

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANDREW G. TERZES and PATRICIA	§
F. TERZES,	§ No. 568, 2011
	§
Plaintiffs Below,	§
Appellants/Cross-Appellees,	§
	§ Court Below—Court of Chancery
v.	§ of the State of Delaware
	§ C.A. No. 6781
KATHRYN T. BONSALL,	§
	§
Defendant Below,	§
Appellee/Cross-Appellant.	§

Submitted: April 20, 2012

Decided: June 18, 2012

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 18th day of June 2012, upon consideration of the parties' briefs and the record on appeal, it appears to the Court that:

(1) This is an appeal and cross-appeal following a post-trial judgment of the Court of Chancery entered October 10, 2011. The plaintiffs below, Andrew and Patricia Terzes, filed their complaint seeking money damages of approximately \$350,000, as well as a declaration that they held an equitable lien on the defendant's home and a constructive lien on the proceeds from a sale of the home. The Court of Chancery entered judgment in the plaintiffs' favor in the

amount of \$200,105.39 plus interest but denied their request for an equitable lien or constructive trust.

(2) The record reflects that the defendant, Kathryn Bonsall, is the only child of the plaintiffs. Over the course of a four-and-a-half year period, the Terzes issued checks to Bonsall totaling more than \$350,000. At the time the payments began, Bonsall was experiencing financial difficulties associated with the birth of her only child, her job loss, and her divorce. By the beginning of 2007, the Terzes has issued checks directly to Bonsall totaling about \$25,000. Then, in April 2007, Mr. Terzes sat down with his daughter to discuss her financial situation, which revealed that Bonsall was approximately \$100,000 in debt, not including the first mortgage on her home. The Terzes gave Bonsall three checks to pay off an auto loan, a home equity loan, and a credit card bill, which would eliminate Bonsall's \$100,000 debt.

(3) In January 2010, Mr. Terzes again sat down with his daughter to discuss her financial situation after it became apparent that Bonsall was having difficulty paying her mortgage. The Court of Chancery found that the parties discussed paying off Bonsall's \$200,105 mortgage by having the Terzes take a loan from their home equity line, which had a two percent lower interest rate. This approach would allow Bonsall the opportunity to refinance her debt-free property in order to pay back her parents. Shortly after the Terzes paid off Bonsall's

mortgage, they gave Bonsall another check worth about \$33,000 in order to pay off a credit card.

(4) At the conclusion of the trial, the Court of Chancery issued its findings of fact and rulings of law. The trial court concluded that, because the monetary transfers were from parents to their child, there was a legal presumption that the transfers were gifts. In order to overcome the presumption of a gift, the burden was on the Terzes to establish by clear and convincing evidence that the transfers were not gifts but instead were loans to Bonsall, which were expected to be repaid. The trial court found clear and convincing evidence, based on the detailed level of discussions between the parties prior to the transaction, that the \$200,105 that the Terzes borrowed from their home equity line to pay off Bonsall's mortgage was intended to be an unsecured loan that Bonsall would repay with interest¹ once she refinanced her property and had the financial means to begin making payments. With respect to the other transactions, the trial court did not find clear and convincing evidence sufficient to overcome the presumption that the transactions were gifts from the Terzes to their only daughter. Both parties appeal from this ruling.

(5) In their opening brief on appeal, the Terzes' sole claim is that the Court of Chancery erred in applying the legal presumption of a gift and placing the

¹ The trial court found that the interest rate on Bonsall's loan was intended to be equal to the interest rate that the Terzes were paying on their home equity line.

burden on them to overcome the presumption by clear and convincing evidence. In her cross-appeal, Bonsall argues that the Court of Chancery erred in finding clear and convincing evidence that the \$200,105 transfer was not a gift. Bonsall disputes the trial court's factual findings that she knew her parents were borrowing the money from their own home equity line to pay off her mortgage and that her parents expected her to repay that amount with interest once she refinanced her own home.

(6) On appeal from a judgment following a nonjury trial, this Court's review is upon both the law and the facts.² The question of whether the legal presumption of a gift applies to these facts is a question of law that we review de novo.³ If the presumption applies, then we must review the entire record and test the propriety of the trial judge's factual findings to determine whether they are sufficiently supported by the record.⁴ We will not disturb a judge's discretionary factual findings if they are supported by the record. We will only make independent findings of fact if the trial court's findings are clearly wrong and justice requires their overturn.⁵

(7) After careful consideration of the parties' contentions, we find no merit to either appeal. The Court of Chancery was correct in applying the legal

² *Levitt v. Bouvier*, 287 A.2d 671, 673 (Del. 1972).

³ *Sheehan v. Oblates of St. Francis de Sales*, 15 A.3d 1247, 1256 (Del. 2011).

⁴ *Hudak v. Procek*, 806 A.2d 140, 149 (Del. 2002).

⁵ *Levitt v. Bouvier*, 287 A.2d at 673.

presumption of a gift under these circumstances.⁶ We find the Terzes' contention that the legal presumption of a gift only applies in circumstances when parents transfer money to a child to purchase land that is titled in the child's name to be unsupported by the law. A transfer of money or property from a parent to a child is presumed to be a gift.⁷

(8) Moreover, we find sufficient evidence in the record to support the Court of Chancery's factual finding that Bonsall knew that her parents were borrowing the \$200,105 to pay off her mortgage from their own home equity line and that they expected her to repay that amount with interest once she refinanced her home and was in a financial position to begin making payments to them. Accordingly, we find no error in the trial court's conclusion that the Terzes had overcome the presumption of a gift with respect to this transfer by clear and convincing evidence.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Court of Chancery is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

⁶ *Hudak v. Procek*, 806 A.2d at 146-47 (citing *Hudak v. Procek*, 727 A.2d 841, 843 (Del. 1999)).

⁷ See generally Charles C. Marvel, Annotation, *Unexplained Gratuitous Transfer of Property From One Relative to Another as Raising Presumption of Gift*, 94 A.L.R.3d 608, §3[a] (1979) (collecting cases).