THE STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Case No.: 2023-CP-08-01531

APPEAL FROM BERKELEY COUNTY

Probate Court

Hon. Keith W. Kornahrens, Probate Judge

Berkeley County Probate Case No. 2021-ES-08-0715

Michael L. Woods ……Appellant,

vs.

Wyman Jean Woods., Jr., Trustee of the Wyman and

Marguerite Woods Family Trust utd 01/16/98……...Respondent.

This matter comes before the Court upon appeal from the Berkeley County Probate Court. A final Hearing was held on November 8, 2022. A final Order was issued on April 17, 2023. The Trial Judge denied Appellants Motion to Alter or Amend Judgment. Appellant appealed to the Court of Common Pleas pursuant to S.C. Code §62-1-308 (1976). Thereafter this matter was referred to this Court for adjudication and to enter final judgment in this cause. The parties agreed that the matter could be resolved based upon the Briefs and Memoranda without the need of oral argument. Further that the parties stipulated to the contents of the record.

The subject matter of the controversy giving rise to these proceedings is the interpretation of a trust and accounting thereof established by the parties parents.

STANDARD OF REVIEW

"If the proceeding in the probate court is in the nature of an action at law, the [appellate] court may not disturb the probate court's findings of fact unless a review of the record discloses there is no evidence to support them." Howard v. Mutz, 315 S.C. 356, 361, 434 S.E.2d 254, 257 (1993). "On the other hand, if the probate proceeding is equitable in nature, the [appellate] court, on appeal, may make factual findings according to its own view of the preponderance of the evidence." Id. at 361-62, 434 S.E.2d at 257-58. To make this determination, the appellate court must look to the essential character of the cause of action alleged by the petitioner in the court below. Dean v. Kilgore, 313 S.C. 257, 437 S.E.2d 154 (Ct.App. 1993). If the

essential character of the petitioner's cause of action is grounded on equitable rights and equitable relief is sought, the case is regarded as equitable and the appellate court has jurisdiction to make findings in accordance with its own view of the preponderance of the evidence. Eagles v. South Carolina Nat'l Bank, 301 S.C. 402, 408 392 S.E.2d 187, 191 (Ct.App. 1990).

The essential character of Appellant's cause of action is an action for an accounting. An action for accounting lies in equity and seeks a calculation and judgment of the account balances between the parties. Historic Charleston Holdings, LLC v. Mallon, 381 S.C. 417, 427, 673 S.E.2d 448, 453 (2009). Accordingly, the Circuit Court's standard of review is de novo.

FACTS:

The parties are the only living adult sons of Wyman and Marguerite Woods. Wyman and Marguerite Woods established a trust dated January 16, 1998. The trust was amended twice, first on June 4, 2010 and second on October 10, 2011.

Marguerite Woods died on April 13, 2012 and Wyman Woods died on June 22, 2020. Upon the death of Wyman Woods, Respondent became the sole successor trustee of the Trust per the Second Amendment. (R. p. 2).

The trust provides that the parties are equal beneficiaries and distributees of all residual trust assets. With regard to the trust assets, the trust further provides:

> a. Page 11, A: After this trust is duly executed, we will execute and deliver all deeds, assignments, bills of sale, written instructions and

> other legal documents necessary to convey and register all of our assets that we choose to place in trust under this trust to be owned by the trustee(s) of this trust and held and administered under the terms and conditions of this trust. Assets which are evidenced by titles or deeds currently being transferred to the trustee(s) of this trust are listed on Schedule A, which is attached to this trust and made apart of this trust. We hereby transfer to this trust all assets not requiring titles or deeds including but not limited to our furniture, wearing apparel and personal possessions. Additionally, the grantors are now holding and will hold solely and exclusively for and on behalf of such trust the following: any and all properties of all kinds, whether presently owned or hereafter acquired including, without limitation:
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> > Bank accounts, certificates of deposit, mutual and money market funds of all kinds, securities, agency and custody accounts, notes, and real estate wherever located.
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> All such property is hereby transferred to and the same shall be owned by such trust.
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> This declaration shall apply even though record ownership or title, in some instances, may, presently or in the future, be registered in the individual name or names of either of us, in which event such record ownership shall hereafter be deemed held in trust even though such trusteeship remains undisclosed.
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> All assets transferred to the trustee(s) of this trust, whether now or at a later date, shall become part of the trust estate and be subject to all terms and provisions of this trust document.
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> (R. pp. 3-4; R. p. 391).

For several years prior to January 30, 2017, Decedent, Wyman Woods maintained a checking account and a savings account titled in his individual name only at Bank of America. The trial court determined that funds in said accounts were trust assets (R. p. 7) and Appellant concedes that, prior to January 30, 2017,

pursuant to the terms of the trust "it is undisputed that the Decedent's individual accounts could reasonably be considered trust assets." (Brief p. 19).

On January 30, 2017, Decedent added Appellant to both Bank of America Accounts and designated each account as "joint with right of survivorship." In the process of making that designation, Decedent and Appellant were required to execute Bank of America's standard signature card forms. The forms include the following statement with regard to account ownership:

> A joint account with right of survivorship is the property of each co-owner and payable to either co-owner or the surviving co-owner(s) if a co-owner dies. (R. pp. 451, 453, 455).

It was undisputed that Appellant contributed no monies to the Bank of America accounts at any time and that Decedent, in all instances, contributed 100% of the funds to those accounts. (R. p. 5). At all times after the joint account designation was made, the Bank of America accounts continued to be used for trust purposes. It was undisputed that expenses associated with all of the real properties owned by the Trust, such as property taxes, utility bills, yard maintenance, and other ordinary expenses were paid out of the Bank of America Accounts. (R. p. 131).

It was undisputed that, during Decedent's lifetime, from 2017 to 2020, Appellant made multiple distributions from the Bank of America accounts to himself, in the total amount of $115,124.17. (R. p. 5). It was also undisputed that during the period of 2018 and 2019, Appellant personally received rent payments in

the total amount of $14,300.00 from the tenant of a rental property owned by the trust and converted those funds to himself for his personal use. (R. p. 5). The combined total of the monies received by Appellant from those sources is $129,424.17. (R. p. 5).

In its analysis, the trial court applied the statutory presumption of ownership set forth in S.C. Code Ann. § 62-6-201(A), which provides:

> During the lifetime of all parties, an account belongs to the parties in proportion to the net contribution of each to the sums on deposit, unless there is clear and convincing evidence of a different intent.

(R. p. 7).

The trial court found that there was "no evidence . . . of any intent by Wyman Woods to change his absolute ownership of all monies in the Bank of America accounts during his lifetime in proportion to his contributions, which was 100%." (R. p. 8). The trial Court concluded that the Bank of America account titled jointly between Appellant and the Decedent constituted assets of Decedents trust. The court further found that Appellant "withdrew monies from the Bank of America [accounts] during the lifetime of Wyman Woods for non-Trust uses without authority" and as a result constituted claims that belonged to the Trust. The trial Court ordered that "the sum of $129,424.17, which is the combination of receipts by the Plaintiff from the Bank of America accounts and the monies he received

directly for rent on the Grover Road property is to be chargeable to the Plaintiff's account and shall be an off-set against his distributive share." (R. p. 8).

This Court agrees with the Trial Court and adopts the Findings the Facts as set forth above.

STATEMENT OF ISSUES ON APPEAL

I. Did the Probate Court err by concluding that Bank of America accounts titled jointly between Appellant and the Decedent constituted assets of the Decedent's Trust?

II. Did the Probate Court err by determining that the Respondent's counterclaims for setoff to the Appellant's Trust Distribution for the sums the Appellant received from Bank of America accounts titled jointly between Decedent and Appellant were claims that belonged to the Decedent's Trust?

ISSUE I:

Pursuant to S.C. Code Ann. § 62-6-103:

(a) An account may be for a single party or multiple parties. A multiple-party account may be with or without a right of survivorship between the parties. Subject to Section 62-6-202(c), either a single-party account or a multiple-party account may have a POD designation, an agency designation, or both.

(b) An account established after January 1, 2014, whether in the form prescribed in Section 62-6-104 or in any other form, is either a single-party account or a multiple-party account, with or without right of survivorship, and with or without a POD designation or an agency

> designation, within the meaning of this subpart, and is governed by this article.

With regard to multiple-party accounts, S.C. Code Ann. § 62-6-201(A) provides that "[d]uring the lifetime of all parties, an account belongs to the parties in proportion to the net contribution of each to the sums on deposit, unless there is clear and convincing evidence of a different intent." The Reporter's Comments provide additional guidance with regard to the application of his statutory presumption and state in relevant part:

> This section reflects the assumption that a person who deposits funds in an account normally does not intend to make an irrevocable gift of all or any part of the funds represented by the deposit. Rather, the person usually intends no present change of beneficial ownership. The section permits parties to accounts to be as definite, or as indefinite, as they wish in respect to the matter of how beneficial ownership should be apportioned between them.
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> . . .
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> Furthermore, accounts with right of survivorship provisions are often set up to allow caretakers to assist elderly people with the management of their finances. Their financial protection can best be honored by adhering to the statutory presumption.

S.C. Code Ann. § 62-6-201 (Reporter's Comments).

This statutory presumption regarding the proportional ownership of funds on deposit in a multiple-party account applies to joint accounts with right of survivorship provisions. *Vaughn*, 345 S.C. at 199, 547 S.E.2d at 870 (holding that "[b]ecause both parties to the Joint Accounts [with right of survivorship provisions]

were still living at the time of the transfer, section 62-6-103(a) [now section 62-6-201(A)] dictates the funds removed by Bernhardt belonged to the Decedent at that time."). Furthermore, the South Carolina Supreme Court has recognized that "accounts with right of survivorship provisions are often set up to allow caretakers to assist elderly people with the management of their finances. Their financial protection can best be honored by adhering to the statutory presumption." *Id*. at 200, 547 S.E.2d at 871.

In *Vaughn*, the decedent held joint accounts with right of survivorship provisions, to which she was the sole contributor, with her nephew. *Id*. at 197, 547 S.E.2d 869. Prior to the decedent's death, the nephew/joint account owner withdrew all of the funds from those accounts. *Id*. The South Carolina Supreme Court affirmed the Court of Appeals decision and held that, pursuant to S.C. Code Ann. § 62-6-103(a) (now section 62-6-201(A)), all funds in the joint accounts belonged to the decedent/sole contributor, and the nephew/non-contributing joint account owner was not entitled to the funds he withdrew from the joint accounts during the decedent's lifetime. *Id*. at 199, 547 S.E.2d 869, 870.

Likewise, in the present case, Decedent, the parties elderly father, held joint accounts with right of survivorship provisions, to which Decedent was the sole contributor, with Appellant. Prior to Decedent's death, Appellant withdrew funds from those accounts for his own personal use. Accordingly, all funds held in the

joint account belonged to the Decedent/sole contributor, and the Appellant/non-contributing joint account owner is not entitled to the funds he withdrew during Decedent's lifetime. Appellant seeks to overcome this statutory presumption. In order to overcome that presumption, Appellant must present clear and convincing evidence of the change of ownership of the deposited funds.

The Court in *Vaughn* did not provide an analysis as to what additional evidence would constitute clear and convincing evidence sufficient to overcome the statutory presumption of ownership. In subsequent cases, South Carolina Courts have held that provisions in a will or evidence of a particular financial arrangement between joint account holders was sufficient evidence to alter the statutory presumption of ownership. *Kemp v. Rawlings*, 358 S.C. 28, 37, 594 S.E.2d 845, 850 (2004) (In his will, the decedent gave and bequeathed the joint account funds to the non-contributing joint account owner.); *Gordon v. Busbee*, 397 S.C. 119, 138 (Ct. App. 2012) (Evidence presented regarding a "financial 'arrangement' between [husband and wife joint account owners] [was] at least some other evidence of her intent that he have the monies in the joint account. The jury clearly believed the defense in the case, because it did not find against the estate as to any transfer or cause of action.").

In the present case, all the evidence presented supports the Probate Court's decision. As previously set forth herein, Decedent maintained the Bank of America

accounts for years prior to designating Appellant as a joint owner and it is undisputed that Decedent contributed 100% of the funds deposited in those accounts. Appellant admitted at trial that (1) the funds in the Bank of America accounts were trust property (R. p. 226, lines 8-25; R. p. 227, lines 1-5); (2) his elderly father was receiving care in a nursing home (R. p. 150, lines18-24); and (3) during that time, he took money from those accounts in the total amount $115,124.17, for his own personal use (R. p. 239, lines 22-25; R. p. 240, lines 1-25; R. p. 241, lines 1-7; R. p. 244, lines 6-20). Further, Appellant admitted at trial that the accounts continued to be used for trust purposes, including the payment of trust expenses, after he was designated as a joint account owner (R. p. 237, lines 6-25; R. p. 238, lines 1-25; R. p. 239, lines 1-25; R. p. 240, lines 1-3).

Appellant argues that the standard signature cards executed by Decedent and Appellant in establishing the joint right of survivorship designations on the Bank of America Accounts constitute clear and convincing evidence that Decedent intended to alter the statutory presumption of ownership. Appellant concedes that the language in the signature card forms makes no distinction with regard to the proportionality of ownership of the funds in the accounts. (Brief pp. 16-17). The signature card forms state that, "[a] joint account with right of survivorship is the property of each co-owner and payable to either co-owner or to the surviving co-owner(s) if a co-owner dies" (R. p. 451), but do not specify that the parties, as co-

owners, share an "equal and undivided ownership" of all the funds in the accounts. See Reporters Comments, S.C. Code Ann. § 62-6-201. Appellant's contention regarding the language of the signature card could constitute some evidence of the intent to alter the statutory presumption. However, the signature card in isolation is the only evidence to support his argument. All other evidence is to the contrary therefore, Appellant has failed to present clear and unambiguous evidence to overcome the statutory presumption.

Unlike a specific provision in a decedent's will (*Kemp*, 538 S.C. at 37, 594 S.E.2d at 850) or evidence presented to a jury regarding a specific financial arrangement between joint account owners (*Gordon*, 397 S.C. at 138), the standard signature card forms required by the bank in the instant case, which contain no specific provision with regard to the proportional ownership of the funds on deposit, do not constitute clear and convincing evidence sufficient to alter the statutory presumption of ownership.

The record shows that Decedent, the parties' elderly father, added Appellant to his Bank of America accounts and set up the accounts as joint with right of survivorship provisions to allow Appellant, who was acting as a caretaker, to assist with the management of his finances. Accordingly, as the Supreme Court recognized in *Vaughn*, "financial protection can best be honored by adhering to the statutory presumption."

Therefore, the Probate Court did not err in concluding that the Bank of America accounts were assets of the Decedents Trust.

ISSUE II:

Did the Probate Court err by determining that the Respondent's counterclaims for setoff to the Appellant's Trust Distribution for the sums the Appellant received from Bank of America accounts titled jointly between Decedent and Appellant were claims that belonged to the Decedent's Trust?

The Trial Court and this Court has determined that the Bank of America accounts were Trust assets. The Trial Court and this Court determined that the distributions from the Bank of America account by Appellant to himself were in the total amount of $115,124.17. The Trial Court and this Court also concluded that Appellant received rent payments in the amount of $14,300.00 from the tenant of a rental property owned by the Trust and converted those funds to himself for his personal use. The combined total of monies received by Appellant from those sources was $129,424.17. Respondent counter-claimed requesting an offset from Appellants Trust distribution for the entirety of this amount. Based upon the Trial Court and this Courts determination that the Bank of America accounts were assets of the Trust, the claim for offset is justified, proper and supported by the evidence admitted at Trial. Likewise, the offset for wrongfully received rental payments is justified and proper and supported by the evidence admitted at Trial.

Therefore, this Court concludes that the Probate Court did not err in providing for a set off to the Appellants Trust Distribution in the amount of $129,424.17.

For the reasons set forth herein the Order of the Berkeley County Probate Court is **AFFIRMED**

_____
Honorable Dale E. Van Slambrook
Berkeley County Master in Equity

Moncks Corner, South Carolina
_____, 2024

Berkeley Common Pleas

Case Caption: Michael L Woods VS Wyman Jean Woods Jr.

Case Number: 2023CP0801531

Type: Order/Other

AND IT SO ORDERED!

s/Dale E. Van Slambrook #3079