IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE ESTATE OF JESSE M. CRENSHAW. JOANNE BUTTON CRENSHAW, Appellant, vs. GERALD CRENSHAW, Respondent.	No. 43074
IN THE MATTER OF THE ESTATE OF JESSE M. CRENSHAW. JOANNE BUTTON CRENSHAW, Appellant, vs. GERALD CRENSHAW, Respondent.	No. 43330
IN THE MATTER OF THE ESTATE OF JESSE M. CRENSHAW. BRENT CONRAD, INDIVIDUALLY, AND AS PERSONAL REPRESENTATIVE OF THE ESTATE AND TRUST OF JESSE M. CRENSHAW, Appellant, vs. JOANNE BUTTON CRENSHAW, Respondent.	No. 43339

FILED

MAY 17 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

These are consolidated appeals from district court orders granting summary judgment, awarding attorney fees and costs, and interpreting the terms of a will and an inter vivos trust. Eighth Judicial District Court, Clark County; Michael A. Cherry, Judge. We conclude that

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district court erred when it granted summary judgment to appellant/respondent Joanne Button Crenshaw because genuine issues of material fact remain as to whether a joint preliminary injunction granted in a divorce proceeding invalidated a November 2, 2001, amendment to decedent Jesse M. Crenshaw's revocable inter vivos trust. We further conclude that the district court erred when it ordered a homestead under NRS 146.050 from the assets of Jesse's trust. We also conclude that the district court properly granted summary judgment to Gerald Crenshaw. However, we conclude that the district court abused its discretion when it awarded attorney fees to Gerald.

Docket No. 43339: The district court improperly granted summary judgment in Joanne's favor

Joanne conveyed her interest in the Cabin Springs house on September 15, 2000, by grant, bargain, and sale deed to Jesse Crenshaw, as trustee of his inter vivos trust. However, there is a genuine issue of material fact as to whether the house became Jesse's sole and separate property by gift or whether Joanne executed the deed with the belief that she retained a community interest.[1]

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[1]We review a district court's grant of summary judgment de novo, without deference to the findings of the lower court. GES, Inc. v. Corbitt, 117 Nev. 265, 268, 21 P.3d 11, 13 (2001). Summary judgment is appropriate when the pleadings and other evidence on file demonstrate that "no genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law." NRCP 56(c); see Wood v. Safeway, Inc., 121 Nev. ____, ____, 121 P.3d 1026, 1031 (2005) (abandoning the "slightest doubt" standard of summary judgment and clarifying that "[s]ummary judgment is appropriate under NRCP 56 when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law"). "[W]hen reviewing a motion for summary

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All property acquired by a spouse after marriage is presumed to be community property.[2] The spouse claiming that the property is separate property bears the burden of rebutting the community property presumption by "'clear and certain proof.'"[3] However, "a [spouse] may convey all his [or her] interest in community property to [the other spouse] either for a valuable consideration, or by way of gift."[4] "[A] spouse to spouse conveyance of title to real property creates a presumption of gift that can only be overcome by clear and convincing evidence."[5] Property acquired by gift during a marriage is the donee spouse's separate property.[6]

. . . *continued*
judgment, the evidence, and any reasonable inferences drawn from it, must be viewed in a light most favorable to the nonmoving party." Wood, 121 Nev. at ____, 121 P.3d at 1029.

[2]NRS 123.220. Joanne and the decedent did not file under NRS 115.020 a declaration of homestead on the Cabin Springs house.

[3]Breliant v. Preferred Equities Corp., 112 Nev. 663, 670, 918 P.2d 314, 318 (1996) (quoting Burdick v. Pope, 90 Nev. 28, 29, 518 P.2d 146, 146-47 (1974)). Under NRS 47.250(2), we presume that Joanne intended the ordinary consequences of her voluntary acts. Thus, she should have been required to present evidence at trial to rebut the presumption that she did not intend to convey her community interest in the Cabin Springs house, an ordinary consequence of a conveyance of an interest in real property by grant, bargain, and sale deed or quitclaim deed. See Sack v. Tomlin, 110 Nev. 204, 213, 871 P.2d 298, 304-05 (1994) (presumption rebutted where purported grantor presents evidence that she did not intend to make a gift of accumulated equity in home held in co-tenancy).

[4]Petition of Fuller, 63 Nev. 26, 36, 159 P.2d 579, 583 (1945).

[5]Kerley v. Kerley, 112 Nev. 36, 37, 910 P.2d 279, 280 (1996).

[6]NRS 123.130.

The joint preliminary injunction issued in Joanne's 2001 divorce proceeding against Jesse prohibited the spouses from "[t]ransferring, encumbering, concealing, selling or otherwise disposing of any of the joint, common or community property . . . or any property which is the subject of a claim of community interest." In invalidating the November 2, 2001, trust amendment at Joanne's request, the district court did not make findings as to the character of property contained in the corpus of the trust at the time of the joint preliminary injunction.

Finally, the district court erred when it allocated a homestead from the trust corpus. Joanne contends she is entitled to a homestead as a surviving spouse. However, the trust corpus is not part of the probate estate and is not subject to a homestead claim under NRS 146.050. Therefore, we reverse the order granting summary judgment as to these issues.

Docket Nos. 43074 and 43330: The district court properly granted Gerald's motion for summary judgment but abused its discretion in awarding attorney fees and costs

We disagree with Joanne's contention that the district court improperly granted Gerald's motion for summary judgment as to her claim that Gerald secured the November 2, 2001, trust amendment through undue influence, thereby dismissing him from the civil complaint.

The donor's mental capacity is an "important element in raising a presumption of undue influence . . . . Indeed, where the alleged donor lacks such mental vigor as to enable him to protect himself against imposition, the burden of proof shifts to the alleged donee to prove . . . that the gift was freely and voluntarily made by the donor."[7]

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[7]Ross v. Giacomo, 97 Nev. 550, 557, 635 P.2d 298, 302 (1981).

Joanne provided no factual support for her complaint that was sufficient to raise a genuine issue of material fact as to Jesse's mental capacity at the time he executed the fourth trust amendment or as to Gerald's opportunity to influence Jesse's decisions. Accordingly, we conclude that no genuine issue of material fact remains as to whether Gerald secured his beneficial interest in Jesse's trust through undue influence.

However, we conclude that the district court abused its discretion when it awarded Gerald attorney fees.[8] The order of the district court did not set forth the legal basis for the award.[9] If the district court awarded fees and costs under NRS 18.010(2)(b), it must so specify and set forth the basis of the amount. If it awarded fees based upon an offer of

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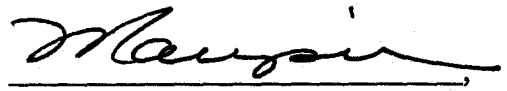
[8]We review the district court's award of attorney fees and costs for an abuse of discretion. U.S. Design & Constr. v. I.B.E.W. Local 357, 118 Nev. 458, 462, 50 P.3d 170, 173 (2002).

[9]City of Las Vegas v. Cragin Industries, 86 Nev. 933, 940-41, 478 P.2d 585, 590 (1970), disapproved of on other grounds in Sandy Valley Assocs. v. Sky Ranch Estates, 117 Nev. 948, 955 n.6, 35 P.3d 964, 968-69 n.6 (2001).

judgment, it must analyze the factors it considered as the basis of the award and the amount.[10] Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter for further proceedings consistent with this order.



_____, J.
Maupin

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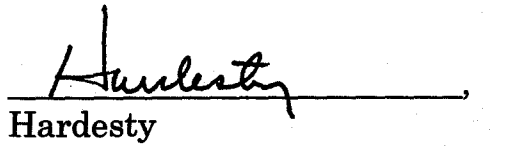
Gibbons



_____, J.
Hardesty

cc: Hon. Michael A. Cherry, District Judge
Bolick & Boyer
Michael A. Olsen
Cary Colt Payne
Clark County Clerk

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[10]Beattie v. Thomas, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983).