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.

RESPONDENTS' BRIEF AND APPENDIX

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STATEMENT OF THE CASE

Appellant is the Personal Representative of the Estate of Patrick Butler. Respondents are the interested parties of the estate and also, the sisters, step-brothers and step-sisters of Appellant. The litigation underlying this appeal was initiated by the petition to remove the Personal Representative by Respondent, Sheila Montognese, 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, Respondent 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* Order of 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 Order, P. 3, Appendix 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, P. 4, Appendix at R-0005-0008.

Over the Respondent'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. Specifically, the jury, like the trial court earlier, 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.

On May 5, 2009, the trial court issued an order denying Appellant's motion for a new trial and judgment not withstanding the verdict.

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. 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.

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.

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 cabin on Woman Lake 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 on Little Boy Lake, 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 the Appellant and Sheila Montognese. Tr. at 50-51, 67, 77. He was estranged from his daughter Bridget Beaudry. Tr. at 44-45.

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." *Rettman v. City of Litchfield,* 354 N.W.2d 426, 429 (Minn. 1984); *Lester Bldg. Systems v. Louisiana-Pacific Corp.* 761 N.W.2d 877, 881 (Minn. 2009).

In this case, the jury was asked to make a factual determination under Minn. Stat. §524.6-204 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. [emphasis added]

The jury answered a special verdict form with 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."

As noted, a denial of a JNOV should be affirmed if there is <u>any</u> competent evidence reasonably tending to sustain the verdict. Here, there was <u>substantial</u> competent evidence introduced at trial providing clear and convincing evidence that the Decedent had a different intention than for Appellant to receive the accounts. The jury was presented with evidence 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 had never entered. Tr. at 97.

The case at hand closely resembles another case with similar facts known as *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. The trial court ultimately held that the joint account should be paid into the estate, after which Salute appealed.

The Minnesota Supreme court in *Rutchick* held that "there is nothing in the evidence to 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.

In this case, like in *Rutchick*, the jury was presented with uncontroverted evidence that the funds for the certificates of deposit were not delivered to Appellant during the life of the Decedent. The jury also heard that the Decedent did not favor Appellant over the other

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Since *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.

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 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, lines 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 competant 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 <u>any</u> theory. The foregoing series of competant 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 the trial court did not abuse its discretion in denying Appellant's motion for judgment as a matter of law.

II. ADMISSION OF DECEDENT'S WILL AND RELATIONSHIP EVIDENCE DOES NOT RISE TO AN ABUSE OF DISCRETION.

Generally, 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.*

It is undisputed that the will does not specifically reference the certificate of deposit accounts, and therefore would not have been solely determinative of the ownership of those accounts under Minn. Stat. §524.6-204. Minn. Stat. §524.6-204 is a two part statute, however. 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 undoubtably 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.

III. THE TRIAL COURT PROPERLY INSTRUCTED THE JURY ON THE LAW, AND WAS NOT REQUIRED TO DIFFERENTIATE BETWEEN PROBATE AND NON-PROBATE ASSETS.

The district court has broad discretion in determining jury instructions and should not be reversed in the absence of abuse of discretion. *See State Farm Fire & Cas. Co. v. Short,* 459 N.W.2d 111, 113 (Minn. 1990); *Alholm v. Wilt,* 394 N.W.2d 488, 490 (Minn. 1986) cited by *Hilligoss v. Cargill, Inc.* 649 N.W.2d 142, 147 (Minn. 2002). Where instructions overall fairly and correctly state the applicable law, Appellant is not entitled to a new trial. *Hilligoss v. Cargill, Inc.* 649 N.W.2d at 147 citing *Kohoutek v. Hafner,* 383 N.W.2d 295, 300 (Minn. 1986).

The trial court requested that the jury make a factual determination that there was clear and convincing evidence of a different intention concerning disputed certificates of deposit. The jury was specifically instructed on burden of proof as follows:

> In order to answer the special verdict form "yes," you must find that the evidence was clear and convincing that the decedent had different intentions other than the joint tenant receiving the money upon his death. Clear and convincing 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.

The jury was further instructed:

> Under Minnesota law, the funds held in joint tenancy belongs to the surviving party upon one of the joint owner's death unless there is clear and convincing evidence of a different intention.

The special verdict form again reiterated what had been stated numerous times during the trial and stated in the jury instructions, namely that the Respondents had the burden of proof, and that the accounts remained with Appellant until Respondents showed a different intention by clear and convincing evidence.

Contrary to Appellant's assertion, there is no evidence to suggest that the jury had the least bit of confusion about the verdict form. The difference between probate and non-probate assets simply was not relevant to the question presented. The jury needed to determine if there was evidence of a different intention by the Decedent.

As noted by the court during trial, Appellant was free to offer evidence during trial concerning probate and non-probate assets. Counsel for Appellant could have described the distinction in his opening, could have called an expert witness on the subject, and could have

argued that this was a crucial distinction in his closing. Appellant made none of these claims, and only mentioned the issue during the charging conference.

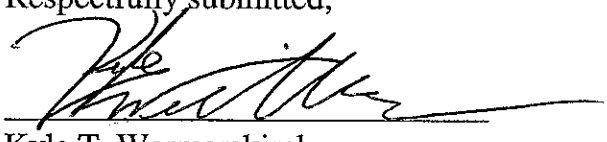
Since it remains unclear what benefit the jury might have gained from hearing about this distinction, and Appellant's failure to argue the distinction, the court did not abuse its discretion by failing to offer the instruction.

CONCLUSION

The question submitted to the jury in this case was clear and easy to distinguish. It was first analyzed by the Judge of District Court, who found that there was evidence of a different intention concerning ownership of the joint accounts. The jury analyzing the question also determined that there was 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,

Dated: October 9, 2009.

By: 

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