
State of Minnesota
In Supreme Court

Ronald Enright, as attorney in fact
for S.E. and Marlys Enright, dba
Pride-One Co. and Associated Bank,

Respondents

vs.

Robert H. Lehmann,

Appellant

APPELLANT'S BRIEF AND APPENDIX

Attorney for Appellant:

Carol S. Cooper (#161548)
C. S. Cooper Law Firm, Ltd.
26437 Galaxie Ave.
Farmington, MN 55024-9229
(651) 460-2056

Attorney for Amicus Probate
And Trust Section of MSBA

Eric J. Magnuson
Diane B. Bratvold
33 South Sixth Street Suite 4900
Minneapolis, MN 55402
(612) 340-8900

Attorney for Respondent Ronald Enright:

Robert J. Bruno (#12415)
Robert J. Bruno, Ltd.
1601 E. Highway 13, Suite 107
Burnsville, MN 55337
(952) 890-9171

Respondent Associated Bank:

Associated Bank
2999 West County Road 42
Suite 130
Burnsville, MN 55306
(651) 306-1831

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Statement of Legal Issues

After obtaining a judgment against Appellant, Respondent garnished funds in two joint accounts titled in the names of Appellant and his wife Zandra Lehmann. The 1951 case Park Enterprises v. Trach, 233 Minn. 467, 47 N.W.2d 194 (1951) contains language stating that all of the funds in a joint account may be garnished for the debt of one of the account owners. The Minnesota Multiparty Accounts Act, Minn. Stats. §524.6-201 et seq. enacted in 1973, provides that (a) during the lifetime of the owners of a joint account, the account belongs to the parties in proportion to their net contributions, unless there is clear and convincing evidence of a different intent, and (b) that this ownership provision applies to creditors. Appellant presented uncontroverted evidence that Appellant's wife contributed all of the funds in the joint accounts. No evidence of a different intent was presented. Were the funds contributed solely by Appellant's wife to joint bank accounts subject to garnishment for judgments against Appellant?

The district court ruled in the affirmative. The Court of Appeals affirmed, holding that the Act only applies after death.

apposite cases and statutory provisions:

Minn. Stats. §524.6-202 (2005);

Minn. Stats. §524.6-203(a) (2005)

Park Enterprises v. Trach, 233 Minn. 467, 47 N.W.2d 194 (1951);

Craig v. Hastings State Bank, 221 Neb. 746, 380 N.W.2d 618 (1986);

Deutsch, Larrimore & Farnish, P.C. v. Johnson, 577 Pa. 637, 848 A.2d 137 (2004);

Browning & Herdrich Oil Company, Inc. v. Hall, 489 N.E.2d 988 (Ind. App. 1986);

RepublicBank Dallas v. Nat'l Bank Daingerfield, 705 S.W.2d 310 (Tex. App. 1986)

Statement of the Case

In early 2005, Respondent Ronald Enright (hereinafter "Enright") sued Appellant for \$7,287.50 rent due under a lease entered into between Respondent's parents and Lehmann Engineering, Inc., a Minnesota corporation owned by Appellant. (A-3)¹ The district court entered judgments against Appellant. (A-6, A-8)

Enright then garnished joint accounts at Associated Bank titled in the names of both Appellant and his wife Zandra Lehmann which did not contain any funds contributed by Appellant. (A-24, A-40) Appellant objected to the garnishment and brought a motion asking the district court to dissolve the garnishments under Section 524.6-203(a) of the Minnesota Multi-Party Accounts Act. (A-9-12, A-19) Appellant presented uncontroverted evidence that Zandra Lehmann contributed all of the funds in the garnished joint bank accounts and part of those funds consisted of her retirement benefits. (A-40, A-42-44)

Dakota County District Court, First Judicial District, the Honorable William Thuet presiding, denied appellant's motions in their entirety in an order filed December 20, 2005. (A-45-48) Although the District Court's Findings of Fact did not address the issue of ownership of the funds in the joint bank accounts, the Court denied Appellant's motion to quash the garnishment. (A-45-48)

On appeal, the Court of Appeals affirmed the denial of Appellant's motion to vacate the garnishment, holding the Multi-Party Accounts Act inapplicable because its

¹ In this brief, references to "A" are to the Appellant's Appendix.

provisions only apply after death, and that Park Enterprises v. Trach, 233 Minn. 467, 47 N.W.2d 194 (1951) requires affirmance of the District Court. (A-66) Appellant then petitioned this Court for review, which was granted.

Statement of Facts

Appellant has been unemployed since October, 2004 because of serious medical problems. (A-22-23, A-40) Appellant and his wife, Zandra Lehmann, had two joint bank accounts at Associated Bank in both of their names. (A-24, A-40) All of the funds in both accounts came from Zandra Lehmann's compensation and expense reimbursements from her employment with Intelligent Marketing Systems, Inc., distributions from her account with the Ceridian Retirement Plan, and inheritance distributions from a trust established by her recently deceased father. (A-24, A-40, A-42-44)) Zandra Lehmann deposited these funds to this joint account for convenience only. (A-40)

Enright obtained judgments against Appellant in his action for unpaid rent. (A-6-8) After obtaining the judgments, Enright's attorney served Associated Bank and Appellant with Garnishment Summonses for the two joint accounts. (A-24) Because none of the garnished funds in the two joint accounts belonged to Appellant under the Minnesota Multiparty Accounts Act, Minn. Stats. Section 524.6-201 et seq., Appellant, in the Exemption Notices he returned to Enright's attorney and the Garnishee, claimed that these funds were exempt under Minn. Stat. §524.6-203, and supplied Enright's attorney with documentary evidence showing that the funds in the accounts were contributed by Zandra Lehmann. (A-24, A-9-12)

Enright objected to Appellant's claim of exemption and Appellant moved the district court to (a) dissolve the garnishments under Section 524.6-203(a) of the

Minnesota Multi-Party Accounts Act; (b) vacate the judgments against him under Rule 60.02 of the Minnesota Rules of Civil Procedure; (c) reinstate his Answer to Enright's Complaint, and allow him to amend his Answer. (A-13-20)

Appellant presented uncontroverted evidence that all of the funds in the garnished joint bank accounts were contributed by Zandra Lehmann and part of those funds consisted of Zandra Lehmann's retirement benefits. (A-40-44) While Appellant's motion was pending, Enright's attorney obtained and served on Respondent Associated Bank a writ of execution based on the \$9,350 judgment of August 2, 2005. (A-49-64)

Dakota County District Court, First Judicial District, the Honorable William Thuet presiding, denied appellant's motions in their entirety in an order filed December 20, 2005. (A-45-48) The District Court's Findings of Fact do not address ownership of the funds in the joint accounts. (A-45-48) The District Court's Conclusions of Law do not address the issue of whether Minn. Stat. Section 524.6-203(a) prevents garnishment of funds in a joint account contributed by an owner other than the debtor. (A-45-48)

On appeal, the Court of Appeals affirmed the District Court's denial of Appellant's motion to vacate the garnishment, holding the Multi-Party Accounts Act inapplicable because its provisions only apply after death, and that Park Enterprises v. Trach, 233 Minn. 467, 47 N.W.2d 194 (1951) requires affirmance of the District Court. (A-66-76)

Summary of Argument

Prior to enactment of the Minnesota Multiparty Accounts Act, Minn. Stats. §524.6-201, et seq. (hereinafter “the Act”) the legal effect of joint accounts was uncertain and the applicable case law inconsistent. In determining the rights of the owners of a joint account, Minnesota Courts used a gift analysis, looking primarily to the parties’ intent, but with the many different fact patterns presented, the results of cases were very fact-dependent and it was difficult to predict the outcome of a particular case. According to Melvin J. Peterson, then judge of Hennepin County Probate Court, prior to enactment of the Act, disputes involving multi-party accounts required lawsuits to resolve, and many cases were resolved only on appeal.

The 1951 Park Enterprises case relied on by the Court of Appeals contains language that a creditor may garnish all funds in a joint account for the debt of only one of the account owners. The Park Enterprises Court ignored the parties’ intent and the gift analysis of other cases, and instead used a conclusive presumption that if the account owners signed a deposit agreement stating that any owner may withdraw all of the funds in the account, then no owner may complain if another, or his creditor, does just that. Park Enterprises relied on a Canadian case on an issue that the parties in Park Enterprises hadn’t raised, argued or briefed, and represented a minority position. Subsequently, this Court rejected the Park Enterprises approach, holding that the gift analysis was to be used in determining the rights of parties to a joint account.

Enacted in 1973, the Act was intended to bring more certainty to the determination of the rights of owners of multiple party accounts. Its clear and unambiguous provisions limit a creditor's rights to funds in a joint account to that proportion of the funds contributed by the debtor. By its own words, the statute applies "during the lifetime of all parties" to controversies between the parties, their creditors and other successors. As a uniform act, its provisions are intended to be applied so as to make uniform the laws of the states enacting it. Courts faced with the garnishment of a joint account in states that have adopted the same provisions as Minnesota have limited garnishment to the portion of the account owned by the debtor under the Act.

Because Appellant contributed none of the funds in the joint accounts at issue here, and there is no evidence that Appellant's wife intended to give Appellant the sums she deposited in the accounts, Respondent was not entitled to any funds from those accounts and his garnishments should be vacated.

Argument

I. SCOPE OF REVIEW

No deference is given to a lower court on questions of law. Modrow v. JP Foodservice, Inc., 656 N.W.2d 389 (Minn. 2003); Frost-Benco Elec. Ass'n v. Minnesota Pub. Utils. Comm'n, 358 N.W.2d 639, 642 (Minn. 1984). There are no disputed facts regarding the garnishment issue. Appellant presented uncontroverted evidence that his wife Zandra contributed all of the funds in the joint accounts at issue. Because the issue

of whether Enright's garnishment of the joint accounts should be dissolved is purely a legal issue, no deference need be given to the district court's ruling on this issue.

II. THE GARNISHMENT OF THE JOINT ACCOUNTS SHOULD BE VACATED.

The District Court erred by not vacating the garnishment of the joint accounts because Zandra Lehmann is the sole owner of the funds in those accounts under Minn. Stats. Section 524.6-203 and Respondent does not have a judgment against her. The Court of Appeals erred in holding that the Act does not apply during the parties' lives.

A judgment creditor cannot acquire any greater property rights in a property than those already held by the debtor. Kipp v. Sweno, 683 N.W.2d 259 (Minn. 2004); Polzin v. Merila, 258 Minn. 93, 103 N.W.2d 198 (1960), Douglas State Bank v. Meyers, 182 Minn. 178, 233 N.W. 864 (1930).

Minn. Stats. § 524.6-203(a) of the Act states:

(a) A joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions by each to the sums on deposit, unless there is clear and convincing evidence of a different intent.

Minn. Stats. §524.6-203(a) (2005). If there is any doubt that this provision applies to disputes between an account owner and the creditor of a non-contributing account owner, the language in Section 524.6-202 dispels any uncertainty:

The provisions of sections 524.6-203 to 524.6-205 concerning beneficial ownership as between parties, or as between parties and P.O.D. payees or beneficiaries of multiple-party accounts, are relevant only to controversies between these persons and their creditors and other successors, and have no bearing on the power of withdrawal of these persons as determined by the terms of account contracts. The provisions of sections 524.6-208 to 524.6-212 govern the

liability of financial institutions who make payments pursuant thereto, and their setoff rights

Minn. Stats. §524.6-202 (2005) (emphasis added) Appellant presented uncontroverted evidence that all of the funds in the joint accounts at issue were contributed by his wife. Under Section 524.6-203(a), therefore, the joint accounts belonged to Zandra Lehmann and were not subject to garnishment for the judgment against Appellant.

A. Background Preceding Enactment of the Minnesota Multi-Party Accounts Act.

An understanding of the background preceding enactment of the Act is helpful in interpreting the meaning of its provisions. The legislature enacted the Act, in response to calls from courts and the bar, as an attempt at a comprehensive system of regulating the use of multiparty accounts. Note, *The "Poor Man's Will" Gains Respectability: Using the Minnesota Multi-Party Accounts Act*, 1 Wm. Mitchell L. Rev. 48, 49, 55-56 (1974); See Estate of Jeruzal v. Jeruzal, 269 Minn. 183, 195, 130 N.W.2d 473, 481 (1964) (If the legislature did not act to change the law regarding the effect of a spouse transferring assets to "Totten trust"² accounts, the Supreme Court would in future cases no longer follow its precedents and adopt the rule of Restatement Trusts (2d) § 58); Erickson v. Kalman, 291 Minn. 41, 189 N.W.2d 381 (1971) (dissenting opinion) (Suggesting that, in order to avoid uncertainties, the legislature might consider enacting legislation adopting the rule set forth in Jorgensen v. Dahlstrom, 53 Cal. App. (2d) 322, 332, 127 P. (2d) 551, 556, where the court interpreted a statute similar to Minnesota's bank protection statute

² These were bank accounts named after the leading case of Matter of Totten, 179 N.Y. 112, 71 N.E. 748, 70 L.R.A. 711, which established the validity of such savings account trusts.

Minn. St. 48.30³ regarding the rights of parties to a joint bank account). Prior to its enactment, the legal effect of joint accounts had been perceived as uncertain, and the applicable case law inconsistent. Note, 1 Wm. Mitchell L. Rev. 48 at 48-49.

1. The Gift Approach: Intent of the Parties.

Prior to enactment of the Act, in determining the rights of the owners of a joint account, Minnesota courts have looked to the parties' intent, as well as the former bank protection statute⁴, noting that the terms of deposit agreements were not necessarily controlling. Note, 1 Wm. Mitchell L. Rev. at 49-50; Brennan v. Carroll, 260 Minn. 521, 111 N.W.2d 229 (1961) (Funds in joint savings account in the name of decedent and one of his sisters belonged to decedent's estate, because there was no evidence decedent intended to make a gift of the account to his sister); Kempf v. Kempf, 288 Minn. 244, 179 N.W.2d 715 (1970) (affirms order holding invalid decedent's transfer of the bulk of his estate to accounts in joint tenancy with his sons because decedent lacked donative intent in making the transfers); Rutchick v. Salute, 288 Minn. 258; 179 N.W.2d 607 (1970) (Presumption in bank protection statute that survivor of joint account is entitled to the proceeds of the account after the death of the other joint owner is only a presumption that disappears in the presence of any evidence that there was no intent to give survivor the account proceeds).

³ Former Minn. Stats. §48.30, part of the banking statutes, permitted a bank to pay the proceeds of a joint account to any owner, a surviving owner, or to a personal representative of the surviving owner.

⁴ Id.

In utilizing the gift approach, prior Minnesota cases have sometimes held that, if donative intent is present, the gift takes effect on the depositor's death. Cashman v. Mason, 166 F.2d 693, 697 (8th Cir. 1948) ("But this presumption in favor of a gift of an interest in the deposit arises only upon the death of the supposed donor"); Erickson at 45, 189 NW2d at 384. (quoting Cashman's statement that the presumption of a gift arises only upon the donor's death and stating that it was a correct statement of the law). In other cases, the Court has held that creation of a joint account was a present gift, and the donee may withdraw funds from the joint account before the donor's death. Dyste v. Farmers & Mechanics Sav. Bank, 179 Minn. 430, 229 N.W. 865 (1930) (donative intent vests in the donee a present interest in the fund); Loth v. Loth, 227 Minn. 387, 35 N.W.2d 542 (1949) (affirms finding of intent to make present gift of funds in joint account to spouse).

2. Park Enterprises and the Contract Approach.

The so-called "contract approach," on the other hand, employs a conclusive presumption that if the account owners signed a bank's deposit agreement stating that any owner had the power to withdraw all of the funds from the account, then a depositing owner cannot complain if another owner or another owner's creditor does just that. Park Enterprises v. Trach, 233 Minn. 467, 47 N.W.2d 194 (1951), which appears to be the only Minnesota case decided prior to enactment of the Act addressing garnishment of joint accounts, contains language approving this contract approach. In that case, a creditor sought to garnish funds in a joint account into which both the debtor and his non-

debtor spouse had contributed. The district court allowed garnishment of one-half of the funds in the account. *Id.* at 468-469, 47 N.W.2d at 195. The Supreme Court affirmed, adding in dictum that had the creditor raised the issue, it would have allowed garnishment of the entire account. *Id.* at 472, 47 N.W.2d at 197.

The Park Enterprises Court reviewed the bank's joint account signature card, signed by both account owners, stating that either owner could withdraw the entire amount on deposit in the account, and the bank would permit such withdrawals. *Id.* at 468, 47 N.W.2d at 195. Because there was at the time no statutory framework describing the respective rights of account owners and their creditors, the Court then discussed the difficulty it had in classifying the type of account under traditional categories of legal ownership. *Id.* at 469-470, 47 N.W.2d at 195-196. Finally, the Court cited and followed a Canadian case, Empire Fertilizers Ltd. v. Cioci, 4 D.L.R. 804 (1934), which reasoned that since the debtor could have written a check on the joint account payable to the creditor for the amount of the judgment, the creditor should be able to garnish for the same amount. *Id.* at 470-471, 47 N.W.2d at 196.

In a footnote, the Park Enterprises Court cited Midland Loan Finance Co. v. Kisor, 206 Minn. 134, 287 N.W. 869 (1939) for the proposition that a garnishment proceeding is virtually an action brought by debtor in the creditor's name against the garnishee, resulting in the subrogation of the creditor to the right of the debtor against the garnishee. *Id.* at 470 fn.6, 47 N.W.2d at 196 fn. 6. Midland Loan Finance Co., however, had nothing to do with joint accounts. That case concerned a situation where a check processed by the garnishee two hours before receipt of the garnishment summons

depleted the funds in the account, so that at the time the garnishment summons was received, there was an overdraft and no funds were available in the account. Midland Loan Finance Co. at 135, 287 N.W. at 869-870.

The authority for the statement of law in Midland Loan Finance Co. regarding the creditor being subrogated to the debtor's rights relied on by the Park Enterprises Court, and repeated by the Court of Appeals in this case, was 5 Am. Jur., Attachment and Garnishment, § 821. Midland Loan Finance Co. at 136, 287 N.W at 870. Had the facts in Midland Loan Finance Co. included the same joint account issue that faced the Park Enterprises Court, the citation to the Attachment and Garnishment note in 5 Am. Jur. would certainly have been followed by a citation to 4 Am. Jur. Attachment and Garnishment §188, which addresses the more specific situation where the garnishee is indebted jointly to the debtor and to another. That section states that the decisions on garnishment of a joint account were not in harmony – some decisions did not allow any garnishment of a joint account, while others did. 4 Am. Jur. Attachment and Garnishment §188. The cases cited that did allow garnishment of a joint account limited the garnishment to the debtor's equitable interest in the account.⁵ Id.

Instead of discussing prior decisions of other jurisdictions in this country on the issue before it, the Park Enterprises Court chose to adopt the holding of a Canadian court

⁵ Similarly, 6 Am. Jur.2d Attachment and Garnishment §163 states that "Where such attachment or garnishment is permitted, it has been held that the creditor's rights are limited to the funds in the account equitably owned by the debtor-depositor." Park Enterprises is the only case cited as an example of a contrary view. 6 Am. Jur.2d Attachment and Garnishment §163.

on an issue that had not been raised, argued or briefed by the parties. In that decision, the Canadian appeals court cited a number of prior Canadian appellate decisions holding that “[a] debt owing to two persons cannot be attached to satisfy a claim against only one of the two.” Empire Fertilizers Ltd. V. Cioci, (1934) 4 D.L.R. 804, 805. The opinion then ignored these cases, didn’t cite any other cases permitting attachment of a joint account, but nevertheless held that all of the funds in the joint account in question could be garnished for the debt of one of the joint account owners. *Id.* at 805. At least one other Canadian appellate court has refused to follow the holding in Empire Fertilizers Ltd. Nash and Davis v. Royal Bank, (1958) 13 D.L.R. 2d 411 (B.C.S.C.).

This Court has rejected application of Park Enterprises and the contract approach, stating, “[i]f the trial court was treating the case as one of contract, it was error for it to do so because this court considers deposits such as the ones before us to be in the nature of gifts and to be governed by the rules applicable to gifts.” Erickson at 45, 189 N.W.2d at 384. In Erickson, the Court held that where the evidence showed that a joint account was established for the convenience of the depositor, there was no donative intent, and the account was part of the depositor’s estate, not the property of the surviving joint owner. Erickson at 47, 189 N.W.2d at 385.

The inconsistency in these decisions led to widespread uncertainty as to the effect of placing funds in joint accounts and paved the way for the enactment of a statutory scheme to address some of these issues. See, Peterson, *supra* at 4 (Prior to enactment of the Act, disputes involving multi-party accounts required lawsuits to resolve, and many cases were resolved only on appeal).

B. Enactment of the Multi-Party Accounts Act.

The Act was enacted in 1973 as Chapter 528 of Minnesota Statutes, and was later moved into the Probate Code. Minn. Stats. §528.01 *et seq.* (1984); 1985 Minn. Laws c. 292 §§ 9-11; Stein, *To Make the Probate Process as Simple and Inexpensive as Can be Done*, 32 Bench & Bar Minn. No. 5, p.21, 24. The Act is derived from the Uniform Probate Code. Stein, *supra*. The two sections at issue here, §§524.6-202 and 524.6-203(a), are identical to the 1969 version of the Uniform Probate Code Sections 6-102 and 6-103(a). 8 U.L.A. §6-102; §6-103 (1998).

The Act was intended to bring more certainty to the determination of the rights involved in a multi-party account. Peterson at 6. Given the widespread use of multiple party accounts, the uniform act was intended to more closely reflect parties' actual intentions when opening such accounts. Comment, Uniform Probate Code, 8 U.L.A. § 6-103 (1998).

The Act clarifies two issues in the garnishment context. First, the language in §524.6-202 makes clear that the ownership provisions of §524.6-203(a) apply to creditors as well as the parties on the account. In doing this, the statute clarifies the prior confusion between the rights of the financial institution and the rights of any other party. The Act clearly separates these issues, specifically providing that certain provisions apply only to financial institutions, while other provisions apply to the parties to the account, their creditors and other successors. Minn. Stats. §524.6-202 (2005); Comment, Uniform Probate Code, 8 U.L.A. § 6-102 (1998). By differentiating between the rights of financial institutions on the one hand and the rights of account owners and their creditors

on the other, the Act effectively nullifies the contract approach, which presumed that the same rules applied to all.⁶

Second, the Act provides a formula for determining the rights of the parties to the account, at least for situations where evidence of the parties' contributions is available.⁷ At the same time, it retains the common law gift approach of prior case law in situations where clear and convincing evidence shows that the parties did not intend ownership of the account to be based on the parties' relative contributions. The drafters recognized that "... a person who deposits funds in a multiple-party account normally does not intend to make an irrevocable gift of all or any part of the funds represented by the deposit." Comment, Uniform Probate Code, 8 U.L.A. § 6-103 (1998).

C. The Act Applies During the Parties' Lives.

The Court of Appeals in this case held that the Act does not apply here because, as part of the Probate Code, it governs only nonprobate transfers upon the death of a joint depositor. It points to the title of Article 6, "Nonprobate Transfers on Death" and concludes that the provisions contained in Article 6 must apply only after death. This holding ignores the plain language of the statute, well-established rules of statutory

⁶ The pre-Act common law cases had also reflected a reluctance to apply the presumptions of the "bank protection statute" to disputes that did not involve the financial institution. See, e.g., Rutchick, supra.

⁷ The drafters intentionally omitted providing for situations where there was no proof of net contributions. "Undoubtedly a court would divide the account equally among the parties to the extent that net contributions cannot be proven; but a statutory section explicitly embodying the rule might undesirably narrow the possibility of proof of partial contributions and might suggest that gift tax consequences applicable to creation of a joint tenancy should attach to a joint account." Comment, Uniform Probate Code, 8 U.L.A. § 6-103 (1998)

construction, and prior published cases of the Court of Appeals applying the Act during account owners' lives.

In construing statutes, words and phrases are construed according to their common and approved usage. Minn. Stats. §645.08 (2005). "The headnotes printed in boldface type before sections and subdivisions in editions of Minnesota Statutes are mere catchwords to indicate the contents of the section or subdivision and are not part of the statute." Minn. Stats. §645.49 (2005). It is difficult to imagine a clearer statement that this statute applies during account owners' lives than the wording of the statute itself:

524.6-203 OWNERSHIP DURING LIFETIME.

(a) A joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions by each to the sums on deposit, unless there is clear and convincing evidence of a different intent.

Minn. Stats. §524.6-203 (2005). (emphasis added). Following the rules of statutory construction that headnotes are not part of a statute, and that words used are to be construed according to their common and approved usage, this statute leads to the inescapable conclusion that it does, in fact, apply "during the lifetime of all parties." Because both account owners here are still living, this statute applies to their respective ownership of these accounts.

The Court of Appeals also ignores its own prior published cases applying the Act to situations occurring during the account owners' lives. In Smith v. State of Minnesota, 389 N.W.2d 543 (Minn. App. 1986), the Court applied the above-quoted §524.6-203 to hold that the funds in a certificate of deposit contributed by the appellant's mother did not make the appellant ineligible for medical assistance because they did not belong to the

son under the Act. The Court of Appeals in Dufresne v. American National Bank, 374 N.W.2d 763 (Minn. App. 1985) applied the same statute to hold a bank liable for unilaterally terminating a trust account and transferring the proceeds to the trustee's joint checking account, in violation of the terms of the certificate and the Act. In Warmka v. Wells Fargo Federal Savings and Loan Ass'n., 458 N.W.2d 695 (Minn. App. 1990), the Court of Appeals again applied the Act during the account owners' lives when it held that an assignment of joint certificates of deposit to a financial institution by one account holder permits the bank to apply the funds on deposit to the joint account holders' outstanding indebtedness without subjecting itself to liability. And also in Hefner v. Estate of Ingvoldson, 346 N.W.2d 204 (Minn. App. 1984), the Court of Appeals considered the rights of a joint account holder during the parties' lives when it applied §524.6-203 to hold that a non-contributing account holder suffered no actionable loss from improper withdrawals during the contributing owner's life if the contributing co-owner realized the proceeds, because the non-contributing owner had no property interest in the account prior to the contributing owner's death.

The former "bank protection statute," Minn. Stat. §48.30, previously used as the basis of presumptions of ownership of joint accounts, has been replaced by Minn. Stats. §48.301, stating that the rights of the parties to a joint account and the financial institution are determined by the provisions of the Act. See also Minn. Stats. §§50.17 Subd.6, 51A.262, 52.131 (2005). None of these statutes limit the application of the Act to situations arising after death or disability.

The clear and unambiguous language of §524.6-203 makes this provision applicable to determinations of ownership during the parties' lives. Prior Court of Appeals decisions recognized this, and applied the provision to a variety of situations arising during the parties' lives. The Court of Appeals' decision here should not be allowed to stand because it disregards well-established rules of statutory construction and would create great uncertainty in the law in this area and call into question previous Court of Appeals published decisions.

D. The Act Should be Interpreted Uniformly with Other Jurisdictions that have Enacted it.

In this case, the Court of Appeals relied on the statement of purposes and rules of construction contained in Minn. Stats. §524.1-102 in holding that the Act did not apply here. While it quoted the first three purposes and policies contained in that section, it inexplicably ignored the fourth purpose contained in the statute, "to make uniform the law among the various jurisdictions." Minn. Stats. §524.1-102 (b)(4) (2005). This goal is also reflected in the statutes governing statutory construction in general:

Laws uniform with those of other states shall be interpreted and construed to effect their general purpose to make uniform the laws of those states which enact them.

Minn. Stats. §645.22 (2005). Layne-Minnesota Co. v. Regents of Univ. of Minn., 266 Minn. 284, 290 & n.13, 123 N.W. 2d 371, 376 & n.13 (1963)

Prior to the Act's enactment, Park Enterprise was out of step with the majority of other courts that dealt with this issue under common law. The majority of courts faced with this issue that have decided it under common law rather than statute have limited

garnishment to the debtor's equitable ownership in the joint account. 86 A.L.R.5th 527 §§2a, 3; See, e.g., Beehive State Bank v. Rosquist, 26 Utah 2d 62, 484 P.2d 1188 (1971); Delta Fertilizer, Inc. v. Weaver, 547 So. 2d 800 (Miss. 1989); Esposito v. Palovick, 101 A.2d 568, 29 N.J.Super. 3 (N.J.Super.App.Div. 1953); Society of Lloyd's v. Collins, 284 F.3d 727 (7th Cir. 2002); Peterson v. Peterson, 571 P.2d 1360 (Utah 1977) .

Courts of other states that have enacted this uniform act, when faced with the garnishment of joint accounts, have concluded that the Act does, in fact, govern garnishment of joint accounts. In Craig v. Hastings State Bank, 221 Neb. 746, 380 N.W.2d 618 (1986), the Nebraska Supreme Court held that a bank had no right of set off against a jointly owned money market certificate for the debt of an owner who had not contributed any funds to the account. In Deutsch, Larrimore & Farnish, P.C. v. Johnson, 577 Pa. 637, 848 A.2d 137 (2004), the Pennsylvania Supreme Court held a joint account not subject to execution on judgment against an owner who had not contributed anything to the account because there was no clear and convincing evidence that the contributing owner intended to make a gift of the account to her.

In Browning & Herdrich Oil Company, Inc. v. Hall, 489 N.E.2d 988 (Ind. App. 1986), the judgment debtor garnished certificates of deposit and a savings account titled in the names of the debtor and his mother. The debtor's mother had contributed all of the funds to these accounts. Rejecting arguments based on cases decided before adoption of

the Uniform Multiparty Accounts Act⁸, the Court described the "rather obvious consequences" of that uniform act:

IND. CODE 34-4-1.5-3(a) is perfectly clear. It needs no judicial construction or interpretation. It is controlling and the court correctly applied it. We hold that insomuch as Opal contributed all of the funds for the purchase of the CDs, and since there was no clear and convincing evidence of an intent to make an inter vivos gift, she alone owned the CDs. They were not owned by Gerald, and they were thus not subject to garnishment by Browning in its attempt to satisfy its judgment against him.

Browning, supra, at 992.

Similarly, the appellate court in Texas, which also has adopted the Uniform Multiparty Accounts Act, held that a judgment creditor could not garnish funds in a bank account to which all of the funds had been contributed by the debtor's parents, even though the parents had added the names of the debtor and their other child to the account.

⁸ The relevant provisions of Indiana's Multiparty Accounts Act read as follows:

"A joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions by each to the sums on deposit, unless there is clear and convincing evidence of a different intent."

IND. CODE 32-4-1.5-3(a)(1976).

"The provisions of sections 3 [32-4-1.5-3], 4 [32-4-1.5-4], and 5 [32-4-1.5-5] of this chapter concerning beneficial ownership as between parties, or as between parties and P.O.D. payees or beneficiaries of multi-party accounts, are relevant only to controversies between these persons and their creditors and other successors, and have no bearing on the power of withdrawal of these persons as determined by the terms of account contracts. The provisions of sections 8 [32-4-1.5-8] through 13 [32-4-1.5-13] of this chapter govern the liability of financial institutions who make payments pursuant thereto, and their setoff rights."

IND. CODE 32-4-1.5-2(1976). These are identical to Minn. Stats. Sec. 524.6-203(a) (2005) and 524.6-202 (2005).

RepublicBank Dallas v. Nat'l Bank Daingerfield, 705 S.W.2d 310 (Tex. App. 1986), In reaching this conclusion, the court stated:

In most jurisdictions, joint bank accounts are vulnerable to seizure by the creditor of any of the depositors, but the creditor's right to seize the funds is limited to the funds in the account that are equitably owned by the debtor and does not extend to funds equitably owned by other parties. See generally 11 A.L.R.3d 1465 (1967), and 38 C.J.S. Garnishment § 80 (1943). Texas appears to follow this general rule.

RepublicBank Dallas, supra at 311. The court went on to state that the Uniform Multi-party accounts act provision, enacted in Texas, supports this result.⁹ See also Lamb v. Thalimer Enterprises, 386 S.E.2d 912, 193 Ga. App. 70 (1989) (Multiparty account statute regarding ownership of a joint account during the parties' lives determines the extent to which creditor is entitled to garnish funds in joint account); Vaughn v. Bernhardt, 345 S.C. 196, 547 S.E.2d 869 (2001) (Multi-party accounts statutes are unambiguous and because both parties to the joint accounts were still living at the time of the transfer, the funds removed by the non-contributing party belonged to the decedent at that time); Szelenyi v. Miller, 564 A.2d 768 (Me. 1989) (Affirms judgment holding the entire amounts in joint bank accounts subject to execution for husband's debt because he contributed virtually all of the money to the account, and wife was unable to prove by clear and convincing evidence that husband intended gift of amounts deposited); Brown

⁹ The court stated, "Tex. Prob. Code Ann. § 438 (Vernon 1980) appears to specifically support the conclusion that Pat and Marie McGee are the owners of the money in this account. It provides that during the lifetime of the parties a joint account belongs to the parties in proportion to the contributions each party has made to the amount on deposit. Tex. Prob. Code Ann. § 437 (Vernon Supp. 1986) provides that Section 438 applies concerning ownership between parties to multiple party accounts in controversies between the parties and their creditors." RepublicBank Dallas, supra at 311-312.

v. Commonwealth, 40 S.W.3d 873 (Ky.App. 1999) (Reversing trial court's ruling that multiple party statutory provisions did not apply because they appeared in a chapter entitled, "Descent and Distribution," remands garnishment case for additional findings on ownership of joint accounts); Estate of Maxfield, 210 Utah Adv. Rep., 856 P.2d 1056 (1993) (Uniform Probate Code section 6-103 provides a clear test to be applied when determining the ownership of funds on deposit in a joint account during the lifetime of the parties.)

The courts of other states that have enacted the uniform Act have held that it applies during the parties' lives to situations where a creditor seeks to garnish the funds in a multiple party account, and absent clear and convincing evidence of a different intent on behalf of the contributing party, a creditor may not garnish the account on a judgment against the non-contributing party. Here, it is undisputed that all of the funds in the garnished accounts were contributed by Appellant's wife. To give effect to the goal of interpreting and construing uniform laws to effect their general purpose to make uniform the laws of those states that enact them, this Court should reject the decision of the Court of Appeals and reverse the District Court's denial of Appellant's motion to vacate the garnishments in this case.

E. Park Enterprises Does not Require Affirmance.

Interpreting the Act in harmony with the decisions of other states which have adopted it would mean that the Act has superceded Park Enterprises.¹⁰ Even if the Act is not held to supercede Park Enterprises, however, that case does not require affirmance because the facts here are distinguishable from those in Park Enterprises, and, if the case is viewed on its facts and result without regard to its dictum, it simply does not apply here.

In Park Enterprises, both co-owners of the joint account contributed funds to the account and made withdrawals from it, but there was no evidence of exact amounts of contributions or withdrawals. Park Enterprises at 468, 47 N.W.2d at 195. Here, however, it is undisputed that all of the funds in the joint accounts at issue here were contributed solely by Appellant's wife. Unlike Park Enterprises' deposit agreement, here the only provisions governing the parties' rights to these joint accounts before the court are the provisions of the Act, which does, in fact, give the parties to a joint account the right to object to unauthorized withdrawals by a non-contributing party. See, Dufresne, supra; Hefner, supra.

In Park Enterprises the district court held that the parties should be presumed equal owners of the joint account in the absence of proof establishing the amount each had contributed to it. *Id.* at 468-469, 47 N.W.2d at 195. Defendant and his wife

¹⁰ At least one commentator agrees that this is the case. Martha A. Churchill, Annotation, *Joint Bank Account as Subject to Attachment, Garnishment, or Execution by Creditor of One Joint Depositor*, 86 A.L.R.5th 527, fnotes. 15 and 17 (2001).

appealed, arguing that no part of a joint account could be garnished for the debt of only one of the owners. *Id.* The creditor never raised the issue of whether all of the funds in the account might be available on garnishment for the debt of one of the owners. *Id.* at 472, 47 N.W.2d at 197.

The Court affirmed the district court's ruling allowing garnishment of one-half of the funds in the joint account. *Id.* In doing so, it went beyond the issues raised, argued or briefed and stated that, had the creditor raised the issue, it would have allowed garnishment of all of the funds in the joint account. *Id.*

Judicial statements that go beyond issues raised, argued or briefed are not accorded the same respect as holdings on issues that are properly before the court.

“[Q]uestions actually before the court and argued by counsel are thoroughly investigated, deliberately considered with care, and, when so investigated and considered, a decision on those issues is entitled to respect in future cases. *Obiter dictum*, on the other hand, is a statement of the judge on an issue not so deliberately investigated and, for that reason, is not entitled to the same respect.”

State ex rel. Foster v. Naftalin, 246 Minn. 181, 208, 74 N.W.2d 249, 266 (1956); See, Kastigar v. United States, 406 U.S. 441, 444-45, 92 S. Ct. 1653, 1662 (1972) (language unnecessary to decision "cannot be considered binding authority").

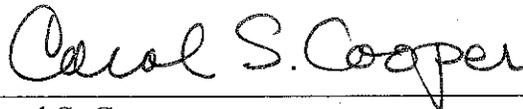
As discussed above, if this issue had been actually raised, argued or briefed in Park Enterprises, the Court would have had the benefit of considering that the only Minnesota garnishment case it relied upon, Midland Loan Finance Co., did not involve a joint account, as well as citations to the more specifically applicable 4 Am. Jur. Attachment and Garnishment §188, stating that the decisions on garnishment of a joint

account that did allow garnishment of a joint account limited the garnishment to the debtor's equitable interest in the account. The parties would also have been able to present arguments regarding the Canadian case the Court relied on, as discussed previously. For these reasons, the garnishment of the joint accounts should be vacated.

Conclusion

Respondent cannot acquire any greater property rights in the joint accounts at issue here than those held by Appellant. Under the Act, all of the funds in the joint accounts belonged to Appellant's wife because she contributed all of the money in the accounts, and there was no evidence that she intended to give the money to Appellant. Park Enterprises does not apply to this case and has been superceded by the Act. For these reasons, the district court's decision should be reversed and the garnishments vacated.

Respectfully submitted,



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Carol S. Cooper
Attorney for Appellant
26437 Galaxie Ave., Farmington, MN 55024
Atty. License No. 161548
Telephone: (651) 460-2056
Fax: (651) 294-1038

The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).