STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0650

In the Marriage of:

Beth Marie Erickson, petitioner,
Respondent,

vs.

Darrin John Zachrison,
Appellant.

Filed May 20, 2008
Affirmed
Lansing, Judge

Chisago County District Court
File No. 13-FA-05-107

Andrew J. Laufers, Dudley and Smith, P.A., 2602 U.S. Bank Center, 101 East Fifth Street, St. Paul, MN 55101 (for respondent)

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Considered and decided by Johnson, Presiding Judge; Lansing, Judge; and Collins, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

LANSING, Judge

Darrin Zachrison challenges the district court's determination in a marital-dissolution proceeding that the five-acre parcel on which he and Beth Erickson built their home is marital property. Zachrison maintains that, despite the warranty deed conveying the land to Zachrison and Erickson as joint tenants, his parents intended to gift the land to him individually. Because Zachrison has not demonstrated that the district court erred as a matter of law by finding that the land is marital property, we affirm.

F A C T S

Following a contested evidentiary hearing in December 2006, Darrin Zachrison and Beth Erickson, formerly Beth Zachrison, submitted written arguments on the issues that they had been unable to resolve in their marital-dissolution proceeding. Zachrison's written submission identified the two primary issues as the length of Zachrison's summer parenting time with their two children and the classification of the five acres on which their home was built as marital or nonmarital property.

The district court issued findings of fact, conclusions of law, and an order for judgment in January 2007. With respect to the five-acre parcel of land, the district court found that it was marital property gifted jointly to Zachrison and Erickson. The district court ordered division of the property by providing that Zachrison would have "all right, title, interest, and equity" in the property "[s]ubject to a lien for [Erickson] for one half (1/2) of the equity, or $45,149.50, in cash property settlement . . . or in the alternative the house should be sold to pay out [Erickson's] interest." In this appeal from judgment,

Zachrison challenges only the district court's classification of the five-acre parcel as marital property.

At the contested evidentiary hearing, four witnesses provided testimony on whether the property was marital or nonmarital. Erickson testified that she and Zachrison were married in February 1989 and, in 1993, Zachrison's parents, Donald and Nancy Zachrison gave the five-acre parcel both to her and Zachrison. Erickson and Zachrison built a house on the property in 1993-94 and lived there with their two children. Erickson said that Zachrison's parents had told them that they would not give them the property until they married. She said that this same condition was imposed on Zachrison's brother before he received an equivalent gift of land. The warranty deed, which Erickson submitted as an exhibit, was dated May 7, 1993, and stated, "Donald L. Zachrison and Nancy L. Zachrison, husband and wife, Grantor(s), hereby convey(s) and warrant(s) to Darrin J. Zachrison and Beth M. Zachrison, Grantees as joint tenants, real property in Chisago County."

Zachrison testified that they obtained the five-acre parcel when "my father gave it to me, us." He stated that it was given to him as part of his father's will a year or so before they started to build the house in 1993, but that his father had to "give it to us so we could get a loan for it." He said that he understood that the land was meant for him because "if I hadn't been married it would have been mine, so [yes], it was meant for me." In a 2005 affidavit Zachrison said, "[t]he home [Erickson] and I reside in is on a parcel of land that is part of acreage that has been in my family for one-hundred fifty (150) years."

Zachrison's parents also testified. Donald Zachrison said that he intended to give the property only to Zachrison. He stated that he considered the property part of Zachrison's inheritance and that his "intention for that property was to provide my son with a piece of property that he could one day build a home on." He said that, if Zachrison and Erickson could have obtained a mortgage without both of their names on the deed, he would have put the property "in [Zachrison's] name alone." Donald Zachrison submitted his November 1991 will as evidence of his intent to give the homestead property only to his son. The will states:

> At the time of making this [w]ill I am in the process of giving to my son Darrin a five (5) acre parcel of land . . . . If at the time of my death I have not made similar gifts of land to my other children, I direct that before making [other] distributions . . . there first be paid to my other children . . . the fair market value of the parcel given to my son Darrin.

On cross-examination, Donald Zachrison acknowledged that the deed conveyed the property to both Zachrison and Erickson and that no signed writing existed that indicated the property should be only in Zachrison's name. Nancy Zachrison testified, consistent with her husband's testimony, that she and her husband intended to give the property to Zachrison and that they put both names on the deed to allow Zachrison and Erickson to obtain a mortgage on the property.

The dissolution judgment contains a specific finding that the homestead property "was gifted to [Zachrison and Erickson] via [w]arranty [d]eed on May 7, 1993" and that "[t]he testimony of Donald Zachrison that it was meant to go to [Zachrison] alone is not credible since no signed writing exists after the [d]eed on May 7, 1993, evidencing that

intent." On appeal, Zachrison argues that the district court erred as a matter of law when it rejected his claim that the five-acre parcel was nonmarital property.

D E C I S I O N

Under Minnesota law, "[a]ll property acquired by either spouse subsequent to the marriage and before the valuation date is presumed to be marital property regardless of whether title is held individually or by the spouses in a form of co-ownership." Minn. Stat. § 518.003, subd. 3b (2006). "To overcome the presumption that property is marital, a party must demonstrate by a preponderance of the evidence that the property is nonmarital." *Olsen v. Olsen*, 562 N.W.2d 797, 800 (Minn. 1997). Property may be nonmarital if it is acquired before, during, or after the marriage as a gift, devise, or inheritance made by a third party to one but not to the other spouse. Minn. Stat. § 518.003, subd. 3b(a). Whether property is marital or nonmarital is a question of law on which we exercise independent review, but we defer to the district court's underlying findings of fact. *Gottsacker v. Gottsacker*, 664 N.W.2d 848, 852 (Minn. 2003).

The district court did not provide extensive findings in support of its conclusion that the five-acre parcel is marital property. But it specifically identified the reasons for its conclusion. First, that "[t]he land was gifted to [Erickson] and [Zachrison] via [w]arranty [d]eed on May 7, 1993." Second, that "[t]he testimony of Donald Zachrison that it was meant to go to [Zachrison] alone is not credible since no signed writing exists after the [d]eed on May 7, 1993, evidencing that intent."

Although the marital-dissolution statute makes it clear that the form of ownership is not dispositive of whether property is marital or nonmarital, the statute creates a

presumption that the property acquired during the marriage is marital property. *See* Minn. Stat. § 518.003, subd. 3b. Consequently, Zachrison has the burden of rebutting the marital-property presumption in order to prove that the five-acre parcel is nonmarital property. *Olsen*, 562 N.W.2d at 800-01.

Zachrison attempted to rebut the presumption with his own testimony. His limited and somewhat equivocal testimony offered four reasons for his belief that the five acres were nonmarital—that he received it in his father's will, that if he had not been married the land would have been his, that it was easier to get a mortgage with both Erickson's and his name on the deed, and that the property had been in his family's name for 150 years. We address each of these reasons.

The first reason is that Zachrison inherited the property under his father's will. But Donald Zachrison's 1991 will did not devise the five-acre parcel to Zachrison. The language in the will that relates to the five-acre parcel is an equalization clause for the economic protection of Donald Zachrison's other children if they have not been gifted property at the time of his death. Although the equalization clause refers only to Zachrison and not to Erickson, it does not have the legal effect that Zachrison attaches to it, and its probative effect is limited both by its purpose and the fact that the will was executed two years before the warranty deed to Erickson and Zachrison.

The second reason advanced by Zachrison, that if he had not been married the land would be his, may be arguably accurate, but it disregards Erickson's testimony that Zachrison's parents told them that they could not receive the land unless they were

married. The claim also disregards the legal effect of marriage—that property acquired during marriage is presumed to be marital.

Zachrison did not provide evidence for his third reason, other than his opinion, that it was necessary to have Erickson named as a co-owner because it would be easier to obtain a mortgage. The record does not demonstrate that a bank or lending institution had ever denied him a mortgage or suggested that it would.

Zachrison's fourth reason was that the land had been in his family's name for 150 years. This continuous ownership demonstrates a strong commitment to retaining the land. But the issue is not whether Erickson should receive title to the land as part of the property division, it is whether the value of the land is subject to equitable division. In dividing the marital property, the district court provided that Zachrison would receive title to the land subject to Erickson's equitable interest.

Zachrison also offered the testimony of his father and the corroborating testimony of his adoptive mother. Donald Zachrison testified that the warranty deed that conveyed the property to Zachrison and Erickson was intended as an inheritance for his son and that both Erickson's and Zachrison's names were put on the deed at Donald and Nancy Zachrison's insistence only so Zachrison and Erickson could obtain a mortgage. Donald Zachrison did not testify to any past difficulty in Zachrison's obtaining a mortgage. He said that he had been represented by an attorney both in the preparation of his will and in deeding the property to Zachrison and Erickson. He acknowledged that the deed put title in both Erickson's and Zachrison's name, that he had not prepared a gift letter, and that there was no restrictive covenant or signed writing that indicated that the five acres

should be only in the name of Zachrison. He also acknowledged that other restrictive covenants had been imposed on the property.

The district court specifically found Donald Zachrison's testimony that the five-acre parcel was "meant to go to [Zachrison] alone [was] not credible since no signed writing exists after the [d]eed on May 7, 1993, evidencing that intent." In reviewing a district court's determination on whether property is marital or nonmarital, we are required to defer to the district court's determination of underlying facts and evaluations of credibility. *Gottsacker*, 664 N.W.2d at 852. Although the district court's credibility determination in this case relies, to some extent, on the absence of documentary evidence, it also takes into account Donald Zachrison's level of experience and the fact that he was represented by an attorney in both the preparation of the will and the warranty deed. Whether the district court's finding was based on oral or documentary evidence, it "shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of witnesses." Minn. R. Civ. P. 52.01 (stating effect of district court's findings).

Erickson's testimony stood in opposition to Zachrison's evidence. She testified that Zachrison's parents gifted the property to both of them, that their marriage was a condition of the gift, and that she and Zachrison had treated the land as joint property throughout their marriage. She testified that part of her Medtronic 401k was used for closing costs for the initial mortgage to construct their home and that she had been a signatory and joint mortgagor on all financing and refinancing of the property.

The district court relied on the warranty deed's language and effect. The district court also considered the circumstances surrounding the gift to determine whether Zachrison's parents intended to gift the property to Zachrison and Erickson or only Zachrison. *See Olsen*, 562 N.W.2d at 800-801 (examining circumstances surrounding gift to determine whether donor intended to give real property to both husband and wife when deeds unambiguously conveyed property to husband and wife as joint tenants with right of survivorship); *see also* Minn. Stat. § 513.04 (2006) (stating that "[n]o estate or interest in lands . . . shall hereafter be . . . granted . . . unless by act or operation of law, or by deed or conveyance in writing"); Restatement (Third) of Property: Wills & Other Donative Transfers § 6.3(a) (2003) (stating that gift of land must be evidenced by writing referred to as deed).

The ownership provided in the deed is consistent with the marital-property presumption. When a landowner recognizes the legal significance of conveying real property to a husband and wife through the instrument of a deed and purposefully does so, it is compelling evidence that the landowner has provided both husband and wife an interest in the property. *See Olsen*, 562 N.W.2d at 801 (finding landowner gave both husband and wife interest in the property because he deeded property to both husband and wife as joint tenants and "was fully aware of how joint tenancies operated").

Accordingly, the district court did not err when it determined that the language of the deed was compelling evidence that the Zachrisons gifted the homestead property to both Erickson and Zachrison. Donald and Nancy Zachrison both testified that they intentionally deeded property to both Erickson and Zachrison. Although they also

testified that they did this to enable Erickson and Zachrison to obtain a mortgage, they presented no evidence that they took any action to limit or condition the joint tenancy at the time of execution of the deed. Zachrison's parents may have had a personal reason that motivated the gift, but the language of the warranty deed nonetheless demonstrates a knowing and purposeful gifting of the property to both Erickson and Zachrison. It may also be true that, if Donald and Nancy Zachrison had known that Erickson and Zachrison would dissolve their marriage nearly fourteen years after the property was gifted to them, they may have structured the transaction differently. But this intent was not demonstrated at the time they gifted the property to Erickson and Zachrison.

On this record, we defer to the district court's fact findings and agree with its legal conclusion that Zachrison did not meet his burden of rebutting the presumption that the five-acre parcel was marital property and therefore subject to the district court's equitable distribution.

Affirmed.