IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE: ESTATE OF LELAND W. BENSON, JR., Deceased	:	OC-41-18-0354 ORPHANS' COURT

OPINION AND DECREE

AND NOW, after argument on Respondent Joel Lipperini's ("Joel") renewed oral motion made during trial for a ruling that he had overcome his incompetence to testify pursuant to the Dead Man's Act through the presentation of prima facie evidence of an inter vivos gift, the Court hereby issues the following OPINION and DECREE.

SUMMARY OF PRE-TRIAL PROCEEDINGS

This issue arises mid-trial; a civil non-jury trial commenced on March 8, 2022, continued on March 9, 11, and 25, 2022, and is scheduled to resume at 1:00 p.m. on May 23, 2022 in Courtroom 2 of the Lycoming County Courthouse.[1] The background and procedural history of this case are recounted in great detail in the Court's July 23, 2021 Decree addressing the parties' Motions for Summary Judgment and Petitioner Denise M. Cordes's ("Petitioner") Motions in Limine. In that Decree, the Court addressed, *inter alia*, issues pertaining to 42 Pa. C.S. § 5930, commonly referred to as the "Dead Man's Act." The Dead Man's Act states, in relevant part:

> "Except as otherwise provided in this subchapter, in any civil action or proceeding, where any party to a thing or contract in action is dead... and his right thereto or therein has passed, either by his own act or by the act of the law, to a party on the record who represents his interest in the subject in controversy, neither any surviving or remaining party to such thing or contract, nor any other person whose interest shall be adverse to the said right of such deceased... party, shall be a competent witness to any matter occurring before the death of said party...."

[1] Trial is scheduled to continue thereafter on May 25, 2022 at 9:00 a.m.

In the July 23, 2021 Decree, the Court held that the Dead Man's Act applied to render Joel incompetent to testify in support of his own claim that Decedent had, prior to his death, transferred three vehicles to Joel.[2,3] The Court noted, however, that:

> "a party incompetent to testify under the Dead Man's Act may be rendered competent through independent corroborating prima facie evidence of an inter vivos gift.[4] 'A valid inter vivos gift requires donative intent, delivery, and acceptance. [T]here must be evidence of an intention to make a [g]ift accompanied by [d]elivery, actual or constructive, of a nature sufficient not only to divest the donor of all dominion over the property, but to invest the donee with complete control.'[5] For example, '[p]ossession of car keys or title to the car usually is sufficient to prove constructive delivery of a car.'[6] Donative intent and delivery are separate factors: the Dead Man's Act will not be satisfied by prima facie proof of donative intent absent independent evidence of delivery.[7] The gift claimant bears the burden of establishing a prima facie gift by clear and convincing evidence."[8]

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[2] The Court concluded that "each set of Respondents," of which Joel Lipperini is one, "will be qualified to testify on behalf of the other. The Court, however, may afford limited weight to such testimony given the potential for collusion among the Respondents."

[3] The three vehicles at issue are all Shelby vehicles: the "Shelby Daytona Coupe" with serial number CSX7061, the "Shelby Cobra 289 FIA" with serial number CSX7007, and the "Shelby Cobra 427" with serial number CSX4017.

[4] *In re Estate of Petro*, 694 A.2d 627, 633 (Pa. Super. 1997).

[5] *In re Estate of Cerullo*, 247 A.3d 52, 55 (Pa. Super. 2021) (quotations and citations omitted). In *Cerullo*, the Superior Court addressed the application of the Dead Man's Act to the purported inter vivos transfer of a decedent's three vehicles to his wife. The decedent's wife called two witnesses; the first testified that the decedent "told her that he wanted [his wife] to have his Porsche because of the great times they had together in the car," and the second "testified that [the decedent] told him that he was giving the vehicles to [his wife]," engaging in "a detailed conversation about transporting the vehicles from [the decedent's] residence in Bethlehem, Pennsylvania to [his wife's] residence in Glenmoore, Pennsylvania." The second witness explained that "the vehicles were never moved to Glenmoore due to the need for multiple drivers and [the decedent's] declining health," resulting in the vehicles remaining at the decedent's residence at the time of his death. Although the decedent's wife "testified that [the decedent] handed her the titles and keys to the vehicles," the Superior Court concluded she should have been deemed incompetent to testify to the transfer, as she did not establish a valid inter vivos gift by independent testimony and evidence.

[6] *Id.* (citing *Ream's Estate*, 198 A.2d 556, 558 (Pa. 1964)).

[7] *Id.* at 56.

[8] *Petro*, 694 A.2d at 633.

The Court then considered whether the record at the summary judgment stage concerning the alleged inter vivos transfer of the vehicles was sufficient to allow Joel to overcome the Dead Man's Act and become competent to testify. Concluding that it was not, the Court stated that "while there is a breadth of evidence as to Decedent's donative intent, there is more limited evidence as to inter vivos delivery." Recognizing that "key factual issues [remained] in dispute," the Court determined it could not conclude that Joel had overcome the Dead Man's Act "based purely upon deposition testimony or statements made in signed Certifications," but would "reassess this question following the presentation of evidence at trial."

SUMMARY OF RELEVANT TESTIMONY AND EVIDENCE AT TRIAL

A. Presentation of Witnesses

Trial began with the presentation of Petitioner's case in chief. Petitioner first called Pennsylvania State Police Corporal John Maggs; Leland Wade Benson, III ("Wade"); and John Cropper ("Cropper"). Petitioner then testified herself. She next called Reno Rivalta and Cheryl Romanell ("Romanell"), after which she rested. At that time, the Court denied both Respondents' separate Motions for Directed Verdict.

Next, Joel began his case by recalling Romanell. He then called Daniel Lipperini, Sr. ("Daniel Sr.") and Maggie Lipperini ("Maggie"). At this point, Joel made an oral motion that he had overcome his incompetence under the Dead Man's Act, arguing that the testimony and evidence he presented was sufficient to establish a prima facie inter vivos gift. For reasons stated on the record, the Court held that the

evidence presented to that point did not satisfy Joel's "burden of establishing a prima facie gift by clear and convincing evidence."[9]

Joel continued his case by calling Donald Wells ("Wells"); Wade; and Daniel Lipperini, Jr. ("Daniel Jr."), whose testimony concluded shortly before the end of the fourth day of trial. At this point, Joel renewed his motion that he had overcome the Dead Man's Act, arguing that the testimony established that 1) Decedent intended to give him the three vehicles at issue as a gift; 2) there was delivery (either actual or constructive) of the vehicles; 3) the nature of the delivery was sufficient to "divest [Decedent] of all dominion over" the vehicles; and 4) the nature of the delivery was sufficient to "invest [Joel] with complete control" over the vehicles.

B. Summary of Evidence Relevant to Instant Motion to Overcome Dead Man's Act

When called by Petitioner, Wade testified that on a day shortly before Decedent's death, Decedent – Wade's father – told Wade that he wanted Joel to have the three vehicles at issue, saying "he was giving them to Joel." Joel did not, however, take the vehicles that day. As of June 9, 2018, ten days prior to Decedent's death, Wade considered the vehicles as belonging to Joel. Wade stated that at some point between June 9, 2018 and Decedent's death on June 19, 2018, Joel picked up the vehicles, which were located at Decedent's shop where he ran his automotive repair and construction business, All Pro Cars.

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[9] Essentially, the Court concluded that the evidence of donative intent, though suggestive, was vague and susceptible to multiple interpretations; dispositively, the Court held that the evidence presented did not satisfy Joel Lipperini's burden of establishing that the transfer of the three vehicles at issue occurred prior to Decedent's death.

Wade testified that when the Pennsylvania State Police inquired as to the whereabouts of the vehicles shortly after Decedent's death, he told the State Police "the owners had them" but did not tell them that Joel had taken the three vehicles. He confirmed that he initially lied to Petitioner, his sister and Decedent's Daughter, about the whereabouts of the vehicles. Wade further admitted that his pleadings – which he had endorsed – contained statements contradictory to his testimony at trial. Although he denied that he had given his previous attorney authority to make those statements on his behalf, he admitted that he had signed the pleadings.

On cross-examination, Wade testified that he had observed Joel working at All Pro Cars and racing the Shelby Daytona Coupe (CSX7061) for Decedent over many years, and was unaware of whether Decedent ever paid Joel. Wade stated that Decedent told him he owed Joel money for services performed, but did not ever tell Wade whether he had paid Joel.

Next, John Cropper testified that he had accompanied Decedent, Joel and others to races and SVRA[10] events, and that he had observed Joel race for Decedent in the Shelby Daytona Coupe (CSX7061). Cropper explained that Decedent owned that vehicle, but listed Cropper's name as the "owner" on race registration forms because only Cropper was a member of the SVRA. Cropper stated that although he and Decedent had discussed how Joel was a very gifted driver, Decedent had never told Cropper that he owed Joel money or discussed whether Joel was providing Decedent any services. Cropper explained that for him, the racing events were fun, and he believed Joel was racing not for any particular compensation but to progress

[10] Sportscar Vintage Racing Association.

as a driver and get exposure for both himself as a racer, and the vehicles Decedent worked on, in the hopes of attracting a buyer. Cropper testified Decedent never told him what he wished to happen to his vehicles if he died.

Petitioner testified next, explaining that she knew Decedent had the three Shelby vehicles at the shop. Decedent had title to the Cobra 427 (CSX4017), and "Manufacturers' Statements of Origin" ("MSO") for the Cobra 289 FIA (CSX7007) and the Daytona Coupe (CSX7061). Petitioner did not know Joel, and Decedent did not say anything to Petitioner about Joel or about giving Joel the vehicles despite having multiple discussions with her in the days prior to his death. Petitioner testified that during this time, she advised Decedent that certain transfers of his property might not be appropriate because his estate had many creditors. Petitioner was not aware of any plans of Decedent to sell or otherwise convey any of the vehicles. Although Petitioner eventually learned that Joel had possession of the vehicles, she did not know how or when he obtained possession.

When called by Petitioner, Romanell testified that she was Decedent's fiancée and had lived with him for the last twelve years of his life. She was present when Joel and Maggie visited Decedent on June 9, 2018, though she did not observe most of the conversation between Joel and Decedent and left the house for part of the time Joel was there. She did not observe Joel or Maggie leave with anything, and was not aware of them ever returning to Decedent's house. Decedent did not indicate to her that he had given anything, such as the three vehicles, to anyone. Romanell was Petitioner's last witness.

Joel began his case-in-chief by recalling Romanell. When testifying for Joel, Romanell explained that Decedent and Joel were very good friends, and had known each other for around 25 to 30 years. She stated that Joel raced for Decedent and did advertising work for him, and although Decedent praised Joel's work he never paid him. She indicated that Decedent felt guilty about this, and on at least three occasions in the final months of his life he mentioned that "he needed to do something to at least pay something back to Joel."

Joel next called Daniel Sr., his father, who had been a close friend of Decedent since the 1980s. Daniel Sr. explained that Decedent was a passionate and gifted "artisan" when it came to cars, but was a poor businessman, which resulted in him being unable to pay Joel for the thousands of hours of work Joel performed for Decedent. Daniel Sr. explained that he and Decedent had discussed the failure to pay Joel on several occasions, and that Decedent continually promised to "take care of" Joel and make sure he was compensated, though prior to his final months Decedent did not give specifics on how he planned to do that. Daniel Sr. testified that he spoke to Decedent for the last time via telephone on June 15, 2018, four days before Decedent's death. He explained that Decedent told him "I made good on everything I promised that I was going to do for Joel" and "some of the cars I have are going to go to him." Daniel Sr. testified that Decedent specifically told him the Daytona Coupe (CSX7061, the vehicle Joel raced for Decedent) was going to him, as was the Cobra 289 FIA (CSX7007); Decedent said he was giving Joel more than that but did not elaborate on what exactly was being given to Joel or how the transfer was made.

Joel next called Maggie, his wife. Maggie testified that she and Joel met in 2011 and married in 2014, and that Decedent and Joel were friends up until Decedent's death. She testified that on June 9, 2018, she and Joel went to Decedent's house, and at one point she and Romanell left to get food, with Joel staying to talk to Decedent. She explained that Joel did not have any documents or papers with him when he arrived, and prior to that date did not possess any titles, MSOs, or other documents of ownership for the three vehicles. She overheard Decedent telling Joel certain changes to make to the Daytona Coupe, even going so far as to draw a proposed adjustment on a napkin, and instructed him on its use and care, telling him "don't ever start the car when it's cold." Maggie testified that after leaving, Joel showed her a folder that she had never seen before; inside the folder was the title to the CSX4017 and the MSOs for the other vehicles.

Maggie testified that on June 17, 2018, two days before Decedent's death, she saw the three vehicles in Joel's warehouse in West Wyoming, Pennsylvania. She knew she saw them that particular day because it was Father's Day, and she had a McDonald's receipt from that day. She did not believe the Cobra 289 FIA (CSX7007) to be in a drivable state, as it was dusty and appeared incomplete. Similarly, the Cobra 427 (CSX4017) vehicle appeared to be missing parts.

As noted above, at the conclusion of Maggie's testimony, Joel made a motion that he had overcome the Dead Man's Act, which this Court denied.

Joel recalled Wade, and testified that approximately two weeks before his death Decedent told Wade he intended to give the three vehicles to Joel, to "try to settle up with him" for his many years of service. Wade stated that before Decedent

and Joel's June 9, 2018 conversation, Decedent asked Wade to grab a folder from the All Pro Cars shop because Decedent wanted Joel to have the title and MSOs to the vehicles; Wade retrieved the folder and gave it to Decedent. Wade later explained that on the evening of June 9, 2018, Decedent told Wade he had given Joel the titles to the vehicles earlier that day.

Wade testified that the vehicles remained at the shop until Joel took them, and that Wade helped Joel load two of the vehicles into his trailer before Joel drove them off the property. This occurred approximately four or five days before Decedent died. Wade testified that Joel had Decedent's permission to take the vehicles. Wade stated that after this, he spoke to Decedent and informed Decedent Joel had taken the vehicles; he explained that Decedent was excited and happy upon hearing this. Wade himself was upset Decedent decided to give all three vehicles to Joel, as Wade had hoped to inherit the Cobra 289 FIA (CSX7007) since he was a child.

During questioning by all parties and the Court, Wade explained his understanding of Decedent's car manufacturing and recordkeeping, and how manufacturing and recordkeeping function for vintage and racing cars generally. He explained that to construct a Shelby vehicle, Decedent would order a vehicle body, chassis, and frame, which would come with an MSO from Shelby; Decedent would source and assemble all other parts, making up the inner workings of the vehicle, separately. Wade explained that Decedent wanted the Daytona Coupe (CSX7061) to stay a "one-owner vehicle," with title always remaining in his name. Wade agreed that the typical transfer of ownership of an automobile involves the previous owner signing the title over to the new owner, and acknowledged that Decedent would be

aware of this general procedure. However, in the case of vintage vehicles, this would not always occur, and Wade believed it was not necessary.

Next, Daniel Jr., Joel's older brother and another Respondent in this case, testified. He explained that he met Decedent in 1995, but had known of him earlier. Daniel Jr. testified he was not as close with Decedent as Joel was, and that Joel spent a tremendous amount of time with Decedent, doing various forms of work for him. Daniel Jr. stated that he occasionally spoke with Decedent about the amount of work Joel was doing for him, to which Decedent assured Daniel Jr. that he would not take advantage of Joel in the long run. He stated that Decedent always referred to the Daytona Coupe (CSX7061), the car Joel raced, as "Joel's car," and that Decedent never permitted anyone other than Joel to operate it. Daniel Jr. testified that when he asked Decedent about Joel and the Daytona Coupe, Decedent would say "don't worry about it"; Daniel Jr. understood this to mean Decedent intended to eventually transfer the car to Joel, though Decedent never stated this explicitly.

Daniel Jr. testified that one of Joel's prized possessions dating to many years before Decedent's death was the Daytona Coupe's VIN plate, which Joel kept on his desk. Daniel Jr. explained that when a manufacturer like Decedent buys a Shelby chassis, it comes with an MSO and a metal plate with the chassis' serial number; this plate, Daniel Jr. stated, "has all the value in the car." The plate was removed from the vehicle before Joel raced it and kept safe because it would be irreplaceable if damaged.

Daniel Jr. testified to portions of a text string between himself and Joel on June 11 and 12, 2018.[11] In the texts, Daniel Jr. told Joel he would be available with a truck and a trailer to help Joel haul things. Daniel Jr. testified that he went to All Pro Cars on June 13, 2018, and on that day he helped Joel, Wade, and others load the Daytona Coupe (CSX7061) and the Cobra 427 (CSX4017) into a trailer. Joel then drove the trailer off of the property, and Daniel Jr. followed Joel first to Daniel Jr.'s building in Exeter, PA and then to Joel's building in Wyoming, PA. He then helped Joel unload the two vehicles into Joel's building. Daniel Jr. described another text message he sent at 5:42 p.m. that day to his fiancée, Jennifer Williams, explaining that he was travelling and near Hazleton; Daniel Jr. explained that he would normally take Route 118 to get from All Pro Cars to his home, but on that day he used Interstate 80 because the trailer containing the two Shelbys could not travel on Route 118. Daniel Jr. explained that he went back to All Pro Cars the following day, June 14, 2018, loaded the Cobra 289 FIA (CSX7007) vehicle onto the trailer, and again followed Joel to Joel's warehouse where he helped unload it. Daniel Jr. explained that he understood these vehicles to belong to Joel, and that the vehicles were all in poor condition and not drivable when Joel picked them up. Daniel Jr. admitted that Decedent never personally told him that he was giving the vehicles to Joel or that he approved of or gave permission to Joel to remove the vehicles. He testified he did not know if Decedent knew he, Joel, and others were present that day scrapping and removing vehicles, but assumed that Wade would have communicated this to

[11] Only the portions authored by Daniel Jr. were admitted; the portions authored by Joel were barred by the Dead Man's Act.

Decedent. Daniel Jr. believed that Wade's permission to do these things was sufficient, because "Wade was the other half of the business" of All Pro Cars.

Daniel Jr. explained his understanding of the titling process for vintage and racing cars, which he learned through years as an automobile dealer. He explained that an MSO is different from a title; there is a process by which a vehicle's owner can send an MSO to the Pennsylvania Department of Transportation ("PennDOT") and receive a title, but this is not always done and is often unnecessary. In response to the Court's specific question, he explained that a dealer wishing to transfer a self-manufactured vehicle with an MSO to a buyer would issue a temporary "pink slip" to the buyer, and it would then be incumbent on the buyer to provide the pink slip, MSO, and all other necessary information to PennDOT to receive a title. Daniel Jr. clarified that there is no legal requirement for non-street vehicles to have a title, so upon their sale a dealer would often just provide an MSO. He stated that if a vehicle is not going to be driven on the street, there is no need, strictly speaking, for even an MSO.

Daniel Jr. testified that an MSO does not necessarily establish ownership, explaining that through his years of buying and selling vehicles he has accumulated many MSOs for vehicles he no longer owns. Daniel Jr. explained that if a vehicle is fabricated by a non-manufacturer, it won't even have an MSO; in order to make it street-legal, an owner would have to submit it to a comprehensive, "enhanced" inspection, and only after passing this enhanced inspection the vehicle receive a title from PennDOT.

At this time, Joel renewed his motion that he had overcome his incompetence under the Dead Man's Act, as described above; this motion is presently before the Court.

ANALYSIS

To overcome the Dead Man's Act, Joel bears the burden of "establishing... through independent corroborating... evidence... a prima facie gift by clear and convincing evidence." The Supreme Court of Pennsylvania has defined clear and convincing evidence to mean: "the witnesses must be found to be credible, that the facts to which they testify are distinctly remembered and the details thereof narrated exactly and in due order, and that their testimony is so clear, weighty, and convincing as to enable the jury to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue."[12] This general definition is applicable in the specific context of demonstrating an inter vivos transfer by clear and convincing evidence.[13]

To demonstrate that Decedent made a valid prima facie gift of the three vehicles to Joel, he must establish that Decedent 1) intended to give the three vehicles to Joel as a gift and 2) actually or constructively transferred the three vehicles to Joel in a way that both divested Decedent of dominion over the vehicles and invested Joel with complete control over them. The Court will address these requirements separately.

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[12] *Hera v. McCormick*, 625 A.2d 682, 689 (Pa. Super. 1993) (citing *In re Estate of Fickert*, 337 A.2d 592, 594 (Pa. 1975)).
[13] *Id.*, *see also Lessner v. Rubinson*, 592 A.2d 678 (Pa. 1991); *Lanning v. West*, 803 A.2d 753 (Pa. Super. 2002).

A. Donative Intent

It is self-evident that, for a purported transfer of property to be a gift, the person transferring the property to another must intend as much; that is, the transferor must have donative intent. In rare circumstances, donative intent can be inferred from a close familial relationship (such as between parent and child), but even a "non-familial, close personal friendship" is insufficient to create any presumption of donative intent.[14] Similarly, an "expect[ation] that the property would be given to [a person] due to his years of devotion… is insufficient to establish an inter vivos gift."[15] A direction to a transferee to "keep" or "take" an item is similarly insufficient to establish donative intent when susceptible to interpretation "as a request [to] take [the item] for safekeeping" as opposed to a gift.[16] However, uncontradicted testimony that a transferor told the transferee to "take this [money] and make it a certificate of deposit from another bank and keep it for [himself]" will support a finding of donative intent.[17]

The Court is satisfied that Joel has provided independent corroborating evidence that Decedent actually intended to give the three vehicles to Joel as a gift. Although for most of his life Decedent's statements concerning his desire to "take

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[14] *Estate of Korn*, 480 A.2d 1233, 1237-38 (Pa. Super. 1984).
[15] *Zigmantanis v. Zigmantanis*, 797 A.2d 990, 994 (Pa. Super. 2002).
[16] *In re Baker's Estate*, 434 A.2d 1213, 1216 (Pa. 1981) ("This phrase" – "Take bulldozer to your house" – "is more easily interpreted as a request that his neighbors take the bulldozer to their house for safekeeping than that it was a gift to them."); *see also Estate of Greenberg*, 444 A.2d 1224 (Pa. Super. 1982) (respondent's statement "I have your rings" and decedent's reply "I gave them to you, Ann. You know that" insufficient to prove donative intent by clear and convincing evidence, as statement could equally support interpretation that respondent was "holding the rings… in a bailment sense" as opposed to the rings being gifted to respondent).
[17] *In re Chiara's Estate*, 359 A.2d 756, 759 (Pa. 1976).

care of" Joel were vague, numerous witnesses testified that Decedent spoke in his last weeks of life about transferring the three vehicles to Joel. Although some witnesses testified that Decedent never said this to them, no witness testified that Decedent ever said anything contrary. The broad range of witnesses who testified that Decedent intended to give Joel the vehicles is sufficient to satisfy Joel's burden with regard to this specific prong of the inquiry.

B. Transfer

Joel has presented clear and convincing prima facie evidence that he took physical possession of the vehicles prior to Decedent's death, as the testimony of Daniel Jr. and the text messages he presented satisfy the Court that he and Joel physically moved the vehicles to Joel's property prior to Decedent's death.

The sole remaining question, then, is dispositive of Joel's Motion: under the circumstances presented here, was the evidence concerning the purported conveyance of the unsigned documentation relating to the vehicles, together with Joel's retrieval of those vehicles, sufficient to prima facie demonstrate by clear and convincing evidence that Decedent transferred the vehicles to Joel in a way that divested himself of all dominion over the vehicles and invested Joel with complete control over them?

1. Case Law Regarding Transfer

Pennsylvania's Courts have addressed a number of occasions in which it was unclear that a purported transfer of property was sufficient to either invest the transferee with or divest the transferor of dominion over that property.

At the outset, it is necessary to note that the prima facie showing of a valid transfer is a lesser burden than the ultimate proof of a valid inter vivos gift. In *Miller*, the decedent "authorized the sale of [$50,000 worth of stock]" eight days before his death; Reeser, the executor of the decedent's estate, possessed the stock at the time of decedent's death and claimed decedent had gifted it to him.[18] The decedent had "endorsed the stock certificate without naming any transferee"; this, coupled with Reeser's possession of the stock, made the transfer "prima facie valid for the purpose of rendering the donee's interest not adverse to that of decedent" – that is, sufficient to overcome the Dead Man's Act – and thus "Reeser's testimony was competent in full and out not to have been excluded from the factfinder's consideration."[19] The Supreme Court of Pennsylvania stressed, however, that "[s]uch a showing is not necessarily sufficient to conclusively establish a gift by requisite proof."[20] The Court ultimately held that under the circumstances presented no gift could be established as a matter of law, so the decision of the orphans' court to exclude portions of Reeser's testimony was harmless error.

In *Evans*, the Supreme Court of Pennsylvania reviewed cases concerning the transfer of safe deposit boxes.[21] In *Leadenham's Estate*, the "the donor had rented a separate safe deposit box in the name of the intended donee, put the contents of his box into the newly rented one and delivered the keys to it to the donee."[22] This was sufficient to prove a valid inter vivos gift, because by moving the contents of his safe

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[18] *In re Estate of Miller*, 346 A.2d 761 (Pa. 1975).
[19] *Id.* at 763-64.
[20] *Id.* at 763.
[21] *In re Evans' Estate*, 356 A.2d 778 (Pa. 1976).
[22] *Id.* at 782 (citing *Leadenham's Estate*, 137 A. 247 (Pa. 1927)).

deposit box to a different one entirely in control of the donee and out of his own control, the donor "had divested himself of dominion and control and invested the donee with complete dominion and control."[23] In *Leitch*, the donor husband and donee wife had three safe deposit boxes registered in their names jointly, but the evidence showed that the husband "designated one of them as his wife's. He gave her the keys to that box... she had complete control over that box and... he only entered it with her permission. Since she had complete control over the access to the box the Court found there was a valid delivery of the contents of the box to her."[24] In *Elliott's Estate*, the Supreme Court of Pennsylvania "held there was a valid constructive delivery of the contents of a safe deposit box where the donor turned over to the alleged donee the keys. There, however, just prior to the delivery of the keys a doctor had informed the non-ambulatory donor that death was imminent. Under those circumstances manual delivery was impossible."[25]

In *Evans*, the decedent made numerous statements "to the effect that the contents of the safe deposit box had been given to appellant," his niece, and the court concluded that the decedent's donative intent was inarguable.[26] Shortly before his death, he told a priest that he had "given the rest of his possessions and the keys to his safe deposit box to appellant."[27] Unlike in *Elliott*, however, in *Evans* "[t]he record contain[ed] no evidence of circumstances which were such that it was impractical or inconvenient to deliver the contents of [the] box into the actual

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[23] *Id.*
[24] *Id.* (citing *Leitch v. Diamond National Bank*, 83 A. 416 (Pa. 1912)).
[25] *Id.* at 781 (citing *Elliott's Estate*, 167 A. 289 (Pa. 1933)).
[26] *Id.* at 779-80.
[27] *Id.* at 779.

possession or control of" the appellant, and he in fact had the opportunity to do so when he visited the bank and went through the contents of the safe deposit box one month prior to his death. The Supreme Court of Pennsylvania affirmed the finding of orphans' court that no valid transfer was made:

> "Although appellant suggests that it was impractical and inconvenient for [the decedent] to manually deliver the contents of his box to her because of his physical condition and the hazards of taking such a large sum of money out of the bank to her home,[28] we need only note that the deceased was obviously a shrewd investor, familiar with banking practices, and could have made delivery in a number of simple, convenient ways. First, he was not on his deathbed. He was ambulatory and not only went to the bank on October 22, 1971, but took walks thereafter and did not enter the hospital until November 5, 1971. On the day he went to the bank he could have rented a second safe deposit box in appellant's name, delivered the contents of his box to it and then given the keys to appellant. He could have assigned the contents of his box to appellant. For that matter, he could have written a codicil to his will.
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> The lower court noted that the deceased was an enigmatic figure. It is not for us to guess why people perform as they do... [I]t is clear that regardless of [the decedent's] intention to make a gift to appellant, he never executed that intention and we will not do it for him."

The *Evans* Court also discussed *In re Ream's Estate*, in which the Supreme Court of Pennsylvania addressed the *causa mortis* gift of an automobile to her companion.[29] In *Ream*, the decedent "went to a justice of the peace with the title to her automobile... said 'I would like to arrange for [my companion] to have this car, but I don't want it in his name yet, so long as he drives me... I don't want it in my estate'," and "executed the assignment in the presence of the justice of the peace, although

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[28] The value of the items in the safe deposit box was in excess of $800,000; the decedent's will included a specific bequest to the appellant of $1,000.

[29] *In re Ream's Estate*, 198 A.2d 556 (Pa. 1964). A gift *causa mortis* is one made with present donative intent, in apprehension of death, effectuated by actual or constructive delivery, and actually followed by death; thus, it has many of the same requirements as an inter vivos transfer for the purposes of the Dead Man's Act. *Id.* at 557.

she did not put [her companion's] name on the assignment."[30] At decedent's death, the automobile was in the garage of the house they shared, and the keys and title to the vehicle were in her companion's possession.[31] The Court concluded that this constituted a valid transfer.[32] In *Evans*, the Supreme Court described the holding of *Ream*:

> "[I]n some cases due to the form of the subject matter of the gift or due to the immobility of the donor actual, manual delivery may be dispensed with and constructive or symbolic delivery will suffice. In [*Ream*], for example, the Court found there had been a valid constructive delivery of an automobile where the donor gave the keys to the alleged donee and also gave him the title to the car after executing an assignment of it leaving the designation of the assignee blank. The assignment was executed in the presence of a justice of the peace and the evidence was overwhelming that the name of the donee was to be inserted upon the death of the decedent."[33]

2. Vehicle Code

Given the specific circumstances present here, a brief overview of the Vehicle Code is necessary.[34] The Vehicle Code defines a "vehicle" as "[e]very device in, upon or by which any person or property is or may be transported or drawn upon a highway, except devices used exclusively upon rails or tracks."[35] The Vehicle Code defines an "owner" as "[a] person, other than a lienholder, having the property right in or title to a vehicle.[36] "Transfer" is defined as "[t]o change ownership by purchase, gift or any other means."

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[30] *Id.* at 558.
[31] *Id.*
[32] *Id.*
[33] *Evans*, 356 A.2d at 771.
[34] Title 75 of Pennsylvania Consolidated Statutes.
[35] 75 Pa. C.S. § 102.
[36] *Id.* The analogous section of the former vehicle code defined an owner as "[a] person or persons holding the legal title of a vehicle"; under this former definition "a Pennsylvania resident [could not] own an automobile unless certificate of title [was] obtained." *Majors v.*

In general, the Vehicle Code demands that "every owner of a vehicle which is in this Commonwealth and for which no certificate of title has been issued... shall make application... for a certificate of title to the vehicle," with the failure to do so constituting a summary offense.[37] Section 1102 provides a number of exceptions to this general rule, however, stating that "[n]o certificate of title is required for," *inter alia*, "[a] new vehicle owned by a manufacturer or registered dealer before and until sale."[38] Under Pennsylvania law, "a certificate of title is merely evidence of ownership of a motor vehicle and is not conclusive."[39]

Section 1111 of the Vehicle Code governs the transfer of ownership of vehicles.[40] Section 1111(a) states:

> "In the event of the sale or transfer of the ownership of a vehicle within this Commonwealth, the owner shall execute an assignment and warranty of title to the transferee in the space provided on the certificate or as the department prescribes, sworn to before a notary public or other officer empowered to administer oaths or verified by a wholesale vehicle auction licensed by the State Board of Vehicle Manufacturers, Dealers and Salespersons, or its employee, or an issuing agent who is licensed as a vehicle dealer by the State Board of Vehicle Manufacturers, Dealers and Salespersons, or its employee, and deliver the certificate to the transferee at the time of the delivery of the vehicle."

Section 1111(a.1) addresses an "exception for dealers" reading in relevant part:

> "When... there is a manufacturer's statement of origin for a new vehicle, delivery of the... manufacturer's statement of origin by the dealer as a transferor at the time of the delivery of the vehicle upon resale shall not be required if, prior to delivery of the vehicle, the dealer obtains the applicable powers of attorney to properly execute transfer of the... manufacturer's statement of origin and the dealer requests and

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Majors, 33 A.2d 442 (Pa. Super. 1943). Thus, it appears the Vehicle Code was explicitly amended to recognize that a title is no longer a prerequisite to ownership, or at least possession of a property right, in a vehicle.

[37] 75 Pa. C.S. § 1101.

[38] 75 Pa. C.S. § 1102(3).

[39] *Wasilko v. Home Mut. Cas. Co.*, 232 A.2d 60, 61 (Pa. Super. 1967).

[40] 75 Pa. C.S. § 1111.

receives the departmental verification of any lienholders, ownership, odometer information and title brands, on titled vehicles, and any other information that the department deems necessary to be verified."[41]

A failure to comply with § 1111 results in a summary offense with a fine of $100 for a first offense and $300 to $1000 for a subsequent offense.[42]

3. Analysis

The cases and statutory provisions cited above reflect a number of principles, foremost among which is that the relevant inquiry is highly fact-specific. Generally, a purely symbolic transfer is insufficient; this general principle may yield, however, when a more concrete transfer is impossible. The transfer of paperwork demonstrating ownership, along with the actual physical transfer of the item itself, may suffice to show a *prima facie* transfer even if imperfectly effected, though such evidence may be insufficient to ultimately prevail. As discussed in detail above, prima facie evidence of the inter vivos gift must be established by clear and convincing evidence.

The Court concludes that Joel has not established, by clear and convincing evidence, a prima facie inter vivos transfer. The Court bases this conclusion upon two independent grounds.

First, the Court cannot conclude that Joel has presented clear and convincing evidence that Decedent transferred the title and MSOs to him prior to his death.

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[41] The Court does not believe this exception is applicable here, but includes this provision for completeness to demonstrate that the section does not otherwise broadly exempt certain classes of transferors, transferees, or vehicles from its requirements. Additionally, 75 Pa. C.S. § 1113, governing "[t]ransfer to or from manufacturer or dealer," relieves certain parties from certain requirements of § 1111 but still requires them to forward relevant information to PennDOT and execute appropriate documents concerning the transfer.

[42] 75 Pa. C.S. § 1111(c).

Maggie Lipperini testified that after leaving Decedent's house on June 9, 2018, Joel showed her a folder that he did not possess before containing the title to the Cobra 427 (CSX4017) and the MSOs for the other vehicles. Wade testified that prior to June 9, 2018, Decedent asked him to obtain this folder from his shop, and sometime after June 9, 2018 Decedent told Wade that he had given Joel the paperwork concerning the vehicle. No witness, however, testified that they observed Decedent actually give the folder or the documents to Joel, or what was said or conveyed at this time.

The Court does not find the testimony of Wade or Maggie credible in this regard, in light of Wade's testimony concerning his previous false statements and Maggie's potential bias given her relationship to Joel. As such, Joel has not presented "credible... clear, direct, weighty, and convincing" independent evidence that Decedent voluntarily transferred the paperwork for the vehicles to him, or whether Decedent intended the exchange of papers to effectuate – either factually or symbolically – the actual transfer of legal ownership of the vehicles to Joel.

Second, assuming *arguendo* that Decedent provided Joel with the title and MSOs with the intent to transfer the vehicles to him, the Court concludes that this was insufficient as a matter of law to divest Decedent of all control and invest Joel with complete control over the vehicles. Unlike in *Ream*, Decedent did not sign the title or MSOs, let alone notarize any documentation relating to the transfer or comply with other provisions of the Vehicle Code. The vehicles remained at Decedent's shop for some time after June 9, 2018, and although Decedent allegedly gave some

indicia of ownership of the vehicles to Joel he did not take any of the numerous steps available to him to transfer the vehicles to Joel in a legal sense.

As such, the Court believes the most analogous case is *Evans*, in which: 1) the decedent made it clear that he intended to give his niece the contents of his safe deposit box; 2) a month before his death, obtained all of the keys to the box; 3) kept them in his house; 4) told a priest that he had given his niece the keys; and 5) the niece in fact possessed the keys at the time of the decedent's death. Like the decedent in Evans, Decedent here could have taken a number of actions, any one of which would have at least done some of the work required to "execute[] [his] intention" to make a gift of the vehicles by transferring them. The testimony at trial suggested that Decedent learned of his diagnosis a number of months before his death, and no party suggests that he lacked testamentary capacity at any point before his death; therefore, the option to leave the vehicles as a specific bequest in a will was always available to Decedent. Decedent did not draft any document purporting to effect the transfer, either formal or informal, let alone notarize or otherwise endorse any such document. He did not fill out any forms to that effect. He did not sign the title or MSOs of the vehicles, let alone do so or otherwise effectuate the transfer in the presence of any witnesses. The Court concludes that the transfer of the unsigned title and MSOs, without any witnesses as to what Decedent did or said at that time, is insufficient as a matter of law to legally effectuate the transfer of the vehicles.[43]

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[43] It is not necessary to state exactly which combinations of these steps would or would not have been sufficient to transfer the vehicle. Rather, the Court's conclusion is that the failure to take *any* of these steps renders any attempt by Decedent to transfer the vehicle insufficient to divest himself of, and invest Joel with, complete dominion over them.

The Court is not blind to possible reasons why Decedent may have attempted to make the transfer in this manner and not taken any other steps to effect a legal transfer of the vehicles. It is possible that he did not believe or accept that a will would be necessary until he felt it was too late to create one. It is possible (and, based on the testimony, likely) that, as an artisan who was extremely passionate about his vehicles but not terribly interested in the formalities of business, he often engaged in the informal transfer of vehicles in the manner alleged here, and never had any issues because the transfers had never been challenged. It is possible that Decedent felt this was an extremely personal matter and wanted only Joel to be present when he gifted him the vehicles, especially in light of his own son Wade's upset over the vehicles going to someone else. That Decedent's choices are perhaps explainable is insufficient, however, to create a legally valid transfer of property. So too is the apparent harshness of a conclusion that although Decedent possessed donative intent, he never successfully executed that intention during his lifetime.

The Dead Man's Act was enacted "to prevent the injustice that would result from permitting a surviving party to a transaction to testify favorably to himself and adversely to the interest of the decedent when the representative of the decedent would be hampered in attempting to refute the testimony by reason of the death of the decedent."[44] This is precisely the case here, and it is for this reason that such a surviving party must establish a prima facie valid inter vivos gift by clear and convincing independent evidence before the surviving party can testify concerning

[44] *Visscher v. O'Brien*, 418 A.2d 454, 458 (Pa. Super. 1980).

the alleged pre-death transfer. The Court holds that the evidence presented here is not "clear, weighty, and convincing" as is required to satisfy this burden.

DECREE

For the reasons stated above, the Court finds that although Joel established Decedent's donative intent and possession of the vehicles prior to Decedent's death by clear and convincing, independent, corroborating evidence, he has not established an inter vivos transfer of the vehicles in a manner sufficient to divest Decedent of and invest Joel with dominion over the vehicles. Thus, Joel remains incompetent to testify concerning the alleged inter vivos transfer of the vehicles from Decedent to himself.

IT IS SO DECREED this 17th day of May 2022.

By the Court,

Eric R. Linhardt, Judge

ERL/jcr
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