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No. 3-07-0387
(Consolidated with 3-09-0684)

Order filed January 24, 2011

IN THE APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
)	of the 13th Judicial Circuit,
EILEEN A. MOATS, n/k/a)	Bureau County, Illinois,
EILEEN A. WRIGHT,)	
)	
Petitioner-Appellee,)	
)	No. 05-D-101
and)	
)	
KENNETH W. MOATS,)	Honorable A. Scott Madsen,
)	Judge Presiding.
Respondent-Appellant.)	

JUSTICE WRIGHT delivered the judgment of the court.
Justices Lytton and Schmidt concurred in the judgement.

ORDER

Held: The trial court's determination that the disputed land was nonmarital property and was irrevocably gifted to petitioner by respondent was not arbitrary, unreasonable, or against the manifest weight of the evidence. The trial court properly considered "estoppel by deed" and found that the disputed property was nonmarital. By applying section 503 of the Illinois Marriage and Dissolution of Marriage Act, (750 ILCS 5/503(b)(1)(West 2006)) this court concludes that the trial court properly found that the property was nonmarital and affirms the trial court's ruling.

Appellant Kenneth Moats and appellee Eileen Wright were married on May 17, 1991. Eileen filed a Petition for Dissolution of Marriage on September 29, 2005. Prior to trial, the parties agreed to proceed to a pretrial hearing regarding whether certain farmland was marital or nonmarital property. On April 2, 2007, the trial court entered an order finding that the farm real estate was Eileen's nonmarital property. The trial court certified this limited issue for interlocutory appeal.

We affirm the trial judge's ruling after concluding the decision was not against the manifest weight of the evidence.

BACKGROUND

Appellant Kenneth Moats and appellee Eileen Wright were married on May 17, 1991. Eileen filed a Petition for Dissolution of Marriage on September 29, 2005, and one of the contested issues was whether certain real estate, referred as "the farm," located at 13459 1650 N. Avenue, Princeton, Illinois, was a marital or nonmarital asset. Prior to trial, the parties agreed to proceed to a pretrial hearing asking the court to resolve the "contested character of the real estate" known as the farm property. The court held a hearing on that petition on April 2, 2007.

The parties filed a pre-hearing stipulation authenticating the following documents: Contract for the Sale of Real Estate, Amortization Schedule, Memorandum of Contract, Assignment of Contract, Quitclaim Deed, and Warranty Deed. Kenneth testified that on July 18, 1994, he and Eileen agreed to purchase, "the farm," from Eileen's mother, sister, and brother, who co-owned the property together with Eileen. Kenneth and Eileen agreed to pay the \$55,000 purchase price pursuant to a monthly installment contract.

According to Kenneth, he transferred his legal interest in this property to Eileen in 2002,

solely in her name. Kenneth stated that Attorney Roger Angel drafted the documents to transfer his interest in the farm to Eileen but he did not realize that he was surrendering all of his interest in the marital residence when he signed those documents at the attorney's office. Kenneth said he only remembered signing one document but he was not certain. Upon further questioning, Kenneth identified his signature on both the "Assignment of Contract" and "Quitclaim Deed," signed on July 26, 2002.

Kenneth described the conversations he had with Eileen prior to signing these documents. Kenneth said that he was a union member and there was a strike at the plant and labor disputes ensued between the union members and some non-union members. He testified that his work environment had become very hostile and employees were threatening each other and in-fighting regarding overtime. Kenneth stated that he had received threats from other people at work and he was concerned that he might end up in an altercation at the plant resulting in a lawsuit against him.

Kenneth stated that he "was just wanting to put [the property] in [Eileen's] name in case anything happened at work so they couldn't sue me and take the house." Kenneth agreed his sole purpose for signing the documents was to protect the farm in the event he got sued and a money judgment was entered against him. If that happened, Kenneth was afraid that the creditors "could take the farm." Kenneth claimed he did not realize that he was signing the whole house over to Eileen and said he did not intend to gift his half of the farm to Eileen. Kenneth said he continued to live at that residence on the farm property together with Eileen from July of 2002 until February of 2005, when the parties separated.

Eileen explained that the farm had been in her family since the late 1800's. Eileen

testified that she and Kenneth purchased her family's farm in 1992 from her mother, sister, and brother. Eileen testified that, in 2002, approximately three weeks before Kenneth signed those documents, she came home from work and Kenneth appeared very agitated. When Eileen asked Kenneth what was wrong, he told her he wanted the farm taken out of his name and put solely in Eileen's name "because of his temper." Eileen stated that she asked Kenneth several times if he really wanted to do that, and he repeatedly told her that he did.

Eileen testified that Attorney Roger Angel explained the documents to them on July 26, 2002. Eileen stated that she and Kenneth agreed that Eileen would be solely responsible for making the remaining payments on the installment contract, the insurance, and the taxes and Kenneth would no longer have any obligation regarding the payments for this real estate. Eileen said she paid all of the insurance premiums and real estate taxes since the date Kenneth signed the documents on July 26, 2002, and also paid for all of the maintenance, repairs and upkeep on the farm property which came out of an account, solely in her name with her funds, that Eileen opened for this purpose. Eileen testified that the installment contract was paid off in August of 2006.

Eileen then testified that the warranty deed granting the property to her was recorded by Attorney Angel's office on August 1, 2006, after the installment contract was paid in full by Eileen. Eileen stated that, after the documents were signed by Kenneth in 2002, Kenneth never had a discussion with her about putting half the farm back into his name.

At the close of the case, Judge Madson noted that Illinois law allows a husband to make a gift of property to his wife during the marriage and, as such, makes the property the wife's nonmarital property. The court found that Kenneth's transfer by deed was a gift to Eileen and he

transferred this property freely and voluntarily with full knowledge of what he was doing. The court determined that Kenneth “was under no misapprehension that the transaction was not a transfer” and that the transaction was legitimate.

The court noted that the doctrine of estoppel by deed stands for the premise that, once property was deeded by a grantor to a grantee, “it forever estopped a grantor to deny the title, right or interest to the grantee.” The court stated that, even if there were other considerations in the instant case, Kenneth’s quit claim deed to Eileen, executed voluntarily and freely, estopped Kenneth from now denying its force and effect. Accordingly, the trial court determined the farm property was now nonmarital property. Kenneth’s attorney asked that the court include language in the order that Kenneth be allowed to file an interlocutory appeal regarding this ruling pursuant to Supreme Court Rule 304(a). 210 Ill. 2d R. 304(a). Consequently, after his motion to reconsider was denied, Kenneth filed a notice of appeal on June 8, 2007, challenging the court’s ruling regarding the farm property.

After his appellate attorney withdrew from the case, this court allowed Kenneth’s motion to hold the interlocutory appeal in abeyance pending resolution of all issues. After a contested hearing on the remaining issues, Judge Hollerich entered a 15-page, written decision on May 8, 2009, that resolved all matters with the exception of the interlocutory issue involving the nature of the farm property.

Judge Hollerich stated that the question of whether the farm is marital property was still pending before the appellate court, therefore he did not have jurisdiction to re-address that issue. Consequently, the court restated that Judge Madson previously found that Eileen had proven by clear and convincing evidence that “the transfer of Kenneth’s interest in the contract to purchase

the [farm] property [***] was a gift and that the property was, therefore, non-marital property.” The court granted the judgment of dissolution and divided the remaining assets and debts of the parties. Since those rulings are not at issue on appeal, we will not detail those findings in this order.

The court entered the Judgment for Dissolution of Marriage on August 4, 2009. Kenneth filed a second notice of appeal on August 26, 2009. This court allowed Kenneth’s motion to consolidate his earlier appeal, No. 3–07–0387, with his pending appeal, No. 3–09–0684, on October 20, 2009.

ANALYSIS

On appeal, Kenneth challenges the circuit court’s April 2, 2007, ruling designating “the farm” as Eileen’s nonmarital property. Kenneth lists five separate issues involving this ruling. Kenneth contends that Eileen did not overcome the presumption that the property acquired during the marriage was marital property; that Eileen did not prove by clear and convincing evidence that the property was a gift to her during the marriage; that Eileen did not prove by clear and convincing evidence that Kenneth voluntarily gifted the property to her; that the court’s finding that the property was gifted to Eileen was against the manifest weight of the evidence; and that the trial court erred in ruling that the legal theory of “estoppel by deed” applied to the instant case. Eileen argues that the trial court did not err in classifying the farm property as Eileen’s nonmarital asset.

Prior to the court determining the distribution of property upon dissolution of marriage, the property must be classified as either marital or nonmarital. The trial court's classification of property as marital or nonmarital will not be disturbed on appeal unless it is contrary to the

manifest weight of the evidence. *In re the Marriage of Gurda*, 304 Ill. App. 3d 1019, 1023-24 (1999). A decision is contrary to the manifest weight of the evidence when an opposite conclusion is apparent or when the findings are unreasonable, arbitrary, or not based on the evidence. *In re the Marriage of Barnett*, 344 Ill. App. 3d 1150, 1155 (2003).

The Illinois Marriage and Dissolution of Marriage Act (Act) provides that nonmarital property transferred into co-ownership between the spouses is presumed to be marital property. 750 ILCS 5/503(b)(1) (West 2006). Even if title is placed solely in one person's name during the marriage, there is a presumption that the property is marital property but this presumption can be overcome only by clear and convincing evidence. *Barnett*, 344 Ill. App. 3d at 1154; *In re Marriage of Davis*, 215 Ill. App. 3d 763, 771 (1991). Conversely, it is also possible for one spouse to make a gift of marital property to the other which would then become nonmarital property. *Barnett*, 344 Ill. App. 3d at 1154; *In re Marriage of Severns*, 93 Ill. App. 3d 122, 125 (1981).

The case law provides that a gift is a voluntary, gratuitous transfer of property by one to another where the donor manifests an intent to make such a gift and absolutely and irrevocably delivers the property to the donee. *In re the Marriage of Cook*, 117 Ill. App. 3d 844, 849 (1983); *Dudley v. Uptown National Bank of Moline*, 25 Ill. App. 2d 514, 520-21 (1960). Kenneth does not assert the transfer was not voluntary or gratuitous. Instead, he contends the transfer was not intended to be a permanent gift.

To prove a gift, the party must show that the donor has relinquished all present and future dominion and power over the subject matter of the gift. *Cook*, 117 Ill. App. 3d at 849; *Simmons v. Simmons*, 87 Ill. App. 3d 651, 654 (1980). This is a question of fact, and it is the province of

the trial judge to determine based on the credibility of the witnesses. *Barnett*, 344 Ill. App. 3d at 1155.

In the instant case, the evidence showed that the farm property had been in Eileen's family since the late 1800's. Prior to the marriage, Eileen held title to the farmland together with other blood relatives. Kenneth first acquired a contractual interest in the farmland when he and Eileen entered into an installment contract to purchase the remaining interests in the land from Eileen's family members for \$55,000. The installment contract was entered into on July 18, 1994. In July of 2002, before the contract was completed, Kenneth told Eileen to transfer the farm property into her name alone because he did not want to lose the family farm due to potential future litigation initiated against Kenneth.

To prove Kenneth's donative intent, Eileen had to show that Kenneth voluntarily relinquished all present and future dominion and power over the farm property. See *Cook*, 117 Ill. App. 3d at 849. It is undisputed that Kenneth both signed an unconditional assignment of the installment contract and a quit claim deed on July 26, 2002, transferring all of his interest in the property to Eileen. Eileen testified that the installment contract was paid off in August of 2006, and she recorded the deed to the property in her name shortly thereafter.

In this case, during the four years after the assignment of contract and before Eileen received the deed, Kenneth did not initiate any action to restore his name to the installment contract. Certainly, this was evidence that Kenneth relinquished present dominion over the property during the installment period. In addition, the quit claim deed executed by Kenneth was evidence that the couple structured the transaction in 2002 to insure Kenneth would not have any arising interest in the property, once Eileen satisfied the contract assigned to her. Moreover, once

Eileen received the deed, it does not appear Kenneth made a demand to have his name placed on the deed.

The *Barnett* court addressed similar facts to the case at bar, and distinguished its facts from those in existing case law that presumes property acquired during a marriage is marital. In *Barnett*, the husband transferred a \$1,551,616.48 trust account to his wife's name to hide or protect it from creditors. *Barnett*, 344 Ill. App. 3d at 1155. The *Barnett* court found, by clear and convincing evidence, that respondent had a donative intent to vest title of the account, absolutely and irrevocably, in his wife because the husband did not exercise dominion over or deal with the account after title was transferred, nor did he make any subsequent attempts to restore his name to the trust account. *Barnett*, 344 Ill. App. 3d at 1155.

In the instant case, similar to the husband in *Barnett*, Kenneth undisputedly relinquished his interest in the farm to prevent Kenneth's future judgment creditors from taking the farm property. After the execution of the assignment and quit claim deed, Kenneth did not make any financial contributions toward the payments required by the installment agreement, did not financially support the property, and did not request Eileen to restore his name to the deed once the contract was fulfilled. Moreover, Kenneth did not offer any testimony disputing that Eileen paid all the remaining installment payments, insurance premiums and real estate taxes on the property after July of 2002 from a separate account held solely in her name.

The trial judge's classification of the land as nonmarital was based on his credibility determinations regarding Kenneth's intent, relying on the testimony of the witnesses and the documentary evidence which the court received. We conclude the court's decision that the farm was irrevocably gifted to Eileen by virtue of the assignment of the installment contract and

simultaneous quit claim deed in 2002, together with evidence that Kenneth also subsequently relinquished all financial responsibility to Eileen concerning the maintenance and repairs on the property, was not arbitrary, unreasonable, or against the manifest weight of the evidence. See *Gurda*, 304 Ill. App. 3d at 1023-24; *Barnett*, 344 Ill. App. 3d at 1155.

Kenneth alternatively contends that “estoppel by deed” should not have been considered by the judge in this case because section 503 of the Act expressly states that all property acquired by either spouse after the marriage is presumed to be marital property. 750 ILCS 5/503 (West 2008). A long line of Illinois cases authorizes a reviewing court to sustain the decision of the circuit court on any grounds which are called for by the record regardless of whether the circuit court's reasoning was correct. *Bell v. Louisville & Nashville R.R. Co.*, 106 Ill. 2d 135, 148 (1985). As stated above, we have concluded, applying section 503 of the Act, that the trial court properly found that the farm property was Eileen’s nonmarital property based on the evidence presented and affirm the court’s ruling on this basis.

CONCLUSION

For the reasons stated above, the judgment of the circuit court of Bureau County is affirmed.

Affirmed.