

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

WASHINGTON, SC.

SUPERIOR COURT

(Filed: October 23, 2012)

MICHAEL STEWART

:

vs.

:

C.A. No. WC 05-0277

:

KAREN STEWART

:

:

DECISION

SAVAGE, J. This case requires this Court, following a non-jury trial of this matter, to call the proverbial balls and strikes and determine whether Plaintiff Michael Stewart should get possession of a collection of historic baseball memorabilia that his grandfather, Robert W. Stewart, amassed during the 1960’s when he served as a Major League Baseball umpire for the American League. The memorabilia, referred to as the “Stewart Collection,” includes 120 baseballs, literally placed into evidence in this case, and ten missing baseball bats.¹ Plaintiff Michael Stewart, grandson of Robert W. Stewart, claims that his father, Robert A. Stewart, made an *inter vivos* gift to him of the Stewart Collection before he died. Defendant Karen Stewart, Plaintiff’s stepmother who was married to Robert A. Stewart at the time of his death, maintains that her husband made no such gift to his son but instead gifted the Stewart Collection to her *inter vivos*.

This Court finds that Plaintiff has batted a thousand; Defendant, on the other hand, has struck out. As such, it awards Plaintiff immediate possession of the 120 baseballs in the Stewart Collection and the ten bats, should they be recovered.

¹ The Stewart Collection originally contained other baseball memorabilia gifted to another family member by Robert W. Stewart. It also included a World Series ring and Cleveland Indians watch. As the events surrounding disposition of the watch and the ring differ from those connected with the baseballs and bats, however, this Court will employ the term “Stewart Collection” in this Decision to include only the 120 baseballs and the ten bats; the watch and the ring will be addressed separately, as necessary.

I

FINDINGS OF FACT² AND PROCEDURAL HISTORY

Robert W. Stewart, Plaintiff's grandfather, was part of a cadre of professional baseball umpires groomed for a career in Major League Baseball who got their start in the Blackstone Valley in Rhode Island. He had an illustrious career as an umpire for the American League from 1959-1970. See Def.'s Ex. D (umpire card). He died on December 20, 1981. See Def.'s Ex. G (death certificate). Right after his death, an article appeared in The Woonsocket Call that heralded his life as an umpire. See Def.'s Ex. I; (Tim Manigan, The Woonsocket Call (December 26, 1981)). Id. It reads, in pertinent part, as follows:

For Bob Stewart, it was a long, long hard haul from the sandlots of Blackstone to the major leagues in a journey that brought him to the fields of the World Series.

There were many struggles, many months of wondering over the future, but in the midst of it, he once remarked solidly: "I wouldn't trade my job for any other in the world."

This week, the struggles were over for Bob as he went to his final rest. The game is finished and the score is final. But it was well played and when Bob died in Woonsocket Hospital, it was likely with few regrets. To those of us who knew him, it seemed as though he always batted a thousand.

The reason for that is because in spite of all his travels and his accomplishments, Bob Stewart never forgot who he was or where his roots were. He never forgot his friends in Blackstone, Woonsocket, Cumberland and Lincoln. He always had time for us, a word for us, a prediction on America's pastime and we loved him for it. We hung on his words. We admired him.

Far from being a "blind ump," Bob kept a careful watch on his past and never lost sight of the people who loved him long before he was famous.

² These findings of fact are drawn from the testimony, which has not been transcribed, and the exhibits, as referenced, introduced at trial. To the extent witnesses provided contradictory testimony, these facts are based on the testimony that this Court found most persuasive.

And he was tough. He went down swinging. Eight years ago, he was told his illness would take him within five years. And as he labored through his last innings, it was with quiet dignity.

When I was a kid, I remember my father going to a late night game up at Fenway, too late to take me along. Vividly, I recall I awoke the next morning and found a major league ball on my bureau. It was signed by Bob Stewart. My dad had met him and obtained the autograph.

I don't know whatever happened to that ball. I don't have it. But I have the memory.

Id.

As this article reflects, like many umpires of his time, Robert W. Stewart made a habit of autographing and obtaining autographed baseballs. The unwritten rule then applicable to umpires was that they only could get players to autograph baseballs and bats for them when those baseballs and bats were used by the players in games in which the umpires worked. Over the course of his distinguished career in Major League Baseball, during which he served as an umpire in three World Series games, Robert W. Stewart amassed an extensive collection of baseball memorabilia, including baseballs signed by professional baseball players, autographed bats, bats from World Series games, a World Series ring, a Cleveland Indians watch, umpire masks, baseball mitts, photographs of players, and Wheaties cereal boxes honoring Willie Mays and Lou Gehrig for "Sixty Years of Sports Heritage." See Pl.'s Exs. 2 & 4-15; Def.'s Exs. A & B. The names on some of this memorabilia reads like a "Who's Who" of Major League Baseball from a bygone era: balls autographed by baseball greats such as Ted Williams, Hank Aaron, Joe DiMaggio and Sandy Koufax and bats signed by Roberto Clemente, Mickey Mantle, Al Kaline, Joe Pepitone, Ron Sey and Wayne Causey. See Pl.'s Exs. 2 & 3.

At some point in the late 1970's or early 1980's, when Robert W. Stewart was in declining health and around the time that he was preparing to sell his home, a Stewart family gathering took place at his home in Cumberland, Rhode Island. See Def.'s Exs. E (real estate data); H (deed referencing sale of home in August 1980); I (newspaper article referencing Robert W. Stewart's illness); P (tax records for years 1977-1980). Among those persons present were: Plaintiff Michael Stewart; his father, Robert A. Stewart; his sister, Robin Stewart; his stepmother, Defendant Karen Stewart; her daughter, Pamela Perrotti; and his Aunt Barbara.³ At the gathering, Robert W. Stewart parted with the Stewart Collection. After giving some baseball memorabilia to his sister, Barbara Josephson, Robert W. Stewart gave the Stewart Collection—which then included baseballs numbering close to 120, ten World Series bats, a World Series ring and a Cleveland Indians watch—to his son, Robert A. Stewart.⁴ Up until this point, the items in the Stewart Collection had been kept wrapped and secured in storage lockers in Robert W. Stewart's basement. It was his intent, as he told Plaintiff, that the Stewart Collection remain in the family and ultimately pass to Plaintiff as the next male heir and his first grandson.

After receiving the Stewart Collection from his father, Robert A. Stewart loaded it into the car and returned with it to his home in New Hampshire. From that point forward until near the time of his death, Robert A. Stewart wore the World Series ring that his father had given him. The Cleveland Indians watch remained in his bedroom. At some point after moving the Stewart Collection to New Hampshire, Robert A. Stewart and his son, Plaintiff Michael Stewart, moved

³ This woman is referenced in testimony by Plaintiff as "Aunt Barbara," so this Court presumes that she is his aunt and the sister of his father, Robert W. Stewart. In his interrogatory answers, Plaintiff further identifies her as Aunt Barbara Josephson. See Def.'s Ex. F (nos. 2(b) and 4(E)).

⁴ At this time, Robert A. Stewart—a mathematics teacher and part-time antiques dealer and auctioneer—had been married to Defendant Karen Stewart for only a brief period of time. See Pl.'s Ex. 18 (divorce decree); Def.'s Ex. K (Master's Report). The gathering took place around the time, in 1980, that he gained custody of Plaintiff Michael Stewart, and then his daughter Robin Stewart, following a divorce and bitter custody battle with his first wife. See Def.'s Ex. K (Master's Report).

the baseballs and bats into Plaintiff's bedroom where they could be displayed. Plaintiff added several autographed baseballs to the Stewart Collection that had been given to him. Although Defendant denies that any baseballs in the Stewart Collection were autographed to Plaintiff, the baseballs themselves that are in evidence confirm the opposite. See Pl.'s Ex. 2. Plaintiff's grandfather gifted one of those baseballs to him, inscribing it with the words "Best Wishes, Mike." (Pl.'s Ex. 26.) Hank Aaron autographed another one of those baseballs with the words "To Michael, Best Wishes." (Pl.'s Ex. 36.) Yet another baseball autographed by Ted Williams says simply "To Mike." (Pl.'s Ex. 38.)

On February 9, 1979, two years before his grandfather's death, Plaintiff attended a dinner party with his grandfather, corroborated by a newspaper clipping of the event, and met such baseball greats as Ron Luciano and Rich Gale. See Def.'s Ex. I. The two Stewart family men discussed the Stewart Collection. It was Plaintiff's understanding, based on conversations with his father and grandfather, that the Stewart Collection was to stay in the family and never be sold and that the baseballs and bats in the collection belonged to him.

After his grandfather died, and around the time Plaintiff went to college, his father wrote him a letter about the Stewart Collection. The letter from Robert A. Stewart to Plaintiff, dated December 23, 1984, reads as follows:

December 23, 1984

Dear Mike:

Christmas is growing near and yet everything else in our lives is beginning to separate and force us farther apart. I hope and pray that this doesn't continue, however, if it does there are many things I want to be sure that you know and some things I don't want you to ever forget if something ever happens to me.

First, I know that you and I have a hard time discussing things. I know that this has caused you many moments of anxiety and I am very sorry because of it all. I hope and trust that someday either I or someone else can help unburden yourself with this problem because you need to and fully deserve it.

Secondly, both you and Robin have the identical problem with each other. You are both super, super people except for the fact—Please before I die or if I do, please solve this problem between you two no matter what it takes. You and Robin only have each other in this world to count on—don't continue to let it go to waste. Please solve it somehow as soon as possible—get anybody you need to if necessary to help—you and Robin need each other now and will also need each more later on in life. Please promise me that you will try and continue to try to solve this problem.

If and when something happens to me, I want you and Robin to be fully prepared. First, I want you to immediately go through all of the clothes in the closet (I HIDE money in my suit jackets they don't know about)—also much money in my wallet. Go through my drawers and find any jewelry I may have hid there.

Next—Immediately get ahold of a lawyer because Karen and Pam will try to stick it to the both of you. Don't let anything leave this house or R.I. unless you know about it—this includes all of her jewelry. Karen and I have talked many times about a will (Don't have one yet) where we have agreed that everything including all personal jewelry will be split 3 ways You-Robin-Pam. This is fine with me. However, if something happens to me before a will be extra carefull (sic)—she will attempt to get at least half of it all—believe me. If this is to happen—years ago when your mother (Carol) and I got divorced there was a stipulation that reads that you and Robin shall be the sole inheriters (sic) of my estate—Karen knows about it—knew about it before we were married and is scared stiff of it.⁵ Make sure your lawyer knows about it and makes smart use of it if he has to.

The baseball collection and your desk are yours—the rutting [?] beds are part of the estate—Pam's dressing table and cedar chest is hers—the rest is part of the estate—Robin's cedar chest is hers—the bedroom set is part of the estate.

⁵ This provision of the divorce decree between Robert A. Stewart and his former wife, Carol J. Stewart, reads: "Robert A. Stewart shall designate by will the minor children of the parties as the sole beneficiaries of his estate." Pl.'s Ex. 18, ¶ 13.

If there are no problems in splitting everything 3 ways—make sure you get an outside appraiser (especially jewelry) in to find out exactly what is what and how much everything is worth. Don't forget—there is always money and stuff in the safe—make sure you get it all accounted for. Be very defensive and very careful. It's a shame—I love her very much but because of her obsession with Pam we can't live together nor can I trust her in a serious situation like this would be—*please remember all of this—put this somewhere you'll always know where it is.*

I love you very much and have always been very, very proud of you. Sure you have had your ups and downs, but that's part of life, they have never made me stop loving you or being proud of you. Please always take care of yourself and your sister. I'll always love the two of you.

Love,

Dad

Pl.'s Ex. 1 (italics added).

The Stewart Collection remained in Plaintiff's bedroom while he was in college, when he returned back home for a year or two after college, and until he moved out of the house. In 1989, when Plaintiff moved out of the house permanently and relocated to Nashua, New Hampshire, he took the Stewart Collection with him. Defendant could not explain why he did so if the baseballs did not belong to him. In the ensuing years, he struggled to make a living as an antiques dealer and auctioneer, which required him to move all over the country. After New Hampshire, he moved several more times, eventually relocating to Georgia and then to Mississippi. During this time period, Plaintiff proudly kept the Stewart Collection in his possession, displayed, with little exception, in his home.

In 1997, Plaintiff found himself working for an antiques dealer and living in a converted mansion with many of his co-employees. He thus returned the Stewart Collection to his father for safekeeping. Plaintiff stored other childhood belongings at Country Squire Antiques—the

business in which both his father and Defendant were involved. The baseballs and bats in the Stewart Collection were packed in boxes and placed in Defendant Karen Stewart's study in the basement of the home that she shared with her husband in Narragansett, Rhode Island.⁶ Vincent Onorato, a man who had worked with Robert A. Stewart in the antiques business, testified credibly at trial, and without any apparent bias or motive, that at a Christmas Party at this house, Robert A. Stewart referred to the Stewart Collection as belonging to Plaintiff, saying, "Those balls belong to Michael."

Two years later, in 1999, Robert A. Stewart and Defendant moved to Wakefield, Rhode Island where Defendant's daughter, Pamela Perrotti, joined them in 2003 following her divorce. Robert A. Stewart built a showcase in a downstairs recreation room to display the baseballs and bats in the Stewart Collection. See Def.'s Ex. M (photograph of baseball collection).

Although Plaintiff returned to New England in 2001, when his relationship with his fiancée ended, he fell on hard times financially and otherwise. When he got back on his feet a bit, he lacked space to store the Stewart Collection and did not want to move it into storage with his other property. The Stewart Collection thus remained in Robert A. Stewart's home until his death on April 13, 2005.

After his father died, Plaintiff told Defendant that he was going to move the Stewart Collection back to his apartment. Defendant refused, claiming that the memorabilia belonged to her. According to Plaintiff, she claimed that her husband had not left her enough money. Yet, at a gathering at her house after the memorial service for her husband, Defendant could be heard instructing Plaintiff to take the guests downstairs and "show them [your] balls."

⁶ While Defendant maintained that the Stewart Collection remained in boxes in her study almost continuously from the time Robert W. Stewart gave it to his son until her husband's death, this Court does not credit her testimony in this regard. Instead, this Court finds that the Stewart Collection was packaged in boxes in her study for only a brief period of time from 1997 up until her move from this residence in 1999.

As a result, on May 4, 2005, Plaintiff Michael Stewart filed suit against Defendant Karen Stewart for replevin to recover possession of the Stewart Collection and related baseball memorabilia (Count I); injunctive relief to enjoin Defendant from disposing of, injuring, concealing or transporting the Stewart Collection and related baseball memorabilia (Count II); and injunctive relief to restrain Defendant from dissipating the assets of the Country Squire that allegedly were part of the Estate of Robert A. Stewart until an Estate could be opened in Probate Court (Count III). See Pl.'s Ex. 19 (Complaint). In seeking possession of the Stewart Collection and related baseball memorabilia, Plaintiff claimed that his father gave it to him in the early 1980's. Id. ¶ 6. Plaintiff defined the Stewart Collection as including: World Series bats from 1961, 1967 and 1970 and bats autographed by Major League Baseball players such as Roberto Clemente, Charlie Finley, Ron Cey and Mickey Mantle; a 1961 World Series ring; baseballs including those autographed to Plaintiff by Major League Baseball players such as Hank Aaron and Ted Williams; baseballs signed by Yankees and Twins teams and a ball autographed by both Joe DiMaggio and Ken Keltner; and other baseball memorabilia such as baseballs, bats and watches. Id. at ¶¶ 5(a)-(e).

On May 4, 2005, Plaintiff filed an Emergency Motion for Writ of Replevin and Injunctive Relief, seeking the immediate return to him of the Stewart Collection and related baseball memorabilia and an injunction to restrain dissipation of that property and the assets of the Country Squire. On the same date, the Court granted an *ex-parte* temporary restraining order to restrain Defendant from selling, moving, dissipating, injuring, concealing or harming the Stewart Collection and related baseball memorabilia and the business records of the Country Squire. See Def.'s Ex. J (Temporary Restraining Order).

On May 13, 2005, the Court granted Plaintiff's Motion for Writ of Replevin, ordering that Defendant return to Plaintiff the Stewart Collection and related baseball memorabilia upon Plaintiff's posting a bond in the amount of \$500,000 with surety. The Order allowed Plaintiff to appoint an individual to inventory and appraise that property. The Clerk of Court issued a Writ of Replevin on that date to allow the following goods to be replevied from Defendant and returned to Plaintiff:

The Stewart Collection—a collection of approximately 118 baseballs, 9 bats, and various other baseball memorabilia compiled by Robert Stewart, grandfather of Michael Stewart. Included in this collection, but not limited to, are the following items:

1. Bats autographed by Roberto Clemente, Ron Cey, Robert Stewart. Also, three (3) World Series bats and green promotional bat;
2. A 1960 World Series ring;
3. Baseballs autographed by Hank Aaron, Ted Williams, Joe DiMaggio, Ken Keltner, No-Hitter balls signed by Hoyte Williams and Bill Mombourquette, approximately twenty (20) balls signed by Yankee teams, a ball signed by umpires;
4. A Cleveland Indians watch;
5. Showcases.

See Pl.'s Ex. 24 (Writ of Replevin). Plaintiff never posted a bond to secure issuance of the Writ of Replevin nor did he arrange for it to be served on Defendant. Instead, on May 20, 2005, the parties entered into a stipulation that continued the temporary restraining order in full force and effect until further notice and by which they agreed that the Stewart Collection and related

baseball memorabilia would be held by a mutually agreed upon third party until the Court finally determined the rightful owner of that property.

On May 31, 2005, Defendant filed an Answer to the Complaint. See Pl.'s Ex. 20 (Answer). In it, Defendant denied that Plaintiff was given the Stewart Collection and related baseball memorabilia by his father, that he is the owner of that property or that she had wrongfully detained or intended to dissipate that property. Id. ¶¶ 6, 14. With regard to the contents of the so-called Stewart Collection and related baseball memorabilia, she admitted that it contained a 1961 World Series ring, that out of the 120 baseballs in issue, there may be approximately two or three that are autographed to Plaintiff, and that mostly everything in the collection was displayed in two display cases before the parties agreed to place the baseballs in safety deposit boxes at the Washington Trust in Warwick, Rhode Island. Id. ¶¶ 5(c), (d) and (e). As to whether it included the bats alleged by Plaintiff or the specific autographed baseballs identified by Plaintiff in his Complaint, Defendant neither admitted nor denied those allegations, but left Plaintiff to his proof. Id. ¶¶ 5(a), (b) and (d). Defendant further admitted that, at the time of her husband's death, the "collection," as identified in Plaintiff's Complaint, was located at their home in Wakefield, Rhode Island. Id. ¶ 5(c).

On June 16, 2005, Defendant went to the South Kingstown Police Department twice to file police reports alleging thefts by Plaintiff. In the afternoon of that day, she alleged that Plaintiff had broken into her business, Country Squire Antiques, through the front door and stolen collections of comic books and baseball cards that were at issue in this litigation. See Pl.'s Ex. 22 (incident report). She claimed that she had been away on a business trip from June 5-13, 2005 and that, upon her arrival home, she was told by a friend, Robert Silva, that Plaintiff had told him that he still had a key to the business premises and that he had taken the items. Id. She

reported to the police that “Michael is bitter because his father did not leave him anything in the will upon his passing.” Id. At trial, however, Defendant denied that her husband had a will. Her daughter was more equivocal on that point, testifying first at trial that she was not sure if Robert A. Stewart had a will and later claiming that he did not.⁷

On the evening of the same date, Defendant filed a second police report, with a different officer of the South Kingstown Police Department, alleging that Plaintiff “possibly” broke into her home and stole ten autographed baseball bats and a 25th anniversary Cleveland Indians watch that are at issue in this litigation. See Pl.’s Ex. 23 (incident report); Pl.’s Ex. 25 (Defendant’s witness statement). Her daughter actively participated with her in the ensuing investigation. Id. Defendant said that she suspected Plaintiff of theft because of the nature of the items allegedly taken and because of the alleged thefts from her business. Id. She claimed that, even though she had been back home for several days, she had not noticed the items missing until the evening in question, after discussing with her daughter that they needed to be more vigilant about using the alarm on the house. Id. According to the police report, Defendant said that she had gone downstairs earlier in the evening and “finally noticed that the bats were missing which led her to check the house for missing items.” Id.⁸ The police found no visible signs of forced entry into Defendant’s house prompting Defendant to state that she had recently replaced all of the locks on the house out of concern about Plaintiff and the way he had been acting during the litigation. See Pl.’s Ex. 23. She believed that it was possible that Plaintiff had gained entry through a window that she had inadvertently left unlocked. Id. When the police inquired as to the value of

⁷ This Court is uncertain whether Robert A. Stewart did, in fact, die intestate. While Defendant appears to suggest in her police statement that he had a will and her daughter, in her trial testimony, did not rule out that possibility, no will was introduced into evidence at trial.

⁸ In a letter to the police several weeks later, Defendant, with the assistance of her daughter, sought to disavow this statement. See Pl.’s Ex. 21.

the items that allegedly had been taken, Defendant said that she knew that they were worth a lot of money and that she was in the process of having them appraised in connection with the litigation. Id. At trial, however, Defendant denied making the representation to the police that she had commissioned an appraisal of the property. In fact, neither party has conducted any appraisal of the Stewart Collection.

In following up on these breaking and entering complaints, the police contacted Plaintiff, who indicated that he had possession of keys to the store and the authority to be in it when the owner was not present there in order to avoid any conflicts. See Pl.'s Ex. 22. He admitted that he had the comic book collection with him, stating that it had been willed to him from a late uncle. Id. When the police sought to question him again at a later date, he declined to speak with them further. See Pl.'s Ex. 23.

When the police interviewed Defendant again, she admitted that Plaintiff had permission to enter the store when her husband was alive and that Plaintiff had a key to the store then, but she denied that Plaintiff had a key to the store or permission to enter it at the time of the alleged theft. See Pl.'s Ex. 22. When the police asked Defendant about the ownership of the items that Plaintiff removed from the store, she said "The comic book and baseball collections are in litigation to determine the right ownership. These items were ours, my husband Bob's and myself, we lent this collection to Michael to hold and he brought it back to us, because it was ours. He had it for approximately one and a half years to 2 years out of 34 years." Id.

With regard to the alleged theft from her home, Defendant said in a later statement to the police that, although her daughter and granddaughter lived with her, no occupants were home during the crime and that she was not sure when the items were taken or if the house was locked at that time. Id. Though Defendant claimed to have been out of town at the time of the alleged

thefts, neither she nor her daughter explained the daughter's whereabouts during the time in question. Defendant admitted that she has a residential alarm, but stated that on at least one occasion, it was not activated. See Pl.'s Ex. 23. She only could describe the items taken with the help of her daughter. Id. She told police that all of the items taken were part of her dowry. Id.

The police also interviewed Robert Silva, who corroborated the fact that Plaintiff had a key to the store. See Pl.'s Ex. 22. Mr. Silva also stated that he believed that the items Plaintiff removed from the store belonged to Plaintiff, as they were items that Plaintiff and his father had accumulated over the years. Id. A neighbor of Defendant claimed to have seen two men on Defendant's deck around June 6, 2005, but said that neither of them looked like Plaintiff. See Pl.'s Ex. 23.

Nothing further came of the police investigation. In violation of the terms of the temporary restraining order and the parties' stipulation, Defendant thereafter sold the World Series ring at an antiques show for \$800 and never saw it again.

On November 20, 2008, Plaintiff filed a Motion to Hold Defendant in Contempt and for Other Relief by which he alleged, inter alia, that Defendant should be held in contempt for failing to secure the bats that were part of the Stewart Collection. In it, Plaintiff claimed that, pursuant to the parties' stipulation dated May 20, 2005, they placed most of the Stewart Collection in safety deposit boxes at the Washington Trust Bank in Warwick, Rhode Island and agreed to split the cost of doing so. He claimed further that part of the Stewart Collection—namely, the baseball bats—was too large to be placed in the safety deposit boxes and that the parties had agreed that Defendant would keep the bats in her home that she secured with an alarm system. Plaintiff claimed that the bats were subsequently stolen from Defendant's home, that the bats were the only items stolen, and that Defendant claimed that on the night of the theft,

she failed to activate the alarm system. Plaintiff thus sought to hold Defendant in contempt for failing to maintain the bats in a safe manner or concealing, dissipating or otherwise harming the bats. He also sought reimbursement from Defendant for unpaid expenses for the safety deposit boxes and an accounting of the books of the Country Squire. There is no evidence, however, that Plaintiff ever asked the Court to hear his motion.

On January 20, 2009, the Court granted Plaintiff leave to amend his Complaint to add a claim for Declaratory Judgment to declare him the owner of the Stewart Collection. There is no evidence, however, that he ever filed an Amended Complaint.⁹ On June 6, 2011, this Court conducted a mediation, which was unsuccessful, and then scheduled the case for trial. On that date, the parties filed a stipulation that read: “[t]he baseball collection at issue shall be kept at the office of James Donnelly, Esq. [Defendant’s attorney] until the day of trial.” This Court tried the case without a jury. As of the time of trial, the ten bats and the Cleveland Indians watch remained missing. Plaintiff introduced into evidence the 120 baseballs that are part of the Stewart Collection. See Pl.’s Ex. 2.

II

STANDARD OF REVIEW

In a non-jury trial, the standard of review is outlined in Rule 52(a), which provides that “in all actions tried upon the facts without a jury . . . the court shall find the facts specifically and state separately its conclusions of law thereon[.]” R.I. Super. R. Civ. P. Rule 52(a). In a bench trial, therefore, “the trial justice sits as a trier of fact as well as of law.” Hood v. Hawkins, 478 A.2d 181, 184 (R.I. 1984). In such a proceeding, “determining the credibility of [the] witnesses

⁹ Despite this apparent oversight, this Court will treat this action as encompassing a claim by Plaintiff for declaratory relief to establish his alleged ownership of the Stewart Collection, subject to his filing an Amended Complaint forthwith, to state such a claim for relief.

is peculiarly the function of the trial justice.” McEntee v. Davis, 861 A.2d 459, 464 (R.I. 2004) (quoting Bogosian v. Bederman, 823 A.2d 1117, 1120 (R.I. 2003)). It is, after all, “the judicial officer who [actually observes] the human drama that is part and parcel of every trial and who has had the opportunity to appraise witness demeanor and to take into account other realities that cannot be grasped from a reading of a cold record.” In the Matter of the Dissolution of Anderson, Zangari & Bossian, 888 A.2d 973, 975 (R.I. 2006). “[A]s a front-row spectator[,] the trial justice has the chance to observe the witnesses as they testify and is therefore in a ‘better position to weigh the evidence and to pass upon the credibility of the witnesses[.]’” Perry v. Garey, 799 A.2d 1018, 1022 (R.I. 2002) (quoting Nisenzon v. Sadowski, 689 A.2d 1037, 1042 (R.I. 1997)).

Although the trial justice is required to make specific findings of fact and conclusions of law, “brief findings will suffice as long as they address and resolve the controlling factual and legal issues.” White v. LeClerc, 468 A.2d 289, 290 (R.I. 1983); see Super. R. Civ. P. 52(a). The trial justice’s findings, however, must be supported by competent evidence. See Nisenzon, 689 A.2d at 1042. As such, a trial justice sitting as a finder of fact need not categorically accept or reject each piece of evidence or resolve every disputed factual contention. Notarantonio v. Notarantonio, 941 A.2d 138, 147 (R.I. 2008); yet, the trial justice should address the issues raised by the pleadings and testified to during the trial. Nardone v. Ritacco, 936 A.2d 200, 206 (R.I. 2007).

III

ANALYSIS

“[I]t is well settled that a claimant has the burden of establishing a gift *inter vivos* by clear and satisfactory evidence.”¹⁰ Wyatt v. Moran, 81 R.I. 399, 403, 103 A.2d 801, 803 (1954) (citing Carr v. MacDonald, 70 R.I. 65, 73, 37 A.2d 158, 162 (1944); Old Colony Cooperative Bank v. Burger, 63 R.I. 158, 228, 7 A.2d 725, 728 (1939)). To satisfy this burden, the claimant must prove that the donor intended, *in praesenti*, to divest himself or herself of the exclusive ownership and control of the property being gifted and to vest such ownership and control in the claimant. Id.; Tabor v. Tabor, 73 R.I. 491, 493, 57 A.2d 735, 736 (1948). Yet, “[a] mere intention to make a gift, however clearly expressed, amounts to nothing.” Carr, 70 R.I. at 74, 37 A.2d at 162. “To be effective, a gift must be fully executed; it must go into immediate and present effect.” Id.

In addition to proving a present true donative intent on the part of the donor, the claimant also must prove delivery. See Silva v. Fitzpatrick, 913 A.2d 1060, 1063 (R.I. 2007); Ruffel v. Ruffel, 900 A.2d 1178, 1188 (R.I. 2006); Tabor, 73 R.I. at 493, 57 A.2d at 736; Weber v. Harkins, 65 R.I. 53, 59, 13 A.2d 380, 382 (1940). There must be “some manifestation such as an actual or symbolic delivery of the subject of the gift so as to completely divest the donor of dominion and control of it.” Dellagrotta v. Dellagrotta, 873 A.2d 101, 110 (R.I. 2005) (quoting Black v. Weisner, 112 R.I. 261, 267, 308 A.2d 511, 515 (1973)). Where there is no evidence of actual delivery, “there must be such a delivery as the nature and situation of the subject sought to

¹⁰ Although the Supreme Court has used the phrase “clear and satisfactory” evidence to describe the claimant’s burden of proof, this burden is more commonly described by it as proof by “clear and convincing” evidence. See Black v. Weisner, 112 R.I. at 268, 308 A.2d at 515 (trial justice found that defendant had proven “by ‘clear and convincing evidence’ that a gift, *in praesenti* was made by decedent to divest himself of the stocks in possession of the bank”).

be given reasonably permits, and this delivery must clearly manifest the donor's intention to divest himself [or herself] of title and possession. It is usually considered sufficient if the donor has put it in the power of the donee to take possession, or if the donee can take possession without committing a trespass." Black, 112 R.I. at 268, 308 A.2d at 515 (citing 38 Am. Jur. 2d Gifts § 20 at 821-23 (1968)).

"[M]ere possession of the [subject of the gift] or mere lack of possession [of it], has not been considered in itself as necessarily controlling on the question of donative intent and gift." Millman v. Streeter, 66 R.I. 341, 350, 19 A.2d 254, 259 (1941). The fact that the subject of the gift was "at times . . . in the possession of [the donor or at other times in the possession of the donee] are matters of importance and deserve due consideration in arriving at an ultimate decision, but such facts are not themselves conclusive or controlling." Wyatt, 81 R.I. at 404, 103 A.2d at 803 (citing Millman, 66 R.I. at 350, 19 A.2d at 259). Indeed, "[p]ossession 'is but one piece of evidence shedding light upon the intention of the parties.'" Tabor, 73 R.I. at 496, 57 A.2d at 738 ("the mere fact that one has possession of it ought not to be conclusive against the rights of the other") (citations omitted). Possession of the subject of the gift or the lack thereof, instead, "[is] to be considered with all [of] the facts and circumstances in evidence in determining the donor's true intent, and the existence of a completed gift." Millman, 66 R.I. at 350, 19 A.2d at 259.

Cases where the property of a deceased person is in dispute call for the closest scrutiny, particularly with regard to testimony as to donative intent. Wyatt, 81 R.I. at 405, 103 A.2d at 803; Carr, 70 R.I. at 73, 37 A.2d at 162. "This is especially so [where] the alleged gift would deprive the donor of [substantial property] and defeat a firm and clearly expressed intention in [his or] her will." Carr, 70 R.I. at 73-74, 37 A.2d at 162.

Rhode Island law also speaks to the question of whether premarital property and property gifted to or inherited by one spouse before, during or after the marriage is marital property. See R.I. Gen. Laws § 15-5-16.1. The pertinent statute provides, in relevant part, as follows:

The court may not assign property or an interest in property held in the name of one of the parties if the property was held by the party prior to marriage The court also shall not assign property or an interest in property which has been transferred to one of the parties by inheritance before, during, or after the term of the marriage. The court shall not assign property or an interest in property which has been transferred to one of the parties by gift from a third party before, during, or after the term of the marriage.

Id. Yet, notwithstanding these provisions, items inherited by or gifted to one party may become marital property based on their use during the course of the marriage. See Ruffel, 900 A.2d at 1178 (finding premarital gift of jewelry and an interest in an oil well not subject to distribution as marital property); Quinn v. Quinn, 512 A.2d 848, 854 (R.I. 1986) (upholding trial court’s finding that a “husband had made a valid gift of inherited jewelry to his wife because of her possession of the jewelry throughout the course of the marriage with his full knowledge and consent”).

A.

The Gift from Grandfather to Father

Applying these precepts to the case at bar, this Court finds from the testimony and evidence adduced at trial that, a few years before his death, Robert W. Stewart hosted a family gathering at his home in Rhode Island at which he proudly passed on the baseball memorabilia that he had collected over the course of his distinguished career as a Major League Baseball umpire for the American League. He divided the memorabilia between his son and daughter, specifically giving his son, Robert A. Stewart, the Stewart Collection, his Cleveland Indians watch and his World Series ring. He intended, based on statements attributed to him and his son

by Plaintiff, that the Stewart Collection remain in the family and ultimately pass down through the male line of the family to his first grandson, Plaintiff Michael Stewart. Robert A. Stewart loaded the items that his father had given him into his car and returned home with them.

From that point forward, Robert A. Stewart wore the World Series ring that his father had given him daily, until it had to be cut off his finger shortly before his death in 2005. The Cleveland Indians watch that his father had given him remained in his bedroom. He and Plaintiff moved the Stewart Collection into Plaintiff's bedroom during his teenage years and put it on display. Plaintiff added to it a baseball that his grandfather had autographed to him as well as other baseballs autographed to him by Hank Aaron and Ted Williams.

While this evidence suggests that Plaintiff's grandfather made an *inter vivos* gift of the Stewart Collection to Plaintiff's father at the family gathering sometime in the late 1970's or early 1980's, Defendant and her daughter attempted to suggest at trial that Robert W. Stewart made that gift not solely to his son, Robert A. Stewart, but also to Defendant. This Court does not credit their testimony in this regard. While both mother and daughter acknowledged that the elder Mr. Stewart gave the Stewart Collection to his son that day, neither of them could recall any substance of the conversation by which Robert W. Stewart allegedly made this gift to his son and daughter-in-law jointly. In addition, as of the date of the gathering, Plaintiff's father and Defendant had been married for only a brief period of time and Robert W. Stewart made the gift around the time that Plaintiff returned from his mother's home in Florida to live with his father and stepmother after his parents' difficult divorce and child custody battle—timing that corroborates the fact that Plaintiff's grandfather would have been focused on his son and grandson in passing on his baseball memorabilia that day. Moreover, a gift to both his son and his son's wife would have been inconsistent with Robert W. Stewart's clear desire that the

Stewart Collection pass down through the male line of the family and, more specifically, to Plaintiff as his first grandson.

In addition, by Defendant's own acknowledgement, Robert W. Stewart gifted his World Series ring and Cleveland Indians watch to his son and not to his son and the Defendant—facts corroborated by Defendant's admission that her husband wore the ring almost every day of his life and her reference in the police report to the watch as a "25th Anniversary watch," suggesting that her husband allegedly gave her the watch for their anniversary shortly before his death. Her surmise that Robert W. Stewart gifted the Stewart Collection differently, therefore, simply does not ring true. It is contradicted by Defendant's statement in the police report that the Stewart Collection and watch were part of her dowry. It is further belied by Defendant's testimony that her husband told her on his deathbed that he wanted her to sell the Stewart Collection so she could take care of herself (implying that it belonged to him at that point) and by her own reference, at the gathering at her home after her late husband's memorial service, that the Stewart Collection belonged to Plaintiff. If Defendant had received the Stewart Collection by gift, along with her husband in the late 1970's or early 1980's, it would have belonged to her, at least in part, at the time of her husband's death. There would have been no reason for her husband to gift the Stewart Collection to her on his deathbed because it already would have been hers, at least in part, to do with as she pleased. Yet, she referred to it, after her husband died, as belonging to Plaintiff and never filed a claim or counterclaim in this action, or otherwise, to establish her claimed ownership interest in the Stewart Collection.

From all of the evidence at trial, therefore, this Court finds, clearly and convincingly, that Robert W. Stewart intended, *in praesenti*, at the family gathering in the late 1970's or early 1980's, to divest himself of exclusive ownership of the Stewart Collection, the Cleveland Indians

watch and the World Series ring and to vest exclusive ownership of these items in his son, Robert A. Stewart. It also finds that Robert W. Stewart actually delivered those items to his son at the family gathering to effectuate his intent. Accordingly, this Court concludes that Robert W. Stewart made an *inter vivos* gift to his son of the Stewart Collection, the World Series ring and the Cleveland Indians watch at that time.

B.

The Gift from Father to Son

This Court finds further that, on December 23, 1984, around the time Plaintiff left for college, his father wrote him an important letter to memorialize the gift of the Stewart Collection to Plaintiff. In the letter, Plaintiff's father wrote: "The baseball collection . . . [is] yours." Pl.'s Ex. 1. This statement reflects Robert A. Stewart's intent, on or before the date of the letter, to gift the Stewart Collection to his son, consistent with the wishes of Plaintiff's grandfather. Indeed, it would be difficult to conceive of a more unequivocal statement of donative intent. See Tabor, 73 R.I. at 494, 57 A.2d at 736-37 (in finding a gift, the court emphasized the donor's statement to the donee to "get the pig skin bag and the tin box, take them home. They are yours.").

Moreover, the larger context of the letter makes it clear that this statement is reflective of Robert A. Stewart's intent to make a gift of the Stewart Collection to Plaintiff *in praesenti* and not at some time in the future either *inter vivos* or by devise. In this regard, Plaintiff Robert A. Stewart wrote:

The baseball collection and your desk are yours—the [?] beds are part of the estate—Pam's dressing table and cedar chest is hers—the rest is part of the estate—Robin's cedar chest is hers—the bedroom set is part of the estate.

Pl.'s Ex. 1. It is clear from this language of the letter that Robert A. Stewart conducted an inventory of the significant items in the bedrooms of his children and stepdaughter to categorize those items that had been gifted to each of them—the Stewart Collection in Plaintiff's bedroom to Plaintiff, the dressing table and cedar chest in Pam's bedroom to her and the cedar chest in Robin's bedroom to her—from those items that were to pass ultimately through testamentary disposition—the beds in Plaintiff's bedroom, the rest of the furniture in Pam's bedroom and the bedroom set in Robin's bedroom. He thus indicated that the Stewart Collection, as well as certain other property belonging to Plaintiff and his sister, was not marital property in which Defendant could claim an interest, but instead was property that Robert A. Stewart held in his own name prior to his marriage to Defendant, that he had received by gift or inheritance before or during his marriage to Defendant, or that otherwise had been gifted to his children previously. See § 15-5-16.1. In like fashion, he recognized that property belonging to his stepdaughter was not marital property in which he could claim an interest, but instead was property that Defendant held in her own name prior to her marriage to him, that she had received by gift or inheritance before or during her marriage to him, or that otherwise had been gifted to her child previously. Id. Consistent with his statements in the letter, no party here disputes the accuracy of his categorization of gifts versus estate property, other than the Defendant now claiming that he gifted the Stewart Collection to her.

According to the letter from father to son, therefore, Robert A. Stewart removed the Stewart Collection from the list of those items that could pass by will or intestacy and manifested his intent that it should pass during his lifetime as a gift to his son. The letter is consistent, therefore, with Plaintiff's understanding, as reflected credibly in his testimony that the Stewart Collection belongs to him.

In addition, Robert A. Stewart made both an actual and symbolic delivery of the Stewart Collection to Plaintiff. Not only did he assist his son in displaying the Stewart Collection in Plaintiff's bedroom sometime after its transport from the family gathering in Rhode Island to Robert A. Stewart's home in New Hampshire, but he gave Plaintiff possession of it after Plaintiff finished college and moved away from home permanently. Plaintiff had exclusive possession and control of the Stewart Collection for years thereafter as he moved around the country.¹¹ At no time over the course of these years did Robert A. Stewart manifest title to, possession of or control over the Stewart Collection; to the contrary, the evidence shows that he intended possession and control to vest exclusively in his son.

While it is true that Plaintiff returned the Stewart Collection to his father's home several years before his father died and that it remained there as of his father's death, this act does not alter this Court's findings of donative intent and delivery. The Stewart Collection already had been given to Plaintiff prior to this time, and there is no evidence to suggest that Plaintiff relinquished ownership or control of it. Instead, the evidence suggests that Plaintiff simply returned the Stewart Collection to his father's home for safekeeping during a time when he lacked the means or will to care for it. That is why Vincent Onorato, a close business associate of Robert A. Stewart, testified so convincingly at trial that, at a Christmas party at the Stewarts' house in Narragansett, Rhode Island at a time after Plaintiff had returned the Stewart Collection to his father for safekeeping, Robert A. Stewart referred to the Stewart Collection as belonging to

¹¹ While Defendant and her daughter testified that the Stewart Collection always remained in Defendant's study and never was in Plaintiff's bedroom, their testimony was unconvincing in this regard. The most that Defendant's daughter could say was that, "to the best of her knowledge," Plaintiff did not display the baseballs in his bedroom, at least not "when they lived together." Defendant, for her part, acknowledged that Plaintiff took the balls with him for several years, but professed lack of knowledge as to how he got possession, speculating that her husband must have wanted Plaintiff to look after the balls for him for a period of time. Defendant's testimony at trial and her statement to the police that Plaintiff had the Stewart Collection with him for only a brief period of time was not reliable or convincing.

Plaintiff, saying: “Those balls belong to Michael.” It is why Robert Silva, in his police statement, articulated a similar view. It also is why Defendant herself explicitly recognized later that the Stewart Collection belonged to Plaintiff, even though it was on display in her basement, telling Plaintiff at the reception in her home after her husband’s memorial service to take the guests down to the basement to “show them *your* balls.”

While Defendant and her daughter attempted to suggest at trial that Robert A. Stewart intended the Stewart Collection to go to Defendant, rather than to Plaintiff, this suggestion is at odds with the intent expressed by father and grandfather that the Stewart Collection remain in the family and pass down through its male line to Plaintiff as the first grandson, the fact that Robert W. Stewart gave the Stewart Collection to his son for benefit of his grandson in the late 1970’s or early 1980’s, their testimony that Defendant already had received it, along with her husband, by gift at that time, Plaintiff’s taking of the Stewart Collection upon his departure from the family home and his possession of it for so many years, Defendant’s obvious difficulty in attempting to explain that fact, the statements of Defendant and those attributed to her husband by Vincent Onorato referencing the baseballs as belonging to Plaintiff, the thrust of Robert Silva’s statement to the police and the fact that Defendant has never filed an affirmative claim seeking to establish her ownership interest in the Stewart Collection. Their testimony, which appeared rehearsed to coincide—just as with their statements to the police—and lacked credibility, relied on alleged deathbed conversations attributed to Robert A. Stewart—just the type of testimony that our Supreme Court has cautioned must be scrutinized most closely. Wyatt, 81 R.I. at 405, 103 A.2d at 803; Carr, 70 R.I. at 73, 37 A.2d at 162. This Court is hard-pressed to find reliable these alleged deathbed statements attributed to Robert A. Stewart where:

- (1) Defendant’s testimony about them contradicts her statement to the police that he gifted the

Stewart Collection and watch to her as part of her dowry; (2) they contradict his intent and that of his father, as testified to credibly by Plaintiff; (3) they contradict his intent to gift the Stewart Collection to Plaintiff, as manifested in the letter that he wrote to Plaintiff in 1984; and (4) they are consistent with his promise to his first wife in his divorce decree to leave his property only to his children. Indeed, Robert A. Stewart's letter to his son was a harbinger of things to come: after his death, just as Robert A. Stewart had predicted, Defendant and her daughter tried to "stick it" to Plaintiff by claiming that Defendant owned the Stewart Collection that Robert A. Stewart had gifted to his son many years before.

From all of the evidence adduced at trial, therefore, this Court finds, clearly and convincingly, that Robert A. Stewart intended, *in praesenti*, as of December 23, 1984, to divest himself of any ownership or control of the Stewart Collection and to vest exclusive ownership and control of it in Plaintiff. It also finds that Robert A. Stewart delivered the Stewart Collection to Plaintiff, as evidenced by the two of them moving it into Plaintiff's bedroom to put it on display, it remaining there during Plaintiff's teenage years, and Plaintiff taking it with him and keeping it for many years after he permanently left the family home. Although Plaintiff returned the Stewart Collection to his father for safekeeping for several years before his father's death, he never relinquished the gift or his ownership interest in it. Accordingly, this Court concludes that the Stewart Collection never became marital property in which Defendant could claim an interest, but was gifted by Robert A. Stewart *inter vivos* to Plaintiff.¹²

¹² While this Court credits Plaintiff's position as to ownership of the Stewart Collection, it must note that, absent evidence of the letter from his father, it would have been more difficult for Plaintiff to prove his claim by clear and convincing evidence. His attempt to characterize himself as a baseball expert on the contents of the Stewart Collection was unconvincing. Plaintiff lacked recollection as to the chronology of events pertinent to this case and the contents of the collection. He, as well as Defendant and her daughter, appeared to unreliably profess recollection of events of long ago that would advance their stories. Notwithstanding Plaintiff's lack of credence in certain aspects of his testimony, however, this Court remains convinced that his father and grandfather intended him to have the Stewart Collection and that he took possession of it accordingly. While it is possible that Plaintiff's grandfather,

IV

CONCLUSION

For all of these reasons, this Court declares that Plaintiff Michael Stewart owns the Stewart Collection and is entitled to possession of it forthwith in order to keep it intact within the Stewart family—including the 120 baseballs in evidence and the ten bats, should they be recovered—subject to Plaintiff filing an Amended Complaint to add a count for declaratory relief to conform to his representations and the evidence at trial.¹³ Judgment then may enter in favor of Plaintiff as to such count for Declaratory Judgment. Count I of his Complaint, for replevin, is denied and dismissed based on this Court’s declaration that ownership and possession of the Stewart Collection is properly vested in Plaintiff and because replevin is exclusively a pre-trial remedy.¹⁴ Judgment is granted in favor of Plaintiff as to Count II of his Complaint for injunctive relief. Accordingly, Defendant is hereby enjoined from disposing of, injuring, concealing or transporting the Stewart Collection. Count III of Plaintiff’s Complaint, in which Plaintiff seeks to enjoin dissipation of the assets of the Country Squire, is denied and dismissed for failure of Plaintiff to press or prove this claim at trial.

Robert W. Stewart, gifted the Stewart Collection to Plaintiff directly in the late 1970’s or early 1980’s, and that Robert A. Stewart’s action in assisting his son in displaying it in his bedroom and penning the letter to his son in 1984 stating that, “[t]he baseball collection . . . [is] yours,” reflects that fact, given Plaintiff’s age at the time and his claim that it is his father who gave him the Stewart Collection, this Court is of the view that the evidence militates more strongly in favor of finding a gift from grandfather to father to son than from grandfather to grandson.

¹³ Unlike the Stewart Collection, Plaintiff does not appear to claim, and the evidence fails to establish, clearly and convincingly, that Robert A. Stewart gifted the World Series ring or Cleveland Indians watch to Plaintiff. Indeed, Robert A. Stewart kept the ring on his person and the watch in his bedroom during his lifetime. Absent proof that he made a gift of those items to Plaintiff or Defendant *inter vivos*, which was not established at trial, the watch and the ring are thus part of his Estate. The watch is apparently missing, and Defendant sold the ring in violation of the temporary restraining order and stipulation of the parties in the case. Accordingly, this Court need not address the disposition of this property further.

¹⁴ See Moseman Const. Co. v. State Dept. of Transp., 608 A.2d 34, 36-37 (1992) (replevin applies only “When the plaintiff seeks pre-trial seizure of personal property pending a trial to determine ownership.”); Goldberg v. Lancellotti, 503 A.2d 1129, 1130 (R.I. 1986) (“Replevin is merely a provisional remedy that applies prior to a trial on the merits.”)

Counsel shall confer and submit to this Court forthwith for entry agreed upon forms of Order and Judgment that are consistent with this Decision.