

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO**

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| EDWARD S. SIEFERT, | : | O P I N I O N |
| Plaintiff-Appellee, | : | |
| - vs - | : | CASE NO. 2011-T-0103 |
| SUSAN M. SIEFERT, | : | |
| Defendant-Appellant. | : | |

Civil Appeal from the Court of Common Pleas, Domestic Relations Division, Case No. 2010 DR 397.

Judgment: Reversed and remanded.

Elsa Reale Gottfried, Community Legal Aid Services, Inc., 160 East Market Street, Suite 225, Warren, OH 44481 (For Plaintiff-Appellee).

Charles E. Dunlap, 3855 Starr's Centre Drive, Suite A, Canfield, OH 44406 (For Defendant-Appellant).

TIMOTHY P. CANNON, P.J.

{¶1} Appellant, Susan M. Siefert, appeals the September 23, 2011 judgment of the Trumbull County Court of Common Pleas, Domestic Relations Division. This court must determine whether the trial court abused its discretion in finding that appellant relinquished her separate interest in a 1992 Ford Mustang when she transferred title of the vehicle into the joint names of the parties after their marriage. We find there to be insufficient evidence in the record to establish that the Mustang, which appellant

expended \$7,500 to purchase before marriage, was transferred by inter vivos gift from appellant to appellee with an intention to relinquish any separate interest she had in the vehicle. Therefore, we reverse and remand.

{¶2} The record reveals that appellant purchased the Mustang in 2001, prior to the parties' marriage. The parties testified that, after their marriage on July 13, 2002, they began restoring the vehicle. It is undisputed that the parties spent considerable time, effort, and money during the Mustang's restoration, thereby increasing its value from \$7,500 to \$27,200, the stipulated appraisal.

{¶3} At the time of purchase, the Mustang was titled solely in appellant's name. In 2005, however, appellant transferred title of the Mustang from her name to both the parties' names, jointly, with rights of survivorship.

{¶4} In dividing the property, the trial court determined that by transferring title of the vehicle, appellant "converted any separate property claims she may have had into a marital asset."

{¶5} Appellant asserts the following error for our review:

{¶6} "The trial court erred finding that the transfer of the 1992 Ford Mustang car title from defendant's individual name to defendant's and plaintiff's joint names on June 9, 2005, cancelled her pre-marital interest."

{¶7} Appellant contends there is no evidence in the record to demonstrate she intended to make a gift of her \$7,500 pre-marital interest in the Mustang to appellee. Appellant requests this court to reverse the judgment of the trial court and award her a separate property claim of \$7,500 in the Mustang, the amount she expended to purchase the vehicle prior to the parties' marriage.

{¶8} Property is divided into two categories: marital and separate. R.C. 3105.171. In this case, it is undisputed that appellant purchased the Mustang prior to the parties' marriage for the sum of \$7,500. Although there is evidence that appellant borrowed \$500 from appellee, the record demonstrates this amount was paid back to appellee. At the time of purchase, the Mustang was titled solely in appellant's name. As the Mustang was acquired by appellant prior to the marriage, it is deemed separate property. R.C. 3105.171(A)(6)(a)(ii).

{¶9} A spouse, however, may convert separate property to marital property through actions during the marriage. *Moore v. Moore*, 83 Ohio App.3d 75, 77 (9th Dist.1992). In this case, appellant transferred the title of the vehicle from her name to the parties' joint names in 2005. The trial court found that by transferring the title of the vehicle into the joint names of the parties, appellant converted any separate property claims she may have into a marital asset. As there is a lack of competent, credible evidence to support such a finding, we reverse the trial court's decision. *Hurte v. Hurte*, 164 Ohio App.3d 446, 2005-Ohio-5967, ¶21 (4th Dist.).

{¶10} The most commonly-recognized method for converting separate property into marital property is through an inter vivos gift of the property from the donor spouse to the donee spouse. In Ohio, the elements of an inter vivos gift include: "(1) the intent of the donor to make an immediate gift; (2) the delivery of the property to the donee; and (3) the acceptance of the gift by the donee after the donor has relinquished control of the property." *Frederick v. Frederick*, 11th Dist. No. 98-P-0071, 2000 Ohio App. LEXIS 1458, *20 (May 31, 2000). "The donee bears the burden of proving by clear and convincing evidence that the donor made an inter vivos gift." *Id.*

{¶11} Based on the findings of fact issued by the trial court, it appears the trial court relied solely on appellant's transfer of the title from her name to the parties' joint names in determining that appellant intended to relinquish by gift to appellee any separate interest she had in the Mustang. The trial court did not cite to any evidence other than the transfer of title; standing alone, this is insufficient to establish an inter vivos gift.

{¶12} In *Frederick v. Frederick*, this court found:

{¶13} Under prior case law, the presence of both parties' names on a joint title may have given rise to the presumption that appellant had foregone whatever separate interest [she] had in the property by gifting fifty percent of it to appellee as marital property. Since the enactment of R.C. 3105.171 however, the presumption of a gift has been negated. * * * Rather, a trial court may make such a finding only upon an appropriate factual context. *Supra*, at *24-25.

{¶14} As the donee, appellee had the burden of showing by clear and convincing evidence that appellant, the donor, made an inter vivos gift. Appellee did not provide any evidence or testimony that appellant intended to make an inter vivos gift when she transferred title of the Mustang. Appellee did submit an exhibit of the certificate of transfer of title illustrating the transfer of title. Appellee also testified this transfer was done in conjunction with the execution of the parties' wills; in the event of both of their deaths, the Mustang was to be bestowed to the Ford Motor Company. Appellant, however, gave no testimony regarding the transfer of the vehicle or the circumstances surrounding the transfer.

{¶15} Appellee did not meet his evidentiary burden. The title of the Mustang in both parties' names is insufficient to establish an inter vivos gift. This is particularly true where the transfer of the asset has a potential alternate purpose, such as estate planning. See, e.g., *Howcroft v. Howcroft*, 192 Ohio App.3d 307, 2010-Ohio-6410, ¶88 (5th Dist.). Here, the evidence does not indicate that appellant intended to present an immediate possessory interest to appellee; rather, in transferring the title, appellant may simply have been planning for the disposition of the vehicle in the event of her death.

{¶16} Accordingly, appellant's sole assignment of error has merit. It is the judgment and order of this court that the judgment of the Trumbull County Court of Common Pleas, Domestic Relations Division, is reversed. This matter is remanded to the trial court for further proceedings consistent with this opinion.

CYNTHIA WESTCOTT RICE, J., concurs,

DIANE V. GRENDELL, J., dissents with a Dissenting Opinion.

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{¶17} I respectfully dissent from the decision to reverse the judgment of the lower court and the conclusion that plaintiff-appellee, Edward S. Siefert, failed to demonstrate that defendant-appellant, Susan M. Siefert, relinquished her separate interest in a 1992 Ford Mustang.

{¶18} This court will uphold a lower court's characterization of personal property as separate or marital where there is competent and credible evidence to support that determination. *Kondik v. Kondik*, 11th Dist. No. 2008-P-0042, 2009-Ohio-2300, ¶ 46.

{¶19} "[T]he holding of title to property by one spouse individually or by both spouses in a form of co-ownership does not determine whether the property is marital property or separate property." R.C. 3105.171(H). Although "[t]he fact that both parties[]" names are on the deed is not determinative of whether the property is marital or separate, * * * such evidence may be considered on the issue." *Howcroft v. Howcroft*, 192 Ohio App.3d 307, 2010-Ohio-6410, 949 N.E.2d 46, ¶ 87 (5th Dist.).

{¶20} The issue in the present case is whether there is any evidence in the record, beyond the titling of the vehicle, which supports the lower court's determination that Ms. Siefert's separate interest in the Mustang became a marital interest during the course of the marriage. Because such evidence exists, that determination should be affirmed.

{¶21} In addition to being titled in the name of both parties, the Mustang's Certificate of Title contains the notation WROS, i.e., with right of survivorship. The right of survivorship, while not determinative of ownership, is evidence of a present ownership interest in each party (both Mr. and Ms. Siefert), which would pass to the other in the event of that party's death. *Gearhart v. Gearhart*, 5th Dist. No. 2007CA0026, 2008-Ohio-23, ¶ 42.

{¶22} In connection with this right of survivorship, there was testimony that, at the time the Mustang was re-titled, the parties executed wills to ensure that if anything happened to either one or both of them, the vehicle would pass to the Ford Motor

Company rather than Ms. Siefert's daughters. As Mr. Seifert testified: "we had the wills done stating that if anything happened to us, the car would go to Ford Motor Company to a museum because she said that her daughters wouldn't know what to do with it." Again, this is evidence of Ms. Siefert's donative intent, rather than merely an estate planning device. Otherwise, Ms. Siefert could have left the vehicle in her name only and devised it directly to the Ford Motor Company, i.e., there would be no need to provide for the contingency "if anything happened to us." *Helton v. Helton*, 114 Ohio App.3d 683, 687, 683 N.E.2d 1157 (2nd Dist.1996) (the estate planning purpose could not be effected without an actual transfer of interest).

{¶23} Lastly, the marital nature of the Mustang is evidenced by the joint effort expended by both parties to restore the vehicle and enter it at car show competitions. The lower court's uncontroverted finding was that "the majority of the restoration work performed on this vehicle was done after the parties' marriage and was done with marital money." Ms. Siefert testified that, during the marriage, they took the Mustang to car shows "together." Mr. Siefert testified that he invested his own time, money, and parts from a separately owned vehicle in the Mustang. The parties agree that Ms. Siefert purchased the Mustang prior to the marriage, in part, with money loaned by Mr. Siefert. *Dudich v. Dudich*, 8th Dist. No. 84742, 2005-Ohio-889, ¶ 39 (determination that vehicle was marital property was affirmed where the other party had use of the vehicle and marital funds were expended to maintain it).

{¶24} While none of these facts are necessarily determinative of the status of the Mustang as separate or marital property, collectively they corroborate the evidence

of the vehicle's Title, and are competent and credible evidence supporting the lower court's determination, which, therefore, must be affirmed. Accordingly, I dissent.