

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

STEVE A. ZONDORY II,	:	
Plaintiff	:	
	:	
v.	:	NO. 99-01,056
	:	
J. SCOTT HANNER and SHARON M.	:	
HANNER,	:	
Defendants	:	

OPINION and ORDER

Plaintiff Steve Zondory II has filed a complaint alleging that his daughter, Sharon Hanner, breached her fiduciary duty to him while acting as his attorney-in-fact pursuant to a Power of Attorney executed in December 1998.¹ Pending the disposition of that action Mr. Zondory has also requested various types of injunctive relief, all of which have been resolved except for the one currently before this court: Mr. Zondory asks for an order directing Ms. Hanner to transfer title of a 1997 Subaru Outback to him or placing the vehicle in storage until a final determination can be made regarding transfer of the title. For the reasons stated in this opinion, this request is denied.

Discussion

Mr. Zondory transferred title to the Subaru to Ms. Hanner on 19 October 1998.² (Defendant's Exhibit #1.) On that same date Mr. Zondory also executed an Affidavit of

¹ Although the complaint was filed and signed by Mr. Zondory, he appeared to understand very little about its import, and was clearly confused about the family squabble surrounding him. It was evident to all attending the hearing that Mr. Zondory's other children, Linda Frye and Stephan Zondory III, were the primary force behind this action, allied against their sister, Sharon Hanner.

² The court notes that this was prior to the time Mr. Zondory appointed Ms. Hanner as his Power of Attorney, which apparently occurred in December 1998.

Gift. (Defendant's Exhibit #2.) He now comes into court demanding return of the car and claiming he never intended it to be a gift.

To make a valid gift, there must be delivery and donative intent. Wagner v. Wagner, 466 Pa. 532, 353 A.2d 819 (1976). Delivery may be actual or constructive, so long as it divests the donor of all dominion over the property and invests the donee with complete control. In re Kerwin's Estate, 371 Pa. 147, 89 A.2d 332 (1952). Clearly, delivery was accomplished when Mr. Zondory transferred title of the vehicle to Ms. Hanner and provided her with the keys. Therefore, the issue before this court is whether at the time of the transfer Mr. Zondory intended the Subaru to be a gift.

Mr. Zondory is faced with a heavy burden in his effort to regain ownership of the Subaru. Although generally the burden of proving a gift is on the proponent, In re Estate of Petro, 694 A.2d 627 (Pa. Super. 1997), once prima facie evidence of a gift is established a presumption arises that a valid gift was made and the burden shifts to the contestant to rebut the presumption. Banko v. Malanecki, 499 Pa. 92, 451 A.2d 1008 (1980). Moreover, donative intent is more readily found in cases involving gifts from a father to his child. Wagner, supra.

Since Mr. Zondory executed an affidavit of gift, the Subaru is presumed to be a gift and Mr. Zondory must rebut that presumption. After a review of the evidence presented at the hearing held on 28 July 1999, the court finds that Mr. Zondory has failed to carry this burden because he has presented little or no evidence to show that he did not intend to give Ms. Hanner the Subaru.

The plaintiff first called his daughter, Linda Frye, with whom he currently resides.

Ms. Frye testified that at some point in 1998 Ms. Hanner telephoned to notify her that Mr. Zondory had transferred the title of the Subaru to her because he had no driver's license and therefore could not obtain insurance. Ms. Frye also testified that Ms. Hanner stated she would return the car at his request. Ms. Frye maintained Ms. Hanner made similar statements on other occasions as well, and that Ms. Hanner never claimed the Subaru was a gift. Mr. Zondory's son Stephan Zondory III's testimony contributed no additional evidence; his testimony consisted mainly of what Ms. Frye had told him.

The testimony of these two siblings, even if fully believed, would not rebut the presumption. An offer to return a gift is evidence of the donee's state of mind—not the donor's. Moreover, even if Mr. Zondory had been motivated to execute the transfer in order to obtain insurance, that does not prove the car was not intended as a gift. As anyone who has made a tax-deductible contribution knows, gifts are often prompted—at least in part—by the donor's self interest.

Mr. Zondory's testimony did not help his case. Mr. Zondory is a highly colorful and likeable eighty-two year old, but he is not a credible witness. Although this court has no doubt Mr. Zondory was doing his best to testify truthfully, he contradicted himself several times throughout the hearing and he clearly has severe memory problems.³ For example, Mr. Zondory could not remember the names of three grandchildren who are clearly the apples of his eye. Therefore, his statement that he did not intend to give Ms. Hanner the Subaru is simply not credible. In fact, Mr. Zondory could not say what his intention was at the time of delivery, for he did not remember signing the title transfer or the

³ Naturally, the court makes no finding regarding Mr. Zondory's competency, as that issue is not before us.

affidavit of gift, although he acknowledged that his signature appeared on both documents. Moreover, his deep affection for Ms. Hanner and her family, as well as his concern over the trouble they were having with their own car and their need for transportation, leads this court to conclude that his testimony—if anything—supports the presumption that the Subaru was a gift.

Sharon Hanner was the only witness present when the Subaru was transferred, and she testified that Mr. Zondory gave her the car unconditionally. She explained that the gift was made partly for the purpose of obtaining insurance, because Mr. Zondory's license was revoked due to the many accidents he had caused. However, it was also made to show his gratitude to Ms. Hanner for all the care she had provided to Mr. Zondory and his wife. The Subaru was an appropriate gift because Ms. Hanner had used it so many times to transport her parents to complete many errands and help them meet their daily needs. Although Ms. Hanner did not recall telling her siblings the car was a gift, she was certain she never told them she would return it when requested to do so. The court finds Ms. Hanner's testimony to be entirely credible.

Given the lack of evidence to rebut the presumption that a gift was made, this court is sorely tempted to make a specific finding to that effect. However, we are convinced that the more proper procedure is to allow the parties to conduct discovery to provide them with the opportunity to uncover evidence in support of their position. Therefore, at this point we find only that the evidence presented at the hearing is insufficient to rebut the presumption the Subaru was a gift, and thus the request for injunctive relief regarding the Subaru must be denied.

ORDER

AND NOW, this _____ day of August, 1999, for the reasons stated in the above opinion, the plaintiff's petition for a preliminary injunction is dismissed.

BY THE COURT,

Clinton W. Smith, P.J.

cc: Dana Stuchell, Esq., Law Clerk
Hon. Clinton W. Smith
Kristine Waltz, Esq.
Richard Callahan, Esq.
Gary Weber, Esq., Lycoming Reporter