STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1304

In re the Matter of:
Steven R. Schaetzke, petitioner,
Respondent,

vs.

Linda Hardin,
Appellant.

Filed June 17, 2008
Affirmed in part, reversed in part and remanded
Muehlberg, Judge[*]

Goodhue County District Court
File No. FA-06-1694

John F. Gilsdorf, Jill Johnson, Gilsdorf & Askvig, 101 East 5th Street, Suite 1712, St. Paul, MN 55101; and

Leland S. Watson, 895 TriTech Office Center, 331 Second Avenue South, Minneapolis, MN 55401 (for respondent)

Thomas E. Gorman, Thomas E. Gorman Law Office, 1626 Old West 3rd Street, Red Wing, MN 55066 (for appellant)

Considered and decided by Willis, Presiding Judge; Johnson, Judge; and Muehlberg, Judge.

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[*] Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

MUEHLBERG, Judge

Appellant and respondent lived together for a substantial period of time as cohabitants. During their cohabitation, respondent executed a deed in favor of appellant creating joint-tenancy ownership of the parties' homestead. The parties eventually married, but this marriage was later dissolved. Appellant now challenges the district court's resolution of the matters relating to the parties' cohabitation and marriage, claiming it erred in: (1) determining that respondent's execution of the deed did not gift an interest to her in the parties' homestead; (2) characterizing certain property shared during the parties' marriage as marital in nature; and (3) in refusing to invade respondent's nonmarital estate. We conclude the district court properly characterized the disputed property as marital property and that it acted within its discretion in refusing to invade respondent's nonmarital estate and affirm in part. But we conclude that the district court erred in deciding that the execution of the deed did not gift appellant an interest in the parties' homestead and reverse in part and remand.

FACTS

Appellant Linda Hardin and respondent Steven Schaetzke became romantically involved and began living together in 1984. They were engaged one month later. Appellant and respondent have no children together.

In 1988, respondent purchased a home in Welch, Minnesota (the "Welch property") under a contract-for-deed agreement. Because appellant had a prior mortgage default on her credit record, the property was purchased solely in respondent's name. In

February 1990, respondent satisfied the contract for deed and placed a mortgage on the property. This mortgage was also solely in his name. Pursuant to an unwritten and informal understanding between the parties, respondent made the monthly mortgage payments, as well as paying the Welch property's taxes, insurance, and utilities; appellant, in return, provided for the parties' day-to-day living expenses.

In November 1993, respondent refinanced the mortgage on the Welch property, again in his name only. A month after this refinance, on December 16, 1993, respondent executed a quitclaim deed to the Welch property that created joint-tenancy ownership of the property between appellant and himself.

On March 31, 1997, almost 13 years after becoming engaged, appellant and respondent married. Subsequently, in January 2004, the parties took out a home equity loan on the Welch property. Appellant was both a signatory to, and obligor under, this loan agreement.

In December 2005, appellant became suspicious that respondent had become romantically involved with another woman. This was not the first time appellant had harbored such suspicions during the parties' cohabitation and marriage. Relations between the couple steadily deteriorated over the next several months, and respondent petitioned to dissolve the parties' marriage.

To more efficiently resolve their marriage dissolution, the parties stipulated to the division of large portions of their accumulated property. The issues they could not agree on were submitted to the district court. In lieu of live testimony at a trial, appellant and respondent agreed that the district court could decide these outstanding issues based on

the submitted affidavits and exhibits. The district court resolved the issues and incorporated the parties' stipulations into an April 19, 2007 dissolution judgment and decree. The district court amended certain findings and conclusions in the dissolution judgment in a June 7, 2007 order. This appeal follows.

D E C I S I O N

Appellant raises issues concerning both the law of gifts and the characterization and division of property related to the parties' marriage dissolution. Because our conclusion relating to appellant's claim that she was gifted an interest in the Welch property affects the analysis of one of her dissolution-related claims, we will address it at the outset.

I.

Appellant argues that respondent's execution of the December 1993 deed in her favor creating joint-tenancy ownership of the Welch property gifted her a distinct and individual interest in the property. The district court concluded otherwise. But, for the reasons outlined below, we agree with appellant.

It is established that the execution of a deed granting a party an interest in real property, including a deed creating a joint tenancy, does not actually constitute a gift of an interest in the property unless all the necessary elements of a gift are present. *Kempf v. Kempf*, 288 Minn. 244, 247-48, 179 N.W.2d 715, 717 (1970). The required elements of a gift are: "(1) delivery; (2) intention to make a gift; and (3) absolute disposition by the donor of the thing which the donor intends as a gift." *Weber v. Hvass*, 626 N.W.2d 426, 431 (Minn. App. 2001), *review denied* (Minn. June 27, 2001). "Donative intent is

demonstrated by the surrounding circumstances, including the form of the transfer." *Olsen v. Olsen*, 562 N.W.2d 797, 800 (Minn. 1997). The donee must establish each element of a gift by clear and convincing evidence. *Oehler v. Falstrom*, 273 Minn. 453, 457, 142 N.W.2d 581, 585 (1966); *In re Estate of LeBrun*, 458 N.W.2d 139, 143 (Minn. App. 1990).

Whether a donor intended the conveyance of real property to be a gift is a question of fact. *Falstrom*, 273 Minn. at 457, 142 N.W.2d at 585. Typically, appellate courts will not reverse a district court's factual findings unless clearly erroneous. Minn. R. Civ. P. 52.01. Rule 52.01 states: "Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses."

> The rule does not distinguish between oral or documentary evidence. Consequently, the reviewing court should not reverse the trial court's findings unless it is left with the definite and firm conviction the trial court made a mistake. The evidence and its reasonable inferences must be viewed in the light most favorable to the prevailing party.

First Trust Co., Inc. v. Union Depot Place Ltd. Partnership, 476 N.W.2d 178, 181-82 (Minn. App. 1991) (citations omitted), *review denied* (Minn. Dec. 13, 1991).

Here, the district court found that respondent had no donative intent when he executed the December 1993 deed, stating that the evidence "compelled" it to conclude that in executing the deed respondent "added [appellant] to the title for estate planning purposes in the event he were to die before her, namely, his concern that she and her

children would have a place to live in the event of his untimely demise. . . . [N]o donative intent has been established [by appellant]."

This finding is based entirely on claims contained in respondent's affidavit, and paraphrases the language used therein. But respondent's after-the-fact statement that he did not intend to convey to appellant an interest in the Welch property when he executed the deed over a decade earlier is severely undermined by the remainder of the evidence. Initially, respondent's statement is exceptionally self-serving in that, if accepted as fact, he would avoid a substantial monetary loss in preventing appellant from acquiring an interest in the Welch property. Furthermore, appellant stated in her affidavit that respondent executed the deed after she learned of his relationship with another woman. Appellant claimed that, to stem her desire to end their relationship, respondent wanted to demonstrate his commitment to her by sharing his interest in the Welch property on a "50-50 basis." Respondent does not specifically contradict this claim in his own affidavit. Further, the deed states, in part, "The purpose of this deed is to establish joint tenancy in the grantees herein."

Additional probative evidence regarding respondent's intent in executing the deed is not derived from the parties' affidavits, but the inferences drawn from evaluating the circumstances surrounding execution of the deed. The *Olsen* case provides helpful guidance in performing this analysis. There, Larry and Colleen Olsen, husband and wife, were gifted an interest in real property by an uncle of Colleen's. *Olsen*, 562 N.W.2d at 798. The uncle gifted this property by executing two deeds naming both Olsens the joint-tenant owners of the deeded property. *Id.* When their marriage was later dissolved, the

issue became to whom the property was gifted. *Id*. at 800. If he intended to gift the property only to his niece Colleen Olsen, under the applicable statutes it would be entirely her nonmarital property. *Id.* If the gift was intended for both Olsens, the property would be marital property to be divided between them. *Id.* at 801. The district court concluded that, despite the fact that the conveyance was to both parties, Colleen's uncle intended to gift the property solely to her. *Id*. at 799.

The supreme court reversed, holding that Colleen Olsen failed to prove by a preponderance of the evidence that the property was nonmarital. The court noted that the evidence supporting the district court's conclusion was "sparse." *Id*. at 800. Because the record demonstrated the uncle was knowledgeable about the operation of joint tenancies, the court stated that the execution of the deeds naming both parties, "while not dispositive, is compelling" evidence that he intended the deeded property as a gift to both. *Id*. at 801. The supreme court pointed out that certain tax documents also indicated that the gift was intended for both parties, and concluded that the district court erred in its determination that the uncle only intended his gift go to his niece Colleen Olsen. *Id*.

The circumstances here are analogous to *Olsen* in several ways. First and foremost, the simple fact that respondent executed a deed that facially purports to convey an interest in the Welch property to appellant provides "compelling" evidence that he intended to gift to her an interest in the property. *See id*. Just as in *Olsen*, respondent's affidavit establishes that he was knowledgeable about joint tenancies because he knew creating this form of ownership of real property would ensure the property passed to appellant immediately upon his death. Also analogous to *Olsen*, the evidence appellant

had no donative intent, as discussed above, is sparse and, furthermore, is substantially undermined by other evidence. Moreover, corroborative evidence exists in the form of appellant's affidavit, which establishes that respondent wanted to split his interest in the Welch property "50-50" with her to demonstrate his commitment to their relationship after his conduct raised questions regarding this matter. These facts buttress the strong inference recognized in *Olsen* that, in the context of a gift analysis, when one party executes a deed which on its face purports to grant another party an interest in real property, the grantor typically has a donative intent regarding the deeded property.

In sum, reviewing the evidence under the clearly erroneous standard and considering the *Olsen* precedent, we conclude that the district court erred in finding that the evidence did not establish donative intent on the part of respondent in executing the December 1993 deed, and we further conclude that by executing that deed he conveyed the Welch property to appellant and himself as joint tenants. It was not executed merely for estate planning progress to become effective upon his death. Accordingly, we reverse and remand to allow the district court to create a mechanism that, in an equitable fashion, ensures appellant is compensated for her undivided one-half interest in the Welch property. *See Kipp v. Sweno*, 683 N.W.2d 259, 263 (Minn. 2004).

II.

Appellant next claims that the district court erred both when it determined that respondent retained a nonmarital interest in the Welch property and that a Roth IRA held solely in her name was marital property. We are not required to, and so do not, address the former claim concerning respondent's purported nonmarital interest in the Welch

property because we have already concluded that appellant was gifted her own, separate interest in that property pursuant to the December 1993 deed. We disagree with appellant's latter claim.

Property acquired during a marriage is presumptively marital property regardless of whether title to the property is held individually or in some form of co-ownership. Minn. Stat. § 518.003, subd. 3b (2006). If property is presumptively marital, a former spouse must demonstrate by a preponderance of the evidence that the property is nonmarital to overcome this presumption. *Antone v. Antone*, 645 N.W.2d 96, 101 (Minn. 2002). A former spouse can establish that property is nonmarital by showing, among other alternatives, that the property was acquired before the marriage or was acquired in exchange for nonmarital property. Minn. Stat. § 518.003, subd. 3b(b)-(c). "In order to maintain its nonmarital character, nonmarital property must be kept separate from marital property or, if commingled, must be readily traceable." *Wopata v. Wopata*, 498 N.W.2d 478, 484 (Minn. App. 1993). But, given that the preponderance of the evidence standard is used to rebut the marital property presumption, the stringency of the evidence needed to trace property to its purported nonmarital origins is not an unduly strict one. *Carrick v. Carrick*, 560 N.W.2d 407, 413 (Minn. App. 1997). On established facts, the characterization of property as marital or nonmarital is a question of law, which we review de novo. *Gottsacker v. Gottsacker*, 664 N.W.2d 848, 852 (Minn. 2003).

Here, appellant admits that she opened her IRA in July 1999, during the parties' marriage. But she states that the money used to open it was obtained by cashing out and rolling over monies previously associated with insurance policies she had purchased

many years before she married respondent. Thus, appellant argues her acquisition of the IRA can be traced to an exchange for nonmarital property.

The district court made the following finding regarding this matter in the dissolution judgment:

> [Appellant] alleges that she is able to trace the nonmarital portion of the State Farm Roth IRA. However, [appellant] has submitted into evidence no documents authenticating her claim. [Appellant] has not sustained her burden of proof to establish her nonmarital claim with respect to this asset. Accordingly, the Court finds that the State Farm IRA, with a stipulated value of $3570, is wholly marital and subject to division accordingly.

Appellant acknowledges that she provided the district court no documents to verify her claim that the IRA is traceable to the aforementioned nonmarital insurance policies.

In support of her argument that the district court erred in finding the IRA was marital property, appellant cites one unpublished case where we upheld the district court's determination that a party had sufficiently traced an asset to its nonmarital origins based solely on the party's testimony. Aside from the fact that that opinion is unpublished and not precedential, Minn. Stat. § 480A.08, subd. 3 (2006), the fact that the particular testimony there was, by itself, sufficiently credible to overcome the presumption that certain property is marital in nature does not mean all testimony is sufficiently credible to do so. Furthermore, the district court had the benefit of being able to evaluate the live testimony of the witnesses. Here, all we have are cold affidavits, which reveal nothing about a witness's demeanor, attitude, emotional state, and other nuances inherently involved in live testimony that shed light on its believability.

The district court found that appellant's claim that she acquired the IRA in exchange for nonmarital property was not sufficient to overcome the presumption property acquired during a marriage is marital in nature. There is no real evidence contravening this finding by the district court and we see no reason to second guess its credibility determination. Accordingly, we agree that appellant's bare claim in her affidavit did not overcome the marital-property presumption under the circumstances.

III.

Appellant's third and final claim is that the district court abused its discretion in denying her motion that she be awarded a portion of respondent's nonmarital property. Minnesota law provides for the award of one spouse's nonmarital property to the other if the division of the marital property is "so inadequate as to work an unfair hardship." Minn. Stat. § 518.58, subd. 2 (2006). Relevant circumstances in making this determination include "the length of the marriage, any prior marriage of a party, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, needs, and opportunity for future acquisition of capital assets and income of each party." *Id*. Awards of nonmarital property, or the denial of such an award, will be upheld unless the district court abused its discretion. *Wiegers v. Wiegers*, 467 N.W.2d 342, 345 (Minn. App. 1991).

In the parties' dissolution judgment, the district court expressly found that appellant was able bodied, capable of supporting herself, and needed no spousal maintenance. The district court also awarded appellant title to a mobile home the

appellant and respondent had purchased in Arizona and a vehicle for her general transportation needs.

In the appendix to the parties' amended dissolution judgment, the district court used a table to assess the net value of the martial property awarded to each party. This table showed that the net value of the marital property awarded respondent was $100,709.06 and the net value of the marital property awarded to appellant was $35,800.50. To compensate for this difference, the district court awarded a marital property settlement of $32,455 to appellant. This equalization payment resulted in the net value of the marital property awarded to each party being within one dollar of equipoise.

In spite of the above circumstances, appellant still argues that the district court abused its discretion in refusing to invade respondent's nonmarital estate. We cannot agree with her contention. We conclude the district court acted within its discretion when it determined that the division of the parties' marital property was not so inadequate as to work an unfair hardship on appellant's ability to support herself.

Affirmed in part, reversed in part, and remanded.