IN THE SUPREME COURT OF THE STATE OF DELAWARE

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| WILLOW A. CLARK, | § | |
| | § | No. 654, 2009 |
| Respondent Below-Appellant, | § | |
| | § | Court Below: Family Court of the State of Delaware in and for Sussex County |
| v. | § | |
| | § | |
| TODD D. CLARK, | § | No. CS88-4163 |
| | § | |
| Petitioner Below-Appellee. | § | |
| | § | |

Submitted: March 1, 2010
Decided: May 11, 2010

Before **STEELE**, Chief Justice, **BERGER**, and **RIDGELY**, Justices.

***O R D E R***

This 11th day of May 2010, it appears to the Court that:

(1) Appellant Willow A. Clark[1] ("Wife") appeals from the Family Court's decision that a farm acquired by Appellee Todd D. Clark ("Husband") during their marriage does not constitute marital property within the meaning of 13 *Del. C.* § 1513(b). Wife makes two arguments on appeal. First, she contends the Family Court erred because it did not apply the appropriate standard of proof to determine if Husband rebutted the legal presumption that the farm was marital property pursuant to 13 *Del. C.* § 1513(b). Second, she contends that the Family Court

[1] By Order dated November 10, 2009, the Court *sua sponte* assigned pseudonyms to the parties under Del. Supr. Ct. R. 7(d).

abused its discretion when it determined that the farm did not constitute marital property within the meaning of 13 *Del. C.* § 1513(b). We find no merit to her arguments and affirm.

(2) The parties to this proceeding were married on October 15, 1987, and divorced on September 15, 2006. Following the divorce proceedings, the Family Court retained ancillary jurisdiction over property division. The most significant asset acquired during their marriage was a farm located at 29412 Buck Run Road in Laurel, Delaware ("the farm").[2] The farm was acquired by Husband on June 6, 1994, from Edna Marie Hearn, Husband's Grandmother. The Family Court's findings on whether transfer of the farm from Ms. Hearn to Husband constituted a gift or a sale is the crux of this appeal.

(3) In late 1993, Ms. Hearn contacted her attorney, Harold E. Dukes, Jr., Esquire, to transfer a total of four separate parcels of real estate to her three daughters and grandson (Husband). Ms. Hearn transferred to her three daughters three parcels of land measuring 0.65, 0.75 and 7.78 acres. Ms. Hearn transferred to Husband the farm measuring approximately 136 acres, and the farm was titled solely in Husband's name. On the date of the farm transfer, January 6, 1994, Husband initiated and executed a purchase money mortgage and bond in favor of Ms. Hearn in the amount of $50,000. Husband made annual payments of

[2] If the farm is determined to be martial in nature, it would constitute approximately 90% of the marital estate.

$6,475.24 including interest at 5% over a period of ten years, from 1995 through 2004, pursuant to an amortization schedule. The farm was valued at substantially more than $50,000.

(4) The three smaller parcels Ms. Hearn transferred to her daughters were all accompanied by a gift tax affidavit and a realty tax affidavit. Although the deed indicates the realty transfer tax was paid, Mr. Dukes was unable to explain why his case file did not contain either a gift tax affidavit or a realty tax affidavit for the transfer of the farm.

(5) Mr. Dukes was asked if he knew the parties' intent behind the $50,000.00 mortgage. Mr. Dukes testified that the mortgage was Husband's idea, and recalled a conversation with Husband, "I said, you can just give your grandmother money whenever you want to. And he said, no, if something happens to me, I want to make sure that she gets at least $50,000 from this farm or whatever if my estate has to sell it." Mr. Dukes then testified concerning the reason Ms. Hearn accepted Husband's payments, stating "I think that there is a fairness issue, she didn't want to make the others jealous of Timothy."

(6) Mr. Dukes also testified as to the intent of Ms. Hearn concerning the nature of the transfer. He stated, "[w]ell, the intention of my client was it was supposed to be a gift. And so, we prepared it this way and never anticipated of

course that we're sitting here." The Family Court found that Mr. Dukes' notes in the case file revealed the following:

> Mr. Dukes' notes of May 16, 1994, following a call from Ms. Hearn, contained references to the fact that Ms. Hearn wanted to "give her farm" to [H]usband. The notes reflected that it was to be a "gift" with "no $ to [Ms. Hearn]." The notes further reflected that [H]usband was married, but "[W]ife is not part of this gift." The notes contain a reference about, "no money being paid."

(7) Wife testified that the farm "was acquired by actually both of us. We paid [Ms. Hearn] for it throughout the years." Cross-examination revealed that Wife was not aware of, or become involved in the transfer until after the transfer occurred. Husband testified that the transfer of the farm was not his idea, and that "[Ms. Hearn] wanted me to have it. I mean, I'm the only one that basically farmed it and I'm the only one, you know, that was able to farm it. And she wanted me to have it." Husband further testified that the $50,000 mortgage was his idea. He testified,

> "I mean, like I said, the $50,000 was for my grandmother, if something happened to her, it was to protect her for her to have some kind of money. I mean she can't live off Social Security, the money she gets – she had to have so much money to live off of. . . .And I don't know how you – it's not – I mean, I still pay her today. I mean, if it was a mortgage, I would be done."

(8) The Family Court, after two days of ancillary proceedings, found that the transfer of the farm was a gift from Ms. Hearn to Husband as contemplated by 13 *Del. C.* §1513(b)(1). Accordingly, the Family Court held that the farm was not

marital property subject to division under 13 *Del. C.* §1513. The Family Court further found that the record did not reveal the precise origination of the funds given to Ms. Hearn over the period of approximately ten years. The Family Court found that these funds totaled $65,552.26, and were marital property subject to equitable division. This appeal followed.

(9) Our standard of review of a decision of the Family Court extends to a review of the facts and law, as well as inferences and deductions made by the trial judge.[3] To the extent that the issues on appeal implicate rulings of law, our review is *de novo*.[4] If the Family Court applied the law correctly, we review for an abuse of discretion.[5] We will not disturb the trial judge's findings of fact where those inferences are sufficiently supported by the record and are not clearly wrong.[6]

(10) Wife contends that the Family Court did not apply the appropriate standard of proof to determine if Husband rebutted the legal presumption that the farm was marital property. Wife's argument that the Family Court did not apply a "clear and convincing evidence" standard is two-fold. First, she contends the Family Court did not use the phrase "clear and convincing evidence." Second, she

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[3] *Wife (J.F.V.) v. Husband (O.W.V., Jr.)*, 402 A.2d 1202, 1204 (Del. 1979); *Solis v. Tea*, 468 A.2d 1276, 1279 (Del. 1983).
[4] *Powell v. Dep't of Serv. For Children, Youth, & Their Families*, 963 A.2d 724, 730-31 (Del. 2008); *In re Heller*, 669 A.2d 25, 29 (Del. 1995); *Black v. Gray*, 540 A.2d 431, 433 (Del. 1988).
[5] *Jones v. Lang*, 591 A.2d 185, 186 (Del. 1991) (quoting W. *v. W.*, 339 A.2d 726, 727 (Del. 1975)).
[6] *Powell v. Dep't of Serv. For Children, Youth, & Their Families*, 963 A.2d at 730-31; *In re Stevens*, 652 A.2d 18, 23 (Del. 1995); *Solis v. Tea*, 468 A.2d at 1279.

contends that had the Family Court applied the standard, it could not have found for Husband and, therefore, it must have utilized a less-stringent standard. Although the Family Court did not use the phrase "clear and convincing evidence," we find that the trial court was satisfied that the record revealed by clear and convincing evidence that Husband rebutted the presumption.

(11) The division of marital property under Delaware law is governed by 13 *Del. C.* § 1513. Under this statute, and "upon request of either party," the Family Court must "equitably divide, distribute and assign the marital property."[7] The party making the request has the burden of proving, by a preponderance of the evidence, the reasons why the marital property should be so awarded, to whom, and the value to be assigned.[8] There is a presumption that all property acquired during the course of a marriage is marital property, regardless of title.[9] This presumption may be overcome, however, by clear and convincing evidence that the property falls into one of the four exclusions outlined by Section 1513(b).[10] The exception relevant to this appeal is 13 *Del. C.* § 1513(b)(1), which provides:

> Property acquired by an individual spouse by bequest, devise or descent or by gift, except gifts between spouses, provided the gifted property is titled and maintained in the sole name of the donee spouse, or a gift tax return is filed reporting the transfer of the gifted property in the sole name of the donee spouse or a notarized document,

[7] 13 *Del. C.* § 1513.
[8] Del. Fam. Ct. Civ. R. 52(a)(3)(i). *See also Greg v. Greg*, 510 A.2d 474, 478 (Del. 1986).
[9] 13 *Del. C.* § 1513(c).
[10] 13 *Del. C.* § 1513(b). *See Farmer v. Farmer*, 2009 WL 1060467, at *2 (Del. Apr. 21, 2009).

executed before or contemporaneously with the transfer, is offered demonstrating the nature of the transfer.

(12) This Court has held that clear and convincing evidence is the standard of proof necessary to rebut a legal presumption.[11] "[T]o establish proof by clear and convincing evidence means to prove something that is highly probable, reasonably certain, and free from serious doubt."[12] The intermediate standard of proof applicable at trial, however, does not impact our standard of review of the trial court's factual findings on appeal:

> On appeal from a trial court's ruling based on the clear and convincing standard of proof relating to the rebuttal of a legal presumption, this Court will review the entire record and test the propriety of the judge's factual findings to "assure that they are sufficiently supported by the record and result from an orderly and logical deductive process." If the discretionary findings are sufficiently supported by the record and are the product of an orderly and logical deductive process, this Court in the exercise of judicial restraint, will not disturb those findings, even though independently we might have reached opposite conclusions. This Court is free to make independent findings of fact only if the findings of the trial court are clearly wrong and justice requires their overturn.[13]

(13) The Family Court noted several specific facts to support its conclusion that Husband rebutted the presumption of marital property:

> There is no question that husband received the farm during the term of the marriage. I am satisfied, though, that the farm was acquired by husband as a gift, and therefore the presumption of marital property has been overcome. There is no question that Ms. Hearn contacted her attorney, Mr. Dukes, because she wanted to give

[11] *Hudak v. Procek*, 806 A.2d 140, 147 (Del. 2002).
[12] *Id.*
[13] *Id.* at 149 (citations omitted).

> the farm to her grandson, who she and her husband had raised as a son, and who was the only family member who expressed an interest in farming. It is *clear* Ms. Hearn wanted no money exchanged and wife was not to be a part of the transaction. In fact, when the deed was executed, the transfer of title to the farm was to husband only. Husband has since maintained the property in his name only.[14]

The Family Court also noted that the execution of a note and mortgage is not a sufficient basis to reject its determination that a gift occurred, because "Husband's decision to give his grandmother $50,000 was a separate act, distinct and apart from grandmother's gift to him." Lastly, the Family Court dismissed concerns regarding the realty transfer tax, saying it "only indicates compliance with the realty transfer tax law, not a designation of the transfer as a sale."

(14) Wife contends that the Family Court abused its discretion by determining that Husband overcame the marital presumption by overlooking "overwhelming evidence" of consideration having been paid for the property. Wife challenges Mr. Dukes' testimony, noting that despite advance notice that he would be called to testify, he was unsure of many aspects of the transfer of the farm from Ms. Hearn to Husband. But Mr. Dukes did testify, and the Family Court found credible, that Ms. Hearn intended that the transfer of the farm be a gift to Husband. Further, Mr. Dukes testified that the $50,000 mortgage was Husband's idea in an attempt to ensure Ms. Hearn was financially secure. Finally, Mr. Dukes testified that Ms. Hearn accepted the payments because of "fairness" concerns,

[14] (Emphasis added).

"because the others had received an acre or two acres and of course [Husband] was getting the farm."

(15) "Regardless of the applicable standard of proof at trial, this Court regularly defers to the unique opportunity of the fact-finder, whether judge or jury, to evaluate the live witnesses, to evaluate their demeanor and credibility and to resolve conflicts in the testimony."[15] The evidence presented to the Family Court supports its conclusion that the transfer of the farm to Husband was intended by Ms. Hearn to be a gift. Specifically, Ms. Hearn was known for her generosity towards her children, Mr. Dukes testified that Ms. Hearn intended the transfer to be a gift, Husband initiated the $50,000 mortgage to ensure Ms. Hearn's financial stability, Ms. Hearn accepted the money to appear fair to her other grandchildren, and Husband continued to pay Ms. Hearn despite having satisfied the mortgage.

(16) After careful review of the record, we hold that the Family Court's factual finding that the transfer of the farm was a gift was not "clearly wrong," and that justice does not require its overturn.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court is **AFFIRMED**.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

[15] *Hudak*, 806 A.2d at 150.