



Marc Soss: The Supreme Court Of Montana Addresses What Is A Completed Gift Opposed And An Estate Asset?

*“The Montana Supreme Court was asked to address whether a decedent’s uncashed cashier’s check, made out to himself and left in his home equates to a gift to his surviving spouse. In reversing the lower court, the Supreme Court, following *Marans v. Newland*, held that the essential elements of an inter vivos gift are “donative intent, voluntary delivery, and acceptance by the recipient.” Further, the ability to make a gift does not eliminate the legal requirements for a completed gift and these elements must be established by clear and convincing evidence. As a result, the uncashed check constituted an asset of the decedent’s estate.”*

Marc Soss, J.D., LL.M., provides members with commentary on *In The Matter Of The Estate Of Bradley James Haler*, Case Number: DA 25-0818, and its interpretation of what is a gift or a probate estate asset.

Marc Soss’ practice focuses on estate planning, probate and trust administration, and corporate matters in Sarasota & Manatee County Florida. Marc is a frequent contributor to LISI and has published articles in the Florida Bar, Rhode Island Bar, North Carolina Bar and National Contract Management Association magazine. Marc is also a retired United States Navy Supply Corps Officer.

Here is his commentary:

EXECUTIVE SUMMARY:

The Montana Supreme Court was asked to address whether a decedent’s uncashed cashier’s check, made out to himself and left in his home equates to a gift to his surviving spouse. In reversing the lower court, the Supreme Court, following *Marans v. Newland*, held that the essential elements of an inter vivos gift are “donative intent, voluntary delivery, and acceptance by the recipient.” Further, the ability to make a gift does not eliminate the legal requirements for a completed gift and these elements must be established by clear and convincing evidence. As a result, the uncashed check constituted an asset of the decedent’s estate.

COMMENT:

On October 22, 2021, Bradley James Haler (the “Decedent”) withdrew \$80,000 from a bank account associated with his business and purchased a cashier’s check payable to himself. The check was left in his home but not cashed prior to his death. The bank account terms provided that authorized signers may make account transactions as agents but have “no ownership or rights at death unless named as Pay-on-Death beneficiaries.” No pay-on-death beneficiary was designated on the account.

On November 25, 2021, the Decedent died intestate survived by his wife, Rebecca Haler (“Rebecca”), and a son from a prior marriage, Jason Haler (“Jason”). Under Montana intestacy law, § 72-2-112(4), MCA, the estate would be divided with Rebecca receiving “the first \$150,000, plus one-half of any balance of the intestate estate,” and Jason receiving the other one-half of the estate. In January 2022, Rebecca was appointed personal representative of the estate.

In February 2022, upon the advice of legal counsel, deposited the \$80,000 into her personal account. Rebecca had been advised the since the cashier’s check was issued before the Decedent’s death it was not an estate asset. Jason challenged this classification of the check.

In early 2025, the parties stipulated that the District Court would decide “[w]hether the disputed \$80,000 should be considered an Estate asset or an asset of Rebecca.” On August 22, 2025, after its review of the limited evidence, including a prior \$50,000 gift from the Decedent to Jason, and reliance on *Platts v. Platts*, 134 Mont. 474, 334 P.2d 722 (1959), the District Court concluded that clear and convincing evidence supported Rebecca’s retention of the \$80,000 as her own property.

The District Court found that the “cashier’s check was a negotiable instrument under § 30-3-104(7), MCA; that [the Decedent] left it in the home and thereby “constructively delivered” it to Rebecca under § 30-3-210(1), MCA; and that Rebecca was the “holder” [or other person entitled to enforce the cashier’s check under Montana’s Uniform Commercial Code(UCC)] and thus a “person entitled to enforce” the instrument under § 30-3-301, MCA.”

Jason appealed the District Court's legal conclusions for correctness and its supporting factual findings for clear error.

Relevant Montana Statutes and Case Law:

§ 70-3-101, MCA provides that a gift is "a transfer of personal property made voluntarily and without consideration."

§ 72-6-205(3), MCA provides that the "[d]eath of the sole party or last-surviving party terminates the authority of an agent," and that "[a]n agent in an account with an agency designation has no beneficial right to sums on deposit.

§ 72-6-211(4), MCA provides that an "agent in an account with an agency designation has no beneficial right to sums on deposit."

Under Marans v. Newland, 7141 Mont. 32, 39, 374 P.2d 721, 724 (1962) the "essential elements of an inter vivos gift are donative intent, voluntary delivery, and acceptance by the recipient." Further, under Albinger v. Harris, 2002 MT 118, ¶ 31, 310 Mont. 27, 48 P.3d 711, the "[d]elivery, which manifests the intent of the giver, must turn over dominion and control of the property to the recipient" and these elements must be established by clear and convincing evidence.

Supreme Court Analysis and Ruling:

On appeal, the Supreme Court addressed the issues of delivery of a negotiable instrument, under UCC Article 3; and whether the Decedent had made a gift to his spouse. In de-emphasizing the lower court's reliance on Platt, the court noted that the following material factual differences: (i) the \$80,000 cashier's check was payable to the Decedent and not Rebecca; and (ii) a lack of evidence or facts to support donative intent.

CONCLUSION

In reversing the lower court ruling, the Supreme Court found that the check was an estate asset as donative intent could not be inferred from the Decedent's prior gifts to his son, Jason, and that the \$80,000 check was not made payable to the alleged donee. The court took note that the Decedent never communicated a gift, indorsed the check, surrendered control over it,

or placed it within Rebecca's power. With respect to Rebecca's status as an authorized account signer on the account from which the cashier's check was obtained, Montana law provides that "an "agent in an account with an agency designation has no beneficial right to sums on deposit."

NOTE:

One should be hard-pressed to understand the logic of the lower court in finding that the check, which was undelivered, uncashed, and titled in the decedent's name alone would constitute a completed gift from husband to wife.

HOPE THIS HELPS YOU HELP OTHERS MAKE A *POSITIVE* DIFFERENCE!

Marc Soss

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