

RECORDED

2014 JAN 31 PM 2:06

STATE OF SOUTH CAROLINA)
JAMES C. CAMPBELL)
CLERK OF DISTRICT COURT OF COMMON PLEAS)
SUMTER COUNTY, S.C.)

COUNTY OF SUMTER) CASE NO.: 2013-CP-43-476)
) (consolidated with 2013-CP-43-668))

IN THE MATTER OF THE ESTATE OF)
GERALDINE M. HARRIS)

PATTI H. SPRING,)
RESPONDENT/)
APPELLANT)

v.)

HARRY L. HARRIS, JR., AS PERSONAL)
REPRESENTATIVE OF THE ESTATE)
OF GERALDINE M. HARRIS,)

APPELLANT/)
RESPONDENT.)

ORDER

CERTIFIED TRUE COPY
OF ORIGINAL FILED

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SOUTH CAROLINA)

MAR 04 2014

SC Court of Appeals


This Order is the Court's disposition of the appeal of each party from the Orders of the Sumter County Probate Court (Probate Court) dated December 7, 2011, and March 13, 2013, in an action commenced against the Personal Representative of the estate by Patti H. Spring (Spring). The Orders appealed from ruled upon ownership succession of two joint bank accounts upon the death of one of the joint owners, Geraldine M. Harris (Decedent). Her son and Personal Representative of her estate, Harry L. Harris, Jr. (Harris) was the other joint owner on both accounts. The Probate Court ruled that one of the accounts, Wachovia, did not pass to the surviving joint owner and, therefore was an asset of the Estate. Its stated reason was that the Wachovia account documents, though creating a joint account, did not specifically contain a survivorship provision. It ruled that the other account, NBSC, passed to Harris as the surviving joint owner.

RJC

The Probate Court also ruled that legal fees incurred by the Personal Representative in defending this action should not be paid from assets of the estate.

I. BACKGROUND

Spring and Harris are sister and brother, the only children of Decedent who died on May 1, 2007, and the late Harry L. Harris, who predeceased Decedent. Francis M. Bowman was a relative of the Harris family and also predeceased Decedent. Each of these three individuals, the Harrises and Bowman, established trusts through their wills which resulted finally with Petitioner, Spring as the beneficiary and Harris as the Trustee. Decedent Geraldine M. Harris executed her Last Will and Testament on September 6, 1999. NBSC and Wachovia accounts which are the subjects of this dispute were opened on February 2, 1998, and September 30, 1999, respectively, with each account being listed in the names of Decedent and Harris. The record reveals that, after his mother's death, Harris went to the banks to transfer the contents of the accounts into the estate account. At that time, he was informed at each bank that these accounts belonged not to the estate but to him as surviving joint owner. The account proceeds were paid to him personally.

 Spring brought suit alleging the funds from these joints accounts are assets of Decedent's estate.

II. REVIEW STANDARD

If the proceeding in the probate court is in the nature of an action at law, the circuit court and this Court may not disturb the probate judge's findings of fact unless a review of the record discloses there is no evidence to support them. In re Howard, 315 S.C. 356, 434 S.E.2d 254 (1993); Townes Assocs., Ltd. v. City of Greenville, 266 S.C.

81, 221 S.E.2d 773 (1976); In re Estate of Weeks, 329 S.C. 251, 495 S.E.2d 454. In re Estate of Cumbee 333 S.C. 664, 670, 511 S.E.2d 390, 393 (S.C.App.,1999). The standard of review applicable to cases originating in the probate court depends upon whether the underlying cause of action is at law or in equity. In re Estate of Hyman, 362 S.C. 20, 25, 606 S.E.2d 205, 207 (Ct.App.2004); In re Thames, 344 S.C. 564, 568, 544 S.E.2d 854, 856 (Ct.App.2001). An issue regarding statutory interpretation is a question of law. Wimberly v. Barr, 359 S.C. 414, 597 S.E.2d 853 (Ct.App.2004). The circuit 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. In re Howard, 315 S.C. at 361, 434 S.E.2d at 257; see also In re Estate of Pallister, 363 S.C. 437, 447, 611 S.E.2d 250, 256 (2005) ("If the proceeding in the probate court is in the nature of an action at law, the circuit court and 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."). The standard of review at law is the same whether the facts are found by a jury or the judge sitting without a jury. In re Howard, 315 S.C. at 361, 434 S.E.2d at 257. University of Southern California v. Moran 365 S.C. 270, 274-275, 617 S.E.2d 135, 137 (S.C.App., 2005)

III SPRING APPEAL

ASCF
Spring contends the Probate Court erred in concluding that Harris became the owner of the NBSC joint account upon the death of his mother. The issue advanced is that the joint accounts were created as a result of undue influence applied by Harris upon his mother, the Decedent. Because a fiduciary relationship between Harris and the Decedent existed at the time both accounts were created, Spring argues that Harris has

the burden of proving an absence of undue influence and that he failed to carry that burden.

It does not appear that a review of the impact of a fiduciary relationship upon the survivorship aspect of joint bank accounts has been undertaken by our appellate courts, but, in Howard v. Nasser, 364 S.C. 297, 63 S.E. 2d 64 (Ct. App. 2005) the court discussed the burden-shifting scheme as between will or deed contestants and fiduciaries:

The Restatement of Property provides in relevant part:

A presumption of undue influence arises if the alleged wrongdoer was in a confidential relationship with the donor and there were suspicious circumstances surrounding the preparation, formulation, or execution of the donative transfer, whether the transfer was by gift, trust, *will*, will substitute, or a donative transfer of any other type. *The effect of the presumption is to shift to the proponent the burden of going forward with the evidence, not the burden of persuasion. The presumption justifies a judgment for the contestant as a matter of law only if the proponent does not come forward with evidence to rebut the presumption.* Restatement (Third) of Property: Wills and Other Donative Transfers § 8.3 cmt. f. (2003) (emphasis added).

We interpret the foregoing to mean that if the contestants of a duly executed will provide evidence that a confidential/fiduciary relationship existed sufficient to raise the presumption; the proponents of the will must offer evidence in rebuttal. We emphasize that although the proponents of the will must present evidence in rebuttal, they do not have to affirmatively disprove the existence of undue influence. Instead, the contestants of the will still retain the ultimate burden of proof to invalidate the will.

RJCF
Assuming this rule applies to the creation of joint accounts, the burden of proof would not shift to Harris in the traditional sense, rather, the existence of the fiduciary relationship, standing alone would constitute evidence of undue influence which, if left un-rebutted would be sufficient to support a finding thereof. The Probate Court found an

absence of undue influence, a finding of fact. This finding cannot be disturbed unless there is no evidence to support it. So the inquiry is whether there is evidence which supports this finding.

Evidence in the record supports this finding. There is evidence that the Decedent signed the contracts with the banks when she was mentally alert; that she thereafter wrote checks payable to Spring; that nothing Decedent prevented the Decedent from changing the account or simply withdrawing the funds. The testimony of Harris that he did not know that the funds in the joint accounts belonged to him after the death of his mother is evidence from which it is reasonable to infer that his participation in the creation of the accounts was not motivated by a desire for personal gain.

Because the Probate Court's finding of absence of undue influence is supported by the evidence, the ruling that the NBSC account passed to Harris upon the death of decedent is affirmed.

IV HARRIS APPEAL

Harris contends the Probate Court erred in concluding that, because the contract creating the Wachovia account did not contain specific survivorship language, it did not pass to Harris upon the death of decedent. This Court agrees this was error.

The South Carolina Probate Code addresses ownership of the funds in a joint bank. Section 62-6-104(a) specifically addresses the rule regarding ownership of the funds in a joint checking account after a death of one of the parties:

Sums remaining on deposit at the death of a party to a joint account belong to the surviving party or parties as against the estate of the decedent unless there is a writing filed with the financial institution at the time the account is created or subsequently as provided under § 62-6-105 which indicates a different intention. [Emphasis added.]

The term "a joint account" is clarified by Section 62-6-101 (4) as follows:

"Joint account" means an account payable on request to one or more of two or more parties (whether "and", "or", "and/or", or any other designation), whether or not mention is made of any right of survivorship. [Emphasis supplied.]

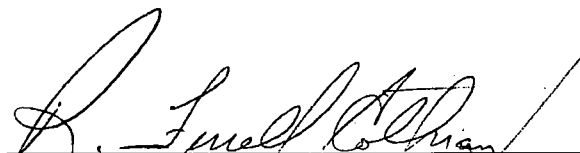
Section 62-6-104(e) further provides:

A right to survivorship arising from the express terms of the account or under this section ... cannot be changed by will; however, a party who owns a joint account under the provisions of Section 62-6-103(a) may effect such change by will to the extent of his ownership if the will contains clear and convincing evidence of his intent to do so.

The Court rejects Spring's contention that the records from Wachovia introduced into evidence by Harris could not be connected to the Wachovia account listed on the Inventory and Appraisal and, therefore, did not support Harris's position that the Wachovia account was in fact a joint account. In addition, the Court rejects Spring's additional sustaining ground set forth in her Appellate Brief (fiduciary relationship argument) for the same reasons addressed above for the NBSC account.

The ruling that the Wachovia account did not pass to Harris as the surviving joint owner, is reversed; the ruling that that the NBSC account passed to Harris as the surviving owner is affirmed, and

It is so, **ORDERED.**


Ralph F. Cothran, Jr. Circuit Court Judge

Date 1-30-14

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER
IN THE COURT OF COMMON PLEAS

RECORDED

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP4300476

Harry L Harris Jr

Geraldine Estate Of Harris

Patti H Spring

2014 JAN 31 PM 3:17
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

CERTIFIED TRUE COPY
OF ORIGINAL FILED

[Signature]
DEPUTY CLERK OF COURT
SUMTER COUNTY, S.C.

PLAINTIFF(S)

DEFENDANT(S)

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

Submitted by: Clerk of Court

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk: See attached Order.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

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MAR 04 2014

SC Court of Appeals

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code 2144 Date 1/31/2014
For Clerk of Court Office Use Only

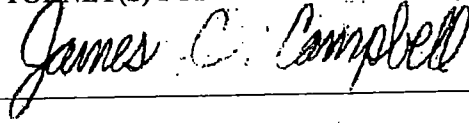
This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on, to attorneys of record or to parties (when appearing pro se) as follows:

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ATTORNEY(S) FOR THE DEFENDANT(S)



James C. Campbell - Clerk of Court

Court Reporter

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
