IN THE COURT OF APPEALS OF IOWA

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No. 7-329 / 96-0470
Filed 10/29/97

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CLERK SUPREME COURT

DONALD E. GARTIN, Executor of the Estate of JOHN L. GARTIN, Deceased, and GILBERT GARTIN, Conservator for ORA L. GARTIN,
Plaintiffs-Appellees/Cross-Appellants,

vs.

CAROL ANN TAYLOR,
Defendant-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Scott County, David H. Sivright, Jr., Judge.

The defendant appeals, and plaintiffs cross-appeal, from a district court ruling in favor of plaintiffs on their action to collect sums on a loan allegedly owed by defendant to her parents. **REVERSED AND REMANDED.**

Patrick W. Driscoll of Stanley, Lande & Hunter, P.C., Davenport, for appellant.

Murray W. Bell of Newport, Bell, Leon & Ramirez, Davenport, for appellees.

Heard by Sackett, P.J., Huitink, J., and Habhab, S.J.*

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1997).

HUITINK, J.

Carol Taylor appeals from a judgment in favor of the executor of her father John L. Gartin's estate and her mother Ora L. Gartin's conservator for the unpaid balance of a 1989 loan. The executor and conservator cross-appeal seeking additional interest on the amounts awarded to them by the district court.

I. Background Fats and Proceedings.

In this case, the executor and conservator seek to recover their respective share of the unpaid balance of a $16,000 loan John and Ora Martin made in 1989 to their daughter, Carol Taylor. Carol denies any liability citing her parents' express wish to forgive the loan by making a gift to her of the unpaid balance.

At trial, Carol testified that John and Ora loaned her $16,000 in April 1989 to purchase a new car. The record indicates she initially made monthly payments of $324.42, in May and June of 1989, and $390.61 July 12, 1989. Carol also testified John and Ora refused to accept any more payments telling her that by forgiving this loan they could roughly equalize gifts they made to all of their children. Other evidence included Ora's July 17, 1989 diary entry which stated "Dad doesn't want her [Carol] sending checks to repay us" and John and Ora's practice of forgiving the balance of loans made to her siblings.

The executor and conservator disputed Carol's claims. They offered, over Carol's objection, a provision of John's September 24, 1993, will reducing Carol's share of his estate by $16,000 plus interest. The terms of this will also provided for

Carol's complete disinheritance if her loan was not repaid in full by November 1, 1993. Carol testified that John made this will revision at the behest of others after her relationship with her parents became strained.

The district court found John and Ora clearly had the required intent to make a gift to Carol by forgiving the balance of the loan. Carol's claim was nevertheless rejected because the district court found she failed to prove the essential element of "delivery" necessary to establish a completed gift. As a result, judgments of $7480.27 were entered in favor of the executor of John's estate and Ora's conservator. These judgments also included interest at the legal rate from and after the date the judgment was entered.

The executor's and conservator's post trial motions seeking additional interest on their judgments was denied. On appeal, Carol argues the district court's judgment lacks sufficient evidentiary support. Carol also contends the district court erred by admitting portions of John's September 24, 1993 will. On cross appeal, the executor and conservator contend they are entitled to interest from the date of Carol's last loan payment in July of 1989, and it was error for the district court to conclude otherwise.

II. Scope of Review.

Our scope of review is for errors at law. Iowa R. App. P. 4. Findings of fact in a law action are binding on us if supported by substantial evidence. Iowa R. App. P. 14(f)(1). We construe the trial court's findings broadly and liberally. *Grinnell Mut. Reins. Co. v. Voeltz*, 431 N.W.2d 783, 785 (Iowa 1988). In case of doubt or

ambiguity we construe the findings to uphold, rather than defeat, the district court's judgment. *Id.* We are prohibited from weighing the evidence or the credibility of the witnesses. *Id.*

> A finding of fact is supported by substantial evidence if the finding may be reasonably inferred from the evidence. In evaluating sufficiency of the evidence, we view it in its light most favorable to sustaining the court's judgment. We need only consider evidence favorable to the judgment, whether or not it was contradicted.

Briggs Transp. Co. v. Starr Sales Co., 262 N.W.2d 805, 808 (Iowa 1978). "Evidence is substantial or sufficient when a reasonable mind could accept it as adequate to reach the same findings." *Waukon Auto Supply v. Farmers & Merchants Sav. Bank*, 440 N.W.2d 844, 846 (Iowa 1989)(citation omitted). Evidence is not insubstantial merely because it could support contrary inferences. *Grinnell Mut. Reins. Co.*, 431 N.W.2d at 785 (citation omitted).

With these principles in mind, we turn to the issues raised on appeal.

III. The Merits.

Forgiveness of a debt may result in its satisfaction by virtue of a gift. *Electra Ad Sign v. Cedar Rapids Truck Center,* 316 N.W.2d 876, 879 (Iowa 1982)(citations omitted). The essential elements of any valid gift are donative intent, delivery of the gift, and its acceptance by the donee. *Raim v. Stansel,* 339 N.W.2d 621, 623 (Iowa App. 1983). Delivery in the context of a forgiven debt generally requires proof of an objective act extinguishing the debt such as a written release, transfer, act, or conduct

placing the debt beyond the legal control of the creditor. 38 Am Jur. 2d *Gifts* § 44.

In *Carlson v. Bankers Trust Co.*, the supreme court stated:

> There may be a constructive or symbolic delivery where manual tradition cannot be made either from the nature of the subject or its situation at the time. (citations omitted) . . . . It is well settled that declarations of the donor in the nature of admissions against interest subsequent to the alleged gift are admissible as evidence thereof. Delivery may be inferred from such declarations. (emphasis added)(citations omitted).

Carlson v. Bankers Trust, 242 Iowa 1207, 1216, 50 N.W.2d 1, 6 (Iowa 1951). Less positive unequivocal testimony is required to establish a gift from a parent to a child than a gift to an unrelated person. *Frederich v. Charman*, 147 N.W.2d 478, 483 (Iowa 1966).

As already noted, the district court found sufficient evidence of John's and Ora's donative intent to support a gift. However, the district court determined the same evidence establishing donative intent was not sufficient to establish delivery. In reaching this conclusion, the district court stated:

> The court is sympathetic to Carol's position, based on clear evidence of donative intent by her parents. If a valid gift of forgiveness of the loan could be established, it would be irrevocable. The fact that Carol and her parents later developed a strained relationship could not divest Carol of the gift of the loan balance. The gift would be a defense in these proceedings. However, the clear weight of legal authority requires either an instrument in writing to effectuate donative intent when the underlying obligation is oral, or evidence of acts or conduct which operated to place the debt beyond the control of the donors. Here, no such evidence has been presented.

We disagree.

The district court's stated reason for discounting the veracity of Ora's diary entry as proof of delivery was John's and Ora's deposit of Carol's July 12 payment

after the date of the diary entry. We are unable to reconcile the disparate probative value the district court assigned to this fact. If it was worthy of belief as evidence of donative intent, it certainly is no less believable as proof of delivery.

Consequently we find substantial evidence supporting a finding of donative intent and symbolic delivery. John and Ora's declarations, Ora's diary entry, and their refusal to accept additional payments from Carol, standing alone or in combination, are evidence from which symbolic delivery may be inferred. It was reversible error for the district court to hold otherwise.

Our resolution of this issue in Carol's favor obviates the need to consider the remaining issues raised by the parties. The judgment of the district court is reversed and this case is remanded for entry of a judgment in conformity with this opinion.

REVERSED AND REMANDED.