

IN THE SUPREME COURT OF OHIO

STEVEN L. RARDIN,	:	CASE NO.: 2009-1468
	:	
Appellant,	:	
	:	On Appeal from the Carroll
vs.	:	County Court of Appeals,
	:	Seventh Judicial District
ESTATE OF DIANA LYNN BAIN,	:	
	:	Court of Appeals
Appellee.	:	Case No. 24478
	:	

APPELLEE'S RESPONSE IN OPPOSITION TO THE
 JURISDICTIONAL MEMORANDUM OF APPELLANT

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FILED
 SEP 14 2009
 CLERK OF COURT
 SUPREME COURT OF OHIO

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**THIS CASE DOES NOT INVOLVE A MATTER OF PUBLIC
OR GREAT GENERAL INTEREST**

Appellant argues this case is one of great public interest in that it deals with the property rights of cohabitating, unmarried persons. In doing so, appellant contends the trial and appellate courts erred in failing to consider his contributions during the relationship of the parties, and to place a monetary value of said contributions for purposes of supporting his claimed interest in the real property.

However, appellant fails to consider the testimony presented at trial, and how spurious his alleged contributions were to the fact-finder. In no way does this case involve a unique issue regarding property rights between unmarried, cohabitating individuals. Rather, this case involves a relationship wherein appellee provided total financial support for appellant for six years, and upon the relationship terminating appellant trying to extract as much money from appellee as possible.

Because this case is so fact intensive, a lengthy statement of facts is necessary. In sum, this case involves appellee's purchase of a vacation home at Lake Mohawk, a secure gated community. To permit appellant unfettered use of various amenities of Lake Mohawk, appellee deeded the property in her and appellant's names. However, when their relationship ended, appellant not only refused to deed his interest in the property back to appellee, but commenced a partition action.

At trial, appellant presented an itemized statement totaling \$239,533.00, claiming this was the value of his services to appellee during their six year relationship. Appellant acknowledged that during the relationship he did not work and appellee supported him in

every way. Not only did appellant pay nothing towards his support, appellee gave him spending money and \$21,000.00 to purchase a new truck. Despite her generosity, when the relationship ended, appellant removed from the lake property two boats, a boat trailer, a golf cart, two jet skis, two snowmobiles and even the boat lift from the dock. As with the lake property, appellee had paid for all of these items. Despite this fact, appellant sold all of the personal property and kept the proceeds for himself.

When asked whether all of this (six years of support, gifts, and the proceeds from the personal property), were sufficient compensation for the things he did for appellee during their relationship, appellant responded "not near enough".

Both the trial and appellate courts held appellee established by clear and convincing evidence that she solely paid for the Lake Mohawk property and deeded the property one-half in appellant's name for the purpose of allowing him use of the property during their relationship. Further, the courts found that appellant's claimed contributions during the course of the relationship were less than credible.

Thus, the courts correctly denied appellant's partition action and found a purchase money resulting trust held by appellee as to the equitable interest in the property.

Statement of the Case and Facts

Appellant, Steven L. Rardin, commenced this action seeking partition of two parcels of real property deeded jointly with appellee, Diana Lynn Bain (“Bain”). In response, Bain filed a counterclaim seeking quiet title to the subject properties. Bain died while this action was pending, and her estate was substituted as the defendant (appellee).

The matter proceeded to trial and on April 30, 2007, the trial court issued its ruling granting Bain’s quiet title action. In doing so, the court found the evidence to be clear and convincing that Bain had deeded the two parcels one-half in Rardin’s name for the sole purpose of permitting him unrestricted access and use of the Lake Mohawk facilities. Thus, while holding legal title, equitable title remained with Bain as the person who solely paid for the properties. This ruling was affirmed in Rardin’s appeal to the Seventh Judicial District.

At trial Rardin testified that he initially met Bain in 1994 at the gym where they both worked out. At the time, Rardin, who was in his thirties, was living with his parents. He was the owner of “Rardin Landscaping”, although admitting that his total income from the business in 1994 and 1995 was “around \$10 to \$12,000” per year. Sometime in 1995, Rardin began dating Bain, and ultimately moved into her home in Hudson, Ohio in 1996. Rardin ceased operating his landscaping business from 1996 to 2002, during the time he was living with Bain.

While living with Bain, Rardin acknowledged that she paid all this bills. At no time did he pay her rent, pay utility bills, insurance, real estate taxes, food, etc. Rardin agreed that Bain “was the one that was paying all the bills”.

During their relationship, there came a time in 1998 when Bain was interested in

purchasing lake property as a vacation home. Rardin accompanied Bain when she went to look at the Lake Mohawk property and thereafter attended the new homeowner initiation where the homeowners' association manual is reviewed and distributed. On March 28, 1998, Bain signed a purchase agreement to buy Lot 323 (lot and home) for \$292,000.00. Rardin acknowledged that he did not sign the purchase agreement, nor did he pay anything towards the purchase of the property. Bain paid for Lot 323 by check.

In 1999, the vacant lot (No. 322), adjacent to Lot 323, came up for sale. Bain was interested in purchasing the vacant lot to insure that no one built a home immediately adjacent to her house. Thus, on June 30, 1999, Bain executed a purchase agreement to buy Lot 322 for \$92,500. As with Lot 323, only Bain signed the purchase agreement for Lot 322.

However, the purchase of Lot 322 was financed through a mortgage held by National City Bank (less the cash down payment). As with Lot 323, Rardin agreed that at no time did he pay anything towards the purchase price, mortgage, real estate tax or the insurance on the property.

Initially, the deed to Lot 322 was placed solely in Bain's Name. As a result, Bain was paying annual dues to Lake Mohawk for both Lots 322 and 323. Accordingly, Bain decided she wanted to put the lots together, thereby avoiding paying duplicate dues. This led to Bain executing a deed to Lot 322 conveying a half-interest in the property to Rardin in order to have the record title to both lots be identical. Once the deeds were identical, as to title, Bain and Rardin executed a "restrictive tie-in covenant" to combine the lots. As a result "there was only one annual due or membership fee that Lynn (Bain) was required to pay."

Scott Noble testified that he is the manager of the Lake Mohawk Property Owners

Association (“Association”). The Association is primarily funded through membership fees and/or dues assessed the property owners on each lot they own. Lake Mohawk is a gated community that is “somewhat exclusive”. Included in Lake Mohawk is a “520 acre lake, three beaches, tennis courts, basketball courts, baseball field (and) a nine hole golf course.” All of these amenities are within the confines of the gated community.

To gain access to Lake Mohawk you have to be a property owner or an immediate family member of a property owner. An immediate family member is defined by the Association as an owner’s spouse, if married, children, parents, grandparents and grandchildren. All other visitors must be registered as guests. Lake Mohawk has a twenty-four hour manned guard house as the primary gate and two back-side gates which require the use of a “clicker” (remote transmitter) to open the gates to enter or exit. Noble testified that Lake Mohawk is a “secure community”.

Upon signing a purchase agreement for a lot at Lake Mohawk, every new owner is required to attend an orientation. At the orientation the new owner receives a copy of the Association’s orientation manual, which includes the constitution, rules and regulations and codes of Lake Mohawk.

These regulations cover the rules regarding guests. In order to use the amenities of Lake Mohawk, all guests must, at all times, be accompanied by either the property owner or one of the owner’s immediate family members, as set forth above. Guests “can not venture out on their own” to use the Lake Mohawk facilities, including the lake.

Further, Noble acknowledged that annual dues are assessed on each lot. If members own two adjacent lots, the owners can execute a “tie-together” covenant to join the lots. The

tie-together covenant permanently ties the adjoining lots together so the owners do not have to pay dues on the second lot. However, in order to “tie the lots together – the property owners have to be the same” on both lots.

In 2002, the relationship between Bain and Rardin ended. During the course of the approximate six (6) years relationship, Bain not only paid for everything, but she gave Rardin \$21,000.00 to purchase his truck. Rardin agreed that Bain “was of better means” and as a result could pay for everything, including giving Rardin money when he needed it and buying his cloths.

During the course of their relationship, Bain also purchased numerous items to be used at the Lake Mohawk property. These included a Chapperel boat and trailer purchased for \$25,000.00, a pontoon boat, a jet ski (plus the difference in value for Rardin to upgrade his own jet ski to a more expensive one), a boat lift (installed on the dock), a snow mobile (again Bain paid the difference for Rardin to upgrade his own snow mobile to a more expensive one - thus there were two jet skis and two snowmobiles at the Lake Mohawk house), and a golf cart. When the relationship ended in 2002, Rardin acknowledged that he went to the Lake Mohawk property and retrieved all of the above-stated property, which he then sold. Rardin sold the Chapperel boat and trailer for “\$12,000 or \$12,500”. He sold the pontoon boat for \$9,000.00. He sold the two jet skis, “one was \$3,000.00 and the other was four or four and a half (thousand)”, and Bain’s snowmobile for \$6,000 or \$6,500.00. Additionally, Rardin sold the golf cart for “\$700 or \$750.00” and the boat lift (which he removed from the dock), for approximately \$3,300.00 or \$3,500.00. All of the proceeds from these sales were kept by Rardin, claiming these items (including the jet ski and snowmobile

Bain used), were expressed gifts given to him by Bain.

The facts, as set forth above are not in dispute. All of the quotations, except those referencing the testimony of Scott Noble, are to the trial testimony of Rardin. The only divergence in the facts of this case arises in the opposing testimony of the parties.

As stated above, Bain died on August 2, 2006, prior to trial. However, the court, pursuant to Evid. R. 804(A)(4)-(B)(1) (prior testimony of an unavailable witness which was subject to examination by the opposing party), admitted the deposition testimony of Bain given under oath and subject to cross-examination. In her deposition, Bain testified she deeded the initial Lot 323 in Rardin's and her names "(b)ecause I was told (by the Association), unless we were married if his (Rardin's) name was not on the title, he (Rardin) could not have free access and get stickers and come and go at my property - (s)o I trusted and I put his name on the title." After purchasing Lot 322, Bain was told by the Lake Mohawk office that in order to join the two lots they would have to be deeded identically, in the same names - "so to join the two lots, since his name was on the deed of the house, his name had to go on the deed of the lot - (s)o I trusted them and put his name on the deed of the lot."

In contrast, Rardin asserts that Bain intended to give him a one-half ownership in the Lake Mohawk property in exchange for all the services he performed for Bain during their six year relationship. While acknowledging that Bain paid for everything during their relationship, including buying Rardin's cloths, gifts, all of the property removed by Rardin from Lake Mohawk after the relationship ended, and giving his \$21,000.00 cash towards the purchase of his truck, Rardin agreed that this was "not compensation enough for the services

that (he) rendered to (Bain) during the six year relationship. In fact, Rardin went on to state that it was “(n)ot near enough”.

At trial for the first time, Rardin introduced an itemized statement listing the value of the services he claims he performed for Bain during their relationship. Based on an hourly wage of \$27.50, Rardin estimated that the value of his services over the six years was \$239,533.00. Included in this amount was \$9,438.00 for washing and detailing Bain’s automobiles and \$41, 298.00 for “ongoing maintenance of the Lake Mohawk property. Accordingly, Rardin believes that the benefits he received from Bain during their relationship (as set forth herein, including the personal property removed from Lake Mohawk and sold), were “not near enough” compensation to him and that he is entitled to one half the value of he lake properties.

LAW AND ARGUMENT

Proposition of Law No. 1

Both the trial court and the appellate court found that appellant lacked credibility in his claimed contributions to the “maintenance, repair and improvement” of the real estate and correctly held that he did not gain an equitable interest in the property by virtue of such spurious claims.....

Proposition of Law No. 2:

The trial court and appellate court correctly found that appellee established by clear and convincing proof that at the time of the purchase of the subject property appellee did not intend to vest appellant with an equitable interest in the property

Ohio law is well settled on the existence a purchase money resulting trust. The “resulting trust” was defined by the Ohio Supreme Court in *First Natl. Bank of Cincinnati v. Tenney* (1956), 165 Ohio St. 513, at 515-515:

“A resulting trust has been defined as ‘one in which the court of equity declares to exist where the legal estate in property is transferred or acquired by one under facts and circumstances which indicate that the beneficial interest in not intended to be enjoyed by the holder of the legal title’ *** The device has historically been applied to three situations: (1) purchase-money trusts; (2) instances where an express trust does not exhaust the res given to the trustee; and (3) express trusts which fail, in whole or in part.” (citations omitted).

See also, *John Deere Indus. Equip. Co v. Gentile* (1983), 9 Ohio App.3d 251, at 254-255;

Bivolocki v. Marimberga (1979), 62 Ohio App.2d 169, at 172.

Δ “purchase-money trust” arises where title to property is transferred to one person, but the purchase price is paid by another. *Gabel v. Richley* (1995), 101 Ohio App.3d 356, at 364; citing to *John Deere, supra.*, and *Glick v. Dolin* (1992), 80 Ohio App.3d 592; 5 Scott on Trusts 8-9, Section 454. The court in *Gabel* went on to quote Restatement of Law 2d, Trusts

(1969), 416-417, Section 454:

“Where a transfer of property is made to one person and a part (or all) of the purchase price is paid by another, a resulting trust arises in favor of the person by whom such payment is made in such proportion (or the entire property) as the part paid by him bears to the total purchase price, unless he manifests an intention that no resulting trust should arise or that a resulting trust to that extent should not arise.” (parenthetical added).

Gabel, supra. at 36

Importantly, a resulting trust arises not only when the purchase price is paid by another, but also when a person other than the transferee undertakes an obligation or debt to pay the purchase price. See *John Deere*, 9 Ohio App.3d at 255, citing to Restatement of Law 2d, Trusts, at Section 456.

There is an exception to the presumption that the purchaser of the property did not intend the legal title owner (transferee) to have beneficial or equitable interest in the property. Thus, a presumption of a “purchase-money trust” does not arise when the transferee is “a natural object of bounty” or the person who pay the purchase price. Accordingly, the law presumes that a conveyance to a person’s spouse, child or descendant, without fair consideration, is a gift. *John Deere*, 9 Ohio App.3d at 255, citing to Restatement of Law 2d, Trusts, at Section 442; *Creed v. Lancaster Bank* (1852), 1 Ohio St. 1, at 9-10.

In the present case, at no time was appellant the natural object of appellee’s bounty. Her last will and testament was executed on October 14, 1998, contemporaneous with the purchase of the lake properties. Nowhere does the will mention appellant, leaving all of appellee’s estate to her children.

Based on the testimony of appellee and Scott Noble of Lake Mohawk, there was clear

and convincing evidence that appellee deeded the properties one-half in appellant's name only to permit him unrestricted use of the property. The second lot was deed one-half in appellant's name so the two lots could be combined, thereby avoiding duplicate fees.

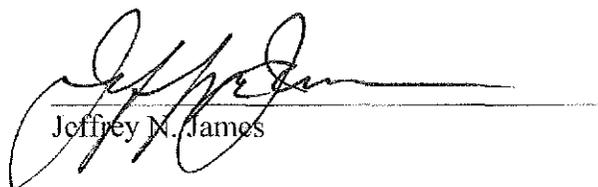
Further, it is fundamental that the trier of fact is in the best position to determine the credibility of witnesses. Appellant's testimony as to the value of his contributions to appellee and her property during the course of their relationship was less than credible. By way of example, does appellant actually believe the cleaning of appellee's automobiles was worth \$9,438.00? In fact, it is incredulous to believe that appellant's services were worth \$239,533.00, given that appellee completely supported appellant during their relationship.

In finding his claimed contributions to be spurious, the court could naturally find appellant less than credible. This lack of credibility extends not only to the alleged contributions, but also his claim that appellee intended to gift to him a half-interest in the lake properties as payment for his services.

CONCLUSION

Given the lack of appellant's credibility, the trial court correctly found, based on the remaining testimony, that appellee deeded the properties in appellant's name only to give him access and use of the Lake Mohawk facilities. On appeal, the Seventh Judicial District agreed. This case present no issue of great interest or public concern, and therefore further review should be denied.

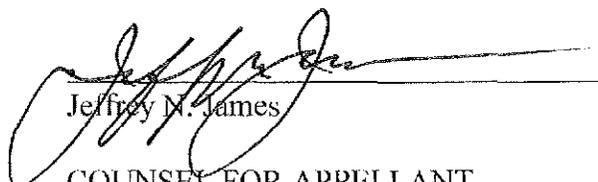
Respectfully submitted,


Jeffrey N. James

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Certificate of Service

I hereby that a copy of this Notice of Appeal was sent by ordinary U.S. mail to counsel for appellant, S. David Worhatch, 4920 Darrow Road, Stow, Ohio 44224, on the 14th day of September, 2009.


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