IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

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

OPINION AND VERDICT

AND NOW, following a nonjury trial held over seven days from March 8, 2022 through July 7, 2022, the Court hereby issues the following Opinion, Findings of Fact, Conclusions of Law, and Verdict.

PROCEDURAL HISTORY[1]

Leland Wade Benson, Jr. ("Decedent") died testate on June 19, 2018. His Will named has daughter Denise M. Cordes ("Cordes" or "Petitioner") as Executrix, and the Lycoming County Register and Recorder of Deeds granted her letters testamentary on June 28, 2018. At the time of his death, Decedent owned an automotive repair and construction business, All Pro Cars, and had a workshop that for many years had been filled with a rotating assortment of vehicles, parts, tools, and other items related to the business of automotive construction and repair.

On March 1, 2019, Petitioner filed a Petition for Citation to Show Cause Why Assets Should Not be Returned to the Estate and for Accounting and Unjust Enrichment. The Petition alleged that Decedent's son Leland Wade Benson, III

[1] The procedural history of this case is detailed in Decrees issued on January 22, 2020 and July 23, 2021.

("Wade"), Wade's wife Stephanie Benson ("Stephanie"), Joel Lipperini ("Joel"), Joel's wife Maggie Lipperini ("Maggie"), and Joel's brother Daniel Lipperini, Jr. ("Daniel Jr.") had taken assets that belonged to Decedent's Estate, possibly pursuant to Decedent's plan to convey assets shortly before his death to evade creditors. Foremost among these assets were four vehicles: 1) a burgundy and gold "Shelby Cobra 427" with serial number CSX4017; 2) a blue and white "Shelby Cobra 289 FIA" with serial number CSX7007; 3) a blue and white "Shelby Daytona Coupe" with serial number CSX7061; and 4) an orange "Grand Sport Corvette."[2] The Petition averred that Joel possessed the three Shelby vehicles, and Daniel Jr. possessed the Grand Sport Corvette.[3]

The Petition contained four counts: Count I, seeking the return of all estate assets; Count II, seeking to void any transfers made by Decedent in violation of the Pennsylvania Uniform Voidable Transactions Act ("UVTA");[4] Count III, seeking Respondents' accounting of assets received from Decedent or his Estate; and Count IV, seeking recovery from Respondents for unjust enrichment. On June 7, 2019, the Court issued an Order prohibiting Respondents from selling, conveying or otherwise disposing of the vehicles and other assets at issue in the Petition. On

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[2] The parties later agreed that the Grand Sport Corvette was not a completed vehicle but consisted of a Corvette shell, "CSX4018 Cobra frame," and certain automotive parts. The Court will continue to refer to this incomplete vehicle as the Grand Sport Corvette for simplicity.

[3] Joel and Daniel Jr. testified at trial that they did in fact obtain possession of the three Shelby vehicles and the Grand Sport Corvette parts, respectively.

[4] 12 Pa.C.S.A. § 5101 *et seq.* The Court discusses the UVTA in detail *infra*.

July 11, 2019, the Court issued a Decree providing that Respondents need not return the vehicles and other assets at issue, but would continue to possess and maintain them and make reasonable efforts to preserve their condition pending the resolution of the Petition.

On January 25, 2021, the Court issued a Decree finding that the parties had waived a request for a trial by jury and placing the case on the nonjury trial scheduling list. The parties subsequently filed dispositive motions, and on July 23, 2021 the Court issued a Decree holding, *inter alia*, as follows:

- The record was sufficient to establish *prima facie* that Decedent had an ownership interest in the four vehicles;
- 42 Pa.C.S.A. § 5930, commonly known as the Dead Man's Act[5] barred Joel from testifying as to any conversations he had with Decedent unless he could make a *prima facie* showing by clear and convincing evidence that Decedent transferred the three vehicles to him as a gift;
- The Dead Man's Act similarly barred Daniel Jr. from testifying as to conversations with Decedent unless he could make a similar showing;
- The Dead Man's Act did not bar Maggie from testifying on Joel's behalf, as she did not have a pecuniary interest in alleged Estate assets;[6]

[5] 42 Pa.C.S.A. § 5930. The Court discussed the Dead Man's Act in great detail in its July 23, 2021 Decree addressing dispositive motions as well as its May 17, 2022 Opinion and Decree denying Joel's motion for a ruling that he had overcome his incompetence to testify pursuant to the Dead Man's Act.

[6] The Court granted reconsideration of this decision on September 29, 2021, in light of a stipulation that Maggie originally claimed a joint interest in a mold, valued at $20.00, allegedly belonging to the Estate. The Court ruled that the Dead Man's Act would therefore bar Maggie from testifying as to any conversations she had with Decedent unless she

- To the extent the Dead Man's Act precluded any Respondent from offering certain testimony, that preclusion would bar that Respondent from testifying concerning their own interest in alleged Estate assets, but would not bar their testimony regarding other Respondents' interests in alleged Estate assets; and

- The record contained sufficient evidence to create a presumption that the Estate is insolvent, and Respondents bear the burden of rebutting that presumption.

Additionally, the Court granted Petitioner's Motion for Summary Judgment against Wade and Stephanie, who averred that although Decedent had gifted Wade two trailers and their contents, they had returned those items to the Estate to avoid litigation. The Court indicated that if Wade and Stephanie executed a release of all claims they may have against the Estate, they would no longer have an arguable interest in any Estate assets and therefore the Dead Man's Act would not bar their testimony on any subject. Wade and Stephanie subsequently executed such a waiver.

The Court scheduled the nonjury trial in this matter to take place on March 8, 9, and 11 of 2022. Due to the volume of testimony and evidence and multiple legal issues, the trial continued on May 23, May 25, and July 7, 2022.

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signed a release of her interest in all alleged Estate assets and returned the mold. She subsequently did so, rendering the Dead Man's Act inapplicable to her testimony.

APPLICABLE LAW AND ISSUES RAISED

A. Dead Man's Act

A significant portion of the trial, as well as pretrial motions practice, concerned the application of the Dead Man's Act, which 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...."

The dispute primarily concerned an exception to the Dead Man's Act, which the Court described in its July 23, 2021 Decree as follows:

> "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.[7] '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.'[8] For example, '[p]ossession of car keys or title to the car

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

[8] *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,"

> usually is sufficient to prove constructive delivery of a car.'[9] 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.[10] The gift claimant bears the burden of establishing a prima facie gift by clear and convincing evidence."[11]

On May 17, 2022, the Court issued an Opinion and Decree finding that the testimony and evidence Joel presented over the first three days of trial clearly and convincingly established Decedent's donative intent with respect to the three Shelby vehicles, but was insufficient to establish an inter vivos transfer of the vehicles in such a way as to divest Decedent of dominion over them. Because the Court made this determination during trial prior to the conclusion of testimony and evidence, this Verdict will readdress the issue in the Conclusions of Law below.

B. Pennsylvania Uniform Voidable Transactions Act

The Pennsylvania Uniform Voidable Transactions Act ("UVTA") renders certain transfers of assets[12] made by debtors voidable and thus subject to rescission. Under the UVTA, a debtor's transfer of assets is voidable as to both

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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.

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

[10] *Id.* at 56.

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

[12] The UVTA defines "transfer" as "[e]very mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset. The term includes payment of money, release, lease, license and creation of a lien or other encumbrance." 12 Pa.C.S.A. § 5101(b). The UVTA defines "asset" as "[p]roperty of a debtor," with certain exceptions not applicable here. *Id.*

present and future creditors[13] if the debtor made the transfer under the following circumstances:

> "(1) with actual intent to hinder, delay or defraud any creditor of the debtor; or
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> (2) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:
>
> > (i) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or
> >
> > (ii) intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due."[14]

An additional class of transfers is voidable under the UVTA as to present creditors only:

> "A transfer made... by a debtor is voidable as to a creditor whose claim arose before the transfer was made... if the debtor made the transfer... without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation."[15]

For the purposes of the PUVTA, "[a] debtor is insolvent if, at fair valuation, the sum of the debtor's debts is greater than the sum of the debtor's assets."[16] This valuation "do[es] not include property that has been transferred, concealed or

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[13] That is, as to both creditors whose claims arose prior to the transfer and those whose claims arose after the transfer.
[14] 12 Pa.C.S.A. § 5104(a).
[15] 12 Pa.C.S.A. § 5105(a).
[16] 12 Pa.C.S.A. § 5102(a).

removed with intent to hinder, delay or defraud creditors or that has been transferred in a manner making the transfer voidable under [the UVTA]."[17] When "[a] debtor... is generally not paying [their] debts as they become due other than as a result of a bona fide dispute," that debtor "is presumed to be insolvent."[18]

C. Validity of Inter Vivos Transfers

It is well established that the Orphans' Court may resolve petitions concerning the ownership of alleged Estate assets.[19] When an alleged donee claims a decedent gifted them property prior to death, "the alleged donee of [the] inter vivos gift by a decedent has the burden of proving by clear, direct, precise and convincing evidence a delivery to the alleged donee, either actual or constructive, together with a donative intent on the part of the donor."[20] If the alleged donee makes such a showing, "a presumption of validity arises and the burden shifts to the contestant to rebut this presumption by clear, precise and convincing evidence."[21] To constitute a delivery for the purposes of an inter vivos gift, a transfer of assets "must not only divest [the] donor of all dominion and control over the property, but also must invest [the] donee with complete control over the subject matter of the gift."[22]

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[17] 12 Pa.C.S.A. § 5102(c).
[18] 12 Pa.C.S.A. § 5102(b).
[19] *See, e.g., Hera v. McCormick*, 625 A.2d 682 (Pa. Super. 1993); *Petro*, 694 A.2d 627; *Cerullo*, 247 A.3d 52.
[20] *In re Pappas' Estate*, 239 A.2d 298, 300 (Pa. 1968).
[21] *Hera*, 625 A.2d at 686.
[22] *Id.*

D. Issues before the Court

As discussed above, Wade, Stephanie, and Maggie signed releases relinquishing any interest they may have in alleged Estate property. Therefore, the only two Respondents are Joel and Daniel Jr. Petitioner asks the Court to compel Joel to return the three Shelby vehicles to the Estate, and to similarly compel Daniel Jr. to return the Grand Sport Corvette. Joel and Daniel Jr. claim that they are the rightful owners of these vehicles, though they assert different theories.

Joel contends that Decedent transferred the three Shelby vehicles to him as an inter vivos gift. Thus, he must first prove by "clear, direct, precise and convincing evidence" both the Decedent's donative intent and actual or constructive delivery. If he has satisfied both of these requirements, the burden shifts to Petitioner to either rebut the assertion that Decedent gifted the Shelby vehicles to Joel, or demonstrate that the gift was nonetheless voidable under the UVTA.

Daniel Jr. asserts not that Decedent gifted him the Grand Sport Corvette but rather that he has always possessed at least a partial ownership interest in the Grand Sport Corvette. The Court must first determine whether Daniel Jr. was the original owner of a partial or entire interest in the Grand Sport Corvette, and therefore entitled to obtain the vehicle from Decedent's shop regardless of Decedent's death. If the Court concludes that Daniel Jr. was not the owner of the Grand Sport Corvette, it will address the same issues as with Joel.

FINDINGS OF FACT

Decedent's Background

1. Decedent Leland Wade Benson, II resided at 82 Reservoir Road, Muncy Creek Township, Lycoming County, Pennsylvania, where he lived with his partner Cheryll Romanell ("Romanell") for many years prior to his death on June 19, 2018.

2. Wade and Cordes are Decedent's children.

3. At the time of his death and for many years prior, Decedent owned All Pro Cars, an automotive construction and repair company with an address of 190 Angletown Road, Muncy, Lycoming County, Pennsylvania. This physical location consisted of a garage where Decedent assembled and repaired automobiles.

4. All Pro Cars had a handful of employees, and various people worked with Decedent to construct and repair vehicles. The garage would typically have numerous vehicles in varying states of assembly and repair.

5. Decedent was a talented and passionate automotive mechanic and builder of vintage cars, but was generally known as a haphazard businessman.

6. Among Decedent's main passions was the manufacturing of vintage Shelby vehicles. To construct a Shelby vehicle, Decedent would order a vehicle body, chassis, and frame from Shelby. These items would come with a "Manufacturer's Statement of Origin" ("MSO") containing information about the vehicle (such as its serial number) and attesting to the vehicle's provenance. Decedent would then independently obtain all other parts needed to build the inner workings of the vehicle.

7. Decedent planned to manufacture and sell ten Shelby vehicles with serial numbers CSX7060 through CSX7069. He ultimately sold two or three Shelby vehicles that he constructed. John Cropper ("Cropper"), a business associate of Decedent, loaned Decedent over $800,000 in connection with this plan.[23]

[23] A newly constructed Shelby vehicle in good condition could sell for up to $275,000.

8. Eventually, Cropper filed a lawsuit against Decedent and obtained a judgment for $85,000. Decedent's Estate paid a portion of this claim with proceeds from the sale of Decedent's house, but approximately $30,000 remained outstanding at the time of trial.

9. Decedent attended numerous automotive shows and races, spanning multiple days. He participated in these shows partly to sell vehicles, including Shelby vehicles he had manufactured, and increase business for All Pro Cars. He also participated, however, because he was passionate about the culture of automobile construction, repair, and racing.

10. Decedent often relied on friends and business associates to pay many of the expenses associated with his attendance at these shows. In particular, Cropper often paid fees associated with Decedent's attendance at and participation in these shows.

11. In addition to Cropper's claim against Decedent, Reno Rivalta, Barry Smith, and other parties filed claims against the estate. The outstanding claims against Decedent's estate at the time of his death were approximately $427,000.

Decedent's Relationship with Joel Lipperini

12. Joel Lipperini lives in Dupont, Pennsylvania with his wife Maggie.

13. Joel is a licensed automotive dealer, and owns a 45,000 foot building that is essentially a hybrid office, garage, showroom and museum.

14. Joel is an extremely talented and nationally recognized race car driver. He began racing at the age of 16 and became a professional driver at the age of 18, continuing to race professionally for decades. Joel won multiple national racing championships in various racing series, received approximately four to six regional "Driver of the Year" awards, and earned numerous trophies and awards as a race car driver. Joel last raced professionally in 2018.

15. Joel's father, Daniel Lipperini Sr. ("Daniel Sr."), became acquainted with Decedent in the mid-1980s and became close friends with Decedent from the late 1980s until Decedent's death.

16. Joel began racing for Decedent and All Pro Cars in the mid-2000s, racing the blue and white Shelby Daytona Coupe owned by Decedent at events. Joel drove the Shelby Daytona Coupe for Decedent in a handful of races each year until the early 2010s, participating in at least fifteen races.[24]

17. Due to his skill as a driver, Joel was the only person Decedent permitted to race the Shelby Daytona Coupe. Decedent often referred to the Shelby Daytona Coupe as "Joel's car."

18. Joel owns a marketing company, Genesis Marketing, and over the many years he knew Decedent he created numerous marketing materials for Decedent and All Pro Cars. Decedent displayed these materials at various car shows and events he attended in an effort to promote All Pro Cars' business and sell vehicles, particularly the series of ten Shelby vehicles. Joel would often attend these events himself, setting up the marketing materials and assisting Decedent with his business endeavors.

19. Between racing, marketing, and helping Decedent and All Pro Cars in other ways, Joel spent many thousands of hours assisting Decedent over the three decades prior to Decedent's death. Decedent did not pay Joel a salary, wage, or fee for this work, and rarely if ever paid Joel's out-of-pocket expenses.

20. Throughout his life, Decedent expressed regret to numerous people that he was not in a financial position to monetarily compensate Joel for his time, efforts, and unique talents. Decedent suggested to various people that he intended to find a different way to compensate Joel. In particular:

    a. When Joel's older brother Daniel Jr. asked Decedent about the ultimate fate of the Shelby Daytona Coupe, Decedent told him not to worry about it; Daniel Jr. took this to mean Decedent intended to eventually transfer the vehicle to Joel.

    b. Decedent and Daniel Sr. repeatedly discussed Decedent's failure to pay Joel, and Decedent promised Daniel Sr. that he

[24] Different witnesses provided various estimates for the number of times Joel raced for Decedent, ranging between fifteen and approximately forty.

would "take care of" Joel and make sure he was compensated, though he did not provide specifics.

c. In the months prior to his death, Decedent told Romanell at least three times that "he needed to do something to at least pay something back to Joel."

Decedent's Relationship with Daniel Lipperini, Jr.

21. Daniel Jr. lives in Dallas, Pennsylvania, where he is a licensed automobile dealer.

22. Daniel Jr. is a gifted automobile fabricator and mechanic.

23. Daniel Jr. met Decedent in 1995 at an automobile event, where they bonded over their mutual love of automobile construction. Afterwards, Daniel Jr. would attempt to stop at Decedent's shop whenever he was travelling through the area.

24. Daniel Jr. attended six to ten events with Decedent and Joel at which Joel raced the Shelby Daytona Coupe. Decedent would regularly take the Shelby Daytona Coupe to Daniel Jr. for maintenance.

25. Daniel Jr. and Decedent occasionally worked on automobile construction projects together. Daniel Jr. kept vehicles and parts at Decedent's garage, and Decedent would at times use items from these vehicles in the construction or repair of other vehicles which he then sold. In particular, Daniel Jr. left two "donor cars" at Decedent's garage, from which Decedent was free to remove parts to use in various projects.

26. One of the vehicles Decedent and Daniel Jr. worked on together was an "atomic orange" Grand Sport Corvette, which they were essentially building from scratch. The body of the Grand Sport Corvette was provided by Carry Hitt, a business associate of Decedent. Daniel Jr. supplied many of the parts used to build the Grand Sport Corvette. Daniel Jr. chose the "atomic orange" color of the Grand Sport Corvette, which was Daniel Jr.'s color of choice for numerous vehicles he had owned. This vehicle was not fully built at the time of Decedent's death.

27. Denise never saw the Grand Sport Corvette in person, but eventually learned that it had been in Decedent's possession until shortly before his death.

28. At some point, Decedent discussed the possibility of selling the Grand Sport Corvette to Reno Rivalta, but did not do so.

29. Because Decedent and Daniel Jr. were constructing the Grand Sport Corvette from the ground up, there was no MSO or title associated with the incomplete vehicle at the time of Decedent's death.

Decedent's Diagnosis and Discussions with Wade and Cordes

30. In November of 2017, Decedent learned he had terminal cancer.

31. On June 1, 2018, Decedent met with Wade and Cordes to discuss end-of-life plans and the disposition of his estate. Decedent indicated a desire to transfer certain assets, including the three Shelby vehicles. Decedent also expressed a desire to transfer All Pro Cars to Wade.

32. Cordes knew that as of June 1, 2018 the three Shelby vehicles were in the possession of Decedent and All Pro Cars.

33. Cordes was aware of the monetary judgment against Decedent arising out of a lawsuit filed by Cropper, and believed that Decedent and All Pro Cars had numerous additional creditors. Cordes believed that Decedent's debts were larger than his total assets and therefore his Estate would be insolvent. For this reason, Cordes advised Decedent that she believed he could not permissibly transfer assets, as such transfers would be seen as attempts to evade creditors.

34. As of June 1, 2018, Cordes did not know Joel, and Decedent did not indicate to her that he wished to give the Shelby vehicles to Joel.

June 9, 2018

35. On the morning of June 9, 2018 Joel and Maggie visited Decedent at his house.

36. Joel stayed with Decedent in the living room for a number of hours. Romanell and Maggie intermittently observed portions of the

conversation but mostly stayed in other areas of the house out of earshot of Joel and Decedent. At one point, Romanell and Maggie left the house to get food.

37. Some portions of the conversation Maggie and Romanell did overhear concerned cars. In particular, Decedent drew a diagram related to a particular car on a napkin for Joel's reference, and instructed him "don't ever start the car when it's cold."

38. When Joel and Maggie arrived home after leaving Decedent's house Joel produced a folder that contained the title to the Shelby Cobra 427 and MSOs for the Shelby Cobra 289 FIA and the Shelby Daytona Coupe. Joel did not have this folder, or the documents within the folder, prior to their arrival at Decedent's house that morning. These documents were not signed or otherwise marked or annotated by Decedent.

Subsequent Events

39. On June 13, 2018, Joel and Daniel Jr. went to All Pro Cars and loaded the Shelby Daytona Coupe and the Shelby Cobra 427 onto a trailer. Joel drove the trailer to his building in Wyoming, Pennsylvania, and Daniel Jr. followed in a truck. Daniel Jr. helped Joel unload the vehicles into his building.

40. On June 14, 2018, Joel and Daniel Jr. returned to All Pro Cars, loaded the Shelby Cobra 289 FIA onto a trailer, drove it to Joel's building in Wyoming, Pennsylvania, and unloaded it into the building.

41. The three Shelby vehicles were not drivable when Joel and Daniel Jr. removed them from All Pro Cars. They remain in Joel's building to this day.

42. Decedent never personally told Daniel Jr. that he was giving these vehicles to Joel or that he approved of or gave permission to Joel to remove them, but Daniel Jr. believed that Decedent had given Joel such permission. Wade was aware that Joel and Daniel Jr. removed the three vehicles, and Daniel Jr. believed that Wade would have objected had Decedent not authorized the vehicles' removal.

43. A few days before Decedent died, Daniel Jr. removed the Grand Sport Corvette from Decedent's property.

44. On June 15, 2018, Daniel Sr. spoke to Decedent via telephone. Decedent told Daniel Sr. "I made good on everything I promised that I was going to do for Joel," and remarked "some of the cars I have are going to him," including the Shelby Daytona Coupe and the Shelby Cobra 289 FIA.

45. Decedent died on June 19, 2018.

46. Following Decedent's death, Cordes was appointed Executrix of his Estate. She soon realized that the Shelby Cobra 427, the Shelby Cobra 289 FIA, and the Shelby Daytona Coupe were missing from the All Pro Cars garage.

47. Although Wade knew that Joel and Daniel Jr. had taken the three Shelby vehicles, he told Cordes that he did not know what happened to the vehicles or their whereabouts.

48. On June 30, 2018, Cordes contacted the Pennsylvania State Police to report the vehicles stolen, along with two trailers of tools and other assorted items that were no longer at the property.

49. Wade informed the State Police that he had taken the trailers and items within because Decedent told him he could, but decided to return the trailers and other items to avoid litigation. Wade told the State Police that he had not taken any of the missing vehicles, and "advised that his father must have made arrangements for the clients owning the cars to come pick them up."

50. Cordes subsequently learned that Joel had possession of the cars, and filed the instant Petition to compel their return to the Estate.

Additional Findings of Fact

51. In their non-drivable state at the time of Decedent's death, the Shelby Cobra 427, Shelby Cobra 289 FIA, and Shelby Daytona Coupe were

each worth approximately $20,000 to $30,000.[25] Due to further deterioration, they may be worth a few thousand dollars less at present.

52. At the time of Decedent's death, the incomplete Grand Sport Corvette was worth $10,000 to $12,000.

53. It is standard practice among people who deal in vintage and constructed automobiles to purport to transfer vehicles by exchanging physical possession and unsigned titles or MSOs.[26]

CONCLUSIONS OF LAW

Claims against Joel Lipperini

1. Petitioner has accused Joel of taking possession of assets owned by Decedent's Estate, namely the Shelby Cobra 427, Shelby Cobra 289 FIA, and the Shelby Daytona Coupe. In response, Joel has asserted that Decedent conveyed ownership of the three vehicles to him as a valid inter vivos gift completed prior to Decedent's death. Therefore, Joel bears the initial burden of showing "by clear, direct, precise and convincing evidence" both "donative intent on the part of" Decedent as well as "a delivery to the alleged donee, either actual or constructive," which divested Decedent "of all dominion and control over the property" and invested Joel "with complete control over the subject matter of the gift."[27]

2. Joel has proven by clear, direct, precise and convincing evidence[28] that Decedent possessed donative intent with regard to the Shelby

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[25] Unrebutted testimony suggested that it would cost $100,000 to $150,000 to restore the Shelby Cobra 427 to mint condition, at which point it would be worth over $200,000.

[26] Various witnesses with significant experience in the automotive industry testified helpfully as to this standard practice. No party, however, proffered an expert witness to opine on this practice or shed light on the legal sufficiency thereof.

[27] *Hera*, 625 A.2d at 686.

[28] "Clear and convincing evidence" requires that "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." *Id.*, *quoting In re Estate of Fickert*, 337 A.2d 592, 594 (Pa. 1975).

Cobra 427, the Shelby Cobra 289 FIA, and the Shelby Daytona Coupe.

3. Joel has failed, however, to show by clear, direct, precise and convincing evidence that Decedent transferred the title and MSOs to him prior to his death, for the following reasons:

   a. The Court does not find credible Wade's testimony that Decedent directed him to retrieve the folder containing the title and MSOs from Decedent's shop, and that Decedent later told him that he had given Joel the folder and paperwork.

   b. The testimony and evidence established that Joel obtained the documents prior to Decedent's death, but does not establish clearly, directly, precisely and convincingly that Decedent gave those documents to Joel intending that act to effect a transfer of ownership. A mere "expect[ation] that... property would be given to [a person] due to his years of devotion... is insufficient to establish an inter vivos gift."[29]

4. Alternatively, even if Decedent provided Joel with the title and MSOs, the Court cannot conclude that Decedent intended this action to effect a transfer of ownership, for the following reasons:

   a. As noted above, inter vivos transfers must be proved by "clear, direct, precise and convincing evidence," that is, evidence "so clear, weighty and convincing as to enable the [factfinder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue."

   b. Inter vivos transfers must be proven by this heightened standard in part because the decedent's death removes his ability to contradict any testimony concerning his actions, intentions, or statements.

   c. The Court cannot come to a clear conviction without hesitancy that Decedent intended the delivery of the unsigned title and MSOs, in a folder, without any witnesses or other actions to

[29] *Zigmantanis v. Zigmantanis*, 797 A.2d 990, 994 (Pa. Super. 2002).

memorialize or prove the transfer, to effect a delivery of the three Shelby vehicles to Joel.

d. Joel's argument that those who trade in vintage and specialized automobiles regularly intend such informal delivery of papers to effect a transfer of ownership of vehicles is unavailing. The fact that parties regularly conduct business informally in situations where that business is not challenged does not transform a legally insufficient action into a sufficient one. Decedent could have taken many actions to transfer the vehicles in a manner that would remove doubt as to his intentions behind the action, but did not do so.

5. Finally, the Court concludes that even if Decedent provided Joel with the title and MSOs *and* intended this action to effect a transfer of the ownership of the vehicles, such action was insufficient as a matter of law to divest Decedent of all control and invest Joel with complete control over the vehicles, for the following reasons:

a. A donor's action to "rent[] a separate safe deposit box in the name of the intended donee, put the contents of his box into the newly rented one and deliver[] the keys to it to donee" is sufficient to prove a valid inter vivos transfer, because by moving the contents of the safe 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."[30]

b. However, when 1) a decedent clearly professes an intent to give a donee the contents of a safe deposit box; 2) obtains all keys to the box a month before his death; 3) keeps the keys in his house; 4) tells a priest that he gave his niece the keys; and 5) the niece in fact possesses the keys at the time of the decedent's death, these facts together are insufficient to demonstrate a valid inter vivos transfer.[31]

c. An automobile may be constructively delivered when "the donor gave the keys to the alleged donee and also gave him the title

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[30] *In re Evans' Estate*, 356 A.2d 778, 782 (Pa. 1976) (*citing Leadenham's Estate*, 137 A. 247 (Pa. 1927)

[31] *Id.*

to the car after executing an assignment of it leaving the designation of the assignee blank... [when] [t]he 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."[32]

d. Here, like the decedent in *Evans*, "[i]t is clear that regardless of [Decedent's] intention to make a gift to [Joel], he never executed that intention," and therefore the Court must not "do it for him."[33] Decedent could have taken a number of actions to transfer the vehicles to Joel, such as amending his Will to include a specific bequest, drafting and notarizing a document to effect the transfer, signing the title or MSOs, or even merely conveying them in the presence of witnesses.

6. For the foregoing reasons, the Court concludes that Decedent retained ownership of the Shelby Cobra 427, Shelby Cobra 289 FIA, and Shelby Daytona Coupe at the time of his death, and Joel has not met his burden of demonstrating that he obtained the Shelby vehicles pursuant to a valid inter vivos gift. Therefore, the Court is constrained to order their return to the Estate.

7. Because the Court has determined that the alleged inter vivos gift is invalid and that Joel must return the vehicles, the Court need not address the UVTA or Petitioner's unjust enrichment claim.[34]

Claims against Daniel Lipperini, Jr.

8. The Estate has made a prima facie showing that it had some ownership interest in the Grand Sport Corvette.

9. Daniel Jr. has presented sufficient testimony and evidence to demonstrate that he contributed more value to the Grand Sport

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[32] *Id.* at 781.

[33] *See id.* at 782.

[34] Although it is indisputable that Joel contributed time, effort and skill to Decedent that would be worth hundreds of thousands of dollars on the open market, that fact is only relevant to the UVTA and unjust enrichment claims, which the Court does not reach. Additionally, because Joel has not established a prima facie valid inter vivos transfer, he has not satisfied the burden necessary to invoke the exception to the Dead Man's Act.

Corvette project, in the form of money, parts, and labor in the process of building the Grand Sport Corvette, than it is presently worth.[35]

10. Therefore, Daniel Jr. has always maintained an ownership interest in the Grand Sport Corvette, and thus Daniel Jr. need not establish a valid inter vivos transfer. Because no inter vivos transfer took place, the Court will deny Petitioner's claim under the UVTA.

11. The parties have not presented sufficient testimony or evidence by which this Court can precisely apportion the percent ownership of the Grand Sport Corvette between the Estate and Daniel Jr., though the Court concludes that Daniel Jr. has contributed more than half of the value of the Grand Sport Corvette.

12. Therefore, the Court will deny Petitioner's claims for return of the Grand Sport Corvette and unjust enrichment against Daniel Jr.

VERDICT

AND NOW, for the foregoing reasons, the Court finds that Decedent owned the Shelby Cobra 427, Shelby Cobra 289 FIA, and Shelby Daytona Coupe at the time of his death, and therefore they are Estate assets. Therefore, the Court finds for Petitioner on her motion for return of property against Respondent Joel Lipperini Counsel for Respondent Joel Lipperini shall arrange for the return of the three Shelby vehicles to the Estate within thirty (30) days of the date of this Opinion and Verdict. Because of this determination, Petitioner's claim under the UTVA and for unjust enrichment are moot.

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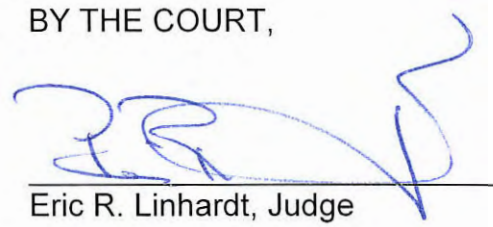
[35] Decedent's apparent belief that he had authority to sell the Grand Sport Corvette to Reno Rivalta does not undermine this conclusion, but merely means that Daniel Jr. would have been entitled to some portion of the profits from the sale.

The Court finds that Daniel Lipperini, Jr. owns the Grand Sport Corvette and is entitled to retain it. Therefore, the Court finds in favor of Respondent Daniel Lipperini, Jr. on all claims against him.

IT IS SO ORDERED this 30th day of December 2022.

BY THE COURT,



Eric R. Linhardt, Judge

ERL/jcr
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