

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

KATHY L. BEST, EXECUTRIX of the	:	NO. 03-01,834
Estate of WILLIAM H. KRAUSE,	:	
Deceased,	:	
Plaintiff	:	
	:	
vs.	:	
	:	CIVIL ACTION - LAW
CONSTANCE I. BIRD a/k/a CONNIE	:	
I. BIRD, individually and t/a NEWBERRY	:	
HOTEL, TREVOR R. BIRD, individually,	:	
and LORI H. BIRD, individually,	:	
Defendants	:	Motion for Summary Judgment

OPINION AND ORDER

Before the Court is Plaintiff’s Motion for Summary Judgment. Argument on the motion was heard July 8, 2004.

In her Complaint, Plaintiff alleges her decedent loaned certain sums of money to Defendant and that Defendant has failed to repay them. Plaintiff seeks a judgment for the amount allegedly loaned. Defendant’s Answer replies the money was a gift, not a loan. In the instant motion, Plaintiff claims she is entitled to judgment as a matter of law, contending Defendant has “failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.” Pa.R.C.P. Rule 1035.2.

In support of her defense the money was a gift, Defendant points to three items of evidence: (1) the lack of repayment or a demand therefor; (2) a note written by the decedent¹ indicating that after his death, any money owed to him by Defendant or any members of her immediate family shall be considered paid in full; and (3) the affidavit of a friend of both Defendant and the decedent that the decedent told her Defendant needed to go to her attorney’s office to have papers signed before anything happened to him in order to make a gift to Defendant of the money. Plaintiff claims this evidence is insufficient to prove a gift by clear,

precise and convincing evidence, and thus Plaintiff has failed to meet the requirement of Rule 1035.2 that she “produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury”. Plaintiff confuses the burden of proof required at trial with the burden of production required to avoid summary judgment, however. For the latter, one need only produce prima facie evidence of a material fact, not sufficient evidence to prove that fact according to the standard ultimately required. Watkins v. Hospital of University of Pennsylvania, Penn Health Systems, 737 A.2d 263 (Pa. Super. 1999)(the quantum of evidentiary facts which must be adduced to preclude summary judgment is not the same as that required at trial). Since the Court finds Defendant’s evidence sufficient to raise the issue of gift versus loan, summary judgment is inappropriate. See Cercone v. Cercone, 386 A.2d 1 (Pa. Super. 1978)(in action for repayment of alleged loan, issue of material fact existed as to whether money was loan or gift, precluding summary judgment).

ORDER

And now, this 9th day of July, for the foregoing reasons, Plaintiff’s Motion for Summary Judgment is hereby denied.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Brian Bluth, Esq.
William Miele, Esq.

¹ That the note was indeed written by decedent is accepted as true for purposes of the instant motion. In fact, the note is unsigned.