

STATE OF SOUTH CAROLINA)
)
COUNTY OF OCONEE)
)
GLORIA LEE MEADE,)
)
Plaintiff,)
v.)
)
DAVID LYNN THACKER,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS

C.A. #: 2016-CP-37-418

ORDER

RECEIVED

JUL 27 2017

SC Court of Appeals

Trial Judge:

Hon. Steven C. Kirven

Trial Dates:

April 20, 2017; May 2, 2015.

Plaintiff's Attorney:

Charles R. Griffin, Jr.

Defendant's Attorney:

Bradley A. Norton

After reviewing the pleadings, taking as much testimony as I deemed necessary, I make the following:

FINDINGS OF FACT/CONCLUSIONS OF LAW

This case is before the Court pursuant to a Summons and Complaint filed by the Plaintiff. The relief requested included, among other things, an Order declaring that constructive trusts be imposed regarding certain real and personal property for the benefit of the Plaintiff. The Defendant filed an answer alleging certain of the said property were gifts bestowed upon him by the Plaintiff.

Pursuant to Rule 53, *SCRCP*, this Case was referred to the Master in Equity by Order of the Hon. Cordell Maddox.

The real estate (hereinafter the "Lot") involved in this litigation is more particularly described as follows:

ALL that certain piece, parcel or lot of land, with improvements thereon, if any, situate, lying and being in Oconee County, South Carolina, being known and designated as Lot 39 of Lakeshore RV Resort, as shown on a plat prepared by Earl B. O'Brien, RLS

#10755, of Nu-South Surveying, Inc., dated June 19, 2006, and recorded in Plat Book B 164, Pages 5 & 6, records of Oconee County, South Carolina. This is the same property conveyed unto the parties by deed of Brian Maginnis on December 29, 2014 and recorded in the Oconee County RMC Office in Deed Book 2075 at page 2017 and recorded on December 31, 2014.

TAX MAP NO: 340-00-06-047

Property Address: Lot 39 of Lakeshore RV Resort, 808 S Fleetwood Lane, Fair Play, South Carolina

Background

The parties first met when they were grammar school classmates in Virginia. They had no further contact until many years later when they renewed their friendship on Facebook. At that time the Plaintiff was living in Georgia and the Defendant was living in Missouri. The parties decided to cohabitate in 2014. They became engaged to be married, but never did so.

Prior to their cohabitation, the Plaintiff wired to the Defendant's checking account Five Thousand and 00/100 (\$5,000.00) Dollars under the impression largely created by the Defendant that he needed the money to relocate to this area of the Southeast. The Defendant converted the funds to cash and placed it in an envelope which he kept in his possession. Once the Defendant arrived, the parties traveled around together in a fifth wheel camper ("camper") which was owned by the Defendant and they stayed at various campgrounds and other places. Ultimately, the parties relocated to Lake Shore RV Resort in Oconee County, South Carolina. Due to Plaintiff's divorce and the death her mother, the Plaintiff began to receive substantial sums of money.

The Lot was purchased on December 29, 2014 for Thirty-Nine Thousand and 00/100 (\$39,000.00) Dollars and was titled in both the Plaintiff's name and the Defendant's name as joint tenants with right of survivorship. The funds used to purchase the Lot were solely Plaintiff's funds from her Credit Union account in Georgia. The Defendant has resided at the Lot in his camper since the Lot was acquired. The parties made various improvements to the Lot.

Subsequently, on March 21, 2015, the Plaintiff purchased a 2013 Club Car Precedent (ID # PH 1339-403794) Golf Cart and various accessories ("Golf Cart") from Adventure Golf Carts, LLC, in Piedmont, South Carolina for the parties' use at the Lot and resort area. The funds used to purchase the Golf Cart and accessories were solely the Plaintiff's funds from her Credit Union account in Georgia, but the paperwork for the Golf Cart was executed by the dealership in the Defendant's name at the Defendant's request.

In or about April, 2015, at the Defendant's urging that the parties needed to establish residency in South Carolina, the Plaintiff opened a joint savings account and a joint checking account at the People's Bank of Iva on Whitehall Road in Anderson County, South Carolina. Plaintiff deposited Twenty-Five Thousand and 00/100 (\$25,000.00) Dollars in the joint savings account to open the account and Twenty-Three Hundred and 29/100 (\$2,300.29) Dollars in the joint checking account to open that account. The Plaintiff made other deposits from her funds to both the joint savings account and the joint checking account. The only amount deposited to either account by the Defendant was approximately Two Hundred and Twenty-five and 00/100 (\$225.00) Dollars for the purchase of some eyeglasses.

It is uncontroverted that the money deposited into the both accounts was the Plaintiff's money. The Defendant has not presented clear and convincing evidence that the Plaintiff intended otherwise. Additionally, based on Defendant's advice, the Plaintiff made various other lump sum deposits of her money into the joint savings account. In early July 2015, the Defendant purchased a Bentley Pontoon Boat from a Boat Dealer in Anderson County (Captain Dave's Boating World) at a purchase price of Thirty-Thousand and Three Hundred and Forty and 00/100 (\$30,340.00) Dollars. The Defendant transferred Plaintiff's funds from the Joint Savings Account to the Joint Checking Account to effectuate the purchase. The Defendant wrote two (2)

checks, one for the down payment and the other for the balance. The Defendant subsequently traded in the Bentley Pontoon Boat for a smaller 2016 Lowe Pontoon Boat (Hull ID Number LWC00858H516), 115 Mercury Outboard Motor (Serial # 28191852) and 2016 trailer (Serial # 1R9BB2510GT673696), ("Lowe Pontoon Boat, Motor and Trailer"). All of the Boat transactions were made at Captain Dave's Boating World, Anderson, South Carolina.

In response to Plaintiff's Interrogatories which Defendant filed with the Court on December 8, 2016, Defendant represented that he currently owned the Lowe Pontoon Boat, Motor and Trailer and he had possession of the Lowe Pontoon Boat, Motor and Trailer. The Defendant has never filed any updated responses stating otherwise nor has testified differently. The testimony at trial was that the Lowe Pontoon Boat, Motor and Trailer were in the Defendant's possession at Lakeshore RV Park in Oconee County, South Carolina.

In September 2015, the Plaintiff traded in her Honda Accord which was titled solely in her name for a BMW Mini Cooper motor vehicle. The Plaintiff was given a Twenty-One Thousand and 00/100 (\$21,000.00) trade-in value by the Dealer and the Defendant wrote a check from the Joint Checking Account in the amount of Twelve Thousand Seven Hundred and Thirty-One and 00/100 (\$12,731.00) Dollars. The vehicle was titled in both the parties' names at Defendant's direction purportedly for insurance purposes.

The Defendant testified that significant improvements were made to the Lot, which allegedly included his time and labor, but the Defendant has offered no expert testimony that these improvements increased the value of the Lot over and above the purchase price. Further, Defendant testified that he often had to pay lot rental to live wherever he stayed in his camper and since the parties purchased the Lot, he has not had to pay any lot rent and has been living

rent free. He testified that lot rental for him in other locations was up to \$400 per month. The parties separated in June 2016 and have not resided together since.

Constructive Trust

Plaintiff seeks to impose a constructive trust on the Lot, the Boat, Motor and Trailer and the Golf Cart.

The uncontroverted evidence is that the money that was used to purchase the Lot and Golf cart came from Plaintiff's money from her Georgia account that was solely in her name. The funds for the Bentley boat came from the joint savings account that was transferred by the Defendant to the joint checking account which funds admittedly belonged to the Plaintiff. Funds placed in a joint account remain the property of the contributing party until that party's death "unless there is clear and convincing evidence of a different intent. "S.C. Code Ann. § 62-6-103(a) (1987). *Abernathy v. Latham*, 545 S.E.2d 848, 345 S.C.106 (S.C. App., 2001). "Joint account' means an account payable on request to one or more of two or more parties. ..."

Abernathy. Neither the Plaintiff nor the Defendant could recall why the Lot was titled in both names at closing. A constructive trust will arise whenever the circumstances under which property was acquired make it inequitable that it should be retained by the one holding legal title." It "results from fraud, bad faith, abuse of confidence, or violation of a fiduciary duty which gives rise to an obligation in equity to make restitution." ... "It is resorted to by equity to vindicate right and justice or frustrate fraud" *Carolina Park Assocs., LLC v.*

Marino, 400 S.C. 1, 732 S.E.2d 876 (S.C., 2012).

"A constructive trust arises against one who by fraud, actual or constructive, by duress or abuse of confidence, by commission of a wrong or by any form of unconscionable conduct, artifice, concealment, or questionable means and against good conscience, either has obtained or

holds the right to property which he ought not in equity and good conscience hold and enjoy. *Briggs v. Richardson*, 288 S.C. 537, 343 S.E.2d 653 (Ct.App.1986). Constructive trusts are resorted to in equity to vindicate right and justice or to frustrate fraud. *Baptist Foundation for Christian Educ. v. Baptist College*, 282 S.C. 53, 317 S.E.2d 453 (Ct.App.1984), cert. granted, 284 S.C. 366, 326 S.E.2d 649 (1984), cert. dismissed, 285 S.C. 456, 330 S.E.2d 287 (1985).” *Halbersberg v. Berry*, 302 S.C. 97, 394 S.E.2d 7 (S.C. App., 1990).

Plaintiff has established by clear and convincing evidence that the Defendant took advantage of her love affection and induced Plaintiff to open joint accounts and deposit large sums of money in the joint accounts to which he would have unfettered access and purchased an expensive boat for himself with Plaintiff's money. Further, the Defendant often manipulated the Plaintiff with threats of violence. Particularly troubling is the circumstances surrounding the titling of the Boat, Motor and Trailer and the Golf Cart. The parties went together to shop for the first Boat, Motor and Trailer, but after finding one they both liked, the Defendant insisting on deferring the transaction in order to reflect on it. A short time later he went alone to the boat dealer and purchased the Boat, Motor and Trailer with Plaintiff's funds, but directed that the title be put in his name only. It appears the Defendant also handled the details of the Golf Cart transaction.

This Court finds that the Lot, the Lowe Pontoon Boat, Motor and Trailer and the Golf Cart are held by Defendant by way of a constructive trust for the Plaintiff.

Resulting Trust

A resulting trust in real estate arises when real estate is conveyed to one party but is paid by another. Under such circumstances, it is presumed that the intent of the parties was to benefit the person providing the money. However, this can be rebutted and the actual intention shown by

parol evidence. There is a presumption of a gift if the conveyance is to a spouse or to the donor's child. *See Hayne Federal Credit Union v. Bailey*, 327 S.C. 242, 489 S.E.2d 472(1997). Evidence to establish a resulting trust must be definite, clear, unequivocal and convincing. *See Moore v. McKelvey*, 266 S.C. 95, 221 S.E.2d 780(1970). In this case, it is undisputed that Plaintiff provided the consideration for the purchase of the Lot and the parties are not married. There was insufficient evidence provided by the Defendant that Plaintiff intended to provide a gift of any interest in the Lot to Defendant. At trial, neither party could remember why the Lot was titled jointly with right of survivorship.

This Court finds that the interest of the Defendant in the Lot is held by the Defendant by way of a resulting trust for the Plaintiff. Further, the Lowe Pontoon Boat, Motor and Trailer and the Golf Cart are also held by Defendant by way of a resulting trust by the Defendant for the Plaintiff.

The BMW Mini Cooper automobile is conceded by the Defendant to be the property of the Plaintiff, but to the extent necessary to restore ownership it is also held by way of resulting trust by the Defendant for the Plaintiff.

Gift

"A gift is a voluntary transfer of property by one to another without any consideration or compensation therefor. ... An *inter vivos* gift is a contract between the living which takes place by the mutual consent of the donor, who divests himself of the property given in order to transmit the title to it to the donee gratuitously, and the donee, who accepts and acquires legal title thereto. It operates, if at all, in the donor's lifetime, immediately and irrevocably. *Baptist Foundation for Christian Educ. v. Baptist College at Charleston*, 317 S.E.2d 453, 282 S.C. 53 (S.C. App., 1984).

There was no testimony that the Plaintiff intended to give the Defendant the funds for the purchase of the Bentley Boat or that the Plaintiff intended to divest herself of the money used by the Defendant to purchase the Bentley boat or the Lowe Boat, Motor and Trailer. The Defendant transferred funds from the Joint Savings account to the Joint checking account and wrote a check out of the Joint Checking Account for the Bentley Boat, then later claimed the Bentley Boat was a gift to him from the Plaintiff. The Bentley Boat was later traded in on the Lowe Pontoon Boat, Motor and Trailer which during the course of this litigation, the Defendant expressly and impliedly represented to the Court that he was the title owner to the Lowe Pontoon Boat, Motor and Trailer.

Defendant has failed to establish that a gift of any of this property to him was ever intended by the Plaintiff. She may have been willing for the Defendant to have use of the Lot, the Boats and the Golf Cart, but she never intended that the Defendant would own those items at her expense. Any work performed on the Lot or Golf Cart by Defendant is found as rental by the Defendant for the use and enjoyment of those items.

Post-Trial Orders

At the conclusion of the hearing in this matter, this Court directed that: the title to the car (Mini-Cooper) be transferred by the Defendant to the Plaintiff since this was not contested; the furniture (chair and ottoman and any other) in possession of the Defendant be delivered by satisfactory arrangement of the attorneys to the Plaintiff since this was not contested; the title to the Lowe Boat, Motor and Trailer be delivered to Attorney Norton (Defendant's Attorney) by the Defendant and retained by him until this matter was resolved with copies to Attorney Griffin (Plaintiff's Attorney); the ownership documents (bill of sale, etc.) for the Golf Cart be delivered to Defendant's Attorney by the Defendant and retained by him until this matter was resolved

with copies to Plaintiff's Attorney. The Defendant raised no objection to these instructions and indicated that he would immediately comply. This Court finds that the Defendant has failed to comply with this Court's directives and Defendant has not provided this Court with any reason whatsoever for his noncompliance.

Without relieving the Defendant of any obligation to comply with this Court's Orders, this Court finds that the Department of Natural Resources shall forward copies all documents in its possession with regard to the Lowe Pontoon Boat, Motor and Trailer to Plaintiff's attorney upon receipt of notice of this Order. Plaintiff's Attorney then shall provide copies to Defendant's attorney. Further, the South Carolina Department of Natural Resources shall provide to the Plaintiff's attorney a duplicate title for the Lowe Pontoon Boat, Motor and Trailer upon receipt of notice of this Order. Plaintiff's Attorney then shall provide copies to Defendant's attorney.

Without relieving the Defendant of any obligation to comply with this Court's Orders, this Court finds that the South Carolina Department of Motor Vehicles shall provide the Plaintiff with a duplicate title upon receipt of notice of this Order. Plaintiff's Attorney then shall provide copies to Defendant's attorney.

Conclusion

This Court finds that the Plaintiff is entitled to immediate and exclusive possession of the Lot to the exclusion of the Defendant.

This Court finds that the Plaintiff is entitled to immediate and exclusive possession of the Lowe Pontoon Boat, Motor and Trailer to the exclusion of the Defendant.

This Court finds that the Plaintiff is entitled to immediate and exclusive possession of the BMW Mini Cooper to the exclusion of the Defendant.

This Court finds that the Plaintiff is entitled to immediate and exclusive possession of the Golf Cart to the exclusion of the Defendant.

This Court finds that the Plaintiff is entitled to immediate and exclusive possession of the chairs, ottomans and rings, if any, to the exclusion of the Defendant and Defendant shall immediately provide the Plaintiff with such items.

This Court finds that the Defendant shall execute such documents as necessary to transfer title to the Lot to the Plaintiff within Fifteen (15) days from the entry of this Order.

This Court finds that the Defendant shall execute such documents as necessary to transfer title to the BMW Mini Cooper to the Plaintiff within Five (5) days from the entry of this Order.

This Court finds that the Defendant shall execute such documents as necessary to transfer title to Lowe Pontoon Boat, Motor and Trailer to the Plaintiff within Ten (10) days from the entry of this Order.

Without relieving the Defendant of his obligation to comply with this Order, this Court finds that if the Defendant fails to execute such documents as necessary to effectuate the terms of this Order, then, pursuant to Rule 70, *SCRCP*, the Oconee County Clerk of Court is appointed and directed to execute such documents as necessary to effectuate the terms of this Order upon written request by the Plaintiff with notice to the Defendant's attorney.

This Court shall retain jurisdiction in this matter to issue such supplemental Orders as necessary to effectuate the terms of this Order as this Court deems necessary.

NOW THEREFORE IT IS ORDERED, ADJUDGED AND DECREED:

1. The Lowe Pontoon Boat, Motor and Trailer and the Golf Cart are held by Defendant by way of constructive trust for the Plaintiff.

2. The interest of the Defendant in the Lot is held by Defendant by way of a resulting trust for the Plaintiff.
3. The Lowe Pontoon boat, Motor and trailer and the Golf Cart are held by way of a resulting trust by the Defendant for the Plaintiff.
4. The Defendant's interest in the BMW Mini Cooper automobile is held by Defendant by way of resulting trust for the Plaintiff.
5. The Plaintiff is entitled to immediate and exclusive possession of the Lot to the exclusion of the Defendant.
6. The Plaintiff is entitled to immediate and exclusive possession of the Lowe Pontoon Boat, Motor and Trailer to the exclusion of the Defendant.
7. The Plaintiff is entitled to immediate and exclusive possession of the BMW Mini Cooper to the exclusion of the Defendant.
8. The Plaintiff is entitled to immediate and exclusive possession of the Golf Cart to the exclusion of the Defendant.
9. The Plaintiff is entitled to immediate and exclusive possession of the chairs, ottomans and rings, if any to the exclusion of the Defendant.
10. Without relieving the Defendant of any obligation to comply with this Court's Orders, the South Carolina Department of Natural Resources shall forward copies of all documents in its possession with regard to the Lowe Pontoon Boat, Motor and Trailer to the Plaintiff's attorney upon receipt of notice of this Order.
11. The Defendant shall execute such documents as necessary to transfer title to the Lot to the Plaintiff within Fifteen (15) days from the entry of this Order.

12. The Defendant shall execute such documents as necessary to transfer title to the BMW Mini Cooper to the Plaintiff within Five (5) days from the entry of this Order.

13. The South Carolina Department of Natural Resources shall provide to the Plaintiff's attorney a duplicate title for the Lowe Pontoon Boat, Motor and Trailer upon receipt of notice of this Order. Plaintiff's Attorney then shall provide copies to Defendant's attorney.

14. The South Carolina Department of Motor Vehicles shall provide the Plaintiff with a duplicate title for the BMW Mini Cooper upon receipt of notice of this Order. Plaintiff's Attorney then shall provide copies to Defendant's attorney.

15. Within Fifteen (15) days from the entry of this Order, The Defendant shall deliver the furniture (chair and ottoman and any other) to the Defendant's attorney's office. Defendant's attorney shall promptly notify the Court and Plaintiff's Attorney as to the Defendant's compliance or noncompliance.

16. Within Five (5) days from the entry of this Order, the Defendant shall deliver the actual title to the Lowe Pontoon boat, Motor and Trailer to Defendant's Attorney with copies to Plaintiff's Attorney. Defendant's attorney shall promptly notify the Court and Plaintiff's Attorney as to the Defendant's compliance or noncompliance.

17. Within Five (5) days from the entry of this Order, the Defendant Shall deliver the ownership documents (bill of sale, etc.) for the golf cart to Defendant's Attorney with copies to Plaintiff's Attorney. Defendant's attorney shall promptly notify the Court and Plaintiff's Attorney as to the Defendant's compliance or noncompliance.

18. Without relieving the Defendant of any obligation to comply with this Court's Orders, if the Defendant fails to execute such documents as necessary to effectuate the terms of this Order, then, pursuant to Rule 70, SCRCF, the Oconee County Clerk of Court is hereby

appointed and directed to execute such documents as necessary, which includes, deeds, titles, and bills of sale, to effectuate the terms of this Order upon written request by the Plaintiff with notice to the Defendant's attorney.

19. This Court shall retain jurisdiction in this matter to grant whatever auxiliary and supplementary relief, as necessary to effectuate the terms of this Order which auxiliary and supplementary relief can include an order joining parties pursuant to Rule 19 *SCRPC* and seizure pursuant to Rule 64 *SCRPC*.

20. Upon request by the Plaintiff or her Attorney, a deputy from the Oconee County Sheriff's Office shall accompany Plaintiff or her designee to gain possession of the Lowe Pontoon Boat, Motor and Trailer.

21. Upon request by the Plaintiff or her Attorney, a deputy from the Oconee County Sheriff's Office shall accompany Plaintiff or her designee to gain possession of the Lot.

22. Upon request by the Plaintiff or her Attorney, a deputy from the Oconee County Sheriff's Office shall accompany Plaintiff or her designee to gain possession of the Golf Cart.

IT IS SO ORDERED.

Hon. Steven C Kirven
Master in Equity for
Oconee County, South Carolina.

Dated: _____

Anderson, South Carolina

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF OCONEE
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2016 CP 37-418

GLORIA LEE MEADE

DAVID LYNN THACKER

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Charles R. Griffin, Jr.	Attorney for : <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other.
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: See Attached Order

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : Court Retains Jurisdiction Per Terms of Order

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Gloria Lee Meade	David Lynn Thacker	\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order: TAX MAP NO: 340-00-06-047; Property Address: Lot 39 of Lakeshore RV Resort, 808 S Fleetwood Lane, Fair Play, South Carolina; 2013 Club Car Precedent (ID # PH 1339-403794); 2016 Lowe Pontoon Boat (Hull ID Number LWC00858H516), 115 Mercury Outboard Motor (Serial # 28191852) and 2016 trailer (Serial # 1R9BB2510GT673696); and BMW Mini Cooper

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

Date

ELECTRONICALLY FILED - 2017 Jul 19 1:43 PM - OCONEE - COMMON PLEAS - CASE#2016CP3700418



Oconee Common Pleas

Case Caption: Gloria Lee Meade VS David Lynn Thacker

Case Number: 2016CP3700418

Type: Master/Order/Form 4

And it is so ordered

s/ Steven C. Kirven, Master in Equity, #3081