a donation inter vivos. Mr. Matherne maintains that the trial court erred in finding a donation of the settlement funds in favor of Mr. Polite where Mrs. Polite merely deposited the funds into a joint account rather than giving him the funds directly. Specifically, Mr. Matherne contends that as reflected in the reasons for judgment, the trial court erred in relying on In re Succession of Gassiott, 14-1019 (La. App. 3rd Cir. 2/4/15), 159 So. 3d 521, 524, writ denied, 2015-0493 (La. 5/15/15), 170 So. 3d 968 to improperly

find that a party divests himself of control over an account when he names a joint co-owner who has identical rights to the funds.

Conversely, Mr. Polite contends that the donation was a "valid manual gift of a corporeal movable." Mr. Polite contends that even if the donation was the donation of an incorporeal movable, the deposit of funds into the joint account under the circumstances presented herein meets the "extremely broad" language of LSA-C.C. art. 1550, which states that donations of incorporeal movables may be made by "requirements otherwise applicable to the transfer of that particular kind of incorporeal movable." Mr. Polite avers that in the instant case, the donation was complete when Mrs. Polite deposited the settlement funds into the joint account with donative intent.

In its reasons for judgment, the trial court found that Mrs. Polite donated all three of the personal injury settlement checks to Mr. Polite during her lifetime because she had donative intent when she deposited the funds into the joint savings account. Mr. Matherne argues that the trial court erred in relying on Succession of Gassiott in its reasons for judgment to find that, "for practical purposes, a party divests itself of his control over an account when he names a joint co-owner who has identical rights to the funds." Even assuming arguendo that the trial court improperly applied Gassiott, it is well settled that appellate courts review judgments, not reasons for judgment, and judgments are often upheld on appeal for reasons different than those assigned by the trial judge. The written reasons for judgment are merely an explication of the trial court's determinations and they do not alter, amend, or affect the final judgment being appealed. Wooley v. Lucksinger, 2009-0571, 2009-0584, 2009-0585, 2009-0586 (La. 4/1/11), 61 So. 3d 507, 572. The trial court's judgment merely states that Mrs. Polite donated the settlement checks to Mr. Polite, and that Mr. Matherne's claims to the proceeds of the checks are dismissed.

As previously noted, in order for a donation to be valid, there must be a divestment of the property, accompanied by the requisite donative intent. Schindler, 964 So. 2d at 1053. Moreover, the donor's donative intent must exist at the time the donations were completed. See Succession of Miller, 405 So. 2d at 819. As recognized in the jurisprudence, a savings account, or the right to the funds therein, is an incorporeal movable, and as such, not subject to manual gift. Nonetheless, the cash withdrawn from the savings account is a corporeal movable which is subject to manual gift, provided there was actual delivery of the funds. Butler v. Reddick, 431 So. 2d 396, 398 (La. 1983); Succession of Miller, 405 So. 2d at 818.

The Fifth Circuit considered Succession of Gassiott and explicitly found that "Succession of Gassiott does not stand for the proposition that the mere establishment of a joint checking account by spouses, and the subsequent deposit of separate funds therein, is sufficient to effect a valid inter vivos donation of those funds." In re Succession of O'Krepki, 16-50, 16-51 (La. App. 5th Cir. 5/26/16), 193 So. 3d 574, 580, writ denied sub nom. Succession of O'Krepki, 2016-1202 (La. 10/10/16), 207 So. 3d 406. We agree. As recognized by the Fifth Circuit, Succession of Gassiott is consistent with Louisiana jurisprudence which states that funds deposited into a joint bank account remain the property of their original owner absent an authentic act of donation. The right of withdrawal, or having one's name listed on the account, is not tantamount to ownership of the funds therein. Succession of O'Krepki, 193 So. 3d at 580, citing In re Succession of Elie, 2010-525 (La. App. 3rd Cir. 11/3/10), 50 So. 3d 262, 265, and Cantrell v. Pat O'Brien's Bar, 97-0545 (La. App. 4th Cir. 1/7/98), 705 So. 2d 1205, 1207.

The Fifth Circuit explained that the holding of Succession of Gassiott is consistent with this jurisprudence as follows:

> In [Succession of] Gassiott, the Third Circuit upheld the trial court's finding of a valid inter vivos donation of a husband's separate funds in a joint checking account where the husband and wife had a separate property regime. The Third Circuit agreed that the donative intent of the husband was clear because the husband, in the two weeks prior to his death, specifically instructed the wife to leave his bedside at the hospital and withdraw the funds from the joint account, and the husband took further steps to keep the existence of the account secret from his children in an effort to ensure that his wife would receive the funds he set aside for her in the account. The wife proceeded to withdraw the balance of the joint savings account four days *before* her husband's death. The Third Circuit cited the supreme court's decision in [Succession of] Miller[, *supra*,] in holding that there was a valid transfer of the funds in the joint account through conversion of the funds to a corporeal movable upon withdrawal, in a case where such conversion was coupled with clear evidence of the donor's intent and accomplished within the donor's lifetime. Therefore, the donation in [Succession of] Gassiott clearly fell under the manual gift exception to the rule that inter vivos donations be made by authentic act.

Succession of O'Krepki, 193 So. 3d at 580. For the same reasons, we conclude that Mrs. Polite's act of placing the settlements funds in the joint savings account, standing alone, is insufficient to complete the donation of the settlement funds in favor of Mr. Polite. However, this does not end our inquiry.

In the instant case, Mr. Polite testified that he initiated various electronic transfers of funds from the joint savings account to his personal account beginning on May 1, 2015, approximately two months after Mrs. Polite deposited the first settlement check into the joint account. Mr. Polite testified that on May 1, 2015, he transferred $50,000.00 from the joint savings account to his own account. He also testified that on March 7, 2017, almost two years later, he transferred $22,000.00 from the joint savings account to his own account. Once the funds were placed into Mr. Polite's separate account, Mrs. Polite clearly no longer had control of or access to the funds. Thus, when she was divested of the funds, there was a completed manual delivery which effected a donation inter vivos of the money. Butler v. Reddick, 431 So. 2d at 398; cf. Vinet v. Vinet, 20-387 (La. App. 5th Cir. 4/14/21), ___ So. 3d ___, ___, 2021 WL 1399000, *3 (finding that there was no evidence of a completed manual delivery of funds because merely placing

the funds into a joint account did not effect a donation inter vivos and the alleged donee never had complete, irrevocable control over the funds).

Here, it is undisputed that Mr. Polite withdrew a total of $72,000.00 from the joint savings account over a period of time prior to Mrs. Polite's death, commencing shortly after the first settlement check was deposited into the account. Moreover, as noted by the trial court, there is no evidence that Mrs. Polite ever objected to Mr. Polite's withdrawal of those funds. In fact, Mrs. Polite deposited the second check almost two years after the time she deposited the first check, despite Mr. Polite having withdrawn $50,000.00 from the account. Accordingly, the donations inter vivos of $50,000.00 and $22,000.00, respectively, were completed upon Mr. Polite's withdrawal of the funds from the joint account, i.e., when he had complete, irrevocable control over the funds, coupled with Mrs. Polite's donative intent.

There is no evidence in the record that Mr. Polite withdrew any additional funds from the joint savings account prior to Mrs. Polite's death. However, Mr. Polite also testified that almost a month *after* Mrs. Polite's death on April 11, 2017, he also withdrew $3,000.00 from the joint savings account. A donation inter vivos is without effect until it is accepted by the donee. Moreover, to complete a valid donation inter vivos, the acceptance *shall* be made during the lifetime of the donor. When the donee is put into corporeal possession of a movable by the donor, possession by the donee constitutes acceptance of the donation. LSA-C.C. art. 1544. Accordingly, because Mr. Polite did not show that he "accepted" the remainder of Mrs. Polite's funds as donations to him while she was alive, the donations were never accepted nor was the donation shown to be completed by manual delivery of the funds during the donor's lifetime. Consequently, it was error for the trial court to find that Mr. Polite was entitled to keep the third settlement check, in the amount of $1,130.07, as well as the remainder of the funds

from the first two settlement checks that Mr. Polite never took possession of, in the amount of $5,313.53. As these donations were never actually delivered or accepted as manual gifts during the lifetime of the donor, Mr. Matherne is entitled to the return of this separate property of his mother, consisting of the remainder of the settlement checks from the lawsuit that she received on or about March 2015, November 2016, and February 2017, which totaled $6,443.60.[2]

CONCLUSION

For the above and foregoing reasons, the portion of the trial court's October 6, 2021 judgment, finding that Kathie Polite's personal injury settlement checks were donated by Kathie Polite to Webb Polite and dismissing Damon Matherne's claims to any of the proceeds of those settlement checks, is reversed and judgment is hereby rendered as follows:

It is ordered, adjudged and decreed that the portion of Kathie Polite's personal injury settlement funds in the amount of $72,000.00 withdrawn by Webb Polite from the Polites' joint savings account prior to Kathie Polite's death are hereby recognized as funds donated by Kathie Polite to Webb Polite, and that accordingly, judgment is hereby rendered in favor of defendant Webb Polite and against plaintiff Damon Matherne, dismissing Damon Matherne's claims as to those settlement funds.

It is further ordered, adjudged and decreed that no valid donation inter vivos was made with regard to the portion of Kathie Polite's personal injury settlement funds, in the amount of $6,443.60, remaining in the Polites' joint accounts at Kathie Polite's death, which remained her separate property. Accordingly, it is ordered, adjudged, and decreed that there be judgment in favor of plaintiff Damon Matherne and against defendant Webb Polite in the amount of $6,443.60.

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[2] The third settlement check, in the amount of $1,130.07, was deposited into the Polite's joint checking account, not the joint savings account. This does not change our analysis herein because Mr. Polite likewise did not withdraw these funds prior to Mrs. Polite's death, and thus did not show there was a donation of these funds.

In all other respects, the judgment is affirmed.

Costs of this appeal are assessed equally to appellant, Damon Matherne and appellee, Webb Polite, Jr.

AFFIRMED IN PART, REVERSED IN PART, AND RENDERED.