

NO. A09-1208

State of Minnesota
 In Supreme Court

Maureen Kissack,

Appellant,

vs.

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

Respondents.

BRIEF AND APPENDIX OF RESPONDENTS

William A. Erhart (#27066)
 ERHART & ASSOCIATES, L.L.C
 316 East Main Street, Suite 110
 Anoka, MN 55303
 (763) 427-7800

Kyle T. Wermerskirchen (#033621X)
 STEVEN H. SNYDER & ASSOCIATES
 11270 – 86th Avenue North
 Maple Grove, MN 55369
 (763) 420-6700

and

John M. Huberty (#0320274)
 HUBERTY LAW FIRM
 316 East Main Street, Suite 110
 Anoka, MN 55303
 (763) 427-7800

*Attorney for Respondents Sheila M. Montognese,
 Bridget Beaudry, Lori France, Sandra Taverna,
 John Sandahl and Steven Sandahl*

Stephen M. Baker (#120613)
 322 Railroad Avenue
 P.O. Box 924
 Walker, MN 56484
 (218) 636-2922

*Attorneys for Appellant**Attorney for Estate of Patrick W. Butler*

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STATEMENT OF THE CASE

Respondents are the interested parties of the Estate of Patrick Butler and also, the sisters, step-brothers and step-sisters of Appellant. Appellant is the personal representative of the Estate of Patrick Butler. The litigation underlying this appeal was initiated by the petition of Respondent Sheila Montognese to remove the personal representative on August 4, 2008. A hearing was held on September 15, 2008, wherein the basis of the petition was discussed. The court ordered a hearing on the petition on October 16, 2008.

At the hearing on October 16, 2008, Montognese alleged that the personal representative breached her fiduciary duties by 1) distributing estate assets prior to the submission of an inventory, 2) failing to include all assets in pleadings, and 3) keeping estate assets relating to joint accounts held by Decedent at his death.

The court declined to remove the personal representative, but did order the reimbursement of \$100,000 of jointly held certificates of deposit into the estate account within 72 hours. *See* Findings of Fact, Conclusions of Law, and Order dated November 4, 2008, Appendix at R-0001-0004. In its order, the court made the following finding:

The fact that the certificates of deposit were placed in joint tenancy with Maureen Kissack creates a presumption that the survivor should become the owner. All indications are that this was not the decedent's intent. It is difficult to imagine the decedent would provide the certificate of deposit as collateral for an estate asset unless he intended that the certificate of deposit be part of the estate. Furthermore, there was little evidence that would indicate the decedent favoring Maureen Kissack over the other children in light of the intentions stated by both Viola Sandahl and Patrick Butler in their Wills.

See Findings of Fact, Conclusions of Law, and Order dated November 4, 2008, p. 3, Appendix at R-0001-0004.

Subsequent to this order, the personal representative refused to deposit the funds into the estate account and moved for amended findings, requesting, among other relief, that a jury determine the ownership of the accounts.

Appellant specifically stated "the Personal Representative is entitled to a trial by jury on these issues, and such right has not been waived." *See Memorandum of Law in Support of Personal Representative Maureen Kissack's Motion for Amended Findings dated December 19, 2008, p. 4, Appendix at R-0005-0008.*

Over Montognese's objection, the trial court granted Appellant a jury trial. *See Order and Memorandum dated January 15, 2009, Appendix at R-0009-0010.* The jury was impaneled on March 10, 2009, and returned a verdict in favor of Respondents.

The jury received a special verdict form which asked the question:

"Was there clear and convincing evidence that the decedent had an intent other than what the CDs stated on their face - that Maureen Kissack become the owner of the funds upon Patrick Butler's death?" Tr. at 148, L. 22-24.

The court instructed that clear and convincing evidence means "that you must have a firm belief or be convinced there is a high probability that the Decedent had different intentions other than the joint tenant receiving the money upon his death." Tr. at 148, L. 1-4.

The jury specifically answered the special verdict question in the affirmative; like the trial court earlier, the jury found that there was clear and convincing evidence that the

Decedent had a different intent than for the Appellant to keep the jointly held certificates of deposit. After the jury verdict in favor of Respondents, Appellant filed a motion for judgement notwithstanding the verdict, and challenged the sufficiency of the evidence.

On May 6, 2009, the trial court issued an order denying Appellant's motion for a new trial and judgment notwithstanding the verdict. The court noted that the verdict cannot be disturbed "if there is any evidence to reasonably support the verdict." The court stated that "the jury's verdict is reasonably supported in a number of respects." See Findings of Fact, Conclusions of Law, and Order dated May 6, 2010, p. 3, Appendix at R-0011-0014.

Appellant appealed to the Court of Appeals, which found in favor of Respondents.

STATEMENT OF THE FACTS

Patrick Butler died on February 28, 2008. Patrick was preceded in death by his wife, Viola Sandahl, who passed away on May 2, 1997. Patrick Butler and his wife Viola had mirror image wills, with each will giving the estate first to the other and then to the parties' children in equal shares. Tr. at 95, L. 23-25. At no point has any party contested the validity of Patrick Butler's will.

Patrick Butler's will provided for distribution of the estate in equal shares to the couple's combined eight children if the other spouse predeceased him or her. Article IV of Butler's will provided:

I hereby give, devise, and bequeath my property, real and personal and mixed, including but not limited to my interest in real property, IRA's, insurance policies and checking accounts, wherever so located, to Viola M. Sandahl if she survives me by thirty days.

If Viola M. Sandahl does not survive me... I then leave my entire estate in equal shares to the following named persons who are alive at the time of my death: Bridget A. Beaudry, Sheila M. Cooper, Lori M. France, Maureen J. Kissack, Sharon F. Sax, Jack K. Sandahl, Steven K. Sandahl, and Sandra E. Taverna.

Viola Sandahl and her biological daughter Sharon F. Sax predeceased Butler.

Mr. Butler's will appoints his biological daughter, Maureen Kissack, as personal representative. Mr. Butler had two other daughters, Sheila Montognese and Bridget Beaudry.

Mr. Butler also had four step-children: Steven Sandahl, John Sandahl, Lori France, and Sandra Taverna. The four step-children were the biological children of Viola Sandahl.

At his death, Mr. Butler owned a lake home worth approximately \$250,000, a trailer home worth approximately \$28,000, a personal checking account worth approximately \$12,000, and certificates of deposit worth approximately \$100,000.

The certificates of deposit each indicated that they were joint accounts with survivorship rights to Appellant. The certificates, on their face, did not describe what that meant, or require the signature of Appellant. On the back side of the certificates, in small print, was a description of joint accounts. Tr. at 100, L. 1-7. While a representative from the bank explained that it is bank policy to explain the effect of a joint account designation, the representative did not know if Mr. Butler was instructed as to the ramifications, or if he understood them. Testimony indicated that the accounts may have been designated to Kissack during an illness in 2003. Tr. at 37, L. 15-18.

Kissack testified that she was not aware of the certificates of deposit during the Decedent's lifetime, and testified to discovering them in a safe deposit box with Respondent

Sandra Taverna. Tr. at 93, L. 13. Taverna testified that the two were surprised to find that the Decedent had the money, and she was disappointed that the Decedent had not spent the money himself. Tr. at 66, L. 8-16. Kissack testified that she described the accounts in her journal as “Dad’s CD accounts” and did not view them as hers until the estate attorney informed her that she could keep these funds. Tr. at 89, L. 19-25. Kissack testified that she never put any of her own money into the accounts. Tr. at 93, L. 17.

Testimony at trial showed that much of Mr. Butler’s assets came from proceeds from an insurance settlement paid to Mr. Butler after a house fire, and from the sale of the land that the property resided upon. Tr. at 35, 53-55. The fire occurred at a lake home originally owned by Viola Sandahl, and left to Patrick Butler at the death of Ms. Sandahl. Tr. at 35, 39. The insurance proceeds were sufficient to buy a different lake property, and to purchase the certificates of deposit at issue. Tr. at 39.

The Decedent had a good relationship with all of his step-children, as well as with the Appellant and Respondent Montognese. Tr. at 50-51, 67, 77. He was estranged from his daughter Bridget Beaudry. Tr. at 44-45. His daughter Maureen Kissack was close to her father, and as a registered nurse, she provided medical care. Tr. at 33, L. 20-23. She assisted the Decedent with his medical decisions and looked after him. Respondent Steve Sandahl lived near Mr. Butler, and provided him with assistance around his home with projects and repairs. Tr. at 77, L. 10-12. Testimony suggested that Kissack was a “buddy” of Decedent,

and would visit him. Tr. at 34, L. 15-17. The other step-children also saw the Decedent on a regular basis.

No party could identify a reason why the Decedent would intend to leave the certificates of deposit to Appellant, aside from the Appellant herself. Tr. at 54-55, 68, 78.

ARGUMENT

I. TRIAL COURT CORRECTLY DENIED APPELLANT'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT AND MOTION FOR A DIRECTED VERDICT.

There is a high burden placed on the Appellant in order to grant a motion for a new trial or a judgment notwithstanding the verdict [presently known as judgment as a matter of law]. As stated in *George v. Estate of Baker*, 724 N.W.2d 1, 6 (Minn. 2006):

The standard that applies to a motion for JNOV is that the evidence must be "so overwhelming on one side that reasonable minds cannot differ as to the proper outcome." *Clifford v. Geritom Med, Inc.*, 681 N.W.2d 680, 687 (Minn. 2004). We will not disturb a jury's answer to special verdict questions if it can be reconciled on any theory, and will set aside a special verdict answer only if it is "perverse and palpably contrary to the evidence." *Hauenstein v. Loctite Corp.*, 347 N.W.2d 272, 275 (Minn. 1984).

Reviewing courts will uphold a denial of JNOV "if there is any competent evidence reasonably tending to sustain the verdict." *Bolander v. Bolander*, 703 N.W.2d 529, 545 (Minn. App. 2005) (citing *Blue Water Corp. v. O'Toole*, 336 N.W.2d 279, 281 (Minn. 1983)). Denial of a motion for new trial is reviewed for abuse of discretion. *Lake Superior*

Ctr. Auth. v. Hammel, Green, and Abrahamson, Inc., 715 N.W.2d 458, 476-77 (Minn. App. 2006).

In this case, the jury was asked to make a factual determination under Minn. Stat. § 524.6-204(a) providing that:

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 clear and convincing evidence of a different intention, or there is a different disposition made by a valid will as herein provided, specifically referring to such account.

The special verdict form contained the following question: “Was there clear and convincing evidence that the Decedent had an intent other than what the CD’s stated on their face - that Maureen Kissack became the owner of the funds upon Patrick Butler’s death?” The jury checked the answer to that form as “Yes.”

The jury reasonably decided this case based upon the evidence presented. The jury reached the same result as the trial court judge who earlier found for the Respondents and specifically stated, “It is difficult to imagine the decedent would provide the certificate of deposit as collateral for an estate asset unless he intended that the certificate of deposit be part of the estate.” *See Findings of Fact, Conclusions of Law, and Order* dated November 4, 2008, p. 3, Appendix R-0001-0004.

As noted, a denial of a JNOV should be affirmed if there is any competent evidence reasonably tending to sustain the verdict. Here, there was substantial competent evidence

introduced at trial providing clear and convincing evidence that the Decedent had a different intention than for Appellant to receive the accounts.

Among the substantial relevant evidence to the jury's decision includes the fact that the Decedent, Patrick Butler, had a will, in identical form to his deceased wife, that left his entire estate, including bank accounts, to his seven children and step-children in equal shares.

The jury was also presented with evidence indicating that Mr. Butler never delivered any certificates of deposit to the personal representative, and that she did not have access to these accounts during Mr. Butler's lifetime. Tr. at 97. Ms. Kissack testified that prior to the death of the Decedent, she did not place money into the accounts and was unaware of the accounts' existence. Tr. at 93. Ms. Kissack further noted that these accounts were used by Mr. Butler for his income, and that the interest drawn on the accounts was paid solely to him. Tr. at 94. She stated that the actual certificates of deposit were kept in a safe deposit box to which she had a key, but which she had never entered. Tr. at 97. Each of these pieces of evidence support the verdict of the jury, and shows that the evidence was not "so overwhelming that reasonable minds cannot differ as to the proper outcome." *George v. Estate of Baker*, 724 N.W.2d 1, 6 (Minn. 2006).

A similar task was presented to this Court in *Rutchick v. Salute*, 179 N.W.2d 607 (Minn. 1970). In that case, a deceased uncle purchased a savings certificate in the amount of \$25,000 and named his nephew, Nathan Salute, as joint owner. No part of the funds were contributed by the nephew nor was delivery made to the nephew. *Id.* at 610. Soon thereafter,

the uncle died, leaving an estate of approximately \$130,000 in equal shares to his nephews, Salute and Harold Rutchick, and his niece, Ann Ferster. *Id.* The nephew, Rutchick, executor, brought action in district court to recover the joint account from Salute.

Though the law has changed since *Rutchick* was decided, the primary question in *Rutchick* remains the same as the instant case: Did the Respondents rebut the presumption of the joint account holder's ownership of the certificate? The trial court ultimately held that the joint account should be paid into the estate, after which Salute appealed.

This Court in *Rutchick* held that “there is nothing in the evidence which would indicate that [the uncle] preferred one [heir] over the other or that one had a greater claim to his generosity than the other. In the final analysis, the question presented is one of fact, and we conclude that the record supports the finding of the trial court.” *Id.* at 612. The Court also discussed that the accounts were never delivered to Salute, that the Decedent's will left his estate in equal shares to the three heirs, and that the rebuttable presumption of ownership of the named account holder is overcome when evidence is presented rebutting the presumption.¹ *Id.* at 611.

The Court of Appeals found *Rutchick* to be persuasive authority for good reason. In both cases a Decedent inexplicably included a child, who happened to personal

¹Since *Rutchick*, the legal standard governing evidence overcoming the presumption of joint ownership has risen from a rebuttable presumption, rebutted by “competant evidence” to “clear and convincing evidence” in the present case based upon Minn. Stat. § 524.6-204, originally passed in 1973. The jury here of course applied the clear and convincing standard.

representative, on a joint account. In both cases the statutory presumption provided that the account be awarded to the living joint account holder. The Court of Appeals emphasized in discussing *Rutchick* that “the question presented is one of fact’ and concluded that ‘the record supports the finding of the [district court].” *In Re Estate of Butler*, A09-1208, at 8 (Minn. App. 2010). Appellant’s suggestion that the Court of Appeals ignored the MPAA’s burden shift fails to recognize the Court of Appeals deference to the fact finder.

The decision made by the properly instructed jury here cannot be discounted. Appellant requested a jury trial over Respondents’ objection to make a factual determination after Appellant rejected the factual finding made by the district court. Appellant’s displeasure with the jury verdict does not alter the deference that must be accorded this verdict.

The jury also heard that the Decedent did not favor Appellant over the other siblings, and that the Decedent’s estate was left in equal shares to the interested parties. Each of the factors discussed in *Rutchick* as bearing upon the question of ownership was also present here.

In addition to the factors present in *Rutchick*, the jury here also heard additional evidence supporting their verdict. The jury heard that the assets comprising the estate assets largely came from the pre-marital assets of Viola Butler. Tr. at 35. Testimony further established that Mr. Butler had a great relationship with Ms. Butler. Tr. at 34, L. 19-24. Evidence showed he had a good relationship with his step-children and would not have wanted to deprive his children of those assets. Tr. at 33-34; 94.

The jury was also presented with the testimony of Maureen Kissack where she admitted that she viewed these accounts as “Dad’s accounts” and did not seek to pay them to herself until her attorney informed her that she was legally able to do so. Tr. at 89.

The jury was also presented with evidence that Mr. Butler used these certificates of deposit to secure his trailer home, which was indisputably an estate asset. Tr. at 94-95.

Each of the foregoing are competent facts that could provide a basis for the jury’s verdict. However, this Court need not speculate what evidence was determinative for the jury. This Court need only determine whether the jury’s verdict could be reconciled with any theory. The foregoing series of competent facts each present evidence of a different intention of Mr. Butler than to have Ms. Kissack receive the funds. The jury could have used any of these facts, or others, to soundly determine that Mr. Butler did not intend for Ms. Kissack to have these funds. As such, the jury’s verdict was not “perverse and palpably contrary to the evidence,” and therefore the trial court did not abuse its discretion in denying Appellant’s motion for judgment as a matter of law.

1. The Court of Appeals rightly deferred to the straight forward, plain language analysis by the jury of Minn. Stat. § 524.6-204(a).

Minn. Stat. § 524.6-204(a) provides that evidence of a different intention can rebut the presumption of ownership by a joint account owner. Here, Respondents submitted ample evidence of a different intention. The jury reviewed this evidence in light of the statute and reached the same conclusion that the district court had originally reached: that there was clear and convincing evidence of a different intention.

Appellant erroneously argues that some different kind of evidence was necessary which she terms evidence of “actual intent.” As a practical matter, it is not clear what part of the statute requires “actual intent,” or what that term might mean in this context. The statute requires only “evidence of a different intention.”

If Appellant means that a joint account holder automatically has conclusive proof of ownership, then her assertion is contrary to the plain language of Minn. Stat. § 524.6-204(a) which contains no such guarantee. This guarantee can be found in Minn. Stat. § 524.6-213, subd. 1 (2008) which provides that conclusive proof of ownership is shown by the “inclusion of a signed acknowledgment stating that “the balance in this account, upon the death of any party to this account, shall belong to the surviving party.” Hence, there is already a portion of Minnesota statutes that sets forth the requirements for conclusive proof of ownership, and the Decedent did not meet its requirements.

On the other hand, if Appellant is contending that the only admissible evidence is that “which surrounds the creation of the account,” then Appellant’s contention lacks support within the case law. For the proposition that the only admissible evidence is evidence which surrounds the creation of the account, Appellant cites *Spiess v. Schumm*, 448 N.W.2d 106 (Minn. App. 1989). However, this case did not reach this holding, nor should this Court extend *Spiess*’ holding to do so. *Spiess* makes inquiry into “the circumstances which surrounded the creation of the account,” and finds this evidence to be relevant in that case. *Id.* at 109. However, the court in *Spiess* analyzed more than just evidence from the creation of the account. The court inquired facts occurring both before and after the account was

created, including letters written years after the accounts were created, even after the death of Decedent. *Id.* at 108-109.

Appellant also cites cases from other jurisdiction for the proposition that evidence of a different intention may exist “at the time the account is created.” *Decker v. Zengler*, 883 N.E.2d 839 (Indiana 2008). However, Indiana’s statute has a substantial addition that Minnesota did not adopt. Specifically, Indiana’s statute states “[s]ums 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 clear and convincing evidence of a different intention at the time the account is created.” *Id.* at 842 (citing Ind. Code § 32-17-11-18). The Minnesota statute does not contain the last portion of that provision stating “at the time the account is created.” *See* Minn. Stat. § 524.6-204(a). The Minnesota legislature could have included the additional language described and chose not to. As such, this is a clear statement from the legislature that any competent evidence bearing on the question of Decedent’s intent is admissible evidence.

In this case, the Decedent listed Appellant, his personal representative, as a joint account holder. No one was with him when he did it and there was limited evidence existing during the time of account creation. Nonetheless, the jury heard many factors indicating the Decedent’s reasoning after the creation of the accounts bearing on his intention at the time the account was created. Under the statute as written, this is all that is necessary, and the jury’s decision should stand unless it is palpably contrary to that evidence.

2. Minnesota jury instructions on the meaning of clear and convincing evidence gave the jury the tools they needed to make a sound decision.

Clear and convincing evidence of a different intention heard by the jury includes: 1) that Appellant was unaware of the CDs during Decedent's lifetime; 2) Decedent did not favor Appellant over Respondents; 3) the CDs were funded by proceeds from the sale of the premarital assets of Viola Sandahl; 4) Appellant referred to the accounts as "Dad's accounts"; and 5) Decedent used one of the CDs to secure his manufactured home, an estate asset. This evidence taken as a whole provides clear and convincing evidence that the Decedent had a different intention.

Appellant quotes at length from *Hopper v. Rech*, 375 N.W.2d 538 (Minn. App. 1985) in suggesting that Minnesota courts have laid out exactly which specific evidence is required to prove evidence of a different intention. The argument in essence is that since *Hopper* relied on specific facts to order funds returned to the estate, then those same facts are required here. In *Hopper*, as here, the Court ordered the joint account funds to be returned to the estate. Additionally, as here, a will set forth the division of the Decedent's assets.

Importantly, no where does *Hopper* set forth a minimum threshold for evidence required to meet clear and convincing. *Hopper*, as here, took the facts presented and applied them to the law as written. Appellant similarly cites *Estate of Nordorf*, 364 N.W.2d 877 (Minn. App. 1985), and *Spiess v. Schumm*, 448 N.W.2d 106 (Minn. App. 1989), which also uphold the finding that the joint bank accounts should be returned to the estate. Appellant fails to locate a Minnesota case where a judge or jury finding of a different intention was

overturned, simply because no such case exists. Each of these cases looks at the will of the Decedent and the actions of the Decedent concerning the accounts in determining whether the presumption in favor of joint tenancy has been rebutted.

Appellant further suggests that a section of dicta in *Spiess*, supra, discussing pay-on-death accounts affects the analysis here. In this dicta, the court suggested that the applicable inquiry concerns the circumstances which surrounded the creation of the account, but also relied on evidence created years after the account was created. While *Spiess* mentions the importance of the circumstances surrounding the accounts creation, its holding does not create the requirement.

Furthermore, even if this dicta in *Spiess* were the law, Appellant has effectively waived this argument by failing to request that the jury be instructed on this at trial. The jury was not instructed, nor did Appellant request the instruction, that the only relevant evidence is that which exists at the time of the accounts' creation. Finally, had the jury been so instructed, there would still have been evidence supporting the verdict. For example, Montognese testified that the account designations were made during an illness in 2003.

Appellant's suggestions that the jury's inquiry must focus on the circumstances existing when the account was created is also illogical. By Appellant's rationale, if an individual creates a joint bank account, and six months later sends a letter to each of her children explaining that the personal representative has been added to the account for convenience purposes, that letter would be irrelevant. Such an illogical outcome is not contained within the statute and has not been recognized by this Court.

Also illogical is Appellant's suggestion that the Decedent's life insurance beneficiary designation somehow bears upon the question of the Decedent's bank accounts. Unlike the Decedent's certificates of deposit, there was no evidence that Decedent made a mistake with his life insurance beneficiaries. Further, the jury heard about the policies, and how they had been taken out when the Decedent's children were much younger, and rightfully discounted that testimony.

To determine what clear and convincing means, it is perhaps most instructive to look to this Court's view on clear and convincing as it has reviewed various jury instructions.

The jury here was instructed that clear and convincing requires "a firm belief or a high probability that the Decedent had different intentions other than the joint tenant receiving the money upon his death." Tr. at 148, L.1-4. The jury had to consider the evidence as presented, and heard, in relevant part, at least six important pieces of evidence indicating that the Decedent had a different intention.

A firm belief or high probability could surely be inferred from the evidence and the testimony as presented. Looking at the evidence in a light most favorable to the Respondents, there was ample evidence that the Decedent intended for these accounts to be divided evenly at the time he created the accounts. Put otherwise, Decedent's actions after he created the accounts showed that he did not intend for the Appellant to keep these funds. The decision of Decedent to secure his home with his certificates of deposit, for instance, is sufficient to create a belief that the Decedent intended these accounts to be included in the estate.

3. Jury properly rejected Appellant's claim that Butler intended for Appellant to receive the certificates of deposit.

Appellant goes to great lengths to reason why the Decedent left the certificates of deposit at issue to her. However, this line of reasoning misses the thrust of statute, which concerns the jury's reasoning as to whether there was evidence of a different intention.

The inquiry required by the statute is made clear in *Miller v. Daniels*, 520 N.W.2d 769, 770 (Minn. App. 1994), wherein the Court of Appeals found that in absence of the conclusive proof language of Minn. Stat. § 524.6-213, subd. 1, a court could still award accounts to a joint holder. The Court noted:

The [statutory] language is not required, however, to prove that decedent intended survivorship rights; even without the language of section 528.15, a presumption arises that the decedent intended survivorship rights. See [Minn. Stat.] 528.05. That presumption is overcome only if there is clear and convincing evidence that survivorship rights were not intended. *Miller v. Daniels*, 520 N.W.2d 769, 770 (Minn. App. 1994)

Hence, Appellant's reliance of *Miller* is misplaced. In *Miller*, a Decedent failed to sign the proper form necessary to create the conclusive proof of a joint account necessary to forego any intent analysis. *Id.* at 770. The Court in *Miller* therefore had to determine if the presumption in favor of joint ownership had been rebutted. The Court found that it was not. *Id.* at 771. Analysis of *Miller* leads the fact finder back precisely to where we begin. It requires an analysis as to whether the jury abused their discretion in finding clear and convincing evidence of a different intention. In *Miller*, the fact finder ultimately concluded that there was not clear and convincing evidence of a different intention, whereas here they

did. *Miller* therefore actually underscores one of Respondents' points, namely, that if a Decedent wants to create conclusive proof that a joint account holder will receive the proceeds of an account at death, then they should use Minn. Stat. § 524.6-213, subd. 1.

II. MINNESOTA JOINT ACCOUNT STATUTE PROVIDES BRIGHT LINE RULE AS DRAFTED.

The Minnesota Multi-Party Accounts Act under Statute 524.6-213, subd. 1 provides a bright line rule for individuals to leave no uncertainty with respect to their bank accounts at death. The bright line that the statute establishes includes only a specific reference to an account in a will or the inclusion of a signed acknowledgment that "the balance in this account, upon the death of any party to this account, shall belong to the surviving party." This rule takes away any uncertainty regarding the disposition of an account upon the account holder's death.

Appellant has suggested that this Court should create a new rule positing that "only that evidence touching upon the Decedent's actual intention at the time of account opening should matter." This sort of rule would cause unnecessary inflexibility and allow for an unjust result in those cases where substantial evidence exists showing evidence of a different intention. As the district court said response to this proposed rule in its denial of a JNOV:

Ms. Kissack suggests that to allow this verdict to stand would open the "floodgates" of litigation of joint accounts with regard to right of survivorship. The Court notes that clear and convincing evidence is a high standard of proof. As the standard of proof is high, the Court does not believe that this will result in the flood of litigation alluded to.

See Findings of Fact, Conclusions of Law, and Order dated May 6, 2009, p. 3, Appendix at R-1011-1014.

The district court ably describes why this statute has been on the books for over thirty years without a flood of litigation. If one is to gauge litigation levels by appellate cases, comparatively little litigation has surfaced. The cases previously cited here show that Minn. Stat. § 524.6-204(a) has not appeared before Minnesota Courts of Appeals often, and when it has, the joint account funds are generally returned to the estate. *See, e.g., Hopper v. Rech, supra*, 375 N.W.2d 538 (Minn. App. 1985).

The reality is that there are many potential reasons for an individual to designate a third party on their account as joint account holder without intending for that account holder to receive the funds. Some individuals open checking accounts with a joint holder for the sake of convenience. Other individuals place a child's name on the account in trust with the expectation that the funds will be divided upon death. There are countless mind sets with which an individual might add an heir to a bank account without the intention that the heir receive the account upon death.

For this reason, the MPAA creates a rebuttable presumption that accounts will belong to the joint account holder. This presumption, as discussed in *Miller*, provides certainty to individuals on a joint account. However, this presumption also provides an escape clause. The statute provides that clear and convincing evidence of a different intention will negate the presumption. While this is a high standard for those wishing to challenge the presumption, it also ensures that an individual is not unjustly enriched due to error or misunderstanding of the Decedent.

Where it is shown, as in this case, that the Decedent did not intend for the accounts to be claimed by the Appellant, the Decedent made no effort to inform the Appellant of the accounts, and gave no indication of favoring one child over another, the statute as written provides exactly the protection needed to correct the mistake. Indeed, if future testators, lawyers, or judges need a bright line rule, they have a bright line written into Minn. Stat. § 524.6-213, subd. 1.

To adopt the rule Appellant suggests would create harsh and unintended consequences for the many families that rely upon joint accounts to assist in ease of transferring assets to subsequent generations with the trust that their child will divide the accounts in absence of a written agreement or use joint accounts for the sake of convenience without explicitly designating the accounts as convenience accounts. There are innumerable ways in which an individual could be placed upon a joint account in error, and Minn. Stat. § 524.6-204(a) provides a ready means to right the possible injustice.

III. THE TRIAL COURT PROPERLY ADMITTED RELEVANT EVIDENCE.

Evidentiary rulings are left to the district court's sound discretion. *Kroning v. State Farm Auto Insurance Company*, 567 N.W.2d 42, 45-46 (Minn. 2007) cited by *In Re Buckmaster*, 755 N.W.2d 570, 580 (Minn. App. 2008). The district court's evidentiary rulings are not disturbed absent an abuse of discretion or an error of law. *Id.*

Appellant unconvincingly argues that the only relevant evidence of Decedent's intention is that evidence which speaks to Decedent's intention at or around the time the account is created. This proposition is unsupported by the statute and finds little support in

the case law. In each case that this Court or the court of appeals has evaluated claims under the MPAA, evidence has been admitted outside of the narrow time frame when the joint account was created.

Relevant evidence such as wills, subsequent actions, and relationship evidence has all been considered relevant to address the question of a different intention. *See, e.g., Spiess v. Schumm*, 448 N.W.2d 106 (Minn. App. 1989) (finding pay-on-death account should be returned to the estate on basis of will, parole evidence of Decedent, and letters written by Decedent after creation of account) *Hopper v. Rech*, 375 N.W.2d 538 (Minn. App. 1985) (finding joint account assets should be returned to estate on basis of actions of Decedent after creation of account and admission of will) ; *Estate of Miller*, 960 A.2d 1140 (Maine 2008) (finding joint savings account assets should be returned to estate on basis of will, bank statements, parole evidence, and relationship evidence); *Estate of Lamb*, 584 N.W.2d 719 (Iowa App. 1998) (finding joint account assets should be returned to estate of basis of relationship evidence and actions of Decedent after creation of joint account).

Spiess, in particular, has a discussion of the admission of Decedent's letters bearing on the question of their relevance to pay on death accounts. *Spiess v. Schumm*, 448 N.W.2d at 108-109. In its discussion, the court highlights the deference given to evidentiary questions, and relevantly states: “[t]he court could find that statements by others, even though made after Decedent's death, were probative on these questions.” *Id.* at 109.

As indicated, there has not been a single case located or cited by Appellant that excludes either the will, relationship evidence, or relevant parole evidence. Here, the will

was highly relevant to the analysis under Minn. Stat. § 524.6-204. The statute allows for joint accounts to be included in the estate if they are specifically referenced in a will. It also allows the jury to hear “evidence of a different intention.” The wills here were not entered to show ownership of the disputed certificates of deposit. Rather, they were entered to show the jury that this was not a case of interested parties being excluded as heirs entitled to inherit.

Had the will given the entire estate to Appellant, or stated specifically that any certificates of deposit were to be paid to her, Appellant would undoubtedly have offered the will herself. Instead, Respondents offered the will to show that the Decedent intended to have estate assets divided evenly. While certainly not determinative, this evidence is at minimum probative of a different intention.

The will is also especially relevant because of one key piece of the Respondents’ case. Respondents entered evidence at trial showing that the Decedent owned a trailer which was encumbered by a \$45,000 loan. The loan had additional security of the disputed certificates of deposit. It was argued at trial that had the Decedent intended for Appellant to receive all of the money contained within the certificates of deposit, he would have secured his loan with the unencumbered cabin which was undisputably an estate asset. He did not. Instead, he secured an estate asset with an asset that Appellant argued was not an estate asset.

The will was necessary to show that the trailer was an asset intended to be divided equally among the seven interested parties. This was strong evidence of a different intention that the jury may have deemed relevant in making its decision.

For these reasons, the trial court did not abuse its discretion in admitting the will.

CONCLUSION

The question submitted to the jury in this case was clear and easy to distinguish. This case has the unique posture of originally being tried before a District Court Judge and then a jury. The question considered on this appeal concerns whether the jury decided a question palpably contrary to the evidence in finding evidence of a different intention. The jury, like the district court before it, rightly found clear and convincing evidence of a different intention.

Appellant has failed to show abuse of discretion at any point in this process and therefore, Respondents request that the jury verdict be affirmed by this Court, as well as the trial court's denial of JNOV, and that Appellant's claims for relief be denied in their entirety

Respectfully submitted,

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By: 

Kyle T. Wermerskirchen
Attorney ID No. 033621X
Steven H. Snyder & Associates
11270 - 86th Avenue North
Maple Grove, MN 55369
Phone: (763) 420-6700
Attorney for Respondents