IMPORTANT NOTICE
NOT TO BE PUBLISHED OPINION

THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED." PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28(4)(C), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS BINDING PRECEDENT IN ANY OTHER CASE IN ANY COURT OF THIS STATE; HOWEVER, UNPUBLISHED KENTUCKY APPELLATE DECISIONS, RENDERED AFTER JANUARY 1, 2003, MAY BE CITED FOR CONSIDERATION BY THE COURT IF THERE IS NO PUBLISHED OPINION THAT WOULD ADEQUATELY ADDRESS THE ISSUE BEFORE THE COURT. OPINIONS CITED FOR CONSIDERATION BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED DECISION IN THE FILED DOCUMENT AND A COPY OF THE ENTIRE DECISION SHALL BE TENDERED ALONG WITH THE DOCUMENT TO THE COURT AND ALL PARTIES TO THE ACTION.

RENDERED: March 24, 2011
NOT TO BE PUBLISHED

Supreme Court of Kentucky

2009-SC-000088-DG

SHERI LYNN REINSTEDLER — APPELLANT

V.

ON APPEAL FROM COURT OF APPEALS
CASE NO. 2007-CA-002227-MR
JEFFERSON CIRCUIT COURT NO. 06-CI-502147

DANIEL THOMAS REINSTEDLER — APPELLEE

MEMORANDUM OPINION OF THE COURT

REVERSING AND REMANDING

The controversy presented in this dissolution proceeding centers around the status of the land upon which the parties' marital home was built. The Jefferson Circuit Court determined that the land was marital property, but the Court of Appeals concluded that the land was the separate property of Appellee, Daniel Reinstedler. Appellant, Sheri Reinstedler, sought review in this Court, asserting that the Court of Appeals erred in reversing the circuit court's determination. We agree that the Court of Appeals failed to give proper deference to the trial court's credibility determinations and instead improperly substituted its judgment for that of the trial court. We, therefore, reverse the Court of

Appeals decision and remand for reinstatement of the judgment of the Jefferson Circuit Court.

The parties married in 1983 and divorced twenty-four years later, in 2007. More than seven years into the marriage, Daniel's parents conveyed a five-acre tract of land to the couple. They built a home on this property and lived there until their divorce. Daniel maintains that the land is his nonmarital property because it was a gift to him, alone, while Sheri contends that it was a gift to them both.

KRS 403.190 governs the disposition of property upon dissolution of marriage. KRS 403.190(3) provides:

> All property acquired by either spouse after the marriage and before a decree of legal separation is presumed to be marital property, regardless of whether title is held individually or by the spouses in some form of co-ownership such as joint tenancy, tenancy in common, tenancy by the entirety, and community property. The presumption of marital property is overcome by a showing that the property was acquired by a method listed in subsection (2) of this section.

Accordingly, the tract in question is presumed to be marital property and the burden to prove otherwise rests with Daniel. As noted earlier, Daniel attempted to overcome the marital property presumption established in KRS 403.190(3) by showing that the tract was a nonmarital gift. Indeed, KRS 403.190(2)(a) provides that "[p]roperty acquired by gift . . . during the marriage" is an exception to the general rule that all property acquired by either spouse subsequent to the marriage is marital property. Of course, if the gift is made *jointly to the spouses* from a third

party during the course of the marriage, it is deemed marital property. *Calloway v. Calloway*, 832 S.W.2d 890 (Ky. App. 1992).

In *Sexton v. Sexton*, 125 S.W.3d 258, 269 (Ky. 2004), this Court explained that "the donor's intent is . . . the primary factor in determining whether a gift is made jointly to spouses or individually to one spouse." And, while the donor's testimony is highly probative, the surrounding facts and circumstances, including the relationship of the parties and the parties' conduct, must also be considered in discerning the donor's intent. *Id.* Ultimately, though, "[t]he determination of whether a gift was jointly or individually made is a factual issue, and therefore, subject to CR 52.01's clearly erroneous standard of review," *id.* at 269, and "[d]ue regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." CR 52.01.

Here, according to the deed, the subject tract of land was conveyed to both Daniel and Sheri. Specifically, the deed stated that the fee simple conveyance was:

> for a VALUABLE CONSIDERATION paid, the receipt of which is hereby acknowledged, and the further consideration of the love and affection which first parties [Daniel's parents] have for second parties who are their son and daughter-in-law.

Contrary to the language in the deed, Daniel's mother testified that her intent was to give the land only to Daniel. The Court of Appeals reasoned that Daniel's mother's testimony overwhelmingly established that her intent was to make a nonmarital gift of the tract to Daniel,

notwithstanding the language utilized in the deed. Consequently, the Court of Appeals held that the trial court clearly erred in its decision to the contrary.

However, appellate courts must remain mindful that clear error is the most deferential standard of appellate review. *Edwards v. Hickman,* 237 S.W.3d 183 (Ky. 2007). As such, an appellate court should resist the temptation to substitute its judgment for that of the factfinder unless the record is devoid of substantial evidence to support the factfinder's decision. *Moore v. Asente,* 110 S.W.3d 336 (Ky. 2003). Substantial evidence is "[e]vidence that a reasonable mind would accept as adequate to support a conclusion," *id.* at 354 (quoting *Black's Law Dictionary* 580 (7th ed. 1999)), or evidence that "has sufficient probative value to induce conviction in the minds of reasonable men," *id.* (quoting *City of Monticello v. Rankin,* 521 S.W.2d 79, 80 (Ky. 1975)).

Here, the trial court stated:

> [T]he gift of land from [Danny's] parents was a gift to both parties. The Court further concludes that the intent of the donors at the time was evidenced in the deed, which listed the land as being transferred to both [Danny] and [Sheri]. There was no need to put it in both names if the intent of the donors was to make a gift to [Danny] only. The donors were his parents. At the time both parties were natural objects of their bounty. [Sheri] is less an object of their bounty when the parties are going through a divorce.

It is apparent that the trial court gave deliberate consideration to the testimony of Daniel's mother, but found that the donors' intent was more accurately reflected by the deed, executed at the time of the gift, than by

the testimony given years later, after the couple separated. Further, the foregoing comments clearly encompass the trial court's assessment of the credibility of Daniel's mother's testimony, an assessment that is entitled to great deference. CR 52.01.

As there is substantial evidence to support the trial court's determination, we must conclude that the Court of Appeals improperly usurped the trial court's authority and failed to give adequate deference to the trial court's credibility determinations. We, therefore, reverse the decision of the Court of Appeals. Our decision in this regard renders moot any remaining arguments concerning the need to apportion the increase in value of the property between the tract of land and the residence.

For the foregoing reasons, the Court of Appeals opinion is reversed and this cause is remanded for reinstatement of the judgment of the Jefferson Circuit Court.

All sitting. All concur.

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