NO. A12-0828

State of Minnesota
In Court of Appeals

Ronald H. Jones and Jessica A. Warren,

Appellants,

v.

Charlotte L. Larson,

Respondent.

RESPONDENT'S RESPONSE BRIEF

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STATEMENT OF THE CASE

The Personal Representative's petition to allow the final account, settle, and distribute the estate was heard on November 21, 2011. Two of the devisees/heirs, Ronald H. Jones and Jessica Warren (hereinafter referred to as the "objecting parties"), claim that six Certificates of Deposit should have been included as part of the estate. The trial court heard testimony from the Personal Representative, Charlotte Larson, and received as exhibits the Final Account and Petition to Allow the Final Account, Settle, and Distribute the Estate. The objecting parties called no witnesses, but did introduce exhibits that included various Wells Fargo Statements of Account and a death certificate of Mr. Jones. The trial court ordered that all of the accounts held in joint tenancy were the property of Charlotte Larson.

STATEMENT OF FACTS

Ronald Jones died on April 5, 2010. His survivors are two children from his first marriage, Ronald H. Jones and Jessica Warren a/k/a Linda Jones, and three children from his second marriage, Charlotte Larson, Gale Bristlin, Diane Jones. *See* Transcript at P. 7, L. 17 through P. 8, L. 15. Diane Jones is handicapped and taken care of by the state.[1] *See* Transcript at P. 8, L. 16-17 and P. 36, L. 9-10. Ms. Larson provided the primary care for Diane Jones for many years. *See* Transcript at P. 36, L. 14-15. In addition to taking care of her sister, she had provided significant help to the decedent. The help increased significantly during the last year of his life when he suffered a number of medical conditions and his dementia became worse. *See* Transcript at P. 13, L. 12-25, P. 14, L. 1-8, and P. 15, L. 6-18. She lived the closest to the decedent and was the primary caregiver for both his financial and personal needs, which included cooking meals for him, transporting him for medical appointments, cleaning, disbursing medication, and she had performed services for her father for many years. *See* Transcript at P. 16, L. 7-25 and P. 17, L. 1-25.

The decedent transferred the CDs that are at issue to a joint account with Charlotte Larson many years ago and prior to his wife's death. *See* Transcript at P. 17, L. 20-25. The purpose was to allow Charlotte Larson to take care of his wife

[1] Charlotte Larson is her guardian. *See* Transcript at P. 8, L. 18-19.

(Charlotte's mother), who was 14 years younger than him and his disabled daughter, Diane Jones. *See* Transcript at P. 18, L. 1-2 and P. 43, L. 7-11.

The personal representative testified that more than ten years earlier after her mother's death, the decedent made distributions of $30,000 each to Gale Bristlin, Ronald H. Jones, and Charlotte Larson. *See* Transcript at P. 35, L. 16-25 and 40, L. 9-15. He did not provide for his disabled daughter, Diane Jones, or Jessica Warren. *See* Transcript at P. 35, L. 24-25 and P. 36, L. 1-3. With regard to his disabled daughter, Diane Jones, it would not have done her any good because of the benefits reduction it would have caused. *See* Transcript at P. 36, L. 11-12. With regard to Jessica Warren, there was testimony that she was in the government protection program and used drugs. *See* Transcript at P. 36, L. 18-20.

There is agreement that as of October 31, 2009, the six CDs involved in this litigation were in a bank account. These CDs are identified as follows:

- Certificate No. 1: Account # established on 09-27-1987 and which had a value on November 30, 2009, of $1,701.56 (hereinafter Certificate No. 1) listed Ronald E. Jones or Charlotte Larson.
- Certificate No. 2: Account # established on 12-03-2001 and which had a value on November 30, 2009, of $53,955.40 (hereinafter Certificate No. 2) listed Charlotte Larson or Ronald E. Jones or Brandon L. Larson.

- Certificate No. 3: Account / established on 02-03-2005 and which had a value on November 30, 2009, of $13,794.63 (hereinafter Certificate No. 3) listed Ronald E. Jones or Charlotte Larson.
- Certificate No. 4: Account established on 07-09-2004 and which had a value on November 30, 2009, of $31,439.25 (hereinafter Certificate No. 4) listed Ronald E. Jones or Charlotte Larson.
- Certificate No. 5: Account established on 07-09-2004 and which had a value on November 30, 2009, of $6,530.91 (hereinafter Certificate No. 5) listed Ronald E. Jones or Charlotte Larson.
- Certificate No. 6: Account established on 05-24-1995 and which had a value on November 30, 2009, of $2,103.14 (hereinafter Certificate No. 6) listed Ronald E. Jones or Charlotte Larson.

Certificate No. 2, which was by far the largest account, was held in joint tenancy between Charlotte Larson, Ronald E. Jones (the decedent), and Ms. Larson's son (Brandon L. Larson). *See* Transcript at P. 21, L. 3-4. The source of these funds were a gift that the decedent had made to his three children as described above. *See* Transcript at P. 20, L. 8-15. Ms. Larson had added her son as a joint tenant, but left the decedent's name on it because of the higher interest rate that this certificate was receiving. *See* Transcript at P. 20, L. 10-12. She cashed this certificate January 14, 2010, and deposited the funds into her own account.

The second largest certificate, Certificate No. 4, in the amount of \$31,439.25, was cashed in 2009. *See* Transcript at P. 33, L. 15-23. The decedent had instructed Ms. Larson to use the proceeds to fix up the house he was living in because that is where he wanted to reside until his death. *See* Transcript at P. 34, L. 1-19. The house needed significant repair because it had been condemned by the city. All of the proceeds were utilized in upgrading the house so that it was habitable for the decedent to live in. *See* Transcript at P. 34, L. 10-14. Unknown to Ms. Larson, the decedent had deeded this property to her years earlier. She did not know of the transfer until after her father's death. *See* Transcript at P. 39, L. 3-8.

The remaining four CDs (Certificate No. 1 in the amount of \$1,701.56, Certificate No. 3 in the amount of \$13,794.63, Certificate No. 5 in the amount of \$6,530.91, and Certificate No. 6 in the amount of \$2,103.14) were cashed on January 14, 2010, and put into Charlotte Larson's account. At the time, Ms. Larson did have a valid Power of Attorney that has not been challenged. There are no allegations that while the decedent was living there were any inappropriate disbursements of the funds. Also, the record is void of any evidence that Ms. Larson has not been undertaking the responsibility of taking care of Diane Jones.

ARGUMENT

I. THE TRIAL COURT RULED CORRECTLY IN A NOVEL CASE.

There is no question that the specific facts dealt with by the trial court have never been considered by either this Court or the State Supreme Court. Having no guidance from the state appellate courts, and recognizing that this falls into a gap in the Uniform Probate Code, the trial court fashioned a fair remedy influenced by equitable principles. The undisputed facts demonstrated that there was not a nefarious intent by Charlotte Larson and that the decedent had trusted her to take care of his wife, who predeceased him, and his disabled daughter upon his death. The trial court's decision honored the intent of the decedent.

A. The Principle Purpose Of The Uniform Probate Code Is To Honor The Intent Of Decedent.

The principle purpose of the Uniform Probate Code that is relevant to this case is "to discover and make effective the intent of a decedent in distribution of property." Minn. Stat. § 524.1-102(a)(2). Here, the trial court found that Ms. Larson, the only person who testified, was credible. The trial court also found that there was no evidence that Ms. Larson had spent any of the money prior to the decedent's death improperly. *See* Court Findings of Fact 13. The testimony presented was that the decedent had confidence in her and wanted to assure that upon his passing, Ms. Larson could take care of his wife and his disabled daughter. There was no evidence presented that Ms. Larson had any nefarious or improper intent when she prematurely, but innocently, withdrew funds from the decedent's accounts prior to the decedent's death. As set forth in the facts above, the largest two CDs were hers. Indeed, the manifest weight of the evidence demonstrates quite the opposite as Ms. Larson was the decedent's caretaker and had also accepted the responsibility of caring for her disabled sister with the funds that had been in the joint accounts.

It is true that Ms. Larson opened the door to this opportunity, but did so unwittingly and, despite Appellants' arguments to the contrary, innocently. Appellants cannot point to any evidence whatsoever to support their contention that "she took [Decedent's] money and abandoned him financially." This is a completely baseless claim, and contrary to the evidence that demonstrates Ms. Larson cared for her father and adequately managed his affairs up to and even after his death since she was appointed the personal representative.

That the decedent wanted Ms. Larson to receive the funds from the joint accounts is shown by the simple fact of the establishment of the accounts in the first instance. Further telling is the lack of testimony from either of the two objecting children both from the decedent's first marriage that for more than two years, there were no issues with Ms. Larson using the funds appropriately to take care of the decedent's disabled daughter and make the home the decedent was living in habitable. Further, Gale Bristlin did not join in the objection, which one can only assume that she concurred with her father's disposition and trusted the confidence he had in Ms. Larson to use the proceeds accordingly.

Accordingly, the only way Decedent's clear intent can be honored is to allow Ms. Larson to retain the funds at issue and use them as Decedent desired—to retain the funds and use them in part to improve the quality of his disabled daughters' life.

B. The Case Falls Into A Gap In The Uniform Probate Code.

Appellants wrongly argue that this case is governed by Minn. Stat. § 524.6-203(a), which applies to joint accounts during the lifetime of the parties to the account. However, they are correct in stating that Minn. Stat. § 524.6-204(a) governs the case because there were indeed no funds remaining on deposit in the relevant joint accounts at the time of Decedent's death. Rather, as the trial court recognized, its relevance is in helping determine the proper remedy where the surviving joint account holder innocently withdraws funds prematurely from the joint account. To dogmatically apply § 524.6-203(a) in this case yields a very harsh result that clearly violates Decedent's intent.

The reason § 524.6-203(a) should not be applied is because it more aptly governs the situation where a party, whether alone or through an agent, withdraws funds from a joint account that were initially contributed by them, then the other joint owner makes a claim. Another situation where this section properly governs is when a creditor of one joint owner attempts to levy funds from a joint account to which another joint owner has contributed.

Dogmatically applying this section in the present case assumes that had Decedent known the funds had been withdrawn he would have demanded them back and taken legal action if refused. Appellants now seek to stand in Decedent's shoes and make that decision for him, even though there is absolutely no evidence suggesting anything other than that Decedent wished for Ms. Larson to have the funds in the joint accounts upon his death. In sum, Appellants have spotted an opportunity to play "gotcha" as a result of Ms. Larson's unwitting and innocent premature withdrawal of funds that were meant to be, and would have been hers.

Examples of scenarios where § 524.6-203(a) is meant to govern can be found in several of the cases cited by Appellants. For example, in *Hefner v. Estate of Ingvoldson*, 346 N.W.2d 204 (Minn. Ct. App. 1984), a duly authorized agent of the sole contributing joint account holder withdraws the funds. The agent stood in the shoes of the contributing joint owner and by withdrawing the funds demonstrated an intent to deprive the non-contributing joint owner of her expectancy. This intent was of course affirmatively manifested *while the decedent was alive*, thus alleviating the need to presume the decedent would have demanded the return of funds had the non-contributing joint owner been the one to withdraw them.

There is no evidence to suggest Decedent in this case had ever affirmatively manifested any such intent during his lifetime. To the contrary, all the evidence suggests he desired the joint accounts to go to Ms. Larson. Though *Hefner* reached the correct result, it is improbable that § 524.6-203(a) should even apply to such a case since there, as here, the contributing joint account holder had died, and this section by its plain language is applicable only "during the lifetime of all parties…." Minn. Stat. § 524.6-203(a). Even if the statute is properly applied in *Hefner*, the case clearly stands apart from the present case because here neither Decedent nor his agent ever made any attempt to withdraw the jointly held funds and thereby manifested an intent to deprive Ms. Larson of her interest therein. Rather, Appellants want the Court to simply assume this would have occurred, though it is against all of the evidence adduced on the issue.

Another example cited by Appellants where the section is surely apt is *Enright v. Lehman*, 735 N.W.2d 326 (Minn. 2007), wherein a creditor of the non-contributing joint account owner attempted to levy the joint account. Both account owners there were still alive, and the case fits squarely within the plain meaning of the statute.

It is therefore a stretch to apply § 524.6-203(a) to the present facts in the first instance given that the contributing account owner had died and thus the statute is not being applied "during the lifetime of all parties…." Further, unlike in *Hefner*

Decedent had not withdrawn the funds, thus vitiating any need to even consider how best to honor decedent's intent, the primary objective in any probate case. This and the fact that the result urged by Appellants would be harsh and violate the obvious intent of Decedent. The trial court was well within its authority to render the ruling it did based upon the application of equitable principles and common sense. States in other jurisdictions have come to the same conclusion. *See Accord South v. Smith*, 934 S.W.2d 503 (Ark. 1996)(holding that withdrawal from joint account prior to contributing owner's death did not end the survivorship interest in the proceeds withdrawn); *In Re Filfiley's Will*, 313 N.Y.S.2d 793, 63 Misc.2d 824 (N.Y. Sur., 1970); *In Re Leisner's Estate*, 268 N.Y.S. 375, 25 A.D.2d 844 (N.Y.A.D. 1 Dept., 1966); *May v. Summers*, 328 So.2d 345 (Miss. 1976); and *Braegger v. Loveland*, 367 P.2d 177 (Utah 1961).

C. The Court Is Free To Reach Its Own Conclusion By Relying On The Principles Of Law And Equity.

The State Legislature has provided clear guidance to courts in construing and applying the Uniform Probate Code to unique factual situations such as the one presented here. This guidance is set forth in § 524.1-103 of the UPC, which states:

> Unless displaced by the particular provisions of this chapter, the principles of law and equity supplement its provisions.

Minn. Stat. § 524.1-103. Here, as previously demonstrated, the specific factual scenario is not clearly dealt with by the UPC. Accordingly, it is appropriate to apply "the principles of law and equity" to fill the gap, which is what the trial court did.

Appellants place much reliance on a few cases from three other states, two with similar factual scenarios wherein funds withdrawn by a non-contributing joint account owner were ordered returned to the decedent's estate. However, as argued above these two cases strain the plain meaning of what was enacted as § 524.6-203(a) in Minnesota by applying it to situations where the contributing joint account holder is no longer alive, and essentially presuming a nefarious intent on the part of the withdrawing party where there is no evidence of such. Assuming, *arguendo*, that the section is properly applied to such circumstances, the foreign rulings cited by Appellants are at best of very limited value in determining the proper result here.

The most important of these cases is arguably *Shourek v. Stirling*, 621 N.E.2d 1107 (Ind. 1993), as it spawned *Vaughn v. Bernhardt*, 547 S.E.2d 869 (S.C. 2001). In *Shourek* the court sent the case back to the trial court after determining there was evidence that the decedent had an "intent to make a present gift subject only to funds being available for Jonas' immediate needs." *See* 621 N.E.2d at 1110. The court in *Vaughn* simply accepted the reasoning presented in *Shourek* and mechanically applied it to deny the funds to the surviving account owner, effectively penalizing him for failing to present any evidence of the decedent's intent, while also recognizing the strong likelihood that its ruling frustrated the decedent's wishes as to disposition of the funds. *See Vaughn*, 547 S.E.2d at 198; *See also Kemp v. Rawlings*, 594 S.E.2d 845 (S.C. 2004)(determining that "other evidence of intent" presented by non-contributing joint account holder entitled her to keep funds withdrawn prior to contributing account owner's death). Here there was significant evidence presented as to Decedent's intent, all of it indicating that he wanted Ms. Larson to have the funds from the joint accounts to take care of his wife if she survived him and his disabled daughter. Accordingly, neither *Shourek* nor *Vaughn* are of much if any value in guiding this Court to a proper ruling.

The third case heavily relied upon by Appellants is *In Re Overton*, 169 B.R. 196 (D. Neb. 1994), which is a debtor-creditor case where the contributing account owner was still alive, thus placing it squarely within the realm of cases to which § 524.6-203(a) properly and logically applies. It is therefore of no value in determining a result in this case.

The trial court realized that mechanically applying § 524.6-203(a) to the instant case, despite the contradiction between the fact of Decedent's intervening death and plain language indicating it applies only when all account owners are still alive, would frustrate Decedent's intent as established by the uncontroverted evidence and result in an unjust windfall for Appellants. Rather, the trial court expressly found that Decedent intended for Ms. Larson to receive the joint accounts upon his death, and chose to honor that intent rather than allow the minor fact of her premature withdrawal open the door for Appellants to unjustly take the funds through their game of "gotcha."

D. The Trial Court Applied An Appropriate Test.

Essentially the trial court's decision struck an appropriate middle ground test that mixed Minn. Stat. §§ 524.6-203(a) and 524.6-204(a), rather than applying either one alone and get a harsh, absurd, or clearly erroneous ruling that ran contrary to Decedent's intent and resulted in an unjust windfall on the hand or rewarded malfeasance by Ms. Larson on the other. The result, as set forth in the trial court's ruling, hinges on the absence of evidence of two things (1) fraud, undue influence, or coercion, and (2) evidence that the decedent had a different intent with regard to distribution of the funds. If these requirements are met, as they are here, the only possible conclusion is that a decedent's intent was for the joint owner to take ownership of the funds just as if that joint owner had done the prudent thing by leaving the funds in place until the decedent's passing.

This framework has the advantage of denying the surviving joint owner the full advantage provided by § 524.6-204(a) through its presumption in favor of the joint owner while also avoiding a harsh result that violates a decedent's intent, rewards undeserving parties with an unjust windfall, and punishes an innocent, but unwitting beneficiary who quite likely contributed significant value to a decedent's life and thus was rightfully set to receive a gift from the decedent. While Appellants may argue that this framework creates a legal fiction—that Ms. Larson left the funds in the joint accounts until Decedent's death—this is not the case because if that had occurred she would receive the full benefit of the presumption contained in § 524.6-204(a), which its clear the trial court did not allow her.

Rather the trial court expressly found that there "is no evidence that [Larson] spent any of the money for her own needs prior to Decedent's death." Trial Court Ruling at Finding of Fact 13. It also found n absence of "fraud, coercion, or undue influence by [Larson] as to the certificates of deposit." *Id.* at Finding of Fact 8. In its conclusions of law, the trial court determined that "[Larson] would have been entitled to the funds in the CDs upon Decedent's death," and further that "[Appellants] did not provide clear and convincing evidence of a different intent." *Id.* at Conclusion of Law 5. The trial court went on to state what is clear, i.e., that the Minnesota appellate courts have not provided any guidance on the specific issue presented, thus requiring it to forge a proper remedy. This remedy relied on the facts recited above—the lack of any evidence that Decedent wanted anything other than for Ms. Larson to have the joint accounts, which led to the determination that Decedent's "established intent" regarding the CDs was for Ms. Larson to have them; a lack of any evidence suggesting in any way that Ms. Larson somehow committed fraud, unduly influenced or coerced Decedent; that Decedent had already provided very generous gifts to two other children; that Ms. Larson's actions in faithfully caring for Decedent and handling his affairs during his final years were consistent with him intending for her to have the joint accounts; and finally that returning the funds to the estate would result in violation of the decedent's intent and provide resources for his disabled daughter.. *See id.* at Conclusion of Law 7.

The trial court is not alone in arriving at such a fair and equitable remedy in the absence of clear guidance in applicable statutes and controlling case law. A situation very similar to the present case arose in *Matter of Estate of Cullman*, 426 N.W.2d 811 (Mich. Ct. App. 1988). There the court determined that the sole contributing joint owner had not intended to make a gift of the funds on deposit, which were withdrawn by the other joint owner prior to the contributor's death. *See id.* at 814. It further found that a relationship of trust and confidence existed between the contributing and non-contributing joint account holders and that the latter was not to use jointly held funds for personal purposes during the life of the contributing owner. *See id.* From there the court continued:

> Thus, were we to stop at this point in our analysis, we would affirm the probate court's order requiring [the surviving joint owner] to turn over to [the decedent's] estate the funds she withdrew from the jointly held bank accounts approximately one month before [the decedent's] death.
>
> We do not affirm the probate court's order, however, because we feel that that court prematurely ended its analysis of the issue presented.

> Had [the surviving joint owner] not withdrawn the funds from the jointly held bank accounts prior to [the decedent's] death, she would have been the only surviving joint owner of the accounts. **Nothing in the record suggests that either Cullmann herself or anyone else acting legally in her behalf sought to withdraw the funds for any legitimate purpose.** Thus, equity requires that we continue our analysis and determine whether, as a surviving joint owner of the accounts, [the surviving joint owner] was entitled to receive the withdrawn funds.

Id. at 814-15. [Bolding added]. The court then considered applicable law had the jointly held funds been left on deposit, which presumed such funds would belong to the surviving joint owner absent "clear and persuasive proof to the contrary," a standard virtually identical to that set forth in Minn. Stat. § 524.6-204(a) ("clear and convincing evidence of a different intention"). *See id.* at 815. Finding no evidence suggested that the decedent had any intention other than for the surviving joint owner to receive the accounts, the court concluded:

> Accordingly, we conclude that, as a joint owner of the accounts funded by [the decedent], [the surviving owner]--had she not withdrawn the funds in question prior to [the decedent's] death--would have been vested with title to the accounts as a survivor of [the decedent]. Although, technically, [the surviving owner] withdrew the funds prior to becoming a survivor of [the decedent], there is nothing in the record to suggest that she did so for fraudulent, coercive or improper reasons. It would be inequitable, therefore, to require her to pay the withdrawn funds to [the decedent's] estate. To so require, we believe, would clearly violate the abiding and unequivocal intent of [the decedent]. To so require, we believe, would plainly dishonor the unambiguous desire of the deceased.

Id. at 816.

Estate of Cullman is squarely on point with the present case and the same result should be reached as no evidence was presented to even suggest the presence of fraud, undue influence, coercion, self-dealing, or most important, that Decedent had any desire but for the jointly held funds to become Ms. Larson's.

Accordingly, faced with a novel factual scenario not clearly contemplated by the UPC, the trial court applied the principles of law and equity to reach an appropriate remedy that hewed to the guiding principle of the law of probate by honoring the established intent of Decedent. The fact that one court in another state mechanically applied the section of the UPC similar to Minnesota Statute and followed by another without any significant analysis should not persuade the Court to do the same.[2] This is especially so when doing so results in such an obvious violation of Decedent's intent as established by the uncontroverted evidence, something that is squarely contrary to the most important purpose of the UPC, which is "to discover and make effective the intent of a decedent in distribution of

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[2] *See Shourek*, 621 N.E.2d 1107 and its progeny, *Vaughn v. Bernhardt*, 547 S.E.2d 869, *supra*. While another purpose of the UPC under Minn. Stat. 524.1-102(b)(4) is to "make uniform the law among the various jurisdictions," the dogmatic, simplistic and mechanical application of the UPC in cases such as this by the senior appellate courts of two, or arguably three states should in no way lock the rest of the UPC states into uncritically following along in wrote fashion, especially where doing so will clearly violate the established wishes of the deceased joint account owner. Certainly there is ample room for a common sense, equitable remedy that hews to established principles of law and equity to honor a decedent's intent when only two or three voices of many have been heard.

property." Minn. Stat. § 524.1-102(b)(2). The trial court's ruling, which follows Decedent's intent, should therefore be affirmed.

II. THERE IS CLEAR AND CONVINCING EVIDENCE OF A DIFFERENT INTENT UNDER § 524.6-203(a).

The trial court determined that clear and convincing evidence that Decedent had an intent different from retaining ownership of the joint account funds during his lifetime, as required by Minn. Stat. § 524.6-203(a), was not adduced at trial. *See* Trial Court Ruling at Conclusion of Law 1. Assuming this is a correct determination, and as discussed above, Appellants would have this Court begin and end its analysis right there. However, similar to *Shourek*, all of the relevant evidence suggests that "[Decedent intended] to make a present gift subject only to funds being available for [his] immediate needs." 621 N.E.2d at 1110. This is shown by Decedent expressing his wishes that Ms. Larson use the money to better the life of his disabled daughter, as well as his direction to Ms. Larson to use a portion of the funds to refurbish the home he had deeded to her, but in which he wanted to live out his last days. Further, as previously detailed, there was no evidence adduced that suggests Decedent wanted the jointly held funds to be disposed of in any other way besides going to Ms. Larson. Also, Decedent expressed the desire that Ms. Larson use the funds to benefit his disabled daughter, Diane Jones. For her to do this, Ms. Larson needed to exercise domain over the jointly held funds, and it would be most impractical for her to seek authorization to from Decedent prior to making each expenditure. Finally, Ms. Larson was Decedent's trusted and devoted caretaker and fulfilled this role faithfully until his Decedent's passing. This is consistent with Decedent having made a present gift subject to sufficient funds remaining available to meet his needs, as they indeed were right up until he died. In light of the completely one-sided evidence, it is clear and convincing in showing Decedent intended to make a present gift subject only to the funds being available to meet his needs.

Appellants' reliance on Decedent's will to suggest he intended for the joint accounts to be part of his estate is nonsensical. As far as Decedent knew, the joint accounts remained intact and would go to Ms. Larson without any issues. They were not referred to at all in his will, whether specifically or generally. Appellants' essentially urge the Court to assume that Decedent knew Ms. Larson had withdrawn the funds and that her doing so meant they would become part of his estate and divided according to his will, but this simply proves too much in the same way as their desire to have the Court assume Decedent would have launched legal action to recover the funds from Ms. Larson had he known of their withdrawal. Indeed, had the joint accounts survived Decedent's death fully intact, *In Re Estate of Butler*, 803 N.W.2d 393 (Minn. 2011), holds beyond doubt that Decedent's will, for failing to specifically refer to the joint accounts, is completely irrelevant in determining their proper disposition. The will does not suddenly become relevant in determining Decedent's actual intent regarding the jointly held funds because they were withdrawn before his death, but without his knowledge. Indeed, if it has any relevance in this regard it is to affirm his intent that Ms. Larson take the funds given that his will is completely silent as to the joint accounts. Appellants' effort to turn this fact on its head thus fails.

III. THE BURDEN OF PROVING INTENT WAS NOT PLACED ON APPELLANTS.

Appellants complain that the trial court placed the burden on them of proving by clear and convincing evidence that Decedent did not have a different intent than that the jointly held funds go to his estate at death. *See* Appellants' Memorandum at P. 9. This much is apparent in Conclusion of Law 1 at the end of which the trial court, in reference to Minn. Stat. § 524.6-203(a), states: "The Court did not receive clear and convincing evidence of a different intent regarding the funds in those accounts." Nothing about the trial court's conclusion indicates the burden under this section was placed on anyone but Ms. Larson. However, as illustrated above, the trial court did not simply apply this statute, nor Minn. Stat. § 524.6-204(a), in an either or fashion, but rather melded the two in order to fill the gap in the UPC previously discussed. It applied both statutes and found that under neither was the requisite clear and convincing evidence provided, while keeping in mind that the uncontroverted evidence indicated beyond doubt that Decedent had intended for Ms. Larson to take ownership of the joint accounts.

Recognizing that mechanically applying § 524.6-203(a) would yield an absurd result by dishonoring Decedent's intent and punishing Ms. Larson absent any evidence that she had acted in bad faith or committed some sort of malfeasance that justified the punishment. The trial court chose instead to craft an appropriate remedy based on sound principles in law and equity. The authority to craft this remedy is clearly provided by Minn. Stat. § 524.1-103.

While there is language in the trial court's ruling to suggest that it did place a burden on Appellants to rebut the presumption contained in § 524.6-204(a) that Decedent had a different intention for funds remaining on deposit in the joint accounts other than that they go to Ms. Larson, this it did not do because it expressly held that there were no funds remaining on deposit. Rather, as stated above, the trial court examined the evidence for anything that might suggest fraud, coercion, undue influence, self-dealing, or that Decedent intended for anything other than that the funds go to Ms. Larson, and found the record absolutely wanting in this regard. In other words, whether any burden was placed on Appellants alone, Ms. Larson alone, or on both sides in some fashion, would not have mattered because the evidence was so completely one-sided.

Even had Appellants been saddled with the burden of proving Decedent had a different intention such that Ms. Larson was afforded full enjoyment of the presumption applicable to sums remaining on deposit it would be fair and consistent with the most important purpose of the UPC by ensuring Decedent's established intention is honored. To do so would follow the rationale applied in *Estate of Cullman*, which essentially created the legal fiction that the jointly held funds had been left in place until the decedent's passing. Though the trial court did not do this, and thus did not place the burden on Appellants, it would have been a fair and appropriate remedy under the circumstances, just as it was found to be in *Cullman* after thorough consideration of the facts, i.e., an innocent, unwitting surviving joint owner, the equities and, most important, the decedent's established intent.

IV. THE PROCEEDS FROM CERTIFICATE NOS. 2 AND 4 WERE GIFTS FROM DECEDENT TO CHARLOTTE LARSON.

Two of the CDs involved in this case stand apart from the rest. Ms. Larson testified, and the trial court found, that Certificate No. 2 consisted of funds belonging exclusively to Ms. Larson. No contrary evidence was adduced. The evidence regarding Certificate No. 4 was that Ms. Larson had withdrawn these funds at the direction of Decedent to use in refurbishing his home after it had been condemned by the city government so he could remain living there. Unbeknownst to Ms. Larson, this home had been deeded to her by Decedent some years prior. Importantly, the trial court found that "[t]here is no evidence that [Larson] spent any of the money for her own needs prior to Decedent's death." Trial Court Ruling at Finding of Fact 13. Appellants claim that the proceeds from Certificate

No. 4 should be returned to the estate, and also suggest, albeit tepidly, that the funds from Certificate No. 2 were owned by Decedent at the time they were withdrawn. Neither claim can be credited.

A. All Funds In Certificate No. 2 Belonged Exclusively To Charlotte Larson.

Certificate No. 2 was valued at approximately $53,955.40 when it was withdrawn by Ms. Larson. Her uncontroverted testimony was that this CD, in an original amount of $30,000, had been gifted to her many years earlier at the same time Decedent made identical gifts to Appellant Ronald H. Jones and Gail Bristlin, and that she had added her son's name as another joint owner. The initial gift earned significant interest over the years to eventually total what was ultimately withdrawn by Ms. Larson. Neither Appellant Jones nor Ms. Bristlin offered testimony contradicting Ms. Larson's claim with regard to Certificate No. 2 and the identical gifts given them by Decedent. The trial court in its factual findings unequivocally determined that "the funds in CD #2 came exclusively from Petitioner's funds." Trial Court Ruling at Finding of Fact 10.

Appellants seem to only half-heartedly challenge this finding, claiming that "[i]t is rather dubious whether [] Ms. Larson may have been truly entitled to the $53,955.40 in Certificate #2 that [] Ms. Larson claimed was entirely from her own assets." Appellants' Appeal Memorandum at 3. Appellants clearly recognize that without even a scintilla of evidence pointing the other way it would be futile to make a claim on the funds from this CD. To be clear, all of the evidence demonstrates that Decedent had made an inter vivos gift to Ms. Larson many years prior, just as he had to Appellant Jones and Ms. Bristlin. Ms. Larson chose to leave her gift where it was, in a jointly held CD with Decedent, where it would continue to accrue interest at a favorable rate not available had the funds been withdrawn and re-invested in another CD. She later added her son as another joint owner, something that was not done with any of the other CDs. As such, the funds were hers to withdraw and Decedent's estate has no colorable claim on them.

B. The Funds From Certificate No. 4 Were Used To Benefit Decedent At His Direction.

The uncontroverted evidence also demonstrates that the funds from Certificate No. 4 totaling approximately $31,439.25 were withdrawn on December 18, 2009 by Ms. Larson at the direction of Decedent. Decedent's home had been condemned by the city inspector, which meant Decedent would have to move out unless the discrepancies were fixed. Because it was Decedent's desire to finish out his days at his home he directed Ms. Larson to use the funds from Certificate No. 4 to effect the repairs necessary to bring the home back within code. Ms. Larson testified, and the trial court apparently believed, that this is what Ms. Larson did. Whether one wishes to apply an agency theory, gift theory, or Minn. Stat. § 524.6-203(a) to this series of events, the result is the same. Ms. Larson is not required to return the funds from Certificate No. 4 to Decedent's estate.

Ms. Larson testified that she was directed by Decedent to withdraw the funds from Certificate No. 4 and use them to bring Decedent's home up to code so he could remain living there. Ms. Larson was, therefore, acting under Decedent's express direction in withdrawing and spending the funds; she acted as his authorized agent.

Under § 524.6-203(a), assuming its relevance with respect to Certificate No. 4, there is clear and convincing evidence that Decedent had a different intention other than for the funds to become part of his estate. Again, this evidence consists of his direction to Ms. Larson to use the funds to repair Decedent's home, a duty she faithfully discharged. Indeed, since the funds were withdrawn by Ms. Larson while acting as Decedent's agent, it is doubtful that this section has any application at all, but if it does, withdrawal of the funds essentially by Decedent himself so they could be used to benefit him must suffice as clear and convincing evidence that he intended that they not pass to his estate.

The fact that Appellants obviously wish to seize upon in their effort to confuse the issue with regard to Certificate No. 4 is that the funds therein were used to repair a home owned, as it turned out, by Ms. Larson by virtue of Decedent having deeded it to her several years before he died. The only evidence presented on this topic was that the home had been conveyed by Decedent without letting anyone know, including Ms. Larson. However, the fact it had been conveyed by the time the funds from Certificate No. 4 were used to improve the home suggests that gift theory should guide the Court in determining whether the funds should be returned by Ms. Larson to Decedent's estate.

For a gift to have been made the following elements must be present: (1) delivery, (2) intention to make a gift on the part of the donor, and (3) absolute disposition by him of the thing which he intends to give to another. *See Rutchick v. Slaute*, 179 N.W.2d 607, 610 (Minn. 1970). Here these elements are satisfied because Decedent directed Ms. Larson to withdraw the funds and use them to improve an asset that he had quietly deeded to her some years prior without her knowing. In other words, Decedent had to have known at the time the funds were withdrawn and spent according to his instructions that he was essentially giving them to Ms. Larson by using them to repair a home he had previously conveyed to her. He clearly knew that once these funds were spent in such a manner they could not be reclaimed. Thus the essential elements of a gift were satisfied.

So while it is questionable whether the funds from Certificate No. 4 could ever be said to have been in Ms. Larson's possession and under her control, if they were it was while she was standing in Decedent's shoes as his agent. From there the funds were expended at his sole discretion and direction, and to directly benefit himself by affording him the opportunity to spend his last dies right where he wanted to, at home. Appellants should not be able to challenge Decedent's use of the funds on the ground that they ultimately benefited Ms. Larson as well by paying for the improvement of an asset she, at the time, had no idea she even owned any more than Decedent's estate should be able to reclaim the cost of an ice cream cone Decedent may have purchased for a grandchild. Alas, even if the funds are looked at as having been given to Ms. Larson, it is clear that whether looked at as a gift or analyzed under § 524.6-203(a), the law allows Ms. Larson to retain the funds or any benefit provided by them.

Accordingly, Appellants' efforts to have the funds from Certificate Nos. 2 and 4 should be rejected.

CONCLUSION

Affirming the trial court's decision is appropriate as the overriding factor should govern, which is the intent of the decedent. It is undisputed that he had either gifted the funds to Charlotte Larson or wanted her to receive them to take care of his disabled daughter. To hold otherwise would stray from the guidance reflected in the law and the intent of the decedent.

Dated: 8/15/12

ERHART & ELFELT, LLC

By: [signature]

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