SPP Guiding Case No. 225: Protest Case — Feng Mouhui v. Li Mou (Gift Contract Dispute)

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SPP Guiding Case No. 225 (Procuratorial Example No. 225)

Keywords

Supervision of effective civil judgments; community property of spouses; violation of public order and good morals; void gift; return of all property.

Holding

Where, during the subsistence of a marriage, one spouse breaches the duty of fidelity and, on account of an extramarital affair, unilaterally gifts community property of the spouses to a third party outside the marriage, the gift violates public order and good morals and shall be determined void in accordance with the law. The party not at fault is entitled to recover all of the gifted property from the donee. In a case where the party not at fault sues the third party outside the marriage for return of the property, if neither spouse has requested division of the community property, a people's court that directly divides the community property of the spouses and orders the donee to return only part of the gifted property has committed an erroneous application of law, and the people's procuratorate shall exercise supervision in accordance with the law.

Basic Facts

He Mourong and Feng Mouhui were spouses with one son and one daughter. Beginning in August 2017, Li Mou worked in management at a foot-bath venue in Dongguan, Guangdong Province. He Mourong became acquainted with Li Mou through frequenting the venue and developed an extramarital affair with her. From August 2017 to September 2019, He Mourong transferred RMB 201,900 to Li Mou in 14 transfers through his Agricultural Bank of China account; from August 2017 to November 2019, He Mourong transferred RMB 177,500 to Li Mou in 278 transfers through WeChat. The bank transfers and WeChat transfers totaled RMB 379,400, of which the WeChat transfers included amounts with special meanings, such as 1,314 and 520. From August 2017 to October 2019, Li Mou transferred a total of RMB 91,300 to He Mourong through WeChat and paid RMB 56,400 in foot-bath consumption fees on his behalf, totaling RMB 147,700.

In January 2020, Feng Mouhui filed a lawsuit with the Xuanhan County People's Court of Sichuan Province (the court of first instance), with Li Mou as defendant and He Mourong as third party, on the grounds that He Mourong's gift of property to Li Mou infringed her property rights, requesting confirmation that He Mourong's gift of property to Li Mou during the subsistence of the marriage was void, and that Li Mou return the gifted property and corresponding interest. The court of first instance held that the money He Mourong transferred to Li Mou through WeChat or bank transfer was community property of himself and Feng Mouhui. He Mourong and Li Mou developed an extramarital affair after meeting through foot-bath consumption, which violated public order and good morals and should be morally condemned. However, because there were mutual transfers between He Mourong and Li Mou, the evidence submitted by Feng Mouhui made it difficult to distinguish normal fund exchanges from unlawful gift amounts. Accordingly, it dismissed Feng Mouhui's claims.

After the first-instance judgment, both Feng Mouhui and Li Mou appealed to the Dazhou Intermediate People's Court (the court of second instance). Feng Mouhui requested reversal to support her first-instance claims; Li Mou requested correction of the portion of the first-instance judgment finding that she had an improper male-female relationship with He Mourong, arguing that his transfers were not gifts but normal cooperative and economic exchanges, while requesting that the first-instance result be upheld. The court of

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second instance held that although Li Mou argued the transfers were based on an investment cooperation relationship, she provided no evidence. He Mourong breached the duty of spousal fidelity by transferring RMB 379,400 to Li Mou, and his property disposition was not ratified by Feng Mouhui, so the gift was void. Fifty percent of the gifted funds belonged to Feng Mouhui, and He Mourong had disposed of them without authority. After deducting the RMB 147,700 Li Mou transferred back, the remaining RMB 231,700 was gifted, of which 50% belonged to Feng Mouhui and should be returned by Li Mou. Accordingly, it revoked the first-instance judgment and ordered Li Mou to return RMB 115,900 to Feng Mouhui with interest.

After the second-instance judgment, Feng Mouhui applied for retrial to the Sichuan Provincial High People's Court and was rejected.

Judgment

Acceptance and review. Feng Mouhui, dissatisfied with the effective judgment, applied for supervision to the Dazhou Municipal People's Procuratorate. Upon review, the Dazhou Municipal People's Procuratorate considered that the gift was void and all gifted property should be returned, and requested the Sichuan Provincial People's Procuratorate to lodge a protest.

Supervision opinions. On May 23, 2022, the Sichuan Provincial People's Procuratorate lodged a protest with the Sichuan Provincial High People's Court. It argued, first, that during the subsistence of his marriage with Feng Mouhui, He Mourong breached the duty of mutual fidelity and, based on his improper male-female relationship with Li Mou, unilaterally gifted community property to Li Mou in several hundred transfers totaling RMB 379,400, contrary to public order and good morals. Pursuant to the second paragraph of Article 153 of the then-effective General Provisions of the Civil Law of the People's Republic of China — "civil juristic acts contrary to public order and good morals are void" — He Mourong's gift to Li Mou should be determined void, with the legal consequence of returning all property. The second-instance judgment's partial return amounted to endorsing a gift contrary to public order and good morals, harming the property rights of the non-fault spouse, and also providing an opportunity for a spouse who breached the duty of fidelity to transfer community property by gifting funds to a third party outside the marriage, contrary to the value orientation of promoting mutual fidelity between spouses, which was an erroneous application of law. Second, the second-instance judgment's partial return of the gifted property directly divided the community property and exceeded the parties' litigation claims. Where the spouses have not expressly chosen another property regime, community property is jointly owned and indivisible as a whole. During the subsistence of a marriage, where a husband or wife disposes of community property otherwise than for daily family needs, pursuant to Article 17 of the then-effective Interpretation (I) of the Supreme People's Court on Several Issues Concerning the Application of the Marriage Law of the People's Republic of China, they shall reach agreement and may not dispose of it unilaterally. The transfers involved in this case totaled more than RMB 370,000 and did not constitute daily family living expenses. He Mourong's disposition constituted a major disposition of community property beyond the scope of ordinary family agency. Where Feng Mouhui and He Mourong had not agreed on the disposition of the gifted funds, the second-instance judgment's direct division of the void gift lacked factual and legal basis.

Result of supervision. On October 31, 2022, the Sichuan Provincial High People's Court adopted the protest opinions and rendered a retrial judgment: Li Mou shall return RMB 231,700 to Feng Mouhui with interest.

Reasoning

(1) The act of one spouse gifting community property to a third party outside the marriage on account of an extramarital affair shall be determined void. Spouses owe each other a duty of fidelity. Where one spouse, on account of an extramarital affair, unilaterally gifts community property to a third party outside the marriage, the gift constitutes a disposition of property otherwise than for daily family needs, infringing the lawful rights of the other spouse as a co-owner of the property, and violates public order and good morals, and shall be determined void. Through supervision of effective civil judgments, procuratorial organs shall

prompt people's courts to determine in accordance with the law the scope of property return after a gift is determined void, so as to safeguard equal and harmonious marriage and family relations, cultivate and practice socialist core values, and foster a sound social atmosphere.

(2) After the gift of property to a third party outside the marriage is determined void, the donee shall return all of the gifted property, and the community property may not be directly divided in the course of return. After a gift is determined void, the donee no longer has a lawful basis for acquiring the gifted property and shall return it in full. Where the donor and his or her spouse have no agreement, or the agreement is unclear, on the property acquired during the subsistence of the marriage, the community property gifted by one spouse to a third party is jointly owned rather than owned in shares, and the return of the gifted property shall restore the original state of joint ownership by the spouses, so as to safeguard the lawful rights of the co-owners. In a case where the non-fault party sues the third party outside the marriage for return of property, if neither spouse has requested division of the community property, a people's court's judgment ordering partial return constitutes a direct division of the community property and an erroneous application of law, and the procuratorial organ shall exercise supervision in accordance with the law.

Relevant Legal Provisions

Articles 8, 153 and 157 of the General Provisions of the Civil Law of the People's Republic of China (applicable to this case; now Articles 8, 153 and 157 of the Civil Code of the People's Republic of China).

Articles 17 and 19 of the Marriage Law of the People's Republic of China (applicable to this case; now Articles 1062 and 1065 of the Civil Code of the People's Republic of China).

Article 17 of the Interpretation (I) of the Supreme People's Court on Several Issues Concerning the Application of the Marriage Law of the People's Republic of China.

Articles 207 and 215 of the Civil Procedure Law of the People's Republic of China (as amended in 2021, applicable to this case; now Articles 211 and 219 of the 2023 amendment).

Article 90 of the Rules for Civil Litigation Supervision by People's Procuratorates.

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