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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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JOSEPH BONA VIA,	)	Appeal from the Circuit Court
	)	of Winnebago County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 08-CF-1358
	)	
LAURA HIBBS,	)	
	)	
Defendant-Appellant	)	Honorable
	)	Eugene G. Doherty,
(Blackhawk State Bank, Defendant).	)	Judge, Presiding.

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JUSTICE JORGENSEN delivered the judgment of the court.  
Justices Hutchinson and Spence concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court did not err in finding, following trial on cross-claims seeking an accounting, that plaintiff's mortgage and other payments increased his joint tenancy share in the real property that he owned with defendant, his former girlfriend. Affirmed.

¶ 2 Plaintiff, Joseph Bonavia, sued defendant, Laura Hibbs, his former girlfriend and the mother of his two children, seeking an accounting in relation to expenses he alleged he disproportionately paid as one of the joint tenants (with defendant) of their residence. Defendant counter-claimed, raising similar allegations. The residence was sold. Following trial, the trial court entered judgment

in plaintiff's favor and against defendant. The court awarded plaintiff the balance of the sale proceeds, finding that plaintiff's mortgage and other payments increased the value of the property and his share in it and were not gifts to defendant. Defendant appeals. We affirm.

¶ 3

### I. BACKGROUND

¶ 4 Plaintiff and defendant, who never married each other, cohabited at the subject premises (at 2348 Arnold Avenue in Rockford (tax identification No. 12-33-376-007 (177C-402)) for seven years (from 2001 through 2008). They had two children together. The first was born in 1999, and the second was born in 2004. Plaintiff had initially purchased the residence on his own. On May 5, 2003, he delivered a quitclaim deed to defendant (for \$1 consideration and thereafter recorded), conveying to her a joint tenancy interest in the property with rights of survivorship. Also on that date, the parties executed a mortgage on the residence for \$100,500 with Blackhawk State Bank (who is not a party to this appeal).<sup>1</sup> Plaintiff has paid all of the monthly payments (\$1,426.08) since execution. On September 24, 2004, the parties executed a line of credit loan agreement with Blackhawk for \$31,149 and secured by a second mortgage on the premises. Plaintiff has made all of the payments on the second mortgage.

¶ 5 Further, plaintiff paid all real estate taxes and homeowner's insurance premiums on the property for the relevant years. The real estate taxes totaled \$21,608.70, one-half of which equals \$10,804.35. Plaintiff made \$60,602.46 in principal payments on the first mortgage (for the period May 5, 2003, through July 19, 2010), one-half of which equals \$30,301.23. On the second mortgage, plaintiff made payments totaling \$22,011 toward the principal balance (between September 24, 2004,

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<sup>1</sup>There was a mortgage balance when defendant was added to the mortgage, so, the transaction was essentially a refinancing.

and July 19, 2010), one-half of which equals \$11,005.50.<sup>2</sup> Plaintiff also made the interest payments on the mortgages during the period May 5, 2003, through July 19, 2010, totaling \$31,343.15; one-half of that amount equals \$15,671.58. Similarly, he paid all of the homeowner's insurance costs for the property during the relevant period for a total of \$5,433; one-half of this amount equals \$2,715.50.

¶ 6 Defendant (with the children) moved out of the residence in March 2008. The property was sold on July 19, 2010, and the proceeds were ordered to be held in escrow.

¶ 7 Initially, on August 26, 2008, plaintiff filed a complaint against defendant and Blackhawk State Bank to quiet title and for incidental relief, alleging that he and defendant owned the residence in joint tenancy. According to plaintiff, although defendant had an "apparently valid" joint tenancy interest in the property, her claim was invalid because she contributed nothing toward the down payment or purchase of the premises or paid the mortgage, utilities, maintenance, or insurance. Her name, according to plaintiff, was included on the deed only for purposes of convenience.<sup>3</sup> Plaintiff further alleged that defendant's claim under the deed constituted a cloud upon the title and interfered with the sale and finance of the property. Addressing the mortgages on the property, plaintiff alleged that \$11,400 in proceeds from the second mortgage line of credit was used to pay defendant's credit

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<sup>2</sup>The remaining balances on the mortgages at closing were paid at closing and divided equally between the parties in the division of the closing proceeds.

<sup>3</sup>Plaintiff further alleged that he and defendant orally agreed in April 2003 that he would quitclaim the premises into joint tenancy in exchange for defendant's promise to change the last names of their children to his last name and in contemplation of marriage. Defendant never changed the children's names and the parties never married.

card debt that resulted from her purchase of goods and services for her personal needs and was in further consideration for her changing the children's names and in contemplation of the parties' marriage. He further alleged that he has solely made every payment on the second mortgage and the remaining balance of \$16,692.46 remains a cloud on title and diminishes the property's value. Plaintiff requested that defendant's claim be decreed illegal and void and that judgment be entered in his favor for \$11,400 for the second mortgage.

¶ 8 Defendant denied plaintiff's allegations and filed a counter-complaint to quiet title and for incidental relief, alleging that her claim to the property was valid because plaintiff owed her \$59,847.58 in child support (pursuant to an April 17, 2008, court order attached to her complaint in cause Nos. 04-F-112 and 04-F-240, which were subsequently consolidated) and for the value of a diamond ring (\$10,000) that he took from her locked jewelry box. Defendant agreed that plaintiff had paid all of the mortgage payments on the first mortgage; however, she alleged that she paid all of the children's living expenses and other living expenses and failed to receive child support from plaintiff. As to the second mortgage, she used \$11,400 to pay her credit card debt, alleging that it resulted from purchases for the children's needs. She further alleged that plaintiff has failed to pay any child support for the children or household expenses. Defendant requested that plaintiff's claim as joint tenant be declared illegal and void. She also requested that judgment be entered in her favor for \$19,749 (balance on second mortgage and value of ring) and \$59,847.58 in child support.

¶ 9 Defendant also moved to consolidate and join the family court cases with the present quiet title action. On November 5, 2008, the trial court denied her motion. The parties subsequently agreed to list the property for sale, and, again, it was sold in 2010 and the sale proceeds were ordered to be placed in escrow.

¶ 10 In a subsequent, amended two-count complaint, plaintiff: (1) brought a suit to partition (735 ILCS 5/17-1 *et seq.* (West 2012)); and (2) sought an accounting under the Joint Tenancy Act (765 ILCS 1005/4a (West 2012)). Defendant then filed a counter-complaint, subsequently twice amended, seeking similar relief.

¶ 11 Trial commenced on January 17, 2012. Plaintiff testified that he (alone) purchased the subject real estate in 2000. On May 5, 2003, he transferred part of the ownership to defendant. He did so because the parties had been engaged for about one year, defendant had stated she would obtain full-time employment to contribute to household expenses, and that she would consent to changing their child's name. Defendant never changed the children's names, and she contributed "very little" to expenses. Defendant worked only two out of the last eight years. Plaintiff denied that he had an agreement with defendant that she would stay home from work to care for their second child, who had gastrointestinal issues as an infant. Plaintiff stated that he paid for improvements to the residence and that he paid all of the mortgage, real estate tax, and insurance payments thereon. He also paid for repairs and improvements, including landscaping, to the residence, which totaled about \$40,000. A portion of the second mortgage was utilized to pay defendant's credit card debt. With respect to child support, plaintiff testified that a child support order was entered in 2004, but that there was never any discussion between the parties to trade home expenses for child support.

¶ 12 Plaintiff further testified that there is currently a claim pending in family court for back child support from 2004 through 2008. Defendant voluntarily left the residence on March 11, 2008; plaintiff took no steps to force her to leave the residence. The parties first had discussions about separating in October 2007. According to plaintiff, defendant stated that she would quitclaim her interest in the residence "to give me the house back." Plaintiff stated that he changed the locks in

March 2008 because defendant had come to the house (after having moved out) and taken some of his possessions. Plaintiff denied that it took defendant two years in family court for defendant to get back most of her possessions from the residence. Plaintiff also denied that he took the ring from defendant; he claims that she gave it back to him.

¶ 13 Plaintiff claimed the children as dependents/exemptions on his tax returns. In 2004, he was ordered to pay \$1,115 in monthly child support. Plaintiff denied that defendant gifted him certain tax benefits that she otherwise would have been entitled to.

¶ 14 Defendant testified that she and plaintiff got engaged in February 2001; she assumed they would get married within a reasonable time. When she was pregnant with their second child, who was born on June 2, 2004, defendant continued to assume that the parties were going to marry. Defendant worked full time with a school district in 2000 and 2001 and nearly had tenure by the time her second child was born in 2004. Defendant switched to part-time work at this time, which, she contends, the parties had agreed to. However, she also testified that plaintiff wanted defendant to return to full-time work; defendant explained that she had lost her seniority with the school district. She continues to work part time.

¶ 15 When she was added as a joint tenant to the house in 2003, defendant believed it was a gift; she believed the couple would marry, plaintiff would pay the mortgage, and defendant would pay for gifts and necessities. During the years she lived with plaintiff, defendant did not take deductions on her tax returns for mortgage interest or real estate taxes. During the time they lived together, defendant contributed some of her income to the household; otherwise, she supported herself and the children. Her wages were used to pay for her own and the children's health insurance; she also

paid for day care and her car. When defendant was not working, plaintiff paid for her car; when the car was sold, plaintiff received the proceeds.

¶ 16 In 2004, defendant obtained a court order granting her sole custody of the children and awarding her child support. Plaintiff paid support for three months and then defendant moved back in with him. The parties lived in a marriage-like relationship: defendant cooked daily meals, cleaned, did laundry, shopped, decorated, and took care of the children.

¶ 17 According to defendant, plaintiff never objected to paying the real estate taxes or mortgage payments during the time they lived together. Also, plaintiff never asked defendant to pay the mortgage. Her understanding was that he was gifting these items to her. In October 2007, the couple argued and defendant decided to end the relationship. According to defendant, it took two years through the court system for her to get back all of her items from the residence. Plaintiff has not paid defendant any rent for the period after defendant left the residence.

¶ 18 On February 14, 2012, the trial court issued its memorandum decision. Preliminarily, the court noted that it would not recognize the economic aspects of the parties' cohabitation as a *de facto* common-law marriage, because that concept is not recognized in Illinois. Next, addressing the original deed, the court found that, in May 2003, plaintiff quitclaimed a joint interest in the subject property to defendant and that this action constituted a gift. Thus, on that date, defendant was a joint owner of the premises with defendant. The court noted that the action was a gift regardless of plaintiff's future expectations as to whether defendant would work, contribute to the family expenses, etc.

¶ 19 Next, addressing plaintiff's subsequent expenditures beyond his one-half share, the court noted that the primary issue was the effect of the additional payments by plaintiff over the years to

reduce encumbrances on the jointly-owned real estate. Plaintiff sought to recover these as contributions over and above his one-half share of such expenses, and defendant construed them as a gift. The court noted that donative intent to make a gift cannot be implied absent some communication between the donor and the donee. Here, the court found that there was no credible evidence of any such communication and that it could not imply the making of a gift. The court found that the evidence supported plaintiff's contention that he contributed a disproportionate amount toward the first mortgage, second mortgage, insurance, and taxes. "There is no need to tally the precise amount because it is clearly well in excess of the 1/2 share of proceeds from the sale which would otherwise go to Defendant." It ordered the remaining escrow balance (1/2 of the sale proceeds; the other half was previously transferred to plaintiff) be paid to plaintiff and declined to award attorney fees because the "only interest served by the partition suit was Plaintiff's." The court noted that its analysis was the same for the period after defendant continued to live in the property, finding that defendant left the property and was not barred from it.

¶ 20 The court allowed plaintiff to amend his pleadings to state a common law claim for an accounting (not a claim under section 4a of the Joint Tenancy Act, as he had pleaded), finding that this would not prejudice defendant since she "was aware of this contention for years." Finally, it noted that plaintiff prevailed because he showed that his payments over the years were not in the nature of family support; rather, they increased the net value of the property and his share in it. As to the child support issue, the court noted that it left that determination to the judge in the separate (*i.e.*, family court) litigation between the parties.

¶ 21 On March 19, 2012, the trial court denied defendant's motion to reconsider. On May 3, 2012, the trial court entered judgment. Defendant appeals.

¶ 22

## II. ANALYSIS

¶ 23 Defendant's first argument is somewhat confusing, as she appears to conflate the issue of the initial conveyance and the issue of the subsequent mortgage payments. As the first issue was decided in her favor (*i.e.*, the court determined that, on May 5, 2003, plaintiff conveyed to defendant a joint tenancy interest in the residence), we focus on the second claim. As to the mortgage payments, defendant challenges the trial court's finding that plaintiff was entitled to reimbursement for the payments that he made during the time the parties lived together because plaintiff either: (1) gifted them to her; or (2) paid them to the bank in lieu of the court-ordered child support payments (that he failed to pay defendant). We conclude that defendant's claim is unavailing.

¶ 24 The standard of review following a bench trial is whether the court's judgment is contrary to the manifest weight of the evidence. *Chicago's Pizza, Inc. v. Chicago's Pizza Franchise Limited USA*, 384 Ill. App. 3d 849, 859 (2008). A judgment is against the manifest weight of the evidence "if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented." *Best v. Best*, 223 Ill. 2d 342, 350 (2006).

¶ 25 Addressing the mortgage payments, defendant argues that plaintiff should be precluded from recovering for those payments and avoiding payment of his child support obligation. Referring to her trial testimony, she maintains that the parties agreed that plaintiff would pay the mortgage and she would pay for child care expenses and certain necessities. First, we find forfeited and not appropriate for this court's consideration any argument concerning a child support obligation. Defendant's motion to consolidate the family court cases with this case was denied, and she did not appeal that order. Further, the family court case remains pending in that court and is not an

appropriate consideration in an action for an accounting of improvements (to reduce encumbrances) to real property held by joint tenants.

¶ 26 Turning to defendant's claim that the mortgage payments were a gift, defendant argues that her failure to contribute to the down payment or mortgage payments is immaterial and does not diminish her interest in the property. She maintains that she owns an undivided, one-half share of the residence and a corresponding share of the sale proceeds. Defendant contends that there should be a presumption of a gift of the mortgage payments and the fact that the couple's undivided interests were immediately mortgaged by them strengthens the presumption. She also notes that the couple split the second mortgage proceeds, which, in her view, reflects that they both viewed the property as jointly held and a gift of partial equity at that time. Citing to her summary judgment filing, she also argues that she paid over \$14,000 for improvements to the home and, thus, her investment strengthens her claim to the property "as well as the consideration of foregoing the pursuit of child support he owed her."

¶ 27 In his pleadings, plaintiff sought an accounting under section 4a of the Joint Tenancy Act, which provides:

"When one or more joint tenants, tenants in common or co-partners in real estate, or any interest therein, shall take and use the profits or benefits thereof, in greater proportion than his or their interest, such person or persons, his or their executors and administrators, shall account therefor to his or their cotenants jointly or severally." 765 ILCS 1005/4a (West 2012).

¶ 28 At common law, joint tenants are equally liable for the cost of necessary repairs as well as payment of the mortgage and real estate taxes and this rule applies regardless of the fact that only

one tenant may be in actual possession of the property, because such expenditures protect the property from loss or damage and, thus, all co-tenants benefit. *Gilmore v. Gilmore*, 28 Ill. App. 3d 36, 40 (1975); see also *Moniuszko v. Moniuszko*, 238 Ill. App. 3d 523, 531 (1992) (“joint tenants are equally liable for the cost of necessary repairs as well as payment of the mortgage and real estate taxes”). However, joint tenants have a right of reimbursement to the extent that they have paid a disproportionate share of the necessary expenses in order to preserve the real property at issue, including real estate taxes and mortgage payments. *Gilmore*, 28 Ill. App. 3d at 41 n.1 (“where the cotenant in possession has made the whole of [mortgage, capital improvements, and necessary repairs] payments, he can enforce the liability of the cotenant out of possession, at least on final accounting between the cotenants when the cotenancy has been terminated by voluntary or partition sale of the property”; further noting, but not holding, that the weight of authority further holds that carrying charges, such as mortgage interest and real estate taxes, also fall within this principle).<sup>4</sup>

¶ 29 Here, defendant’s argument that plaintiff’s mortgage payments were gifts to her is unavailing. A “gift” is a voluntary, gratuitous transfer of property by one person 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 Marriage of Cook*, 117 Ill. App. 3d 844, 849 (1983). The elements of a valid gift are: (1) donative intent; (2) the donor’s parting with the exclusive dominion and control over the subject of the gift; and (3) delivery to the donee. *Moniuszko*, 238 Ill. App. 3d at 529. “In order to create a gift, there must be some communication, oral or written, of donative intent between donor and

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<sup>4</sup>Although *Gilmore* involved a parties’ divorce, the case is instructive here because it predated our current divorce statute and, thus, traditional property principles applied to address the disposition of the parties’ property. *In re Marriage of Fleming*, 80 Ill. App. 3d 1006, 1008 (1980).

donee.” *Id.* Donative intent is the intention on the part of the donor that there be a present and irrevocable transfer of title to the subject matter of the gift. *Id.* A gift to a donee is not shown unless the donor has relinquished all present and future dominion and power over the subject matter of the gift. *Id.* Finally, the alleged donee has the burden of proving, by clear and convincing evidence, the alleged donor’s donative intent. *Id.*

¶ 30 Here, we do not find unreasonable the trial court’s finding that there was insufficient evidence presented to show that plaintiff intended to gift to defendant his mortgage payments. The testimony conflicted on this point. However, both parties testified that plaintiff wanted defendant to return to full-time work. A reasonable inference is that he desired her to contribute more to the couple’s expenses. Defendant’s testimony that plaintiff never objected to paying the mortgage payments during the time they lived together and never asked her to pay the mortgage rings somewhat hollow given the foregoing testimony that he desired that she maintain full-time employment. Plaintiff testified that he wanted defendant to return to work so she could contribute to household expenses. Defendant’s testimony that she did not claim related deductions in her tax filings tends to show that she did not believe that she had an ownership interest in them such that she was entitled to the deductions. In a bench trial, it is within the trial court’s province to determine witness credibility, the weight of testimony, and to resolve any inconsistencies and conflicts; we defer to its resolution of these matters. *Pottinger v. Pottinger*, 238 Ill. App. 3d 908, 919 (1992). We cannot conclude that the trial court erred in finding that defendant did not prove donative intent.

¶ 31 In her second argument, defendant challenges the trial court’s finding that plaintiff was entitled to reimbursement for the improvements for which he paid *after* March 2008 (when defendant moved out). The trial court found that defendant left the property and was not barred from

it. It also found that no competent evidence was offered concerning the rental value of the property. Defendant argues that plaintiff locked her out of the house after she moved out and refused to let her have some of her and the children's possessions. Plaintiff testified that he did lock out plaintiff after she moved out because she subsequently returned at one point and took some of his possessions. This dispute aside, however, defendant does not claim that she tried to move back into the residence or otherwise return to the relationship, but only that she could not access her and the children's possessions at one point. Thus, we have no basis upon which to conclude that the court's finding that defendant voluntarily left was against the manifest weight of the evidence.

¶ 32

### III. CONCLUSION

¶ 33 For the foregoing reasons, the judgment of the circuit court of Winnebago County is affirmed.

¶ 34 Affirmed.