O'FALLON v. O'FALLON

SUPREME COURT OF ARKANSAS, 2000
341 ARK. 138, 14 S.W.3D 506

http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=ar&vol=supreme/2000a/20000420/99-806&invol=2

FACTS Barney Laron O'Fallon died intestate (without a will) on May 3, 1997, and was survived by three children. His oldest son, William Martin O'Fallon, was appointed administrator of the estate and, pursuant to the probate court's order, proceeded to collect the assets of the estate. One of those assets was a 1996 Chevrolet Camaro automobile that had been purchased by the decedent two weeks prior to his death and delivered to his seventeen-year-old son, Ronnie O'Fallon. After the administrator of the estate took possession of the vehicle, Ronnie O'Fallon filed a motion in the probate court for return of the property. He alleged that the "vehicle was intended to be a gift to [him] and from and after the purchase of the vehicle the Decedent never had possession of same." The administrator denied that the decedent had made a gift of the 1996 Chevrolet Camaro to Ronnie O'Fallon. After a hearing, the probate court found "by clear and convincing evidence" that the vehicle was a gift from the decedent to Ronnie. Subsequently, the Arkansas Supreme Court reversed and remanded because the probate court was without jurisdiction to adjudicate Ronnie O'Fallon's claim to the car as an alleged donee of a gift made prior to the decedent's death and held that the appropriate jurisdiction for the matter was chancery court. Ronnie O'Fallon then asked the chancery court to enter judgment based upon the record of the probate court, where the matter had been fully tried before the same judge. The chancellor granted the motion, finding that the 1996 Chevrolet Camaro purchased by the decedent prior to his death was a gift to Ronnie O'Fallon. From that order, the administrator again appealed.

DECISION Judgment affirmed.

OPINION Imber, J. For his first point on appeal, the administrator challenges the chancellor's finding that the decedent made an *inter vivos* gift of the vehicle to Ronnie O'Fallon. Our law determining a valid *inter vivos* gift is clear and well established. We have stated that a valid *inter vivos* gift is effective when the following requirements are proven by clear and convincing evidence: (1) the donor was of sound mind; (2) an actual delivery of the property took place; (3) the donor clearly intended to make an immediate, present, and final gift; (4) the donor unconditionally released all future dominion and control over the property; and (5) the donee accepted the gift. [Citation.]

In the case at hand, it is undisputed on appeal that the donor, Barney O'Fallon, was of sound mind, that there was actual delivery, and that the donee, Ronnie O'Fallon, accepted the car. The administrator's argument focuses instead on the evidence that pertains to the other two requirements for a valid *inter vivos* gift; that is, whether Barney O'Fallon intended to make the automobile a gift and whether he relinquished dominion and control over the automobile.

The administrator first points out that Barney O'Fallon retained title to the automobile. We have held, however, that the intent of the donor can negate the fact that actual title was not transferred. [Citation.] Here, Ronnie O'Fallon's mother, Linda Ngar, testified that Barney O'Fallon told her he "was going to buy" the car for Ronnie O'Fallon. Later, he told her that he "had bought" the car for Ronnie. Similar testimony was elicited from Mike Gorman, a loan officer with the Potlatch Credit Union where Barney O'Fallon applied for a loan to purchase the automobile. According to Mr. Gorman, Mr. O'Fallon told him that he was buying the car for his son who was getting ready to go to college. It should be noted that Ronnie O'Fallon was a minor at the time of the alleged gift and, therefore, could not acquire title to the automobile. [Citation.] With regard to the fact that Barney O'Fallon insured the vehicle in his name and listed himself as the only driver, Mr. O'Fallon's insurance agent, Sammy Mullis, testified that the children of a named

insured may be covered as occasional drivers. Mr. Mullis further confirmed that parents do not always list their children as drivers on the family's car insurance policy because the premium would be significantly higher.

The record reflects additional evidence regarding Mr. O'Fallon's intent to make a gift and to relinquish all dominion and control over the automobile. Ms. Ngar testified that she drove Barney O'Fallon to Warren, where he picked up the 1996 Chevrolet Camaro from the dealership. He then drove it to Gillett, where Ronnie lived with his mother. After Ronnie got home from school, Mr. O'Fallon delivered the car and one set of car keys to Ronnie and gave the other set of keys to Ms. Ngar. According to Ms. Ngar, Mr. O'Fallon did not retain a set of keys to the car. Ronnie then drove his father back to his home in Arkansas City and returned to Gillett that same day in the 1996 Chevrolet Camaro. Ronnie testified that the keys and paperwork on the car were given to him by his father and that the car stayed with him in Gillett. Furthermore, Ronnie stated that his father may have driven the car one other time prior to his death "because of his truck [being] in a bad position, like blocking the driveway or something, to go to the store."

INTERPRETATION Intent and relinquishment of control are necessary for an effective gift.

CRITICAL THINKING QUESTION When should the making of a gift be considered complete? Explain.