COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

IN THE MATTER OF THE MARRIAGE OF:	§	No. 08-22-00005-CV
JILL CRIST	§	Appeal from the
AND	§	414th Judicial District Court
KIRK CRIST	§	of McLennan County, Texas
	§	(TC# 2020-1717-5)

O P I N I O N

This case concerns the characterization of property in a divorce. Appellant, Kirk Crist, appeals the trial court's decision that a residential property was the separate property of Appellee, Jill Crist. In two issues, Kirk contends that the trial court erred in admitting parol evidence when determining the character of the residential property and because Jill did not plead any exceptions to the parol evidence rule, the separate property award cannot be upheld on any corresponding ground. We affirm.

Factual and Procedural Background

In 2009, prior to the marriage, Jill purchased a residential property in McLennan County (the House).[1] She purchased the House as a single mother, something she took great pride in. In 2010, she and Kirk started dating, and on October 27, 2012, the couple got married. During the marriage, both spouses and their children lived together in the House.

Both spouses testified they experienced marital problems and argued frequently. Finances and money were the main source of contention. When they would argue, Jill would refer to the House as her house. Jill testified when they would argue, Kirk would say "[t]his is your house, right? It's always going to be your house." Jill testified she would respond "Yes." In 2017, the couple were experiencing financial difficulties and decided to refinance the House to pay off other debts.

As part of the refinancing, the bank prepared a deed and other documents which Jill signed. Jill testified that she believed she was only refinancing the House, but one of the documents she signed was a special warranty deed (the Deed) which added Kirk's name as a grantee. The Deed lists Jill Crist as the grantor and both "Kirk M. Crist and Jill S. Crist, husband and wife" as the grantees. The Deed also contains the following language above the signature block:

> The purpose of this Deed is to add the spouse of Grantor to title and to change the name of record for Jill S. Crist who acquired title by Deed dated January 7, 2009, filed for record in Instrument No. 2009001502 of the Real Property Records of McLennan County, Texas as Jill S. Davis, a single person, and title should now be vested as shown on this Deed.

Both parties testified the bank prepared all the documents, and neither party sought outside counsel to review the documents. Jill further testified she never asked the bank to add Kirk's name to the

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[1] This case was transferred from the Tenth Court of Appeals pursuant to a docket equalization order issued by the Supreme Court of Texas. *See* TEX. GOV'T CODE ANN. § 73.001. We follow the precedent of the Tenth Court of Appeals to the extent it might conflict with our own. *See* TEX. R. APP. P. 41.3.

Deed and she did not intend to gift Kirk a portion of the property. Kirk objected to Jill's testimony about her intent in signing the Deed as violating the parol evidence rule. The trial court overruled Kirk's objections.

On November 12, 2021, the trial court entered a final decree of divorce, concluding the House was Jill's separate property. No findings of facts or conclusions of law were requested or filed. This appeal followed.

Standard of Review

We review the trial court's characterization of marital property for an abuse of discretion. *Raymond v. Raymond*, 190 S.W.3d 77, 80 (Tex. App.—Houston [1st Dist.] 2005, no pet.). A trial court abuses its discretion when it acts in an arbitrary or unreasonable manner without respect to guiding principles. *See, e.g.*, *Magness v. Magness*, 241 S.W.3d 910, 912 (Tex. App.—Dallas 2007, pet. denied). "We review parol evidence questions *de novo*, as questions of law." *See Adams v. McFadden*, 296 S.W.3d 743, 751 (Tex. App.—El Paso 2009, no pet.). When there are no findings of fact or conclusions of law, we affirm the trial court's judgment if there is sufficient evidence to support it on any theory presented at trial, resolving conflicting evidence in favor of the judgment. *Wetzel v. Sullivan, King & Sabom, P.C.*, 745 S.W.2d 78, 81 (Tex. App.—Houston [1st Dist.] 1988, no writ.).

Characterization of Property

This case involves multiple presumptions and shifting burdens of proof that apply when characterizing property at the dissolution of a marriage. The character of property as separate or community is determined at inception, when a party's right in the property first accrues. *Barnett v. Barnett*, 67 S.W.3d 107, 111 (Tex. 2001). Separate property is property owned before marriage or acquired during marriage by gift, devise, or descent. TEX. FAM. CODE. ANN. § 3.001. Community

property consists of all property, other than separate property, acquired by either spouse during the marriage. *Id.* § 3.002. There is a presumption that all property possessed by either spouse at the dissolution of marriage is community property, but a spouse may rebut this presumption by clear and convincing evidence. *Id.* § 3.003.

Arguments of the Parties

Here, there is no dispute the House was Jill's separate property at the time of the marriage. Kirk contends, however, the Deed transferred him a one-half interest in the House as his separate property, and Jill claims that she owns the entire interest because she never intended to make a gift to him. Kirk primarily relies on the principle that the terms of an unambiguous deed cannot be altered using parol evidence. He asserts that because he is a named grantee, the trial court erred in receiving any parol evidence of Jill's donative intent. In his first issue, Kirk argues that when Jill executed the Deed, she presumptively conveyed a one-half interest as his separate property, and parol evidence was inadmissible to rebut the presumption or otherwise alter the language of the Deed.

Jill responds that the Deed did not transfer any interest in the House because she never intended to gift an interest to Kirk. She contends the parol evidence rule precludes evidence of intent only where there is a separate property recital in the deed. Jill asserts the Deed has no separate property recital, and thus created a rebuttable presumption of a gift—which she rebutted with evidence she lacked donative intent. Because the parties argue two different presumptions apply, we must first decide whether the separate-property presumption or the gift presumption applies, and whether parol evidence is admissible under the controlling presumption.

Separate Property Presumption

In a marriage, we begin with a presumption that all property is community property. TEX. FAM. CODE ANN. § 3.003. However, a presumption of separate property arises when the conveying instrument contains a separate property recital. *Stearns v. Martens*, 476 S.W.3d 541, 547 n.4 (Tex. App.—Houston [14th Dist.] 2015, no pet.). A separate property recital is a recital in an instrument which states either that the purchase consideration comes from a spouse's separate property, or title to the property is to be vested in the transferee as separate property for the transferee's separate use. *See id.* (citing *Roberts v. Roberts*, 999 S.W.2d 424, 432 (Tex. App.—El Paso 1999, no pet.)). A separate property recital creates a rebuttable presumption of separate property. *Matter of Marriage of Nash*, 644 S.W.3d 683, 703 (Tex. App.—Texarkana 2022, no pet.). Once the language of an instrument establishes the separate-property presumption, the burden to rebut shifts to the spouse claiming otherwise. *Id.* A separate property recital becomes conclusive if the contesting spouse is a party to the transaction, at which point the parol evidence rule prevents the introduction of evidence showing otherwise. *Weed v. Frost Bank*, 565 S.W.3d 397, 406 (Tex. App.—San Antonio 2018, pet. denied) (citing *Hodge v. Ellis*, 277 S.W.2d 900, 904–05 (Tex. 1955)). Accordingly, if the Deed contains a separate property recital, then parol evidence was inadmissible to contradict the separate property recital. *See Kahn v. Kahn*, 58 S.W. 825, 825–26 (Tex. 1900) (holding parol evidence was inadmissible to contradict the separate property recitals in a deed where the grantor was a party to the transaction and the deed "clearly expressed" the intent to convey separate property).

Although Jill was clearly a party to the transaction, we conclude the Deed does not contain a separate property recital and does not create the separate property presumption as Kirk contends. As an initial matter, the granting clause lists Jill as the grantor and both Kirk and Jill as the grantees

without any language specifying Kirk receives an interest as his sole or separate property. *Compare Matter of Marriage of Nash*, 644 S.W.3d 683, 702–03 (Tex. App.—Texarkana 2022, no pet.) (finding, in a deed executed during marriage, the language "a married man, as his sole and separate property and not joined in . . . by his spouse as [the] property constitute[d] no part of his homestead" a separate property recital), *and Henry S. Miller Co. v. Evans*, 452 S.W.2d 426, 428-30 (finding, in a deed from a third party, language reciting consideration paid out of wife's "'sole and separate estate'. . . conveyed to her as her 'sole and separate estate'" created a separate-property presumption), *with Roberts*, 999 S.W.2d at 428 (finding, in an interspousal deed conveying from wife to husband, "one-half (1/2) of her said interest in the following described property" insufficient for a separate property recital). Despite the absence of any such language in the granting clause, Kirk nonetheless contends the following language qualifies as a separate property recital:

> The purpose of this Deed is to add the spouse of Grantor to title and to change the name of record for Jill S. Crist who acquired title by Deed dated January 7, 2009, filed for record in Instrument No. 2009001502 of the Real Property Records of McLennan County, Texas as Jill S. Davis, a single person, and title should now be vested as shown on this Deed.

We disagree. The language here only states the "purpose" is to add Kirk's name to the title—the clause does not recite that Kirk received any interest in the property as separate or for his sole use. Absent these express recitals, the Deed does not create a separate property presumption in favor of Kirk.

Gift Presumption

Jill argues an interspousal conveyance gives rise to the rebuttable presumption the transferred interest is a gift, and the introduction of parol evidence is admissible to rebut the

presumption. “A gift is a voluntary transfer of property to another made gratuitously and without consideration.” *Roberts*, 999 S.W.2d at 432; *see* also, *Matter of Marriage of Nash*, 644 S.W.3d at 703;707–08.

“Three elements are required to establish the existence of a gift: (1) intent to make a gift; (2) delivery of the property; and (3) acceptance of the property.” *Roberts*, 999 S.W.2d at 432. The element of intent must exist at the time of the transfer. *Id.* “Generally, the burden of proof rests on the person claiming the existence of a gift.” *Matter of Marriage of Nash*, 644 S.W.3d at 708. However, in a conveyance between spouses, the transfer is presumed to be a gift and the burden is on the grantor spouse to produce evidence establishing there was no intention to make a gift.[2] *See Harrison v. Harrison*, 321 S.W.3d 899, 902 (Tex. App.—Houston [14th Dist.] 2010, no pet.) (“A rebuttable presumption shifts the burden of producing evidence to the party against whom it operates.”).

The gift presumption can arise when a spouse either deeds their separate property to the other spouse, or when one spouse uses separate property as consideration during the marriage and takes title to new property in the names of both spouses. *See Matter of Marriage of Nash*, 644 S.W.3d at 707–08 (“A spouse may make a gift of separate property to the other spouse.”); *see also Cockerham v. Cockerham*, 527 S.W.2d 162, 168 (Tex. 1975) (“[W]hen a husband uses separate property consideration to pay for land acquired during the marriage and takes title to the land in the name of husband and wife, it is presumed he intended the interest placed in his wife to be a gift.”), *and Koss v. Koss*, No. 10-4-00015-CV, 2005 WL 1488070, at *2 (Tex. App.—Waco June

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[2] Kirk “urges the Court to hold that no ‘significant recital’ is needed when a spouse gifts property via deed during marriage,” because the “significant-recital requirement is a poor fit for the interspousal-gift context.” We reject his argument as it is contrary to the long-standing precedent holding that when an instrument contains no significant recital, there is only a presumption of a gift. *See Matter of Marriage of Nash*, 655 S.W.3d 707–08 (collecting cases).

22, 2005, no pet.) (mem. op.) ("A presumption of a gift is made because it is not possible for a spouse to make a gift to the community estate."). This presumption may be rebutted by evidence there was no intention to make a gift. *Cockerham v. Cockerham*, 527 S.W.2d at 168; *Harrison*, 321 S.W.3d at 902; *Carter v. Carter*, 736 S.W.2d 775, 780–81 (Tex. App.—Houston [14th Dist.] 1987, no writ) ("However, this presumption is rebuttable, and parol evidence is admissible to show that a gift was not intended."); *Moroch v. Collins*, 174 S.W.3d 849, 860 (Tex. App.—Dallas 2005, pet. denied). Therefore, we conclude there was a presumption of a gift but evidence of Jill's intent, admitted over Kirk's objections, was admissible evidence for the purpose of rebutting the gift presumption.

Here the evidence at trial consisted of conflicting testimony from the spouses. Jill testified she signed the documents from the bank because she thought she was required to do so to refinance the House. She testified she never intended to gift an interest in the house to Kirk. Kirk testified the two had discussed adding his name to the property so he and the children could continue to reside in the House should something happen to Jill.

From the evidence presented, the trial court could have concluded that Jill rebutted the presumption of a gift by testifying she had no donative intent and she only intended to refinance the house to pay off debts because of the financial issues in the marriage. *See Harrison*, 321 S.W.3d at 903 (noting that courts are "inconsistent" when determining what evidence is needed to rebut the presumption, but concluding that the contesting spouse "rebutted the presumption by testifying he did not intend to make a gift and by providing an alternative reason for purchasing the property"). Once Jill successfully rebutted the presumption, the trial court, as the fact finder, was free to make a credibility determination between the conflicting evidence. *See Gen. Motors Corp. v. Saenz*, 873 S.W.2d 353, 359 (Tex. 1993) (once a burden is discharged, the presumption

disappears and is not weighted as evidence). When there are no findings of fact or conclusions of law, we affirm the trial court's judgment if there is sufficient evidence to support it on any theory presented at trial, resolving conflicting evidence in favor of the judgment. *Wetzel*, 745 S.W.2d at 81. Reviewing the evidence in the light most favorable to the trial court's decision, we conclude that the trial court did not abuse its discretion.

We overrule Kirk's first issue. Because we conclude the evidence Kirk complains of was properly admitted, we do not address his second issue regarding pleadings and exceptions to the parol evidence rule. TEX. R. APP. P. 47.1.

CONCLUSION

We affirm the judgment of the trial court.

SANDEE B. MARION, Chief Justice (Ret.)

February 13, 2023

Before Rodriguez, C.J., Soto, J., and Marion, C.J. (Ret.)
Marion, C.J. (Ret.) (Sitting by Assignment)