Washington Law Review

Volume 27 | Number 2

5-1-1952

Trusts—Purchase Money Resulting Trusts Between Parties Living in Meretricious Cohabitation

Ernest M. Murray

the Legislature would have forbidden the town or city to enter into competition with a P.U.D. had that problem been considered.

The proposition that the Legislature did not intend to authorize towns and cities to enter into competition with established P.U.D.s by the general authorization of REM. REV. STAT. § 9488 is reinforced by a consideration of the economic consequences. Here the P.U.D. had sold revenue bonds and investors had bought the bonds relying on the revenue to be derived from the inhabitants of the town. If the town should hold another election and then enter into competition with the P.U.D., the P.U.D. would be deprived of a substantial number of its potential customers with a resultant loss of revenue. To the rural consumer this loss of revenue would mean higher rates; to the P.U.D. it could mean anything from a difficult financial situation to bankruptcy depending on the extent of the loss; and to the investor it could mean a partial loss on his investment.

It may be that in the future, an area composed of a town or city and the surrounding rural area which could enjoy the benefit of public power and which may desire to establish a P.U.D. for the mutual benefit of the municipal and rural area will experience difficulty in doing so. The rural consumers may resist the plan fearing that the city or town might withdraw leaving them with the debt of the P.U.D. And such P.U.D., if established, may experience further difficulty in financing the acquisition and operation of the necessary facilities, for investors will be reluctant to risk money knowing that a substantial part of the potential revenue of the system which must repay the loan may be legally cut off.

ELDON C. PARR

Trusts—Purchase Money Resulting Trusts Between Parties Living in Meretricious Cohabitation. *P*, separated from his wife, illicitly cohabited with *D*. *P* purchased their residence with his separate property, taking title in *D*'s name. *D* asserted ownership of the property and evicted *P*. *P* brought action claiming *D* held the property as a trustee for *P*'s benefit. The trial court found for *D*. On appeal, *Held:* Reversed. Since *P* advanced all the consideration for the property, a resulting trust is presumed. *Walberg v. Mattson,* 38 Wn. 2d 808, 232 P. 2d 827 (1951).

The rule in Washington has been that a transfer of property to one party, with the purchase price being paid by another, raises the presumption that the grantee holds the property as a trustee for the person advancing the consideration. In re *Cunningham's Estate,* 19 Wn. 2d 589, 143 P. 2d 852 (1943); *Scott v. Currie,* 7 Wn. 2d 301, 109 P. 2d 526 (1941); see RESTATEMENT, TRUSTS §§ 440-444 (1935); 3 SCOTT, TRUSTS 2239 (1939). The normal exception to this rule is a presumption of gift rather than resulting trust where the grantee is related to the purchaser in such a way as to be the natural object of the bounty of the purchaser. *Scott v. Currie, supra; Dines v. Hyland,* 180 Wash. 455, 40 P. 2d 140 (1935); see 24 WASH. L. REV. 164 (1949). However *Creasman v. Boyle,* 31 Wn. 2d 345, 196 P. 2d 835 (1948), created a second exception—a presumption that the property was disposed of according to the intent of the parties, where there is a meretricious relationship coupled with an absence of an inconsistent intent. This exception apparently makes the form of the transaction (i.e., putting the deed in the grantee's name), rather than the presumed intent of the purchaser, the controlling factor; it is contrary to authority. *Mouser v. O'Sullivan,* 22 Wn. 2d 543, 156 P. 2d 655 (1945); *May v. May,* 161 Ky. 114, 170 S.W. 537 (1914); *Hanson v. Hanson,* 78 Neb. 584, 111 N.W. 368 (1907); *Dunn v. Zwilling,* 94 Iowa 233, 62 N.W. 746 (1895); 3 SCOTT, TRUSTS 2239 (1939).

The court in the *Walberg* case applies the general rule of resulting trusts in a meretricious relationship, but still recognizes the exception created by the *Creasman* case,

although limiting its application to situations where there is an absence of evidence of intent of the purchaser. This is indeed a narrowing of that exception since perhaps the only situation where there will be an absence of evidence of contrary intent will be where the meretricious spouse is dead and RCW 5.60.030 [RRS § 1211; P.P.C. § 938-3] bars testimony by the surviving "spouse" of what he intended. This limitation is again stated in the recent case of *Poole v. Schrichte,* 139 Wash. Dec. 515, 236 P. 2d 1044 (1951), although this case did not involve the problem of resulting trust. In the *Poole* case the meretricious husband claimed to be the owner of all the property jointly acquired by the meretricious parties, since title was in his name. The court gave the meretricious wife one-half of the property, stating that the result of the *Creasman* case was due to a lack of evidence of intent on the part of the grantor. By dictum the court declared that in each instance where the parties to a meretricious relationship had been left in the position in which they had placed themselves, one of the parties had been dead. It does not seem proper to change a presumption of intent simply because of a lack of evidence, and make the form of the deed the controlling factor only where there is this lack of evidence coupled with a meretricious cohabitation.

A possible way of reaching the result in the *Creasman* case, i.e., giving the property to the grantee, would be to include the meretricious spouse in that class of persons who are the natural objects of the purchaser's bounty. While it may be more likely that a man would intend to make a gift to his mistress rather than to make her a trustee, see 3 SCOTT, TRUSTS 2260 (1939), the weight of authority is *contra. Orth v. Wood,* 354 Pa. 122, 47 A. 2d 140 (1946); *Lufkin v. Jakeman,* 188 Mass. 528, 74 N.E. 933 (1905); *McDonald v. Carr,* 150 Ill. 204, 37 N.E. 225 (1894). There is also authority, supported by Washington cases, to the effect that the "natural object of bounty" exception obtains only where there is a "natural, moral, or legal obligation" to provide for the grantee. *Scott v. Currie, supra; Adley v. Pletcher,* 55 Wash. 82, 104 Pac. 167 (1909); 1 PERRY, TRUSTS (7th Ed. 1929) § 143. Furthermore, making the mistress the natural object of the purchaser's bounty might lead to inequitable results if the mistress were to die intestate. Although the husband takes a share of the separate property of his wife, RCW 11.04.020 [RRS § 1341; PPC § 199-1]; RCW 11.04.030 [RRS § 1364; PPC § 200-1], he would have no rights in the property of his mistress, even though this property may have been his home. As indicated in the dissenting opinion in *Creasman v. Boyle,* it hardly seems natural that a man would intend to make a gift of his dwelling house to his mistress, so that her heirs would take the property, to the exclusion of himself.

Retention of the exception of the *Creasman* case seems undesirable and unnecessary. Even if the normal rule of resulting trusts is presumed, and the meretricious wife is dead, RCW 5.60.030 will not bar her heirs from rebutting the presumption where it appears a gift was intended, or where the circumstances, i.e., the parties holding themselves out as husband and wife, show the purchaser intended the meretricious spouse should have some, but not all of the property.

ERNEST M. MURRAY

Divorce Decree—Procedure to Invoke Jurisdiction to Modify. *H* obtained a default divorce decree under which *W* was given custody of two minor children and *H* was granted reasonable visitation privileges. Later *H* remarried and established residence in Montana, and, in order to enable the children to visit him there, filed a motion and affidavit for an order that *W* show cause why the decree should not be modified. The show cause order was granted, but meanwhile *W,* in an original application in the Supreme Court, requested a writ of prohibition restraining the Superior Court from