

BARBARA BREISCH and	:	IN THE COURT OF COMMON PLEAS OF
EUGENE BREISCH, her husband,	:	LYCOMING COUNTY, PENNSYLVANIA
Plaintiffs	:	
	:	
vs.	:	NO. 01-00,818
	:	
TIMOTHY SAUERS and RUTH SAUERS,	:	
Defendants	:	SHERIFF'S INTERPLEADER

*Date: November 26, 2003*

**OPINION and ORDER**

Before the Court for determination is the Sheriff's Interpleader of Justin Sauers. Justin Sauers ("Justin") is the sixteen-year-old minor child of the named Defendants in the above captioned case. A judgment in the principle amount of \$7,503.56 was entered against the named Defendants in case No. 97-02,059 on or about December 24, 1997 and revived under this case on May 25, 2001. A Writ of Execution was filed on July 8, 2003. On October 2, 2003, the Lycoming County Sheriff's Department levied upon two vehicles purportedly owned by the Defendants. Those vehicles were a 1986 Ford pickup truck and a 1989 Toyota 4-Runner. The central issue in this case is the ownership of the 1989 Toyota 4-Runner.

Justin contends that he is the owner of the Toyota 4-Runner and that it is not subject to the levy. On October 15, 2003, Justin filled out a Claim for Exemption with the Lycoming County Sheriff's Department. This was procedurally in error as the Claim for Exemption applies to the judgment debtor. 42 Pa.C.S.A. §§8121-8128. The appropriate method for Justin to have brought his case before the Court was the Sheriff's Interpleader. Although not titled as such, the papers filed by Justin essentially comply with the procedural requirements of the Sheriff's Interpleader. Pa.R.C.P. §§3201-3216. Most significantly, the papers put Plaintiffs on notice of the facts and matters that a proper interpleader motion would

have. Therefore, the Court shall treat the Claim for Exemption as a Sheriff's Interpleader and proceed on that basis. The procedural posture of the case *sub judice* is an objection to the Sheriff's determination that Justin Sauers was not the *prima facie* owner of the Toyota 4-Runner.

On November 3, 2003, this Court held on hearing on the matter. There it was determined that the Sheriff's Department had concluded that Ruth Sauers, Justin's mother, was the owner of the 4-Runner. This conclusion was based on a review of the PennDot registration, which had Ruth Sauers listed as the registered owner. Justin disputes this conclusion.

Justin asserts that he is the owner and exclusive operator of the vehicle. Justin testified that he had worked and saved his earnings to purchase the vehicle. Once he had sufficient funds, he transferred the money to his mother so that she could write a check to purchase the vehicle. The final payment was not made until September 2003. Prior to that, the title was transferred in June 2003. The 4-Runner was titled in the mother's name. Justin asserts that this was done so that a favorable rate on auto insurance could be obtained.

The issue before the Court is whether Justin is the owner of the vehicle when he provided the funds to purchase it and used it exclusively, but the vehicle is titled in his mother's name, not his. The Court accepts and finds credible the testimony of Justin. The Court finds that Justin is the owner of the 4-Runner and it is not subject to the levy.

It is presumed that a gift is made if a parent provides the purchase money and titles the property in the name of his child. *Kohr v. Kohr*, 413 A.2d 687, 690 (Pa. Super. 1979). Conversely, when a child provides the purchase money and the property is titled in the name of

the parent it is presumed that it is not a gift, but a resulting trust. *Ehnes v. Yowell*, 97 A.2d 56, 58 (Pa. 1953). A resulting trust arises when:

a person makes a disposition of property under circumstances, which raise an inference that he does not intend that the person taking or holding the property should have a beneficial interest in the property. (Citation omitted). A purchase-money resulting trust arises in favor of the person who paid the purchase price, when the transfer of property is made to one person and the purchase price is paid by another. (Citation omitted).

In order for a purchase-money resulting trust to arise, the following is required (1) the transfer is made to one person and the purchase price is paid by another; (2) the payor does not have the intention that no resulting trust shall arise; (3) the transferee is not the natural object of the transferor's bounty.

(Citation omitted).

*Fenderson v. Fenderson*, 685 A.2d 600, 604-05 (Pa. Super. 1996), *appeal denied*, 698 A.2d 594 (Pa. 1997). Furthermore,:

a resulting trust must arise at the time title is transferred. (Citation omitted). Payment of the purchase price by the beneficiary subsequent to the transfer of the title without a prior obligation on the part of the beneficiary to pay fails to raise a resulting trust. (Citation omitted). As a result, the purchase money must be paid at the time title passes or the beneficiary must be obligated to pay (Citation omitted).

*Id.* at 605. A resulting trust "imposes an obligation on the title holder of property to hold it in trust for the beneficial owner." *Hornyak v. Sell*, 629 A.2d 138, 140 (Pa. Super. 1993).

The person seeking the imposition of a resulting trust bears the burden of establishing it. *Fenderson*, 685 A.2d at 605. That person must produce clear, direct, precise, and convincing evidence of a resulting trust. *Ibid.* To be clear and convincing, the witness must be credible, the facts testified to must be distinctively remembered, and the testimony

must be so clear, direct, weighty, and convincing as to enable the finder of fact to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue. *Hornyak*, 629 A.2d at 141.

The Court finds that there is a resulting trust here. The Court must start from the presumption that there was a resulting trust because Justin provided the purchase money to obtain the 4-Runner. There is also clear and convincing evidence that the 4-Runner is owned by Justin and held in trust by his mother. It is clear that the funds used to purchase the vehicle were Justin. He saved his earnings and had them transferred to his mother's account so that she could cut a check. The transfer of the money was not a gift. Justin's mother was acting on his behalf when she accepted the transfer and wrote the check. The money was transferred to effectuate the intent and plan of Justin to purchase the vehicle. Furthermore, it is clear that the 4-Runner was not purchased to avoid payment to or in deprivation of the rights of the plaintiff judgment creditors to recover from the assets of the Defendants.

At the time the 4-Runner was purchased, Justin did not intend to provide his mother with a beneficial interest in the vehicle. It was not purchased for her use and there was testimony that she did not operate the vehicle. The vehicle was titled in her name for the sole purpose of obtaining a favorable insurance rate. Justin purchased the vehicle and displayed incidents of ownership by controlling how the vehicle was used. It is clear that he is the owner of the 4-Runner.

The fact that the entire purchase price was not paid before the title was transferred does not change the outcome. Justin was obligated to pay the balance of the purchase price at the time the title was transferred. Therefore, there is still a resulting trust.

**ORDER**

It is hereby ORDERED that the Sheriff's Interpleader of Justin Sauers is granted. Justin Sauers owns the vehicle identified in the Writ of Execution as a 1989 Toyota 4-Runner. Said vehicle is not subject to the levy placed upon it by the Lycoming County Sheriff's Department and the levy on it is STRICKEN.

BY THE COURT:

William S. Kieser, Judge

cc: Scott A. Williams, Esquire  
Timothy and Ruth Sauers  
45 Kinley Drive; Cogan Station, PA 17728  
Sheriff's Office  
Judges  
Christian J. Kalas, Esquire  
Gary L. Weber, Esquire (Lycoming Reporter)