

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 4, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 98-2745

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE MARRIAGE OF:

JEFFREY S. DUELLMAN,

PETITIONER-RESPONDENT,

V.

SALLY JEAN DUELLMAN,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Buffalo County:
DANE F. MOREY, Judge. *Affirmed.*

Before Cane, C.J., Myse, P.J., and Hoover, J.

PER CURIAM. Sally Duellman appeals that part of a divorce judgment dividing the marital property. She argues that the trial court erroneously included in the marital estate two parcels of property that she received as gifts from her mother. Because we conclude that neither parcel retained its separate

character and one of the parcels was, in effect, gifted to both Jeffrey and Sally, we affirm the judgment.

Applying marital property law to undisputed facts presents a question of law that we review without deference to the trial court. *See Arneson v. Arneson*, 120 Wis.2d 236, 243, 355 N.W.2d 16, 19 (Ct. App. 1984). The dispositive facts are undisputed. Five months before the parties married, Sally's mother, Marion Farner, gave Sally a parcel of land valued at \$7,000. Jeffrey and Sally constructed a home on that lot, jointly contributing to the labor and expenses and securing a joint mortgage. After the marriage, Farner also sold the parties a \$76,500 farm for \$50,000. Farner's real estate transfer tax return shows the remaining \$26,500 discount as a gift to Sally. Farner also testified that she intended that the gift apply only to Sally. Jeffrey and Sally purchased the farm as joint tenants on a land contract that created a joint obligation to pay the amount due.

The trial court properly included the homestead lot in the marital estate because it did not retain its separate character. "Character" refers to the manner in which the parties have chosen to title or treat gifted assets. *Brandt v. Brandt*, 145 Wis.2d 394, 410-11, 427 N.W.2d 126, 132 (1988). Although the lot was initially gifted to Sally, she transmuted it into marital property by inextricably merging the lot with the parties' jointly created and financed home.¹ *See Trattles v. Trattles*, 126 Wis.2d 219, 225-27, 376 N.W.2d 379, 382-83 (Ct. App. 1985). Transmuting exempt property creates a presumption that the party intended to donate exempt property to the marital estate. *Id.* Sally has not overcome that

¹ The inability to separate the house from the lot is demonstrated by Sally's request for money, not the lot itself.

presumption. In fact, she testified that the parties lived in and treated the homestead as the “marital estate” from the day they moved in.

Despite her stated intent to gift Sally with the \$26,500 discount on the farm property, Farner’s gift equally benefited Jeffrey and Sally. The manner in which Farner donated the “gift” did not accomplish her stated intention of making a gift to Sally alone. Jeffrey and Sally bought the property as joint tenants and had a joint obligation to make payments on the land contract. Discounting the property’s sale price constitutes a gift to both purchasers.

Even if we were to construe the farm as property gifted to Sally only, she merged the property with marital property by using joint funds to make the land contract payments. *Trattles*, 126 Wis.2d at 225, 376 N.W.2d at 383. Converting gifted property into a joint tenancy converts the gift from exempt property to divisible marital property. See *Bonnell v. Bonnell*, 117 Wis.2d 241, 246-47, 344 N.W.2d 123, 126-27 (1984).

By the Court.—Judgment affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.

