

IN THE COURT OF APPEALS OF IOWA

No. 6-376 / 05-1279
Filed August 23, 2006

**Upon the Petition of
MARLIN G. WIELENGA,**
Petitioner-Appellee,

**And Concerning
JACQUELENE V. LIVELY,**
Respondent-Appellant.

Appeal from the Iowa District Court for Sioux County, James D. Scott,
Judge.

Jacqueline Lively appeals the district court's decree ordering title of
certain real estate be transferred to Marlin Wielenga. **AFFIRMED.**

Andrea Van Beek, Orange City, for appellant.

Patrick N. Murphy of Murphy, Collins & Bixenman, P.L.C., Le Mars, for
appellee.

Considered by Vogel, P.J., and Zimmer and Vaitheswaran, JJ.

VAITHESWARAN, J.

Marlin G. Wielenga purchased real estate in Sioux County but placed title to the property in the name of his girlfriend, Jacqueline V. Lively. Later, Wielenga asked Lively to transfer title to him. When Lively refused, Wielenga sued. The district court rejected Lively's contention that Wielenga gave her the property and ordered title transferred to Wielenga.

On appeal, Lively insists that Wielenga gifted the property to her. "To meet the requirements of a gift, there must be: (1) donative intent; (2) delivery; and (3) acceptance. The intent of the grantor is the controlling element." *Gray v. Roth*, 438 N.W.2d 25, 29 (Iowa Ct. App. 1989) (citations omitted).

On our de novo review of the record, we agree with the district court that evidence of donative intent is lacking. Wielenga purchased the real estate shortly after receiving the final payment of an inheritance. He placed title to the real estate in Lively's name because he was unsure whether a settlement of an outstanding child support obligation precluded his former wife from obtaining a lien for the pre-settlement balance. He testified that Lively "seemed to understand" this rationale. He further testified that he never promised Lively the acreage would be hers forever and he expected title to the property would be transferred to his name.

Wielenga also did not divest control of the property. He lived on the property, maintained the property, and stored items needed for his construction

business on the property. Although Lively wrote the checks for the real estate taxes and insurance, the money came from Wielenga.¹

In short, Wielenga expressed no intention to transfer the real estate to Lively and at no time allowed Lively to assume dominion over the property. See *id.*; *In re Estate of Crabtree*, 550 N.W.2d 168, 170 (Iowa 1996) (quoting *Taylor v. Grimes*, 223 Iowa 821, 826, 273 N.W.2d 898, 901 (1937)) (stating owner must have had a “present intention to make a gift” and divest himself “of all control and dominion over the subject of the gift”).

Because Wielenga did not intend to give the real estate to Lively and did not allow her to exercise control over the property, we agree with the district court that “the real estate should be quieted in Marlin’s name.” We also agree with and adopt the following language of the district court: “While the Court does not condone Marlin’s conduct, it would be unjust under the circumstances of this case to allow Jacqueline to retain the benefit of these assets.” We find it unnecessary to address the remaining issues raised by the parties.

AFFIRMED.

¹ Lively acknowledged that the last time she was gainfully employed was in 1995 or 1996.