

STATE OF MICHIGAN  
COURT OF APPEALS

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SAMUEL GAMBINO,

UNPUBLISHED

Plaintiff-Appellant/  
Cross-Appellee,

v

No. 190953  
Wayne Circuit Court  
LC No. 95-501296

BRIAN A. GAMBINO,

Defendants-Appellees/  
Cross-Appellants.

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Before: Taylor, P.J., and Gribbs and R. D. Gotham,\* JJ.

Gribbs, J., dissenting.

I respectfully dissent. As the majority correctly states, in order to establish a valid gift inter vivos, the donor must have intended to pass title to the donee. Here, the majority acknowledges that, granting the benefit of reasonable doubt to plaintiff, the donor did *not* intend that defendants would have an ownership interest in the securities until plaintiff was dead. In *Osius v Dingell*, 375 Mich 605, 611; 134 NW2d657 (1965), our Supreme Court considered whether stock registered by plaintiff in defendant's name was an inter vivos gift or a revocable parol trust. There, as here, the plaintiff asserted that she told defendant the stock would not belong to defendant until after her death, and defendant claimed that the stock had been a gift. On the facts of *Osius*, our Supreme Court agreed with the trial court that there was no inter vivos gift. In *Osius*, the Supreme Court stressed that "[t]he crucial question here is one of fact. What did [plaintiff] intend?"

Just as there was in *Osius*, I believe there is a question of fact in the case before us. In this case, there is evidence that plaintiff and his wife placed their children's names on the stocks to avoid probate upon their deaths. Plaintiff asserts that, for nearly twenty years after defendants' names were placed on the stocks, plaintiff and his wife retained possession of the stock certificates and defendants had no knowledge that the securities even existed. There is evidence that plaintiff and his wife deposited the dividend checks into their personal bank account, lived off the dividend income and interest income, and claimed the dividend and interest income on their tax returns. In a case such as this, where there is

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\* Circuit judge, sitting on the Court of Appeals by assignment.

clear evidence that the donor did not intend to pass title, I would find that summary disposition was improperly granted because there is a genuine issue of fact. I would reverse and remand for a full hearing on the question of plaintiff's donative intent.

/s/ Roman S. Gibbs