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Purchase Money Resulting Trusts in West Virginia

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probably open to serious question; but be that as it may, the fact remains that it is not justified by the present state of our law. Doubtless business standards can be elevated by judicial decisions, but the process of elevation must be well considered, gradual, and not too far in advance of ordinary business customs. On the other hand, it is scarcely necessary to suggest that the *Williamson* case falls far short of the orthodox ethical standard for domestic relations. Consequently, the West Virginia law on the subject of fiduciary or confidential relations is in a decidedly unsatisfactory state.

—GEORGE W. MCQUAIN.

PURCHASE MONEY RESULTING TRUSTS IN WEST VIRGINIA. — Purchase money resulting trusts have been a very fertile field of litigation in West Virginia. Due to the very considerable number of cases decided, the West Virginia decisions mark out for this jurisdiction the applicability of most of the rules developed in this branch of the law. The decisions are for the most part in conformity with the weight of American authority. The circumstances under which this doctrine has been invoked and applied may be roughly divided into two classes; first, situations wherein the purchaser and grantee are strangers, and secondly, wherein they are related by blood or marriage.

Where, upon a purchase of property, the conveyance of the legal title is taken in the name of one person, while the consideration is given or paid by another, the parties being strangers to each other, a resulting trust arises by virtue of the transaction.¹ The party who pays the consideration becomes in law a *cestui que* trust while the party receiving legal title is trustee.² This rule is founded on the natural presumption that the person who furnishes the purchase money intends the purchase to be for his own benefit. This presumption is rebuttable by the grantee.³ The evidence must be clear and unequivocal.⁴ Mere admission made by the party holding legal title that he holds the property

¹ *Pumphrey v. Brown*, 5 W. Va. 107 (1872); *Despard v. Despard*, 53 W. Va. 443, 44 S. E. 448 (1903); *Smith v. Patton*, 12 W. Va. 541 (1878).

² *Pumphrey v. Brown*, *supra* n. 1.

³ *Logan, Walton, Adm'rs. v. Pritt*, 93 W. Va. 375, 116 S. E. 759 (1923).

⁴ *Cassaday v. Cassaday*, 74 W. Va. 53, 81 S. E. 829 (1914).

in trust is not enough.⁵ The claimant by resulting trust is not a competent witness to prove payment of the purchase money to or through a decedent who died seized of the property nor is his wife.⁶

The payment must have been made before or contemporaneously with the conveyance⁷ or the claimant become bound by valid contract at that time to pay the price.⁸ The grantee may show that the nominal purchaser advanced the money as a loan to him and conversely a party may show that the grantee advanced the price as a loan to him.⁹ No agreement to pay, or actual payment on, the price subsequent to the conveyance will raise the trust.¹⁰ The payment may be made in money or money's equivalent, as by trading land or other valuables for the property conveyed.¹¹

One claimant may pay only part of the price or several parties may jointly contribute to the price, in which case a beneficial interest results to each proportionate to the contribution made.¹² Some jurisdictions require the claimant to have paid an aliquot part of the price.¹³ West Virginia requires only that the amount paid be definitely established.¹⁴ The interest claimed by the *cestui* and the exact part of the whole price which he paid must be clearly established.¹⁵ The conveyance must not have been made for the purpose of defrauding creditors.¹⁶ Where the claimant has been tardy in asserting his interest and creditors of the grantee seek to subject the property to the grantee's debts the claimant is not estopped unless it was his duty to speak or

⁵ *Supra* n. 4.

⁶ *Hummel v. Marshall*, 95 W. Va. 42, 120 S. E. 164 (1923).

⁷ *Moore v. Mustoe*, 47 W. Va. 549, 35 S. E. 871 (1900).

⁸ *Moss v. Moss*, 88 W. Va. 135, 106 S. E. 429 (1921); *Cleavenger v. Felton*, 46 W. Va. 249, 33 S. E. 117 (1899).

⁹ *Raines v. Raines*, 96 W. Va. 65, 122 S. E. 437 (1924); *Harris v. Elliott*, 45 W. Va. 245, 32 S. E. 176 (1898).

¹⁰ *Tichnell v. Tichnell*, 74 W. Va. 237, 81 S. E. 978 (1914); *Bright v. Knight*, 35 W. Va. 41, 13 S. E. 63 (1891); *Smith v. Turley*, 32 W. Va. 14, 9 S. E. 46 (1889).

¹¹ *Seiler v. Mohn*, 37 W. Va. 507, 16 S. E. 496 (1892).

¹² *Murry v. Sell*, 23 W. Va. 475 (1884); *Weinrich v. Wolf*, 24 W. Va. 299 (1884); *Heiskell v. Powell*, 23 W. Va. 717 (1884).

¹³ *Scott, Resulting Trusts Arising Upon the Purchase of Land* (1927) 40 HARV. L. REV. 669.

¹⁴ *Currence v. Ward*, 43 W. Va. 367, 27 S. E. 329 (1897).

¹⁵ *Shaffer v. Fetty*, 30 W. Va. 248, 4 S. E. 278 (1887). A bill is demurrable that does not state what part of the entire purchase money was paid by the purchaser claiming a resulting trust. *Watts Brothers & Co. v. Frith*, 79 W. Va. 89, 91 S. E. 402 (1916).

¹⁶ *McClintock v. Loisseau*, 31 W. Va. 865, 8 S. E. 612 (1888).

act and he has by his silence, false statement, or refusal to act intentionally misled the creditor to his detriment.¹⁷

Where one person stands in such relation to another that there is an obligation, moral or legal, to provide for the other, a purchase or conveyance in the name of the latter party will be presumed to be made in discharge of that duty, as for example, where the purchaser stands *in loco parentis* to the grantee.¹⁸ A gift and not a resulting trust is the presumption in such case. Thus where the person to whom title is made is child or wife of the purchaser there is no presumption of resulting trust but to the contrary a gift is presumed.¹⁹ This rule has been extended to include grandchildren where the parents are dead, the mother of the purchaser, nephews, nieces and adopted children.²⁰ Some cases have extended this rule to include gifts to a son or daughter over twenty-one years of age,²¹ thus transcending the obligation to support as the basis for the presumption.

In *Boyd v. Boyd*,²² the most recent case in this field, title was made to a husband and wife by entirety. It is not clear what amount each contributed to the price. It was shown that the wife contributed at least part of the price in money saved by her, from funds furnished her by the husband for household expenses. The husband later conveyed his title to his wife. Subsequently the wife sold the property and deposited the money to her separate account in a bank. She then drew out this money and bought the property in controversy, taking title in her name only. The husband claimed a resulting trust. The court decreed an equal division of the property. The case may be correct on the ultimate facts, but it is difficult to square the decision on the facts contained in the opinion. The amount contributed by each is uncertain. If they each had a half interest in the first property the conveyance by the husband to the wife would constitute a transfer of his half and leave her the full owner.

As to all of the rules stated thus far, the West Virginia decisions, with the possible exception of *Boyd v. Boyd*,²³ are in com-

¹⁷ *Mayer v. Johnson*, 101 W. Va. 522, 133 S. E. 154 (1926).

¹⁸ See collection of cases in note (1923) 26 A. L. R. 1106, 1126.

¹⁹ *Hamilton v. Steele*, 22 W. Va. 348 (1883); *Deek v. Tabler*, 41 W. Va. 332, 23 S. E. 721 (1895); *Lockhard & Ireland v. Beckley et al.*, 10 W. Va. 87 (1877); *Ludwick v. Johnson*, 69 W. Va. 499, 68 S. E. 117 (1910).

²⁰ *Supra* n. 13.

²¹ *Supra* n. 13.

²² 109 W. Va. 766, 155 S. E. 303 (1930).

²³ *Supra* n. 22.

plete conformity with the vast majority in both England and the United States. Variations exist, however, in the situation where a wife pays the purchase price and title is taken in the husband's name. That transaction is held in the majority of jurisdictions to raise a resulting trust in favor of the wife.²⁴ A wife is under no legal obligation to provide for her husband and hence that major reason for presuming a gift is not involved. This presumption of a trust rather than a gift, moreover, is based on common experience. The wife may have many reasons for causing title to be placed in her husband, for example, his more convenient management of her separate estate. Whether in fact experience authorizes the presumption has not been supported by data.

The cases in which the wife was purchaser and the husband grantee, are dealt with in chronological order to show the varying view of the court.

In *McGinnis v. Curry*²⁵ the wife gave the husband money with which the husband bought land in Missouri taking title in himself. Later the husband sold the Missouri land and with the proceeds bought land in West Virginia, again taking title in himself. The husband became involved and deeded this property to the wife. In a creditor's bill to levy upon the land it was held that the property belonged to the husband. The court said there was a presumption of a gift from the wife to the husband. In this case the wife with full knowledge of the facts had made no claim to the property before the conveyance to her.

In *Berry v. Weidman*²⁶ the husband used the wife's money to purchase property, title to which he caused to be conveyed to himself. The court held that unless it was shown that the wife intended to make a gift of the money to her husband or to lend it to him a resulting trust arose. Mere lapse of time was held not sufficient to establish the transaction as a gift. In this case the wife had treated the property as her own and had made valuable improvements upon it.

In *Skaggs v. Mann*²⁷ it was held, where a husband purchased property with the wife's money and took title in his own name, that a resulting trust arose in her favor in the absence of a clear showing that she intended a gift. Again in *Standard Mercantile Co. v. Ellis*²⁸ it was held, where the husband purchased property

²⁴ *Supra* n. 13.

²⁵ 13 W. Va. 29 (1878).

²⁶ 40 W. Va. 36, 20 S. E. 817 (1894).

²⁷ 46 W. Va. 209, 33 S. E. 110 (1899).

²⁸ 48 W. Va. 309, 37 S. E. 593 (1900).

with the wife's money and without her knowledge or consent took title in his own name, that a resulting trust arose. The wife was not estopped from setting up such trust by permitting the legal title to remain in her husband's name unless credit was knowingly extended to the husband on the strength of his apparent ownership. It would seem that the clear result of the decisions in these cases is that a prima facie presumption exists that the wife intended a purchase made with her money to be for her benefit, and that this presumption raises a resulting trust which can be rebutted by showing that the wife intended to make a gift to her husband.

In *Pickens v. Wood*²⁰ the wife furnished part of the purchase money and the husband alone took title. The court held that there was a prima facie presumption of a gift to the husband. Again in *Whitten v. Whitten*²¹ the holding was that money of the wife invested in land in the husband's name is presumptively a gift, and that in the absence of facts and circumstances rebutting the presumption such as violation of a prior or contemporaneous agreement to take title in the wife's name, ignorance of its having been taken in the husband's name, subsequent expenditure of the wife's money in improvements thereon, an effort on her part to obtain title after discovery of its condition, control of the property as her own against the husband, or the like, there is no resulting trust in her favor.

In *Hummel v. Marshall*²², although the court distinguished that case from *Whitten v. Whitten*²³, its decision shows a marked tendency against the presumption of a gift in such circumstances. The court said, "we think a rule that permits a wife to overcome this presumption of gift with but slight evidence best comports with justice. This conclusion is strengthened when it is considered that in a great majority of jurisdictions in this country there is no presumption at all of a gift where the wife's money is used by the husband to purchase property the title to which he takes in his own name." The presumption was rebutted in this case by showing that the wife did not know title had been taken in the husband's name and that the husband had told others that the property belonged to the wife. Subsequent to this decision the court held in *Eagle v. McKown*²⁴ that a trust resulted to the wife where

²⁰ 57 W. Va. 480, 50 S. E. 518 (1905).

²¹ 70 W. Va. 422, 74 S. E. 237 (1912).

²² 101 W. Va. 639, 133 S. E. 361 (1926).

²³ *Supra* n. 30.

²⁴ 105 W. Va. 270, 142 S. E. 65 (1928).

property was bought with her money and title was by mistake made to her and her husband jointly, and she accepted the deed on the express agreement that the husband convey to her. It seems that there still exists in the West Virginia decisions the theory of a presumptive gift where the wife pays for land conveyed to the husband, but that it is a very weak presumption, and rebuttable by the introduction of slight evidence of circumstances showing a contrary intent.

West Virginia has held that where the price is paid by one and title is taken in the name of a stranger under an express parol agreement to hold in trust for the purchaser's daughter a complete gift is consummated and the grantee holds the property in trust for the daughter.⁵⁴ It is axiomatic that to effect a valid gift of personal property there must be a delivery to the donee. In this case the purchase money was not delivered by the father to the daughter but to the vendor and then not in trust for the daughter but in payment for the land. There could have been no resulting trust for the daughter but a valid express trust was doubtless created since the transaction was in substance the same as if the vendor had first conveyed to the purchaser and he in turn to the trustee. This decision was prior to the Revised Code of 1931 in which it is declared in substance that any parol trust attached to a conveyance of land is valid.⁵⁵ The former ruling that parol trusts of land for the benefit of third parties but not of the grantor were valid is now supplanted by statute providing it is thought that this statute is applicable only to cases in which there has been an express parol trust.

From the above decisions, it is apparent that the question of intent of the parties is of controlling significance. When the parties are strangers equity is also influenced by the desire to prevent unjust enrichment or a breach of a confidential or fiduciary relationship. It is where the parties are related that the dominance of intent is most apparent, — the whole question very largely is whether there was an express oral trust or a gift. But for the existence of the liberal statute in West Virginia as to creation of trusts by parol, it might be difficult to square these cases to the policy underlying statutes of frauds.⁵⁶

—DONALD F. BLACK.

⁵⁴ *Hardman v. Orr*, 5 W. Va. 71 (1871).

⁵⁵ W. VA. REV. CODE (1931) c. 36, art. 1, § 4.

⁵⁶ See *Scott, op. cit. supra* n. 13, at 671, 672.