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Transmuting gifts into community property: Marriage of Weaver, 2005

Roger Bernhardt
Golden Gate University School of Law, rbernhardt@ggu.edu

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Husband's separate property interest received as gift during marriage transmuted into community property interest with reimbursement rights when wife was later added to title as joint tenant.

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In 1985, before getting married, the Weavers purchased a home on Scandia Drive as joint tenants. The downpayment and closing costs were paid by Mr. Weaver from his separate property. The Weavers moved into and began remodeling the property in 1986, using a second mortgage to finance the improvements, and lived in the property until they separated in 1999. Mr. Weaver and his parents owned a property on Thule Drive as joint tenants until his father died in 1997, when Mr. Weaver's mother (Mother) quitclaimed title on the property to the Weavers and Mother as joint tenants. At the dissolution trial, the court held that Mr. Weaver was entitled to reimbursement of his separate property used as the downpayment on the Scandia Drive residence (but not the closing costs or refinancing proceeds), which was community property. Further, the trial court held that Mrs. Weaver had no interest in the Thule Drive property.

The court of appeal affirmed the trial court's first ruling and reversed the latter. The Scandia Drive property, originally purchased with Mr. Weaver's separate property two days before the Weavers were married, was transmuted into community property. Accordingly, it was appropriate for the trial court to reimburse Mr. Weaver for his separate property contribution to the purchase of the home. However, under Fam C §2581 (jointly titled interests presumed to be community property unless there is express written evidence to the contrary), the Weavers' interests as joint tenants in the Thule Drive property are presumed to be community property. Mr. Weaver contributed the value of the equity in the separate property joint tenancy interest he originally received as a gift from his parents to the acquisition of the community property joint tenancy interest he obtained with Mrs. Weaver after his father's death. Therefore, under Fam C §2640 (spousal right to reimbursement on dissolution for separate property contributed to the acquisition of property held in joint title), Mr. Weaver was entitled to reimbursement for the value of his separate property interest, with the remainder of the Weavers' interest in the Thule Drive property, as community property, to be divided 50/50.

Accordingly, the court of appeal upheld the trial court's ruling that Mr. Weaver was entitled to reimbursement of his separate property downpayment on the Scandia Drive property, but reversed the lower court's judgment regarding the Thule Drive property, remanding that issue to the lower court for further proceedings dividing the Weavers' community property interests in that home.

THE EDITOR'S TAKE: Family Code §2581 does not work out well in three-party situations. The section creates a presumption that spousal property held in joint tenancy is really community property, but adds that this is applicable only "[f]or the purpose of division of property on dissolution." What happens when there are three joint tenants on

title, but (naturally) only two of them are getting divorced? How do you apply two-thirds of a presumption?

In this case, when Mom and her son converted their joint tenancy consisting of Mom, Son, and Dad into one comprised of Mom, Son, and Wife (Dad having deceased), the presumption made it appropriate to say, in the divorce action, that Son and Wife had become holders of a community property estate (in two-thirds of the house) because they were married at the time of the transmutation and had signed no agreement to the contrary. Under that presumption, Son's attempt to prove that he never intended to add Wife on title failed—even though the judge might have believed him—because §2581 requires a writing. (Or so the appellate court said. Personally, I doubt that the statute was intended to validate oral fraud this way.) So Son and Wife are community property holders, rather than joint tenants.

But what about Mom? She should still be a joint tenant in the house, since she was not a party to the divorce and the dissolution presumption had nothing to do with her. If she sues, testifying that she executed the deed under mistake, and the judge believes her, the deed could be reformed to make her a one-half owner, even though there is no writing proving her case. Thereafter, if, for instance, Son then dies, Mom should own the entire estate as surviving joint tenant. Under this scenario, Wife gets nothing.

Perhaps it is possible to say that, as far as the divorce action is concerned, Son and Wife hold two-thirds of a house as community property while, outside the divorce action, Mom owns half the house in joint tenancy. However, that comes to seven-sixths of one house, and I would have trouble keeping a straight face if I said that.

There is similar trouble in dealing with Son's attempt to partially undo things by making himself and Mom joint tenants, while relegating Wife to tenancy in common status, when he went to see the real estate attorney who rewrote the deed. In the divorce, Wife and Son still hold community property, but outside it, Wife is a tenant in common with Mom while he is a joint tenant with her. Different consequences follow depending on who dies first.

The impact of all of this on Son's right of reimbursement under Fam C §2640 may also be problematic. From his perspective, his original one-half interest in the joint tenancy was "contributed" to the community when Wife was added to title and it became community property. For this contribution, he should be reimbursed under §2640. For example, if the house was worth $150,000 at the time, he is credited with contributing $75,000 to the community. Two-thirds of the house became community property, worth $100,000, and after he is reimbursed $75,000, the remaining $25,000 should be divided equally.

The court visibly disapproves of such a result, saying that it makes the right of reimbursement trump the principle of transmutation. But that is true only if there is a divorce immediately after the creation of the estate. If there is a time lag between the transfer of title and the dissolution action, and the property has grown more valuable over that time, reimbursement—which is without interest or adjustment for appreciation—amounts to far less than recharacterization.

While the court says it hopes that the supreme court will change the rule, I think that any such change ought to come from the legislature, since it wrote these code sections in the first place. A broad statutory pronouncement would be more helpful to practitioners than an inevitably contextual court opinion, no doubt further compromised by dissenting and concurring opinions. There may also be good policy arguments for going in an opposite direction and making the contribution right stronger than the transmutation effect.

Finally, what about Mom? If she is believed in her claim that she did not want her daughter-in-law to get the house, her share goes back up from one-third to one-half; the fact that Son's share may now be community property rather than his separate property is beyond her control. But if that strategy fails, and her share is reduced from its original one-half to one-third, can she get any reimbursement when Son divorces Wife? Since §2640 provides only for reimbursement to the spouse, not the spouse's mother, the answer is "No." Wife gains at Mom's expense.

That, however, is avoidable. Parents who want to buy their kids a house for a wedding present don't need to have title pass directly from the seller to both children. To ensure preservation of a contribution claim by their son—as against his spouse if the marriage ever fails—they could instead use the same downpayment to purchase it in just his name (constituting a gift to the son), and let him thereafter contribute it to the community, which gets a different contribution result. This would bring his contribution under §2640 and trigger a reimbursement right in his favor. The kids may be presumed to be too starry-eyed to think about such things at the time of marriage, but that is no reason for the parents (or their attorneys) to be similarly silly.— *Roger Bernhardt*