

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: June 13, 2019

527763

CHRISTOPHER LOTZ SR.,
Appellant,

v

MEMORANDUM AND ORDER

JACKIE CARTER,
Respondent.

Calendar Date: May 1, 2019

Before: Egan Jr., J.P., Lynch, Devine, Aarons and Rumsey, JJ.

Garufi Law, PC, Binghamton (Alena E. Van Tull of counsel),
for appellant.

Legal Aid Society Mid NY, Inc., Binghamton (Nicole Lynn
Kulik of counsel), for respondent.

Lynch, J.

Appeal from an order of the County Court of Broome County
(Cawley Jr., J.), entered January 8, 2018, which affirmed an
order of Binghamton City Court in favor of defendant.

Plaintiff and defendant were in a long-term relationship.
In 2012, plaintiff purchased a 2012 Ford Focus that was used
primarily by defendant. The purchase was financed and titled in
both parties' names but registered only in defendant's name.
The parties separated in the spring of 2014, when plaintiff left
their shared household. Defendant retained use of the vehicle.
In December 2014, plaintiff sent defendant an eviction notice
and also demanded a return of the vehicle. Plaintiff somehow

secured a new title in his name only and thereafter commenced this conversion action seeking to recover the vehicle. In her answer, defendant maintained that the vehicle had been a gift and that she was the sole owner. Following a trial, Binghamton City Court dismissed the claim, crediting defendant's testimony that the vehicle had in fact been gifted to her. The court also directed plaintiff to transfer title back to defendant. Upon appeal, County Court affirmed. Plaintiff appeals.

We affirm. Giving due deference to the trial court's assessment of witness credibility, the record amply supports City Court's determination that plaintiff purchased the vehicle as a gift for defendant. As such, the conversion claim was properly dismissed. Having raised the issue of ownership, City Court retained jurisdiction to direct plaintiff to correct the vehicle title, notwithstanding the dismissal of the complaint (see UCCA 202, 212).

Egan Jr., J.P., Devine, Aarons and Rumsey, JJ., concur.

ORDERED that the order is affirmed, with costs.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger
Clerk of the Court