

The Contested Corvette

Was There A Valid Gift?

In Dante Alighieri's masterpiece, *The Divine Comedy* (c. 1310-1320), he writes (as translated): "The greatest gift . . . was the freedom of the will, with which the creatures with intelligence, they all and they alone, were and are endowed."

The law seeks, when appropriate, to honor and follow the free will of an individual (to the extent ascertainable), in a variety of contexts including gifts of property during one's lifetime and bequests to be implemented thereafter.

An analysis of such considerations in a situation involving a collector car was provided in *Heaphy v. Ogle*, decided on November 14, 2008 by the Court of Appeals of Indiana.

According to the Court, Stuart Terry owned a 1957 Chevrolet Corvette. On June 12, 2007, Terry, who was very ill, executed a will, leaving all of his property to his daughters, Vicki Heaphy and Patty Terry. The will named Randy Ogle, Terry's nephew, as the executor.

Terry died on August 8, 2007.

Terry's will was offered and admitted to probate in the LaPorte Circuit Court on August 16, 2007. On that day, the trial court appointed Ogle as the personal representative of Terry's estate. On November 27, 2007, the trial court ordered that an inventory and accounting of the estate be filed on or before December 7, 2007.

On December 5, 2007, Ogle, as the personal representative of Terry's estate, filed a petition to determine the ownership of the Corvette. Ogle alleged that "[s]even to 10 days before his death," Terry signed and delivered the Corvette's title to Ogle, with the intent to gift the Corvette to him.

At a hearing on Ogle's petition, based on the evidence presented, the trial court found that the delivery of the title to Ogle constituted a gift. Thus, the Corvette was the personal property of Ogle and was not an asset of Terry's estate.

Heaphy appealed.

The Court of Appeals affirmed the ruling for Ogle.

"An inter vivos [from one living person to another] gift 'is one by which the donee [recipient] becomes in the lifetime of the donor the absolute owner of the thing given.' . . . A valid inter vivos gift occurs when: '(1) the donor intends to make a gift; (2) the gift is completed with nothing left undone; (3) the property is delivered by the donor and accepted by the

donee; and (4) the gift is immediate and absolute. . . . The donor must intend to part irrevocably with absolute title and control of the thing given at the time of making the gift."

"Delivery is an indispensable requirement without which a gift fails, regardless of the consequences.' . . . Title does not pass to the donee if there is no delivery. . . . However, 'it is not necessary that there should always be a manual transfer of the thing given. . . . It will be sufficient if the delivery be as complete as the thing and the circumstances of the parties will permit."

"In this case, Ogle testified that Terry signed and delivered the Corvette's title to him prior to Terry's death. Ogle believed that Terry wanted him to finish restoring the Corvette. Heaphy testified that she was present during this transaction. [Hospice nurse Kendra] Hogan testified that she witnessed Terry hand a title to Ogle after he appeared to sign it."

"Given the evidence, we cannot say the trial court's finding that Terry made an inter vivos gift to Ogle is clearly erroneous."

The Court of Appeals also rejected Heaphy's claim "that Ogle breached his fiduciary duty as personal representative 'by delaying his claim of the inter vivos gift until after the death of [Terry] when the heirs can no longer confirm or corroborate the alleged gift'" and her claim that therefore "Ogle 'holds the Corvette and title in trust for the distributees of the estate.'"

"Heaphy's argument that Ogle's fiduciary duty as executor arose prior to Terry's death fails. 'It cannot be heard to be said that the testator's naming of an Executor under his will in and of itself clothes the Executor with any rights, duties or powers.' . . . Rather, [i]t is only when the will has been duly probated in a court of competent jurisdiction and the designated Executor appears and has the requisite qualifications under our statute and then qualifies as such Executor by taking and subscribing to his oath as such . . . that the named Executor becomes the Executor in fact and is an officer of the court and has the responsibility of caring for the assets of the estate along with the other attendant responsibilities."

"We therefore cannot say that Ogle breached his fiduciary duty to the estate by not claiming the Corvette as a gift prior to Terry's death."



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