

STATE OF MICHIGAN
COURT OF APPEALS

WILLIAM W. O'MALLEY,

Plaintiff-Appellee,

v

GERTRUDE E. PRAY,

Defendant-Appellant.

UNPUBLISHED
October 10, 1997

No. 195124
Genesee Circuit Court
LC No. 94-029608 CZ

Before: Doctoroff, P.J., and Cavanagh and Saad, J.J.

MEMORANDUM.

Defendant appeals by right judgment for plaintiff, entered after a bench trial, which judgment recognized that plaintiff never made a valid gift of certain corporate securities to defendant and therefore retains the power to rescind creation of a joint tenancy with right of survivorship. This case is being decided without oral argument pursuant to MCR 7.214(E).

Throughout this litigation, plaintiff has consistently maintained that, in creating joint tenancies with rights of survivorship in these various corporate shareholdings, he had no present donative intent. His sole purpose was to transfer these shareholdings to defendant, his sister, in the event he might predecease her. Accordingly, the first element of a valid gift, intent to gratuitously pass present title to the donee, was absent. *Buell v Orion State Bank*, 327 Mich 43, 55; 41 NW2d 472 (1950), citing *Chamberlain v Eddy*, 154 Mich 593, 603; 118 NW 499 (1908) and *Geisel v Burg*, 283 Mich 73, 80; 276 NW 904 (1937).

Furthermore, a valid gift requires actual or constructive delivery to effectuate it, whether the gift is *inter vivos* or *causa mortis*. *Id.*; *Jones v Causey*, 45 Mich App 271, 274-275; 206 NW2d 534 (1973). Here there was no actual delivery, nor did plaintiff yield dominion and control over his shareholdings to some third party, either for the purpose of safekeeping on defendant's behalf or for delivery to defendant. Accordingly, no valid gift occurred on this basis either. *In re Zaharion Estate*, 412 Mich 852; 312 NW2d 85 (1982). The trial court's findings of fact in this and other respects are not clearly erroneous, and accordingly its conclusion of law that no valid gift occurred and that these

items of personalty remain plaintiff's sole property, to dispose of as he sees fit, properly followed inexorably from the established facts.

Affirmed.

/s/ Martin M. Doctoroff

/s/ Mark J. Cavanagh

/s/ Henry W. Saad