

NO. A09-1208

State of Minnesota
 In Court of Appeals

Maureen Kissack,

Appellant,

vs.

Sheila M. Montognese, Bridget Beaudry, Lori France,
 Sandra Taverna, John Sandahl, and Steven Sandahl,

Respondents.

APPELLANT'S REPLY BRIEF

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ARGUMENT

I. Whether there was an inter vivos gift is irrelevant.

Respondents rely heavily on the case of *Rutchick v. Salute*, 179 N.W.2d 607 (Minn. 1970) to support their position. The bank certificate at issue in the *Rutchick* case named the decedent and a nephew as joint owners without reference to survivorship rights. The main issue was whether there was a completed inter vivos gift. The court looked at a number of facts that were considered in resolving the issue. Respondents presented similar facts to support their position in this litigation. These included the source of the funds for the CDs, the relationship between the parties, whether Appellant had access to the accounts during the decedent's lifetime, and whether Appellant has proved that she is entitled to a greater share of the proceeds.

The facts and applicable law in the *Rutchick* case is clearly distinguishable from the current case. First, the *Rutchick* case was decided before the introduction of the Uniform Probate Code. Second, the bank certificate in the *Rutchick* case did not contain the survivorship language. In the current case, each of the CDs in question had a section completed by the decedent specifically identifying "with survivorship" as follows:

ACCOUNT OWNERSHIP: You have requested and intend the type of account marked below.

Individual

- xx Joint Account – With Survivorship (and not as tenants in common)
- Joint Account – No Survivorship (no tenants in common)
- Trust: Separate Agreement Dated _____
- _____
- _____
- _____
- _____

See Addendum at Page 2.

In addition to the election by the decedent with survivorship, the reverse side of each CD contained the following:

Joint Account With Survivorship (And Not As Tenants In Common) – Such an account is owned by two or more persons. Each of you intend that upon your death the balance in the account (subject to any previous pledge to which we have consented) will belong to the survivor(s). If two or more of you survive, you will own the balance in the account ownership as joint tenants with survivorship and not as tenants in common.

Id.

Given that each CD had express language, Minn. Stat. § 524.6-204, subd. (d) is controlling and reads as follows:

A right of survivorship arising from the express terms of the account, or under this section, or under a P.O.D. payee designation, may be changed by specific reference by will, but the terms of such will shall not be binding upon any financial institution unless it has been given a notice in writing of a claim thereunder, in which event the deposit shall remain undisbursed until an order has been made by the probate court adjudicating the decedent's interest disposable by will.

Emphasis added.

Respondents, on Page 8 of its brief, acknowledges that “It is undisputed that the will does not specifically reference the certificate of deposit accounts” Since the decedent’s will did not contain a specific reference changing the survivorship language, then the provisions contained within the CDs are controlling. The language contained in the will is immaterial as is any of the other facts that Respondents references.

Minnesota’s adoption of the Uniform Probate Court has codified the disposition of accounts containing express survivorship language. Although no case law has arisen under this code, likely due to the clarity of the statute, other surrounding jurisdictions have addressed such issues. For example, an Iowa court held that where there was unequivocal survivorship language, the survivor’s ownership was conclusive. *See In re Estate of Samek*, 213 N.W.2d 690 (Iowa 1973). In *Williams v. Williams*, 100 N.W.2d 185 (1959), the court held that if the survivorship language is clear and unequivocal, the signature card is conclusive as to the parties’ intent to establish a joint account, and cannot be changed by parol evidence except in a situation involving fraud, duress, or mistake.

Similarly, Michigan courts came to the same result in a case that involved joint accounts containing an express survivorship provision. In the case of *Albro v. Allen*, 454 N.W.2d 85 (Mich. 1990), the court in a lengthy opinion, outlined persuasive reasoning that when a joint account makes specific reference to

survivorship rights, the language is binding. The *Albro* court discussed and distinguished general joint tenants account from those have an express survivorship term. The court concluded that the former could be contested; whereas, the later is “indestructible.” *Id.* at P. 88. The *Albro* court discussed the adoption of dual contingent remainder doctrine. Under that doctrine, each party to a joint account with express survivorship benefits holds a life estate followed by a contingent remainder in fee for the survivor.

Minn. Stat. § 524.6-204 mirrors this philosophy. Subd. (a) is synonymous with a joint account without survivorship designation; whereas, subd. (d) covers where there is express survivorship terms. In the former, a joint account can be challenged by clear and convincing evidence of a different intent or there is a different disposition made by a valid will. The later can only be changed be a specific reference in the will altering the express language.

Based upon the express terms of each of the CDs that provided survivorship rights to Appellant, Minn. Stat. § 524.6-204, subd. (d) governs. There is no necessity to decide whether there was clear and convincing evidence of a different intent. Appellant is the rightful and sole owner of each of the accounts in question.

II. Collateralization of some of the CDs is irrelevant.

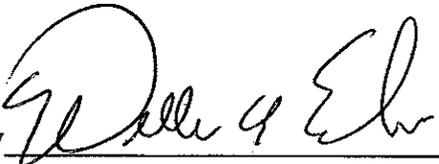
Respondents’ other argument is that the pledging of \$50,000 of the \$100,000 CDs shows an intent that the assets belonged to the estate. Appellant disputes that

such an inference can be made. Regardless, it is irrelevant based upon the discussions outlined *supra* and the language contained in each of the CDs that states “Each of you intend that upon your death the balance in the account (subject to any previous pledge to which we have consented) will belong to the survivor(s).” See Addendum at Page 2. It is undisputed that Appellant was unaware of these certificates prior to the decedent’s death and that there was no pledge by her on any of the certificates relating to the loan made to the decedent. In addition, there are sufficient estate assets to pay off the loan with the bank. Therefore, the collateralization of the CDs does not lend itself to support the decedent’s intent and is irrelevant.

CONCLUSION

Each of the CDs had express language that upon the death of one, the joint owner (survivor) receives the balance of the account. Based upon the clear language of Minn. Stat. § 524.6-204(d), the lack of language in the will altering the account language, Appellant is entitled to the proceeds from the CDs.

Dated: 10/22/09

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