

70603-9

No. 70603-9

70603-9

COURT OF APPEALS

DIVISION I

OF THE STATE OF WASHINGTON

BRIAN FISSE, an individual

Appellant,

v.

HEATHER M. GARVIE, an individual

Respondent

RESPONDENT'S REPLY BRIEF

Heather M. Garvie, pro se

709-6th Ave North

Edmonds WA, 98020

(425) 239-8908

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2014 JUL -7 PM 3:23

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I. INTRODUCTION

This is a simple case of givers remorse. During the time I dated Plaintiff-Appellant Brian Fisse I went through a difficult divorce in which my x-husband and his sister, who is an attorney, were able to retain a large portion of my premarital assets. I ignorantly comingled my premarital assets into community by the purchase of a second property. I was working four jobs to try to make up for the devastating financial loss.

Brian was financially secure and wanted me to spend more time with him, he asked me on several occasions to be his wife. I thought we would marry soon based on his strong desire and insistence to do so and the fact that we had already been living together for some time. Brian gave me the money so I could quit working four jobs and spend more time with him. Brian began to behave in a controlling manner telling me now that he had gifted me such a large amount of money I couldn't break up with him. He would constantly talk about the money with the goal of controlling me. This relationship became more and more emotionally unhealthy and frankly a little scary so I ultimately had to get out of it.

After I ended the relationship Brian began sending weird texts and emails that included details of what I was wearing on a certain day, how my facial expressions were towards customers he saw me interacting with mentioning small changes on the appearance of the outside my home.

Brian wanted me to know that he was watching me. He on occasion would talk about the money he gave me but it was always so mixed in with other bizarre statements it was difficult to know what to take seriously and what was just another shocking statement from him.

I did not engage in any conversation with Brian Fisse about this money after we stopped dating. There was no refusal to pay; I considered the money a gift. Brian's behavior towards me was now so strange I really didn't know what to do. When he initiated this lawsuit I contacted several attorneys. They said if he is stalking you this is another matter and has nothing to do with this legal action. I hired attorneys to defend me maxing out my credit cards to do so until I ran out of money entirely. Because this man gave me money and I don't have it to give back, I am being perceived as a bad person who tried to take advantage of another person. When, in fact, I am an extremely hard working person who has always paid her debts. Brian knew my financial situation when he gave me that money and he knew beyond a shadow of a doubt I would not be able to pay it back to him. I don't think it is right that Brian can turn around all these years later and claim it was a loan and not a gift and then proceed to force me into bankruptcy.

I tried to borrow money to give it to Brian just to stop this constant legal harassment not because I was required to pay back the gift. Last year my

employer of 5 years cut my wage by \$6.00 an hour and no one would lend me any money after that. I worked for the post office as a substitute letter carrier for 5 years 6 days a week, I ran a business from my home at night, I woke up early in the morning and taught exercise classes and sold a water bike product on the side too, all of this to cover my bills. During this case Brian has taken me to a motions summary trial and a full jury trial. The jury, after hearing the circumstances behind the gifted money, decided there was no contract therefore no breach of contract. If there was no contract then the money was a gift. I believe the jury awarded the \$50,000 judgment to Brian because we were acting as man and wife for almost an entire year and this was the only comingled asset so they split it. The judge made reference to the standard the jury used to determine this amount but since I am not an attorney I don't truly understand what standard law book they were provided during deliberation.

Brian simply doesn't like the verdict that was reached and now he wants to change it. Brian has exhausted funds on legal services at this point that would exceed the original amount he gave me so it seems clear his motivation is not financial recovery but to inflict the most collateral damage to me as possible. I have suffered great stress from the constant legal threats hanging over me. Any attorney I contact at this point wants tens of thousands of dollars to help me. I hope the court will find my attempt to respond to this intimidating paperwork acceptable.

II. ASSIGNMENTS OF ERROR

A. Assignments of error

- 1 Trial court did not error.
- 2 Trial court did not error.
- 3 Trial court did not error.
- 4 Trial court did not error.

B. Issues Pertaining to Assignments of Error

- 1 Trial court did not error. If there was no contract then the money was a gift and therefore unjust enrichment does not apply.
- 2 Trial court did not error damage was not determined.
- 3 Trial Court did not error prejudgment interest was not entitled.
- 4 Trial court did not error there were no grounds for a new trial.

III. STATEMENT OF THE CASE

- A. Plaintiff-Appellant Brian Fisse states not that the gift was a loan, but that the transfer of \$100,000 into my account was not a gift. Brian further claims that this "loan" was to be repaid to him not by making payments with interest as

per a signed agreement but that I was to repay a lump sum amount with interest within three years.

- B. Judgment was denied by court.
- C. Plaintiff attorney presents his own set of proposed jury instructions in which he requests jury to determine equitable relief, thereby not making it a sum certain. It is my understanding that pretrial interest and damages are not awarded unless it is a sum certain. Plaintiff's attorney did not object to the standard jury instructions court presented that incorporated his own instructions of equitable relief. It is my understanding he waived his right to object to this later by not objecting to it at that point.
- D. Court denies all post-trial motions yet awards attorney's fee to plaintiff.

IV. SUMMARY OF ARGUMENT

The plaintiff wants to keep using the original amount of \$100,000.00 over and over again as if doing so makes it liquid or sum certain. He does this in attempt to gain pretrial interest and damages. However he himself instructed the jury to determine damages by doing so he admits no definitive

amount was determined therefore no pretrial interest is entitled.

Brian Fisse gifted me \$100,000.00. This is evidenced by the single transfer of money into my account. It is further evidenced by the fact that if Brian intended to make loan there would be some document or paperwork of agreement discussing terms or interest. The plaintiff's own argument proves there was no agreement of repayment. Plaintiff states I was to make a lump sum repayment to him with interest yet this amount was undetermined? According to the statute of frauds he should have had something in writing if I was unable to pay the money back within a year, and based on his own argument that was not the case. According to him I was not expected to return it until closer to three years. Even if this alleged agreement did exist and I wasn't required to pay the money back for three years, why did he initiate a law suit against me in less than three years' time? Why would you bring suit against someone before the money is even due? It's simple there was no agreement and he simply had giver's remorse.

V. DISCUSSION

A. Standard of Review.

I believe the evidence or lack thereof speaks loudly of the plaintiff's intent to make gift. I have no cases to cite as I am not an attorney so I do not know how to gather this sort of information but frankly I think the cases he cites speak to my argument as well there is lack of sufficient evidence which is exactly why the jury did not award Mr. Fisse \$100,000.00 judgment.

B. Discussion of Assignments of Error.

1. The trial court did not error. The lack of documentation stating intention makes this entire issue and the amount highly disputable. It would have been unreasonable to assign judgment for such a large amount of money with absolutely no evidence at all supporting that it was ever to be repaid. How do we know Brian didn't say to me here is a \$100,000.00 Heather go build a zoo in your back yard for me I love animals and want to see them at your house. This is no less reasonable that to suggest in less than three years' time I could suddenly manifest \$100,000.00 plus a large amount of interest. There is no way to ever know

that based on a lack of any evidence that is why it was reasonable to split the disputed amount in half.

2. It is frustrating to me that a man with financial means can simply bring suit against another individual without any evidence at all of wrong doing. Even after 2 courts, 2 judges and 6 jury members have all found he is not entitled to this judgment against me of \$100,000.00 plus interest he continues to waste the valuable time of a third court with ultimately no hope of any benefit because he has already spent more money than he gifted to me originally in legal fees if this alone doesn't not speak to the intent of this individual I don't know what further evidence could.
3. The trial court did not error he is not entitled to pretrial interest on an undetermined amount of money. It was not liquid and it was determined by the judge and jury not to be sum certain therefore no pretrial interest would apply here.
4. The trial court did not error. There was no issue of clear unfairness raised here. In fact splitting a disputed amount right down the middle leaving both parties equally burdened seems about the fairest standard

that could be applied. No grounds for new trial were determined.

VI. CONCLUSION

I accepted a gift from a man I was involved with in a serious relationship. I was very much in love with him at the time. I wish I had known at the time of the need to have him put his intention in writing. Perhaps giving that money without paperwork suited his purpose well because there seems to be no end to the amount of money he has to invest towards the matter now. Clearly this was not a business situation where he intended to make a profit so what was the motivation in transferring \$100,000.00 into my bank account? By doing so he seems to have maintained some level of control in my life. The constant legal threats, wage garnishments, the intimidating legal paperwork matched with inability to afford legal help, fear of bankruptcy and financial collapse. I have even suffered some very curious damage to my home and car. I wish I had not accepted Brian's gift, I should have questioned it more at the time but I didn't. I realize Brian gave me a lot of money but there is no price on another person's life and giving large money gifts doesn't entitle people to a special level of control in someone's life. My life has been forever changed, and not for the better. Brian has slandered me to countless people as a result of this gift. My next door neighbor, who has been like close family to me for many years is telling everyone in my small

attacks on my character and I have suffered financial harm as a result of this. If anyone was conned here it was me in believing the genuine nature of Brian's gift was out of love and caring for my well-being. Maybe if we had married his intentions would not have changed but there is no legal basis for it to change now. Having unstated conditions on a gift of money does not turn it into a loan with interest just because you are no longer in love with the person you gave the money to.

Dated this 7th day of July , 2014

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Heather M. Garvie', written over a solid horizontal line.

Heather M. Garvie pro-se

JUL - 7 2014

Superior Court of Washington
County of

In re: Brian Fisse,
an individual. Appellant
Petitioner,
and V.
Heather M. Garvie,
an individual Respondent.

No. 70603-9
Acceptance of Service
(ACSR)

2014 JUL - 7 PM 3:32
COURT OF APPEALS DIV 1
STATE OF WASHINGTON

1. Acceptance of Service

Ricci Grube
Breneman PLLC [Name] accepts service of:

- the summons and petition in this action.
- a proposed parenting plan.
- a proposed order of child support.
- a financial declaration.
- proposed Child Support Worksheets.
- other:

2. Consent to Personal Jurisdiction

- Does not apply.
- _____ [Name] consents to personal jurisdiction.
- Other

I slipped a copy of
respondent's brief under the locked
door opening.

3. Other

Dated: 7/7/14

I Heather M. Garvie
did serve respondent's
brief to the office of
Ricci Grube Breneman PLLC
at 3:15pm 7/7/14. The office
was closed and no one
answered the phone or a

[Signature]
Signature of Party or Lawyer /WSBA No. Accepting Service

Heather M. Garvie
Print or Type Name 425-239-8908

Notice to party: You may list an address that is not your residential address where you agree to accept legal documents. Any time this address changes while this action is pending, you must notify the opposing parties in writing and file an updated Confidential Information Form (WPF DRPSCU 09.0200) with the court clerk.

709-6th Ave North
[Address] Edmonds WA 98020

Knock on the door at 1200-5th Ave St. 625 Seattle,
WA 98101-3118. It will follow up by mailing an
additional copy to this same address today.
Respectfully Submitted.

[Signature]
Heather M. Garvie

No. 70603-9

COURT OF APPEALS
DIVISION I
OF STATE OF WASHINGTON

BRIAN FISSE,
An individual
Appellant,
V.

HEATHER M. GARVIE,
An individual
Respondent

Dear Court of Appeals,

I filed my respondent's reply brief yesterday Monday July 7, 2014. I realized one sentence was missing on final page # 10. I apologize for the oversight and respectfully submit this single revision of my respondent's reply brief. I have also served a copy of this revision to opposing council at the following address

Breneman Grube, PLLC

Attorneys for Appellant

1200-5th AVE, Suite 625

Seattle, WA 98101

Respectfully submitted on this Tuesday, July 08, 2014

Thank you,


Heather M. Garvie Pro-Se

Received
JUL 08 2014
Breneman Grube PLLC

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DIVISION ONE

JUL - 8 2014

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STATE OF WASHINGTON

community that I conned a mentally retarded man out of \$100,000.00. I am devastated by these personal attacks on my character and I have suffered financial harm as a result of this. If anyone was conned here it was me in believing the genuine nature of Brian's gift was out of love and caring for my well-being. Maybe if we had married his intentions would not have changed but there is no legal basis for it to change now. Having unstated conditions on a gift of money does not turn it into a loan with interest just because you are no longer in love with the person you gave the money to.

Dated this 8th day of July , 2014

Respectfully submitted,



Heather M. Garvie

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DIVISION ONE

JUL - 8 2014

pro-se

Received
JUL 08 2014
Breneman Grube PLLC