

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

May 14, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-2204

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

MARIAN R. CROSSWHITE,

Plaintiff-Respondent,

v.

DEBORAH L. ZIVKO,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Milwaukee County: WILLIAM D. GARDNER, Judge. *Affirmed.*

Before Wedemeyer, P.J., Sullivan and Fine, JJ.

PER CURIAM. Deborah L. Zivko appeals from a judgment entered after a trial to the court, where the trial court ruled that Marian R. Crosswhite was entitled to judgment on her complaint. Zivko claims that Crosswhite's transfer of stock certificates into joint tenancy with Zivko was a completed gift and, therefore, Zivko is entitled to half of the proceeds of the stock. Because the trial court's findings of fact are not clearly erroneous, and

because the findings logically support the trial court's conclusion that Crosswhite's testimony rebutted the presumption that the transfer was made with donative intent, we affirm the judgment of the trial court.

I. BACKGROUND

Crosswhite is the mother of Zivko. In 1985, Crosswhite inherited certain stocks from her husband after he died. Crosswhite completed an Application for Distribution of Account of Deceased Participant to a Designated Beneficiary naming herself and her daughter, Zivko, as joint tenants, with right of survivorship. From 1985 through 1994, Crosswhite received dividend checks from the stock, which were made out to both Crosswhite and Zivko. Crosswhite signed both names in cashing the checks and never told Zivko about the existence of the checks or the fact that Zivko was named as a joint tenant.

In 1994, Zivko learned that Crosswhite was signing her name to checks and requested that Crosswhite refrain from doing so. Crosswhite enlisted the assistance of an attorney in order to transfer the stocks back to herself as sole owner. Zivko refused to sever the joint tenancy without compensation. As a result, Crosswhite initiated this lawsuit.

The case was tried to the court on June 1, 1995. Crosswhite testified that she did not intend for the stocks to be a present gift to Zivko, but that her intent was for Zivko to be the beneficiary of the stocks after Crosswhite died.

At the conclusion of the trial, the trial court made the following pertinent findings of fact: plaintiff did not notify defendant of the transfer of stock to joint tenancy; plaintiff did not physically transfer the stock or any of it to defendant; plaintiff never communicated to anyone her intent to make a gift of the stock to defendant; plaintiff did not place defendant's address or social security number upon the stocks; plaintiff did not notify defendant of the receipt of dividends; plaintiff retained the dividends for her own use; plaintiff reported the dividends as her personal income on her tax returns; plaintiff believed placing defendant's name on the stock as joint owner would give title

to defendant upon plaintiff's death; plaintiff transferred the stock to joint tenancy in her layperson attempt to do some estate planning; and, *plaintiff did not intend to make a present gift of the stock to defendant*. (Emphasis added). On the basis of these findings, the trial court concluded in pertinent part: that conversion of the stocks to joint tenancy created a presumption of donative intent; that said presumption of donative intent may be overcome by evidence that is clear, satisfactory and convincing; that the evidence in this case is clear, satisfactory and convincing that plaintiff evinced no donative intent regarding the stock in question; and, that no gift occurred with respect to the stock in question. Zivko now appeals.

II. DISCUSSION

In reviewing a trial court's findings of facts and conclusions of law, we will not set aside the findings of fact unless they are clearly erroneous, and we will give due regard to the trial court's opportunity to judge the credibility of the witnesses. Section 805.17(2), STATS. In reviewing the trial court's decision, we conclude that its findings of fact are not clearly erroneous and that the findings of fact reasonably support the trial court's conclusion that Crosswhite rebutted the presumption that the transfer was made with the intent to make a present gift of the stock to Zivko.

It is undisputed that when Crosswhite transferred the stocks into joint tenancy, a presumption was created that Crosswhite intended to make a present gift to Zivko. See *First Wisconsin Trust Co. v. United States*, 553 F. Supp. 26, 30 (E.D. Wis. 1982) (creation of joint tenancy presumptively evidences donative intent; however, this presumption can be rebutted by clear and convincing evidence that the donor intended to retain sole control over the transferred property). The issues before us are whether the trial court's findings of fact regarding Crosswhite's intentions are supported by the record, and whether the trial court's legal conclusion based on those findings, that Crosswhite sufficiently rebutted the presumption, was properly drawn.

In reviewing the record, we conclude that the trial court's finding that Crosswhite "did not intend to make a present gift of the stock" is supported by the record. The support for this finding is Crosswhite's testimony at trial, which the trial court found to be credible. Where the trial court acts as the

finder of fact, it is the ultimate arbiter of both the credibility of the witnesses, *Gehr v. City of Sheboygan*, 81 Wis.2d 117, 122, 260 N.W.2d 30, 33 (1977), and the weight to be given to each witness' testimony, *Milbauer v. Transport Employees' Mut. Benefit Soc'y*, 56 Wis.2d 860, 865, 203 N.W.2d 135, 138 (1973).

At trial, Crosswhite testified that she transferred the stock into joint tenancy because she wanted to make Zivko the beneficiary of the stock *after* Crosswhite died. Crosswhite's testimony also indicated that Crosswhite continued to act as sole owner of the stock in every way: she paid all the taxes on the stock; she retained all benefits of the stock; she did not even notify Zivko that she had transferred the stock into joint tenancy; and she never used Zivko's address or social security number. This testimony provides the necessary support in the record for the trial court's findings. The findings, therefore, are not clearly erroneous.

Based on its findings, the trial court concluded that Crosswhite's testimony provided the clear, satisfactory and convincing evidence required to rebut the presumption that the creation of the joint tenancy evidenced donative intent to make a present gift. We review the trial court's legal conclusion to determine whether the conclusion can be properly drawn from the findings of fact. We conclude that the above referenced findings of fact provide an adequate basis to support this conclusion and that this conclusion could be logically drawn from the trial court's findings of fact. Accordingly, we affirm the judgment.¹

By the Court. – Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

¹ We do not address Zivko's claims that Crosswhite committed fraudulent conduct in signing Zivko's name to the dividend checks. These claims were not sufficiently pursued or decided at the trial court level and, therefore, we decline to address them on appeal. *Wirth v. Ehly*, 93 Wis.2d 433, 443-44, 287 N.W.2d 140, 145-46 (1980)