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HUSBAND'S ACQUISITION OF TITLE WITH FUNDS FURNISHED BY WIFE: RESULTING TRUST OR PRESUMPTION OF GIFT

The acquisition of title to property[1] by a husband, utilizing funds supplied[2] by his wife, is generally held to create a resulting trust in the wife's favor. This result is illogical when viewed in light of two presently existing presumptions. Generally a resulting trust is declared in favor of the person paying the purchase price of property transferred to another unless there is evidence that the payor intended that no resulting trust should arise.[3] However, whenever the transferee is a wife, child or other natural object of the bounty of the payor of the purchase price, a resulting trust does not arise unless the transferor manifests an intention that such transferee should not have any beneficial interest.[4] It would seem logical that, assuming a husband is a natural object of a wife's bounty, a gift should be presumed unless the wife manifests a contrary intention. Nevertheless, while agreement is clearly lacking, the general rule is stated to the contrary: in the absence of any contrary manifested intention by the wife-payor, a trust results in the wife's favor.[5]

1. Since the material discussed does not distinguish the difference, the doctrine applies alike to personalty as well as to realty. Bacon v. Grosse, 165 Cal. 481, 132 P. 1027 (1913) (stocks and bonds); Barker v. Montana Gold Min. Co., 35 Mont. 351, 89 P. 66 (1907) (stock); Monahan v. Monahan, 77 Vt. 133, 59 A. 169 (1904) (deposit in bank); 4 J. POMEROY, POMEROY'S EQUITY JURISPRUDENCE § 1038 (5th ed. 1941).

2. To raise the resulting trust, the funds must be provided or the obligation assumed prior to or at the time of purchase. Subsequent payment or assumption will not be sufficient to raise the resulting trust in the payor's favor. Curielli v. Curielli, 388 Ill. 215, 57 N.E.2d 879 (1944); Moat v. Moat, 301 Mass. 469, 17 N.E.2d 710 (1938); Peel v. Peel, 303 Pa. 397, 154 A. 813 (1913); Rehm v. Rehm, 32 Pa. D. & C. 193 (C.P. Phila. 1938); 5 A. SCOTT, SCOTT ON TRUSTS § 457 (3d ed. 1967).

3. G. BOGERT, TRUST AND TRUSTEES, § 454 (2d ed. 1964); 4 J. POMEROY, POMEROY'S EQUITY JURISPRUDENCE, § 1037 (5th ed. 1941); 4 R. POWELL, REAL PROPERTY ¶ 592 (1968); RESTATEMENT (SECOND) OF TRUSTS § 404 (1959).

4. RESTATEMENT (SECOND) OF TRUSTS, § 442-43 (1959).

5. Keaton v. Pipkins, 43 F.2d 497 (10th Cir. 1930); Thornton v. Rodgers, 251 Ala. 553, 38 So. 2d 479 (1949); Gilbert v. Gilbert, 180 Ark. 596, 22 S.W.2d 32 (1929); Zeller v. Knapp, 135 Cal. App. 122, 26 P.2d 704 (1933); Williams v. Williams, 147 Fla. 419, 2 So.2 d 725 (1941); Crawford v. Hurst, 299 Ill. 503, 132 N.E. 521 (1921); Sheffield Mining Co. v. Hertzman, 192 Iowa 1288, 184 N.W. 631 (1922); Glover v. Waltham Laundry Co., 235 Mass. 330, 127 N.E. 420 (1920); Ryals v. Douglas, 205 Miss. 695, 39 So. 2d 311 (1949); *In re* Yasilonis' Estate, 204 Misc. 755, 125 N.Y.S.2d 363 (Sur. Ct. 1953); Kelly Springfield Tire Co. v. Lester, 190 N.C. 411, 130 S.E. 45

These presumptions function as a dual edged sword in the wife's hands. Whenever the wife furnishes the consideration and the spouse takes title, assuming no contrary manifested intention, she obtains the benefit of the presumption of a resulting trust (wife-payor-trust); moreover, when the husband furnishes the consideration, and the spouse takes title, she obtains the additional benefit of a presumption of a gift in her favor (husband-payor-gift). The trite general rule applies: "heads she wins, tails he loses." The dichotomy created by these contrary presumptions presents collateral issues concerning both the logic and effect of these presumptions. This Comment will evaluate the present resulting trust-presumption of a gift dichotomy on the basis of these collateral issues and suggest reliance on a rule which not only would add symmetry and logic to the law but also reduce inequitable effects of the present general rule when third parties are involved.

BACKGROUND

Generally, payment of purchase money by one not taking title gives rise to a resulting trust in favor of the payor or the one who furnishes the consideration in absence of a contrary intention manifested by him.[6] Courts of equity infer that the transferee is to hold naked legal title and not any beneficial interest.[7] The principle establishing this inference is clear. Since a person does not normally extend gifts to strangers, the transfer of funds to such a stranger permits the inference to be drawn that the transferor did not intend to transfer any beneficial interest. This inference of a retained beneficial interest is what causes the trust to result back to the payor. Intention is an integral part of a resulting trust, and an inference of this intention arises from the mere transfer to the stranger.[8] Therefore, the power of equity will act to protect the interest of the person from whom the consideration comes, or who represents or is identified in right with the consideration when the purpose of the conveyance has been frustrated.[9]

(1925); Rhodes v. Peery, 142 Ore. 165, 19 P.2d 418 (1933); Hofteizer v. Prange, 45 S.D. 228, 186 N.W. 963 (1922); Peman v. Blount, 264 S.W. 169 (Tex. Civ. App. 1924); *cf.* Schwarz v. United States, 191 F.2d 618 (4th Cir. 1951) (where wife paid for land and title was taken in both names, there was a resulting trust in her favor for the entire property); Light v. Zeller, 144 Pa. 570, 22 A. 1029 (1891) (held a resulting trust existed but the value of the holding may be distinguished since there was an obvious agreement between the husband and wife).

6. *See* authority cited note 3 *supra.*

7. 4 J. POMEROY, POMEROY'S EQUITY JURISPRUDENCE § 1037 (5th ed. 1941).

8. *Cf.* 4 J. POMEROY, POMEROY'S EQUITY JURISPRUDENCE § 1031 n.5 (5th ed. 1941) (constructive trust is imposed not because of intention of parties but because person holding title to property would profit by a wrong or would be unjustly enriched); 5 A. SCOTT, SCOTT ON TRUSTS § 404.2 (3d ed. 1967) (the constructive trust arises without any obvious intention to create a trust such as when a transferee derives property through fraud, duress, or undue influence).

9. The underlying principle to all implied trusts is consideration

Conversely, one is presumed to make gifts to those who are the objects of his natural bounty or are entitled to support. While the wife or child do not generally have a duty to support at common law, there have been gradual statutory inroads establishing a limited duty to support.[10] The duty of support imposed upon a wife or child may not rise to the same degree but it would seem that the husband is no less the object of their natural bounty,[11] as they are his. This alone should be enough to support the presumption of a gift.

A More Logical View

Before alternatives can be suggested, assessment of both the reasoning and the circumstances behind the present presumptions is imperative. As Professor Scott so aptly phrases the query:

> What, then is the guiding principle which is applied by the courts in determining what relationships raise an inference of an intention by the payor to make a gift, and what relationships raise an inference of an intention to make the grantee a trustee for the payor?[12]

Some courts premise their presumption of a gift on the payor's duty to support.[13] The rule, clearly enunciated by these courts, is that where a man pays for property and it is conveyed to his wife or child, the presumption arises that the transfer was intended to be a gift or advancement.[14] The dominant reason assigned for the adoption of the rule was that there is a legal obligation resting upon the father to support such wife or child.[15] Conversely, however, when the wife furnishes the purchase money and the deed is taken in the husband's name the rule has not been favored.[16] This

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and the equitable doctrine concerning it. In short, consideration draws to it the equitable right to the property. *See* 3 J. Pomeroy, Pomeroy's Equity Jurisprudence § 981 (5th ed. 1941).

10. Mont. Rev. Codes Ann. § 36-101 (1961); N.J. Stat. Ann. § 44:1-140 (Supp. 1969); N.Y. Gen. Obligations Law § 5-311 (McKinney 1964); Pa. Stat. Ann. tit. 62, § 1973 (1968). The majority of statutes provide that the wife or other relative is liable to support the spouse in order to prevent him from becoming a public charge.

11. For a discussion of principles of "natural bounty" theory, see note 23 *infra.*

12. 4 A. Scott, Scott on Trusts, § 442 (2d ed. 1956).

13. Hill v. Hopkins, 198 Ark. 1049, 133 S.W.2d 634 (1940); Lutyens v. Aldrich, 308 Ill. 11, 139 N.E. 50 (1923); Crawford v. Hurst, 299 Ill. 503, 132 N.E. 521 (1921); Wright v. Wright, 242 Ill. 71, 89 N.E. 789 (1909); Rhodes v. Peery, 142 Ore. 165, 19 P.2d 418 (1933).

14. *E.g.*, Lutyens v. Aldrich, 308 Ill. 11, 13, 139 N.E. 50, 52 (1923); Rhodes v. Peery, 142 Ore. 165, 168, 19 P.2d 418, 421 (1933).

15. Cases cited note 14 *supra.*

16. Cases cited note 5 *supra.*

rule seems natural, if there is never a support duty imposed upon wife or child, but considering that there are statutory inroads upon this situation and that there are occasions when the husband no longer has a duty to support, it proves to be an over-generalization.[17]

The Montana Supreme Court in *Bingham v. National Bank*,[18] critized the "support theory," by-passed the distinguishing characteristics of support, and stated that, while the wife has no absolute duty to support, in certain instances she is bound to contribute to support the husband or family. While the mutual duty to support has shifted nearer, the distinctions in duty owed cannot alone justify the rejection of the theory. However, if the support theory is sound, it would seem to follow that whenever a parent provides the consideration and an adult child takes title, a gift would not be presumed because there is no longer a duty to support. Unfortunately, this has not been the case and a gift has been presumed where the parent provides consideration for such an emancipated child.[19] To presume a gift, in the absence of such duty, seems to indicate that perhaps, the "support theory" is not the guiding principle, needless to say the proper one.

Holding that the evidence sustained the finding that there was a resulting trust, the Supreme Court of New Jersey in *Weisberg v. Koprowski*[20] discussed all theories: (1) support, (2) closeness of relation, and (3) natural bounty. Finding that the "support theory" could not be the principle on which courts have relied, the New Jersey court stated that the inference of a gift is not to be determined by any legal obligation to furnish support.[21] Without discussion, the court dismissed "closeness of relation"[22] as being the underlying principle and suggested that the modern view of "natural bounty"[23] would be more satisfactory.

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17. *Compare* Huffman v. Huffman, 311 Pa. 123, 166 A. 570 (1933) (husband legally obligated to support his wife); Commonwealth *ex rel.* Shaffer v. Shaffer, 175 Pa. Super. 100, 103 A.2d 430 (1954) (obligation arises from the marital status imposed by law) *with* authorities cited note 10 *supra*. *See also* cases cited note 19 *infra*.

18. 105 Mont. 159, 72 P.2d 90 (1937); *see* authority cited note 10 *supra*.

19. *E.g.*, First National Bank v. Honstein, 144 Colo. 176, 355 P.2d 535 (1960); Moore v. Moore, 9 Ill. 2d 556, 138 N.E.2d 562 (1956); *In re* King's Estate, 49 Wyo. 453, 57 P.2d 675 (1936).

20. 17 N.J. 362, 111 A.2d 481 (1955).

21. *Id.* at 368, 111 A.2d at 486; 5 A. SCOTT, SCOTT ON TRUSTS, § 442 (3d ed. 1967).

22. Simply stated the theory would presume a gift when the transferee was within a certain delineated group of the family. While it would be arbitrary in application, questions as to who is a member of the family could lead to incongruities in the development.

23. The "natural object of bounty" theory seems to be resorted to when avenues for presumption of a gift on other theories are closed. *See* Weisberg v. Koprowski, 17 N.J. 362, 111 A.2d 481 (1955) (since adult child did not have general duty to support the mother, court suggested that, were it not for other evidence, the relationship between the married son and aged mother was such as to infer a gift as a natural object of his

The "closeness of relation" theory, as a basis for the existing rule, also seems to result in less than salutary ends. The difficulty in developing this arbitrary theory is evidenced by the following reflection on the alterations of family roles:

> The earlier decisions in England were based upon a social system which has been tending to disappear. . . . [T]he central figure was the husband and father . . . surrounded by dependent wife and children. . . . It was natural for him to make gifts to his wife and children, but quite unnatural to expect . . . gifts to him.[24]

Since the wife could not make gifts until the creation of woman's separate estate, the duty was not incumbent upon her to provide for her children.[25] Woman's new function in society, enhanced by her capability of holding and transferring all property whether real or personal, makes the distinction tenuous today.[26]

In *Bingham v. National Bank*,[27] the court noted that in most instances the wife-payor-trust rule had been adopted prior to the "Married Women's Acts"[28] and criticized the "closeness of relation" theory underlying the rule as well as the rule itself. The former formidable reasons—her inferior economic status, and inability in taking, holding and managing property—valid prior to the enactment of her new rights, are no longer persuasive.[29] More recently, in *Fergusen v. Stokes*[30] the Missouri Supreme Court stated the wife-payor-trust and the husband-payor-gift are rendered purely arbitrary contrary presumptions with the passage of the Married

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bounty). The theory places the burden on the transferee desiring the presumption of a gift to show by certain evidence that he is a natural object of bounty; the presumption does not arise arbitrarily.

24. 5 A. SCOTT, SCOTT ON TRUSTS § 442 (3d ed. 1967).

25. *Id.*

26. *E.g.*, COLO. REV. STAT. ANN. § 90-2-1 et seq. (1964); ILL. ANN. STAT. ch. 68, § 1 et seq. (Smith-Hurd 1959); N.J. STAT. ANN. § 37:2-12, 2-16 (1968); N.Y. GEN. OBLIGATIONS § 3-301 (McKinney 1964); PA. STAT. ANN. tit. 48, § 32.1 (1965) (generally the wife is given the same power and rights as husband in relation to property).

27. 105 Mont. 159, 72 P.2d 90 (1937).

28. The Acts basically provide that:

> Hereafter, a married woman shall have the same right and power as a married man to acquire, own, possess, control, use, convey, lease or mortgage any property of any kind, real, personal, or mixed, either in possession or in expectancy, or to make any contract in writing or otherwise, and may exercise the same right and power in the same manner and to the same extent as a married man.

PA. STAT. ANN. tit. 48, § 32.1 (1965).

29. Bingham v. National Bank, 105 Mont. 159, 72 P.2d 90 (1937); G. BOGERT & G. BOGERT, BOGERT ON TRUSTS & TRUSTEES, § 460 (2d ed. 1964). *See* 24 COL. L.R. 325; 37 HARV. L. REV. 921.

30. 269 S.W.2d 655 (Mo. 1954).

Women's Acts and the present position of married women in all financial, business, and professional areas.

It appears that the "support theory" is not factually correct and that the "closeness of relationship" theory is based upon an inferior female status which no longer exists in the United States. To advocate a rule providing that, if the wife pays and the husband takes title, a trust results in her favor while the converse results in a gift is, therefore, anachronistic and deplete of support on either of these two theories. To presume a gift in both situations would clarify the matter even if the theory would be somewhat arbitrary.

The modern view prefers to base determination upon whether the grantee is a "natural obect of bounty" of the payor or whether he stands in such relationship that is probable that the payor intended a gift to him.[31] The natural object theory goes beyond the arbitrary bounds of the hard and fast rules in the search for the essential ingredient of intent and looks to the circumstances of the parties at the time of the acquisition. While proximity cannot be the sole guideline, it does not necessarily preclude the fact that utilization of family relationship may be one practical consideration.[32] Likewise, the duty to support would be a proper consideration under the "natural object" theory. However, neither the relationship nor the support duty would be binding and would only be elements of total circumstances.

Effects of Presumptions

A presumption, wherever applicable, merely serves to erect a prima facie case for the party in whose favor it exists. Neither the presumption of a resulting trust nor the presumption of a gift is compelled merely because the proofs suffice to raise one or the other.[33] Generally, presumptions are not to be accorded excessive weight requiring one or the other conclusion since intention is the controlling feature. The presumption may be rebutted or overcome by prior or contemporaneous evidence accompanying the transaction and corroborated by any subsequent conduct of the parties.[34]

It is generally agreed that the peculiar effect of a presumption of law, that is a real presumption, is merely to invoke a rule of law compelling the jury to reach a particular conclusion in the absence

31. 5 A. Scott, Scott on Trusts, § 442 (3d ed. 1967); *see* Weisberg v. Koprowski, 17 N.J. 362, 111 A.2d 481 (1955).

32. *See* Jacobsen v. Farnharm, 155 Neb. 776, 53 N.W.2d 917 (1952) (where the relationships of the parties are sufficiently close, it would give rise to the presumption of a gift; and where the parties are husband and wife, there is a presumption that the placing of title in the name of the other was an intended gift).

33. Weisberg v. Koprowski, 17 N.J. 362, 111 A.2d 481 (1955).

34. Killen v. Killen, 141 N.J. Eq. 312, 57 A.2d 33 (1948).

of contrary evidence from the opponent.[35] Presumptions, in themselves, are not evidence but merely control the direction from which evidence must come. In *Flower v. Scott*,[36] the function of presumptions was indicated as follows:

> Thus, such presumptions are beacons designed to regulate the course of inquiry in quest of the real intention of the party. They do not prevent the court from discovering the real intentions of the party outside the channel.

The fundamental distinction between a presumption and an inference is that the former shifts the burden of going forward while the latter merely suggests a result which can be accepted or rejected by the jury.[37]

In the case where a wife has provided funds for property which the husband purchased, the proceeding begins with the wife-payor having the burden of proving the resulting trust.[38] Yet, with the aid of the presumptions, the burden of going forward shifts.[39] The natural query which follows would be to what extent must the husband-transferee, or whoever holds his interest, go forward with evidence to rebut the presumption arising in the spouse's favor.

Although the presumptions of a gift or trust arise from similar circumstances, the proof necessary for rebuttal is somewhat incongruous on a cursory review. The mere evidence of a lack of knowledge or consent was held to be sufficient to rebut a presumption of a gift.[40] However, the prevailing authorities agree that the gift can only be rebutted by clear, unequivocal, and convincing evidence.[41] If a gift were presumed when the wife paid the purchase price, she would not only have the burden of proof to estab-

35. Watkins v. Prudential Ins. Co., 315 Pa. 497, 501, 173 A. 644, 648 (1934).

36. 8 N.J. Super. 490, 492, 73 A.2d 278, 280 (1950).

37. Bower v. Bower, 78 N.J.L. 387, 74 A. 522 (1909).

38. Adams v. Griffin, 253 Ala. 371, 45 So. 2d 22 (1949); Newbein v. Farris, 149 Okla. 74, 299 P. 192 (1931); Parker v. Newitt, 18 Ore. 274, 23 P. 246 (1890); Brown v. Halfen, 294 S.W.2d 290 (Tex. Civ. App. 1956).

39. In a situation where the wife is the payor and the husband takes title, the wife has the burden of proving the trust; but, under the majority view, the wife is aided by the presumptive force which shifts the burden of going forward. It is conceivable that, by merely showing the circumstances sufficient to allow a trust to arise in her favor, a wife may be in such a position that a jury will be compelled to find in her favor. E.g., Wallace v. Kilbride, 319 F.2d 760 (3d Cir. 1963).

40. Crespo v. Crespo, 54 W. Va. 581, 46 S.E. 582 (1904).

41. Blaine v. Blaine, 63 Ariz. 100, 159 P.2d 786 (1945); Houdek v. Ehrenberger, 397 Ill. 62, 72 N.E.2d 837 (1947); Mountford v. Mountford, 181 Md. 212, 29 A.2d 259 (1942); Hermanoski v. Hermanoski, 18 N.J. Super. 406, 87 A.2d 452 (1952); Katz v. Katz, 121 N.Y.S.2d 562 (Sup. Ct. 1953); Dunning v. Dunning, Pa. D. & C. 468, 30 Del. 361 (C.P. Del. 1941).

lish a trust but also the burden of going forward with the evidence. But under the general rule, a trust is presumed in favor of the wife and the burden of going forward is on the husband to rebut the presumption of the trust which the payor has the burden of proving.[42] The true effects of the presumptions are not necessarily confined to the husband-wife sector. When those beyond the immediate interfamily circle enter the picture, the weight of the presumption can become obviously more unfair.

APPLICATION OF PRESUMPTIONS: RELATION OF TIME AND PARTIES

To think of the presumptions limited to the mere family orbit, is to avoid the broader effects of the rule discussed. Even though the rule has been systematically extended, the effects have been less than salutary. Foremost, the rights of creditors vis-a-vis the record owner husband (wife-payor-trust) are, it seems, jeopardized by a rule allowing a wife to come forward asserting a resulting trust. Although the wife has the burden of proving the trust, it seems very burdensome to require a third party to prove the wife's intention to make a gift to her husband in order to rebut the trust presumed in her favor.[43] The situation would certainly lend itself to collusion, where it would be fruitless to expect any favorable extraction of parol evidence from either the husband or the wife.

In *Wallace v. Kilbride*,[44] the creditors of the husband sought to assert their rights vis-a-vis the husband. Prior to the suit, the husband transferred a one-half record interest in property to his spouse.[45] The court stated that the general rule applies where the wife pays the purchase price and the property is transferred to the husband and a resulting trust arises in favor of the wife unless a contrary intention is manifested.[46] The uncontradicted testimony suggested that the wife paid the entire purchase price; however, the testimony was uncertain whether the inclusion of the husband's

42. Some factors rebutting the establishment of a trust are: (1) that the grantee is related to the payor, (2) that the payor is wealthy and the grantee is poor, (3) that the grantee has maintained control over the property, and (4) that no reason can be asserted for taking title in name of the grantee. 5 A. SCOTT, SCOTT ON TRUSTS, § 441 (3d ed. 1967).

43. PA. STAT. ANN. tit. 21, § 601 (1955), provides that a resulting trust with respect to real property caused by supplying the purchase money is void as to bona fide judgment and other creditors unless (1) a declaration of trust is filed and recorded in the county of the situs, or (2) unless an action of ejectment is brought in the proper county by the person advancing the funds.

44. 319 F.2d 760 (3d Cir. 1963) (applying Virgin Island law).

45. *Id.* at 762.

46. *Id.* at 763; *see, e.g.*, Schwarz v. United States, 191 F.2d 618 (4th Cir. 1951); Keaton v. Pipkins, 43 F.2d 497 (10th Cir. 1930); Wright v. Wright, 242 Ill. 71, 89 N.E. 789 (1909); Kelly Springfield Tire Co. v. Lester, 190 N.C. 411, 130 S.E. 45 (1925); *cf.* Dixon v. Dixon, 123 Md. 44, 90 A. 846 (1914); Graham v. Onderdunk, 33 N.J. 356, 164 A.2d 749 (1960); Rayher v. Rayher, 14 N.J. 174, 101 A.2d 524 (1953); 5 A. SCOTT, SCOTT ON TRUSTS, § 442 (3d ed. 1967).

name on the title was by design or mistake—no finding was made.[47]

Mrs. Kilbride, with the presumption of a resulting trust in her favor, had the burden of proving the resulting trust. The court, evaluating the circumstances stated:

> As we have seen, the entire purchase price . . . was paid by Mrs. Kilbride out of her own personal funds. Moreover . . . there was no finding . . . that Mrs. Kilbride directed that Kilbride's name be included as transferee . . . for the purpose of making a gift to him. . . . Indeed there is no evidence from which such a finding could be made under the circumstances it must be concluded that a trust . . . resulted. . . .[48]

In evaluating the case, it is apparent that the wife or husband and wife did little more than show the source of the consideration utilized to purchase the property. The creditors were shackled with the burden of going forward with enough evidence to show that the wife manifested a contrary intention. The resultant force of the presumption was very strong, strong enough to result in a finding of a trust in the wife's favor. Conceivably, a case might arise where a wife provides funds and title is taken by the husband (wife-payor-trust); he would be estopped from asserting a resulting trust in his wife's favor when credit had been availed him on the basis of the apparent ownership.[49]

Perhaps it would be more expedient to utilize a rule of proof production based upon the comparative availability of material evidence to the respective parties.[50] Since a conclusion based upon generally known results of wide human experience places a burden on third parties,[51] it clearly seems more expedient for a wife or those who hold her interest to be required to produce evidence concerning her intent when she transfers funds to her spouse and he acquires title. More succinctly stated, presume the gift to the spouse thereby placing the burden upon the party who has access to the proof of intent to create a trust.[52]

The extent of time available within which one can assert the resulting trust is also an important question. In *Lloyd v. Woods*[53]

47. Wallace v. Kilbride, 319 F.2d 760, 763 (3d Cir. 1963).
48. *Id.*
49. *See In re* Carpenter, 179 F. 743 (D.C.S.C. 1910).
50. Watkins v. Prudential Ins. Co., 315 Pa. 497, 504, 173 A. 644, 648 :1934).
51. *Id.*; *see* notes 2-3 and accompanying text *supra.*
52. *E.g.*, White v. Amenta, 110 Conn. 314, 148 A. 345 (1930); Bingham v. National Bank, 105 Mont. 159, 72 P.2d 90 (1937); Petersen v. Massey, 155 Neb. 829, 53 N.W.2d 912 (1952).
53. 176 Pa. 63, 34 A. 926 (1896) (emphasis added).

the Pennsylvania Supreme Court stated as it had previously held[54] that, if a husband having the money or property of his wife in his possession invests it in real estate and without her consent thereto takes title himself, she has a resulting trust in the land which she can assert *at any time* she sees proper to enforce it, to the extent the property was paid for with her money. However, the court did not refer to a previous decision[55] where it had held that, to establish a resulting trust which is to overturn a record title of nearly thirty years, it must appear by clear proof that her money went into the property at the inception,[56] that the purchase was made by her, or for her account, and that the placing of the title in her husband was a violation of an agreement by which the deed was made to her.

This latter holding would seem to require the rights to be asserted in due time or be diminished or barred by the equitable doctrine of laches. In fact, the requirements as enunciated by *Crawford v. Thompson*[57] appears to be a complete reversal of the effects of the presumption of a resulting trust in favor of the wife, at least when the record title has been in the husband's name for a long period of time. The failure to assert the resulting trust over a period of years would, in effect, obviate the effect of the presumption in the wife's favor. The matter in Pennsylvania is still undecided as to whether a resulting trust or a gift arises from a similar situation when the right is asserted within adequate time.[58]

Conclusion

The presumption of a resulting trust in favor of the wife upon furnishing of funds prior to purchase by the husband cannot be solely supported on either the "support" or "closeness of relation" theories. The time for such distinction between the husband-payor-gift and wife-payor-trust has elapsed. The anachronistic theory supports a resultant rule that is excessively burdensome. The anachronism results from the alteration of woman's status in society without a concomitant change in the rule affecting her

54. Light v. Zeller, 144 Pa. 570, 22 A. 1029 (1891).

55. Crawford v. Thompson, 142 Pa. 551, 21 A. 994 (1891); *cf.* Byers v. Ferner, 216 Pa. 233, 65 A. 620 (1907) (requiring not only evidence that the wife was the source from which money was obtained, but that it was invested under some understanding or agreement or that taking of title was done without her consent or knowledge, such that it would not suffice to simply say that the husband obtained funds from the wife and made the purchase to establish a resulting trust after a thirty year lapse of time).

56. *See* discussion and cases cited note 2 *supra.*

57. 142 Pa. 551, 21 A. 994 (1891).

58. Rehm v. Rehm, 32 Pa. D. & C. 193 (C.P. Phila. 1938):

> [W]hich presumption exists in case the purchase price is paid by the wife and title is taken in the name of the husband is subject to some doubt. Pennsylvania cases can be cited on either side but each of them can be explained on some other theory: (citation omitted).

Id. at 198.

rights and duties. The excess burden arises whenever persons outside the interfamily sector assert their rights vis-a-vis the husband holding title (wife-payor-trust). The equitable doctrine of laches may, at times, be asserted to mitigate the burdensome effect. However, the redeeming values of presuming a gift in like situations whether a husband-payor or a wife-payor would be to add symmetry to the law, to rectify the presently anachronistic theory, and to shift the burden of going forward with evidence to the party to whom proof of intent would be most accessible.

Perhaps an even better system would be to give rise to the presumption only after one party has shown himself or herself to have been the natural bounty of the person supplying the funds at the time of acquisition. Such a system would incorporate both the support and closeness of relationship theories, making them mere elements of an examination of the totality of circumstances surrounding the parties.

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