

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

JEFF KOHLER,	:	
Plaintiff	:	
	:	
v.	:	NO. 00-00,062
	:	
MARY ELLEN BENNARDI,	:	
Defendant	:	

OPINION and ORDER

This is a replevin case in which the plaintiff, Jeff Kohler, is asking the court to order the defendant, Mary Ellen Bennardi, to return a gun safe to him. Both parties agree Mr. Kohler purchased the safe and was its rightful owner. However, Ms. Bennardi claims she acquired ownership because Mr. Kohler abandoned it at her house. Ms. Bennardi's position is untenable in light of the legal definition of abandonment, which requires intent, and the evidence presented at the hearing, which established that Mr. Kohler never formed such intent.

Findings of Fact

The parties resided together in a home owned by Ms. Bennardi from 1989 until February 1998, when Mr. Kohler moved out. In 1993, Mr. Kohler purchased a gun safe at a cost of \$2395. It is approximately six feet tall, forty inches wide, and 36 inches deep. It weighs approximately 2000 pounds. Mr. Kohler placed guns in the safe and kept it at Ms. Bennardi's residence. The safe and its contents are currently worth approximately \$5000. When Mr. Bennardi moved out, he took his clothes and some of his smaller possessions but left some larger items at her home.

For the first year after their separation the parties remained friends, and Mr. Kohler occasionally slept overnight at Ms. Bennardi's residence. At some point,

however, the relationship soured for good and Ms. Bennardi claimed the safe as her own. In April 1999, she called a locksmith to come and break open the safe, telling him it had belonged to her deceased husband. Upon finding out the truth, the locksmith refused to do the work. In May 1999, Ms. Bennardi intended selling the safe and Mr. Kohler's other possessions in a sheriff's sale of her property. In December 1999 Ms. Bennardi's home was sold through a private sale. She moved the safe and is storing it at a relative's home, refusing to return it to Mr. Kohler.

Ms. Bennardi testified that after Mr. Kohler moved out of her residence she asked him to remove the safe and his other possessions many times, but he never did so. Mr. Kohler, however, testified that after he moved out he and Ms. Bennardi continued to see each other occasionally, and he even hoped they would be reunited. He also stated the couple had an understanding that the safe could remain at Ms. Bennardi's home. We resolve this contradiction in testimony in favor of Mr. Kohler, whom we find to be the more credible witness.

Conclusion of Law

1. Jeff Kohler is the rightful owner of the gun safe and the guns stored in the safe.
2. Jeff Kohler never abandoned the gun safe or the guns stored in the safe.
3. The safe and its contents are worth \$5000.

DISCUSSION

The question of whether a party has abandoned an item is generally one of intention. Eagan v. Nagle, 378 Pa. 206, 106 A.2d 222 (1954). In determining whether a person has abandoned his property, the intention is the first and paramount object of inquiry, for there can be no abandonment without an intention to abandon. Com. v. Wetmore, 301 Pa. Super. 370, 447 A.2d 1012 (1982).

Nothing in the evidence presented even remotely indicates that Mr. Kohler ever intended to abandon the safe. Mr. Kohler's testimony clearly established that he was only storing it at Ms. Bennardi's home, and the court finds him credible on that issue. But even if the court fully believed all of Ms. Bennardi's testimony, we could at best conclude that Mr. Kohler was lax in not removing the safe from her residence when told to do so—not that he intended to abandon it. For Ms. Bennardi never testified that Mr. Kohler told her he no longer wanted the safe, or did anything to suggest he was no longer interested in it. In fact, Ms. Bennardi stated that Mr. Kohler told her the reason he was not removing it was that he could not afford the expense at that time.

Further evidence of lack of intent to abandon include the following: (1) Mr. Kohler was the only person who knew the combination to the safe, and the only one who ever had access to its contents; (2) Ms. Bennardi found it necessary to lie to the locksmith about the owner of the safe, which demonstrates that she knew Mr. Kohler still wanted the safe; (3) The letter from Mr. Kohler's attorney to the sheriff, dated 30 April 1999 (plaintiff's exhibit #1), clearly states that although Mr. Kohler had encountered difficulty removing the items, he has "relinquished neither his claim nor his intent to remove them;" and (4) Ms. Bennardi testified that some time between February and April 1999 she told Mr. Kohler she would give him back the safe only

when he paid her money she claims he owes her, which again shows Mr. Kohler still wanted the safe, and that Ms. Bennardi knew it. And finally, the fact that Mr. Kohler has filed this action in replevin demonstrates that he has not abandoned the safe.

After considering all of the evidence, we conclude that after the cessation of Mr. Kohler and Ms. Bennardi's live-in relationship they continued seeing each other throughout 1998 and early 1999. Mr. Kohler even retained a key to the home, and occasionally slept there overnight. Under these circumstances, it is understandable that Mr. Kohler hoped the two would be reunited and believed it was perfectly all right for him to leave his safe there in the meantime. That explains why he did not retrieve the safe while the couple remained on good terms.

At some point in early 1999, when their relationship ended for good, Ms. Bennardi refused to give the safe back unless she received money she claimed Mr. Kohler owed her. She also threatened to have him arrested for harassment if he continued to contact her. That explains why Mr. Kohler took no steps to remove the safe after the relationship was over.

Conclusion

For the reasons stated in the above opinion, the court concludes that Mr. Kohler at no time abandoned the gun safe or its contents. During the first year after the couple's separation he did not remove the safe because Ms. Bennardi did not require him to, and during the remainder of the time Ms. Bennardi herself was responsible for the non-removal. Therefore, we grant the petition for replevin and deny her claim for expenses incurred in storing and moving the safe.

ORDER

AND NOW, this _____ day of April, 2000, for the reasons stated in the above opinion, the court finds that Jeff Kohler has a right to recover possession of the gun safe and its contents, currently worth \$5000. It is therefore ordered that Mary Ellen Bennardi provide Jeff Kohler with the opportunity to remove the gun safe at a time that is convenient for all individuals involved. The date of removal shall be no later than thirty days from the date of this order. Jeff Kohler will be responsible for all moving expenses.

BY THE COURT,

Clinton W. Smith, P.J.

cc: Dana Stuchell Jacques, Esq., Law Clerk
Hon. Clinton W. Smith
Marc Drier, Esq.
G. Scott Gardner, Esq.
Gary Weber, Esq., Lycoming Reporter