

Clear and Unequivocal Evidence Required to Prove a Gift of Land

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Cases Considered:

[*Fleet Estate v. Davies*](#), 2009 ABCA 376

Cases involving gifts of land are not frequently before the Alberta Court of Appeal. This may be because such gifts are uncommon, or it may be because such gifts are difficult to prove. In the recent case of *Fleet Estate v. Davies*, 2009 ABCA 376, the Court of Appeal reminds us that clear and unequivocal evidence must always be presented to make out a case for a gift of land. Having been allowed to live in the property for a number of years without paying any rent is not sufficient. Proving that a gift of land has been perfected requires more. The Court of Appeal says that evidence of delivery of a transfer of land or a duplicate certificate of title (where those are still available) will do, but it is doubtful that anything less will.

In *Fleet*, the residential property in question was purchased by Cyril Fleet, by way of assumption of mortgage and an additional cash payment. Cyril made a gift of one-half interest in the property to his daughter Valerie. He gave Valerie two substantial cash payments to pay the mortgage and then he made all remaining monthly mortgage payments. Cyril and Valerie held the property as tenants-in-common. Despite Cyril's interest in the property, it appears he never lived there. Rather, Valerie and her husband, Robert Davies, had occupied the property.

After the death of both Cyril and Valerie, the administrator of Cyril's estate brought an application to terminate the tenancy-in-common. Robert, who had become the registered owner of Valerie's interest upon her death, cross-applied for a declaration that he was the beneficial owner of the entire property. He asked the court to order the property transferred into his name alone. Robert argued that Cyril had made a gift of the entire interest in the property to his daughter Valerie.

According to the trial judge, there was insufficient evidence that Cyril Fleet intended to and did in fact gift his daughter the entire interest in the property. In particular, the trial judge noted that Cyril never transferred title to the property into his daughter's name alone. Consequently, in the trial judge's view, Cyril never surrendered or gifted his one-half interest to his daughter. The trial judge ordered the sale of the property and in addition, directed Robert to pay Cyril's estate a sum of \$500 per month in rent for the duration of Robert's occupation of the property.

On appeal, the Court of Appeal agreed with the trial judge that a gift of land had not been made. The Court disagreed, however, that Robert ought to pay rent of \$500. On both points, it was a lack of evidence that decided the matter.

With respect to whether Cyril had gifted his interest to Valerie, the Court of Appeal agreed with the trial judge that Cyril had not surrendered his interest in the property to his daughter. According to the Court, at para. 5: “[i]n order to make a gift of real property, the donor must do what he is obliged to do.” As noted by the Court, this may mean delivery of a transfer of land or delivery of a duplicate certificate of title in respect of the property. By contrast, in this case, not only had Cyril not delivered a transfer of land or duplicate certificate of title, but no transfer had ever been prepared. Oral statements introduced by Robert to serve as admissions that Cyril had intended to give the entire interest in the property to his daughter were, according to the Court, equivocal; they were given little weight. Ultimately, the Court focused on the lack of evidence indicating that a transfer of land had been delivered. In short, the alleged gift was never perfected.

As for the trial judge’s order that Robert pay \$500 per month as a reasonable rent, a lack of evidence again played a critical role before the Court of Appeal. The Court concluded that, while it was the administrator’s obligation to adduce evidence in support of this claim for rent, the administrator had failed to do so. The trial judge’s order to pay occupation rent was overturned.

At the end of the day, *Fleet v. Davies* does not make new law nor does it elaborate upon or elucidate existing legal principles. Still, the case is useful for reminding us that the key to all claims is the evidence. Before going to court to advance a claim, make sure you have solid evidence on your side. And, in the case of a claim with respect to a gift of land, make sure you have either a transfer of land or a duplicate certificate of title in your possession.