

NOTICE

Decision filed 05/13/11. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

NO. 5-10-0336

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

WARREN EBEL,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	St. Clair County.
)	
v.)	No. 09-AR-323
)	
BRAD D. EBEL,)	Honorable
)	Laninya A. Cason,
Defendant-Appellee.)	Judge, presiding.

JUSTICE DONOVAN delivered the judgment of the court.
Justices Welch and Spomer concurred in the judgment.

R U L E 2 3 O R D E R

Held: The court erred as a matter of law in finding a presumption that a transfer of money from an uncle to a nephew was a gift.

Plaintiff, Warren Ebel, sought to recover certain monies allegedly loaned to his nephew, Brad Ebel, defendant. The circuit court of St. Clair County entered a judgment in favor of defendant, and plaintiff appeals. We reverse and remand.

Plaintiff initially filed an action on March 4, 2009, in arbitration alleging that defendant breached an oral contract to repay an \$8,000 loan defendant received in 2006. The arbitrators entered a judgment in favor of plaintiff for \$8,649.62. Defendant, however, rejected the award, and the parties went to trial. At the trial, the evidence revealed that in August of 2006, defendant, while unemployed, ran a lawn care business and was using the family vehicle to tow mowers. According to plaintiff, he realized that his nephew was having financial trouble and offered to help him purchase a pickup truck to use for the lawn care business. Accordingly, he wrote a \$1,500 check to defendant on August 12, 2006, for

the purchase of a 1982 truck. Plaintiff testified that he intended to be repaid and further stated that defendant told him that he would repay him. Defendant countered that they never discussed repayment and that plaintiff told him he was giving him the money to help him out. On November 31, 2006, plaintiff wrote a \$6,500 cashier's check on defendant's behalf for the purchase of a second pickup truck. Plaintiff again testified that he intended to be repaid, while defendant testified that he believed he did not need to repay his uncle. On November 10, 2007, defendant gave plaintiff a check for \$500. Plaintiff believed that the check represented a partial repayment for the loans, now totaling \$8,000. Defendant, on the other hand, explained that the check was written to repay plaintiff for auto parts purchased to repair the vehicles. Defendant had no receipts or records of these purchases, however. Plaintiff denied purchasing auto parts and further denied helping defendant install the parts. Plaintiff admitted to gifting defendant several items, ranging in value from \$500 to \$1,500, prior to the transactions at issue here. He explained, however, that all the items gifted already belonged to plaintiff and were no longer being used by him. Defendant testified he believed that his uncle brought this lawsuit in retaliation for the way he was handling the guardianship and estate of plaintiff's sister. Plaintiff's sister has Alzheimer's disease and is in a nursing home. Defendant is the guardian. At one point, plaintiff became concerned over his sister's care in the home and about certain charges being assessed to the estate. Plaintiff, however, claimed that his concerns had nothing to do with his pursuit of the loaned funds. Plaintiff did admit, however, that defendant is no longer a beneficiary under his will. The court ruled in favor of defendant and further denied plaintiff's motion for a judgment notwithstanding the verdict (*n.o.v.*) Plaintiff argues on appeal that the court erred in granting a judgment in favor of defendant and in denying his motion for a judgment *n.o.v.* Plaintiff also contends the court should not have admitted defendant's exhibit containing the guardianship file. We agree.

Generally speaking, the law does not presume a gift, and the burden is on the alleged donee to prove that there was a valid gift. *In re Estate of Hill*, 30 Ill. App. 2d 243, 248, 174 N.E.2d 233, 235 (1961). An exception does exist, however, when a conveyance is made by a grantor to his spouse or child. In those instances, the law will presume that the transfer was a gift. Yet even this limited presumption is not conclusive and can be rebutted. See *In re Marriage of Wesselhoft*, 228 Ill. App. 3d 269, 271, 591 N.E.2d 928, 930 (1992). The law also has not expanded the application of the presumption to parties other than a spouse or child. It certainly is not determined by the closeness of the relationship or the extent of natural affection between the grantor and the transferee. For instance, the law does not presume a gift for the transfer of property or money to a friend, no matter how close (see *Barnes v. Michalski*, 399 Ill. App. 3d 254, 269, 925 N.E.2d 323, 337 (2010)), or even to a grandchild from a grandparent (see *Bray v. Illinois National Bank of Springfield*, 37 Ill. App. 3d 286, 289, 345 N.E.2d 503, 505 (1976)). As noted in the Restatement (Second) of Trusts, section 442, Comment *c*, "If the transferee is related to the payor, but is not in such a relation as to be a natural object of bounty of the payor, this circumstance is not enough to raise an inference that a gift was intended, but it is a circumstance which can be shown with other circumstances as tending to rebut the inference that a resulting trust arises." Restatement (Second) of Trusts §442 Comment *c*, at 403 (1959). Accordingly, given that defendant here was neither plaintiff's spouse nor his child, there is no presumption that the transfer of money from plaintiff to defendant was a gift. Defendant therefore had the burden to prove by clear and convincing evidence that a gift was intended. See *In re Estate of Huston*, 319 Ill. App. 361, 365, 49 N.E.2d 289, 291 (1943) (a nephew's possession of money given to him by his uncle shortly before the uncle's death did not establish a gift by itself; the burden remained on the nephew to establish all the elements of a gift); see also *Lappin v. Lucurell*, 13 Wash. App. 277, 534 P.2d 1038 (1975) (no presumption of a gift arises from an unexplained

gratuitous transfer of money from an uncle to his niece); G. Bogert, *Trusts & Trustees* §459 (1977) (generally there is no presumption of a gift between aunts and nephews; gifts of this type are considered unusual and unlikely). The court here, however, placed the burden on plaintiff. The court specifically noted, based on the language in several cases, that the law presumes a gift if the transfer of property or money was made between "family members." While plaintiff and defendant were related and even might have had a close relationship at one point, as plaintiff points out, neither depended on the other for economic support, medical care, or housing. Plaintiff clearly did not stand in the position of *in loco parentis* to defendant. Compare *Dines v. Hyland*, 180 Wash. 455, 40 P.2d 140 (1935) (where a payor stands *in loco parentis* to a grantee, a rebuttable presumption of gift arises) with *Peterson v. Kabrich*, 213 Mont. 401, 691 P.2d 1360 (1984) (an aunt never assumed an *in loco parentis* relationship; a presumption of a gift was precluded). Plaintiff might have wanted to help his nephew get back on his feet, but that does not mean that he did not intend to be repaid once defendant was able to do so. Defendant counters that plaintiff never told him he had to repay him and that he was only doing so now because plaintiff did not like how he was handling the estate of plaintiff's sister. A party's motive for commencing an action, however, is not a valid defense to an action and is immaterial. *Nika v. Danz*, 199 Ill. App. 3d 296, 313, 556 N.E.2d 873, 886 (1990); see also *Somers v. AAA Temporary Services, Inc.*, 5 Ill. App. 3d 931, 935, 284 N.E.2d 462, 465 (1972) (the plaintiff's right of recovery was not barred by a motive that prompted him to bring the action). We therefore must agree that the court's judgment was contrary to the law in this instance. There is no presumption that a transfer from an uncle to a nephew is a gift, unless that uncle stands *in loco parentis* to the nephew, and therefore, the burden should have been on defendant to demonstrate by clear and convincing evidence that the transfer from plaintiff was not a loan. Because the trial court applied the wrong presumption in this instance, we must remand this cause for a new trial.

For the foregoing reasons, we reverse the judgment of the circuit court of St. Clair County and remand this cause for further proceedings.

Reversed; cause remanded.