

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA26-111

Filed 16 September 2026

Dare County, No. 24CV001660-270

NEILS MOORE, Plaintiff,

v.

LAURA VOLASTRO, Defendant.

Appeal by plaintiff from order entered 3 July 2025 by Judge Jennifer R. Wells in Dare County District Court. Heard in the Court of Appeals 26 August 2026.

Hayes Law Offices, PLLC by Mark L. Hayes, for the plaintiff-appellant.

Hiner Law, PLLC by Frank P. Hiner, IV, for the defendant-appellee.

TYSON, Judge.

Neils Moore (“Plaintiff”) appeals from the trial court’s order, which awarded ownership of a dog to Laura Volastro (“Defendant”). We affirm.

I. Background

Plaintiff and Defendant began a dating relationship in 2020 and moved in together in November of 2021. The couple discussed getting a dog. They researched breeds and decided to purchase a Great Dane puppy. On 8 December 2023, the couple visited a breeder kennel, and Plaintiff placed a \$500.00 deposit to secure acquisition of a puppy. The couple agreed to pick up the puppy upon return from vacation on 2 January 2024.

On Christmas Day, Defendant posted on Facebook social media: “Introducing Roxy Rose . . . Thank you Honey. She’s beautiful.” When the couple picked “Roxy” up from the breeder, the bill of sale identified Plaintiff as buyer, but also listed Defendant’s email address and phone number for the contact information. Plaintiff paid the remaining \$500.00 due when they picked the dog up from the breeder.

The couple’s relationship deteriorated over the next six months. On 24 August 2024, defendant obtained an *ex parte* domestic violence protective order (“DVPO”) against Plaintiff. The *ex parte* DVPO ordered for Defendant to retain possession of the dog. On 29 August 2024, Defendant obtained a DVPO against Plaintiff, which granted to Defendant “the care, custody, and control” of the dog.

Plaintiff was accused of violating the DVPO on 9 December 2024. On 17 December 2024, he filed a Complaint to Recover Possession of Personal Property against Defendant in the Small Claims Division of the Dare County District Court. The subjects of the complaint sought recovery of a 1.39 carat diamond engagement ring, one-third of the rent for the month of August, Christmas decorations, various kitchen accoutrements, and the dog, Roxy. The complaint listed the value of the dog as \$1,000.00.

Defendant filed a response to the complaint, in which she adamantly stated Roxy was a Christmas gift from Plaintiff, and the dog belongs solely to her. Defendant stated she would give Plaintiff all of the other items he had requested, but “Roxy is a different story.” The matter was heard before the magistrate on 15

January 2025. The court ordered for Plaintiff to recover possession of all items listed in his complaint, except the dog. Plaintiff appealed to District Court.

The District Court heard the matter on 30 June 2025. The court found and concluded the dog was a gift from Plaintiff to Defendant, and Defendant had provided care for the dog since it was acquired. The court awarded possession of the dog to Defendant. Plaintiff appeals.

II. Issues

Plaintiff argues the trial court erred by finding and concluding Plaintiff had gifted the dog to Defendant.

III. Jurisdiction

This Court has jurisdiction over this appeal pursuant to N.C. Gen. Stat. § 7A-27(b)(2) (2025) (Appeal lies of right directly to this Court “[f]rom any final judgment of a district court in a civil action.”)

IV. Standard of Review

The standard of review from a bench trial “is whether . . . competent evidence . . . support[s] the trial court’s findings of fact and whether its conclusions of law were proper in light of such facts.” *Parker v. DeSherbinin*, 257 N.C. App. 319, 327, 810 S.E.2d 682, 686 (2018). “Findings of fact . . . are conclusive on appeal if there is evidence to support those findings.” *Id.* The trial court’s conclusions of law are reviewed *de novo*. *Id.*

V. *Inter Vivos* Gift

The elements needed to show an *inter vivos* gift are: (1) the intent of the donor to give the donee the gift and to divest himself immediately of all right and title to and control of it; and, (2) the delivery, actual or constructive, of the gift to the donee. *Fesmire v. First Union Nat'l Bank*, 267 N.C. 589, 591-92, 148 S.E.2d 589, 592 (1966) (citations omitted). The party claiming the gift bears the burden to prove these elements. *Id.* at 591, 148 S.E.2d at 592. The intention to make the gift need not be expressly announced, “but may be inferred from the facts attending the delivery.” *Newman v. Bost*, 122 N.C. 524, 528, 29 S.E.2d 848, 848 (1898).

The trial court found as fact:

9. On [December 8, 2023], the Plaintiff put down a \$500 deposit to secure the acquisition of the puppy.

10. [Plaintiff and Defendant] agreed that they wanted to buy the puppy but since they were traveling to Hawaii for Christmas they agreed to pick the puppy up from the breeder on January 2, 2024.

11. The Defendant testified . . . Plaintiff [had] told her multiple times the dog was to be her Christmas present.

12. The Defendant posted on Facebook on Christmas Day: “Introducing Roxy Rose . . . Thank you Honey. She’s beautiful.”

13. When Plaintiff and Defendant went to pick up the puppy on January 2, 2024, they filled out a Bill of Sale with the breeder that listed the Plaintiff as the Buyer of the dog but had Defendant’s email address and phone number for the contact information.

14. The Defendant immediately started taking the dog to the dog park at First Flight almost on a daily basis.

15. Sometimes the Plaintiff would accompany the Defendant to the dog park.

16. Several witnesses testified they heard the Defendant refer to the dog as a Christmas gift from the Defendant (sic) and the Defendant nodded or gestured in assent.

17. One witness from the dog park testified the Plaintiff told her the dog was a Christmas gift to the Defendant.

18. Several witnesses for the Plaintiff testified the Plaintiff referred to the dog as the family dog, never as “his” dog.

19. The Defendant testified that from the moment they brought the dog home, she provided the great majority of her care, including but not limited to, taking her to the vet and [e]nsuring timely vaccinations, registering her with the AKC, registering her with Dare County, registering her microchip in her name, buying her food, buying her crate, buying her toys, purchasing pet insurance in her name, and taking her for walks and to the dog park.

The court found and concluded Defendant had proven by a preponderance of the evidence the dog had been gifted to her by Plaintiff.

A. Intent to Gift

Plaintiff first argues the evidence failed to show he had the intent to immediately divest himself of all right and title to and control of the dog. *Fesmire*, 267 N.C. at 591-92, 148 S.E.2d at 592. He asserts the bill of sale for the dog states he is the sole buyer and the bill of sale form is blank to indicate “co-ownership,” which indicates he did not intend for Defendant to be an owner of the dog. He further asserts he maintained his right to and control of the dog by purchasing food, “taking

her out” and to the dog park, and paying for and attending obedience classes with the dog. Plaintiff claims, at the very most, he ceded some control of the dog to Defendant by acquiescing to her concurrent care for the dog, but he did not cede total control as is required to prove an *inter vivos* gift. *See id.* After Plaintiff bought the dog, the dog came to live at his residence, and Plaintiff never indicated Defendant could take the dog with her when she left the apartment.

The trial court heard evidence from both parties regarding whether Plaintiff intended to gift the dog to Defendant. “[W]here different reasonable inferences can be drawn from the evidence, the determination of which reasonable inferences shall be drawn is for the trial judge” as the finder of fact. *Repair Co. v. Morris & Assoc.*, 2 N.C. App. 72, 75, 162 S.E.2d 611, 613 (1968).

It is axiomatic that

an important aspect of the trial court’s role as finder of fact is assessing the demeanor and credibility of witnesses, often in light of inconsistencies or contradictory evidence. It is in part because the trial court is uniquely situated to make this credibility determination that appellate courts may not reweigh the underlying evidence presented at trial.

In re J.A.M., 372 N.C. 1, 11, 822 S.E.2d 693, 700 (2019).

Here, sufficient evidence was presented tending to show and from which the trial court found and concluded the dog was a Christmas gift from Plaintiff to Defendant. This Court will not reweigh the evidence. *Id.* This argument is overruled.

B. Delivery

Plaintiff next argues the evidence failed to show he delivered the dog to Plaintiff in a manner to divest himself of his dominion over it, because he had lived with the dog continuously until it was taken from him by an *ex parte* court order. The case of *Swindell v. Swindell* involved a dispute over whether a husband had gifted a horse to his wife and is instructive. Our Supreme Court explained:

It was not required, in order to complete the gift, that she should continue in the sole possession of the horse. If it was her property, the mere possession and use of the horse afterward by her husband did not divest or even impair her title, no more than such a possession and use of property, which she had acquired by purchase or which she owned at the time of the marriage, would affect her title to such property.

Swindell v. Swindell, 153 N.C. 22, 23, 68 S.E.2d 892, 892 (1910).

Under and applying *Swindell*, the fact Plaintiff purchased and lived with the dog, engaged with it, and provided for some of its care, did not demonstrate his intent to maintain sole dominion and control over the dog. *Id.* Plaintiff and Defendant cohabitated with the dog, which made it impossible for Plaintiff to wholly physically deliver and divest himself of possession of the dog. It stands to reason Plaintiff would engage with the dog and provide some of its care while the parties lived together. The evidence tends to show, and the trial court could find and conclude, Plaintiff delivered the dog as a gift and Defendant spent significantly more time attending to the dog's needs and holding herself out as the owner. Plaintiff's argument is overruled.

VI. Conclusion

Sufficient evidence was presented to support the trial court's findings and conclusion the dog was intended as a Christmas gift from Plaintiff and delivered to Defendant. The trial court's order awarding possession and ownership of the dog to Defendant is affirmed. *It is so ordered.*

AFFIRMED.

Judges STROUD and MURRY concur.