

NO. A09-1221

State of Minnesota
In Supreme Court

Mona Savig and Robert Savig,

Plaintiffs,

vs.

First National Bank of Omaha and Messerli & Kramer, P.A.,

Defendants.

ON QUESTION CERTIFIED BY UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA, HON. JOAN N. ERICKSEN

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Statement of Legal Issues

1. May a judgment creditor serve a garnishment summons on a joint account to satisfy the debt of an account holder when not all of the account holders are judgment debtors?

Apposite Authorities

MINN. STAT. § 571.71-.932;

Enright v. Lehmann, 735 N.W.2d 326 (Minn. 2007)

- a. If so, is it the judgment creditor or the account holders who bear the burden of establishing net contributions to the account during the garnishment proceeding?

Apposite Authorities

MINN. STAT. § 524.6-203(a);

Uniform Probate Code, 8 U.L.A. § 6-103 (1969)

Bar-Meir v. North American Die Casting Ass'n, No. C6-03-331, 2003 WL 22015444 (Minn. Ct. App. Aug. 26, 2003).

- b. If so, what applicable presumptions regarding ownership, if any, apply in the absence of proof of net contributions?

Apposite Authorities

Bar-Meir v. North American Die Casting Ass'n, No. C6-03-331, 2003 WL 22015444 (Minn. Ct. App. Aug. 26, 2003).

Statement of the Case

This case addresses an important and prevalent problem that arises when a Minnesota judgment creditor attempts to collect a judgment by serving a garnishment summons or execution, as allowed by statute, upon a bank where the judgment debtor has an account held jointly with a non-judgment debtor. In *Enright v. Lehmann*, 735 N.W.2d 326 (Minn. 2007); this Court adopted the rule that money in a joint account belongs to the owners of the account in proportion to their contributions. *Enright*, however, did not resolve what the procedures are for garnishing a joint account, who bears the burden of proving ownership, or what presumptions govern the ownership of the funds in the account absent proof of ownership.

Nevertheless, judgment debtors have attempted to use *Enright* to claim that judgment creditors, their attorneys, third-party garnishee banks, and perhaps others are liable for issuing, serving, and responding to a garnishment summons when the garnishee reaches funds held in a joint account. In this case, Plaintiffs Mona and Robert Savig filed such claims against Defendants First National Bank of Omaha (“First National”) and Messerli & Kramer, P.A., (“Messerli & Kramer”) because they allege that First National, through its attorneys Messerli & Kramer, violated Minnesota law by serving a garnishment summons on Midwest Bank, where the Savigs maintain a joint account.

In *Enright* this Court could not have intended to open the door to this now-pervasive litigation. As a result, the Honorable Joan N. Ericksen of United States District Court for the District of Minnesota certified the following questions of law to this Court:

May a judgment creditor serve a garnishment summons on a joint account to satisfy the debt of an account holder when not

all of the account holders are judgment debtors, and if so, (1) is it the judgment creditor or the account holders who bear the burden of establishing net contributions to the account during the garnishment proceeding and (2) what applicable presumptions regarding ownership, if any, apply in the absence of proof of net contributions?

Add.17.

Judge Ericksen certified those questions to this Court after determining that they presented an important issue of Minnesota law:

[T]he question of whether the burden of establishing net contributions in a post-judgment garnishment proceeding falls on a judgment creditor or on joint account holders presents an important question of Minnesota law for which there is no controlling appellate decision, constitutional provision, or statute of Minnesota.

Savig v. First National Bank of Omaha and Messerli & Kramer, P.A., Case No, 0:09-cv-00132-JNE-RLE, at 15, (July 6, 2009) *Add.15.* This Court accepted the certified questions by Order dated July 13, 2009. *Add.22.*

Statement of Facts

In the federal case pending before Judge Ericksen, Plaintiffs Mona Savig and Robert Savig, a married couple, allege that Defendant First National, through its attorneys, Defendant Messerli & Kramer, violated Minnesota law by serving a garnishment summons on Midwest Bank, where the Savigs maintain a joint bank account. Defendants served that garnishment summons to satisfy a judgment against Mona Savig. *A.3.* In response to the garnishment summons, Midwest retained \$565.68 from the joint account. The Savigs contend that service of the garnishment summons was unlawful because the garnishee,

Midwest Bank, retained funds from their *joint* account in response to the garnishment summons in order to satisfy *Mona's* debt. *A.3.*

The core of the issue in this action is whether, as the Savigs assert, under this Court's decision in *Enright v. Lehmann*, 735 N.W.2d 326 (Minn. 2007), mere service of a garnishment summons leading to a garnishee's retention of funds in a joint account violates the Fair Debt Collection Practices Act and constitutes the torts of conversion, wrongful levy, and invasion of privacy by the judgment creditor and its attorney, because the creditor did not have clear and convincing evidence of the depositor's intent to confer joint ownership of the funds prior to serving the garnishment summons. This action is one of several pending in Minnesota federal court under the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692-1692p (2006), based on similar theories—all to the effect that *Enright* prohibits even the issuance of a garnishment summons, if that summons should reach a joint account, absent clear and convincing evidence of the depositor's intent prior to service of the summons.¹ That theory has been accepted as a viable claim by Judge Donovan W. Frank (*Phillips v. Messerli & Kramer, P.A.*, 08-CV-04419 (DWF/JJG)) and Judge Paul A. Magnuson (*Ramirez v. Como Law Firm, P.A.*, 08-CV-04249 (PAM/JJG)). However, as Judge Ericksen held:

¹ Pending cases include the following:

Phillips v. Messerli & Kramer, P.A., 08-CV-04419 (DWF/JJG)

Ramirez v. Como Law Firm, P.A., 08-CV-04249 (PAM/JJG)

Billiar v. Atlantic Credit & Fin., Inc., 09-CV-00133 (PJS/SRN)

Friederichs et al. v. Messerli & Kramer, P.A., 09-CV-00648 (MJD/SRN)

Bowers et al. v. Messerli & Kramer, P.A., et al., 09-CV-01036 (RHK/JJK)

A number of such cases have also been filed.

Black v. Como Law Firm, P.A., 09-CV-00795 (JNE/JJG)

Schmidt et al. v. Como Law Firm, P.A., et al., 09-CV-00178 (DWF/FLN)

Frisk et al. v. Capital Alliance Financial, LLC, et al., 09-CV-00678 (DSD/JJG)

Arias v. Stewart Zlmen & Jungers, Ltd., 09-CV-00558 (MJD/JJG)

Enright did not address the issue of who bears the burden of establishing net contributions to a joint account during a post-garnishment proceeding. Rather, the question before the *Enright* court was whether the lower courts correctly relied on *Park Enterprises* when holding that all funds in a joint account, regardless of the identity of the contributor, could be garnished to satisfy the debt of any account holder.

Add.9-10.

Summary of Argument

This Court should recognize and give meaning to Minnesota's statutory right for a judgment creditor to serve a garnishment summons on a financial institution where it might reach an account that would satisfy a debt—even if the account is a joint one in which not all of the funds may belong to the judgment debtor. That holding is consistent with Minnesota's garnishment statute, which allows a judgment creditor to serve a garnishment summons to satisfy the debt of an account holder without regard to whether the property ultimately retained is from a joint account. *See* MINN. STAT. § 571.71-.932. It is also consistent with the Court's decision in *Enright v. Lehmann*, 735 N.W.2d 326 (Minn. 2007), which did not prohibit such conduct. Moreover, a contrary ruling exposes judgment creditors, their attorneys, third-party garnishee banks, perhaps even sheriffs, to liability for issuing or responding to a garnishment summons, in the event the process reaches funds held by the debtor in a joint account. It would effectively preclude all bank garnishments, because judgment creditors and their attorneys would risk serious liability in every instance.

This Court also should hold that the account-holders bear the burden of establishing net contributions to a joint account in the garnishment proceeding. This Court should construe Minnesota's Multiparty Accounts Act, which is part of Minnesota's Uniform

Probate Code, consistently with how courts in other jurisdictions have construed similar language from the Uniform Probate Code. Those courts have uniformly held that the account-holders bear the burden of establishing net contributions. The legislative intent behind the Uniform Probate Code supports that holding. Cases in jurisdictions that have not followed the Uniform Probate Code likewise have reached that conclusion. This Court's holding therefore also would be consistent with the common law.

Finally, this Court should hold that the judgment debtor is initially, but rebuttably, presumed to own all funds in the account. In every state that has articulated the procedure for contesting garnishment of a joint account, the law establishes a presumption of ownership which may, to varying degrees, be rebutted by the account-holders. That presumption is consistent with the legislative history behind the relevant Uniform Code Provision. This process is also compatible with Minnesota's process whereby a debtor can claim an exemption or intervene in a garnishment proceeding.

Argument

I. This Court Reviews The Issues Presented De Novo.

The certified questions present questions of law, which this Court reviews de novo.

Dohney v. Allstate Ins. Co., 632 N.W.2d 598, 600 (Minn. 2001).

II. A Creditor Is Permitted to Serve a Garnishment Summons on a Joint Account to Satisfy the Debt of an Account-Holder.

The first certified question asks “May a judgment creditor serve a garnishment summons on a joint account to satisfy the debt of an account holder when not all of the account holders are judgment debtors[?]” The answer to that question must be “yes.”

A. The Garnishment Statutes Provide for Issuance of a Garnishment Summons Without Regard to the Property Ultimately Retained by the Garnishee.

The garnishment statutes allow a judgment creditor to serve a garnishment summons to satisfy the debt of an account holder without regard to whether the property ultimately retained is from a joint account. Garnishment is a statutory proceeding that authorizes enforcement of a money judgment against property that is in the hands of a third party. MINN. STAT. § 571.71-932. Garnishment is not an independent action, but is a proceeding ancillary to a main action wherein liability has already been determined and a judgment has been entered. *Buyse v. Baumann-Furrie & Co.*, 448 N.W.2d 865, 870 (Minn. 1989). The purpose of garnishment is to reach property in the hands of the garnishee in order to apply it in satisfaction of the judgment. *Id.* The particular property ultimately reached does not affect the authority of the judgment creditor or its attorney to issue the garnishment

summons as allowed by statute. By law, the judgment creditor has that authority by virtue of the entry of judgment.

The garnishment statute places no preconditions on the character of the property ultimately reached by the garnishment. The statute simply states that, at any time after entry of judgment, a creditor may issue a garnishment summons against any third party:

As an ancillary proceeding to a civil action for the recovery of money, a creditor may issue a garnishment summons as provided in this chapter against any third party in the following instances:

* * *

(3) at any time after entry of a money judgment in the civil action.

MINN. STAT. § 571.71.

The statutory text of the garnishment summons also emphasizes that such summonses are not directed to specific accounts (joint or otherwise), but rather to all property of the judgment debtor then in the possession of the third party garnishee. The contents of the garnishment summons are strictly controlled by the statute. MINN. STAT. § 571.72, subd. 7 (“No creditor shall use a form that contains alterations or changes from the statutory forms that mislead debtors as to their rights and the garnishment procedure generally.”) The garnishment summons text is as follows:

To the garnishee named above:

You are hereby summoned and required to serve upon the creditor’s attorney (or the creditor if not represented by an attorney) and on the debtor within 20 days after service of this garnishment summons upon you, a written disclosure, of the nonexempt indebtedness, money, or other property due or belonging to the debtor and owing by you or in your possession

or under your control and answers to all written interrogatories that are served with the garnishment summons.

MINN. STAT. § 571.74. That text does not distinguish property held in a joint account.

Indeed, the garnishment statute is replete with sections whose plain language governs joint accounts and makes them subject to ordinary garnishment procedures. For instance, the statutory form of exemption notice, set out in MINN. STAT. § 571.912, illustrates that the legislature contemplated garnishment summons being served on joint accounts. Some of the exemptions address money that belongs to the “debtor.” *See* MINN. STAT. § 571.912, (10)-(11). Other exemptions, however, address money that belongs to any “person,” debtor or not. *See* MINN. STAT. § 571.912, (8)-(9). Giving these separate words separate meanings requires this Court to construe the statute to apply to money belonging to persons other than the debtor, including holders of joint accounts. Likewise, MINN. STAT. § 571.83 expressly allows a person who is “not a party to the action” but who claim “an interest in any of the ... money” subject to the garnishment summons to “intervene or join in the garnishment proceeding.” MINN. STAT. § 571.83. The plain meaning of this provision applies to joint account holders and provides a process for them to protect their rights.

The Savigs would have the Court give no effect to Minnesota’s garnishment statute, which authorizes the issuance of a garnishment summons any time after the entry of judgment without regard to the property ultimately retained. The Savigs’ position, however, ignores the well-established rule that “[e]very law shall be construed, if possible, to give effect to all its provisions.” *Abex Corp. v. Comm’r of Taxation*, 207 N.W.2d 37, 51 (Minn. 1973). The Savigs thus cannot ignore the fact that the garnishment statute allows a

judgment creditor to serve a garnishment summons to satisfy the debt of an account holder without regard to whether the property ultimately retained is in a joint account.

B. The Savigs Misinterpret this Court's Decision in *Enright v. Lehmann*.

The Savigs' contrary position is based on an unfairly expansive misreading of the Minnesota Supreme Court's decision in *Enright v. Lehmann*, 735 N.W.2d 326 (2007). *Enright* addressed the conflict between *Park Enterprises v. Trach*, 47 N.W.2d 194 (Minn. 1951), and a provision of the Multiparty Accounts Act, MINN. STAT. § 524.6-203(a). Under *Park*, this Court held that a garnishing judgment creditor could keep all of the funds in a joint account without regard to how much the debtor had actually contributed to the account. 47 N.W.2d at 196. In contrast, the Multiparty Accounts Act, adopted after *Park* was decided, states:

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. STAT. § 524.6-203(a). In *Enright*, the Supreme Court resolved this apparent conflict by holding that the Minnesota legislature, in adopting the Multiparty Accounts Act in 1973, had abrogated *Park*. *Enright*, 735 N.W.2d at 334.

The Savigs' argument expands *Enright* beyond this holding. They rely on the passage in *Enright* that states, "Under the plain language of MINN. STAT. § 524.6-203, funds in a joint account may not be garnished to satisfy a judgment against a party who did not contribute the funds, unless the creditor provides clear and convincing evidence that the depositor intended the funds to belong to the debtor." 735 N.W.2d at 336. The Savigs argue that this language somehow prohibits judgment creditors from servicing a garnishment summons.

The Savigs' argument is incorrect. In *Enright*, the judgment creditor served garnishment summonses on a bank thought to have in its possession funds belonging to the judgment debtor. In response to the garnishment summons, the bank retained funds in a joint account held by the judgment debtor, Robert Lehmann, with his wife, Zandra Lehmann, a non-debtor. The Supreme Court's opinion in *Enright* did not address this conduct. Had the Court intended to decide that service of the garnishment summons was improper, it would have explicitly done so.

Instead, this Court addressed the vitality of the *Park* analysis in *Enright*. The Court reversed the district and appeals court determinations and held that, where a judgment debtor or intervenor shows that funds retained by a garnishee in response to a garnishment summons were deposited by someone other than the judgment debtor, a judgment creditor is not entitled to keep those funds unless it can show that the deposited funds were intended to belong to the judgment debtor. This holding does not prohibit a judgment creditor from serving a garnishment summons.

Other cases, premised on similar law, including cases cited by the Court in *Enright*, similarly embraced the commencement of post-judgment proceedings. *Browning & Herdrich Oil Co., Inc. v. Hall*, 489 N.E.2d 988, 992 (Ind. Ct. App. 1986) (judgment creditor served a levy on the third party bank), *Giove v. Stanko*, No. CV-86-L-582, 1988 WL 80872, at *1 (D. Neb. July 20, 1988) (judgment creditor served writ of garnishment on bank garnishee); *Brown v. Commonwealth*, 40 S.W.3d 873 (Ky. Ct. App. 1999) (judgment creditor served writs of garnishment on two bank garnishees), *Lamb v. Thalimer Enters., Inc.*, 386 S.E.2d 912, 913 (Ga. Ct. App. 1989) (judgment creditor served affidavit of garnishment on bank garnishee).

Indeed, the Savigs' position that a judgment creditor must somehow know in advance what property will be retained by a garnishee in response to a garnishment summons, and may not issue a summons unless the property the garnishee will in the future retain is known by the judgment creditor to be deposited by the judgment debtor and not intended to be conferred upon a non-debtor is incompatible with "[b]asic principles underlying the allocation of burdens of proof" in Minnesota to the extent that it fails to place the burden on "the party with easier access to relevant information." *In re UnitedHealth Group Inc. Shareholder Derivative Litig.*, 754 N.W.2d 544, 561 (Minn. 2008). Accordingly, the Savigs' contention that *Enright* prohibits service of a garnishment summons must fail.

C. The Legislature Has Not Repealed MINN. STAT. § 571.71.

Minnesota's Multiparty Accounts Act did not implicitly repeal Minnesota's garnishment statute. Repeals by implication are disfavored, and to justify holding that an act of the legislature is repealed by one subsequently passed, it must appear that the later enactment is certainly and clearly hostile to the earlier. *State v. Archibald*, 45 N.W. 606, 607 (Minn. 1890). If by any reasonable construction the statutes can stand together, there is no implied repeal. *Id.* Here, the garnishment statute allows a judgment creditor to serve a garnishment summons to satisfy the debt of an account holder without regard to whether the property ultimately retained is in a joint account. The Multiparty Accounts Act then clarifies that a joint account belongs to each party in proportion to their net contributions. The Multiparty Accounts Act thus "provides some measure of protection for assets in a joint bank account from creditors of either party;" it prohibits a creditor from using the assets of a nonjudgment debtor in a joint account to satisfy a judgment against the other joint account

holder who is a judgment debtor. *Enright*, 735 N.W.2d at 332 (emphasis added). It, however, does not prevent a judgment creditor from serving a garnishment summons where a garnishment summons may reach a joint account. *Cf. Note, The "Poor Man's Will" Gains Respectability: Using the Minnesota Multiparty Accounts Act*, 1 WM. MITCHELL L. REV. 48, 65 (1974). ("[T]he general application of the rule . . . should preclude the use of joint accounts for the evasion of creditors.") The Multiparty Accounts Act and the garnishment statute thus can be harmoniously construed. Therefore, there has been no implicit repeal, and Minnesota law still allows for the issuance of garnishment summonses as stated in section 571.71.

D. Consequences of The Savigs' Argument.

As stated in the district court's Order, "[Respondents'] interpretation would have serious practical implications for post-judgment creditors seeking repayment of debts from joint accounts." *Add.14*. A judgment creditor cannot know what funds will ultimately be reached by a garnishment summons, whether the account containing those funds will be joint, or who contributed the funds to the joint account. The Savigs' argument therefore would expose judgment creditors, their attorneys, third-party garnishee banks, perhaps even sheriffs to liability for issuing or responding to a garnishment summons, in the event the garnishee retained funds in a joint account. Their theory thus would effectively preclude bank garnishment entirely, because judgment creditors and their attorneys would risk serious liability in every instance. That consequence was evident in the *Phillips* case where the court

permitted the Plaintiff to amend their Complaint to assert punitive damages against the defendant law firm. *A.175.*²

The Savigs' theory has implications for judgment creditors of every stripe. For instance, a prohibition on bank garnishment summonses would eliminate a central means for tort victims to recover awards granted to them by courts. Likewise, the Minnesota Department of Revenue routinely issues garnishment summonses, and then allows taxpayers to present proof of who made contributions to any joint account. Reply Brief for Appellant at 6, *Enright v. Lehmann*, No. A06-0347, *decision reported at* 735 N.W.2d 326 (Minn. 2007). Moreover, under the Savigs' argument, lenders and banks would not be able to enforce loan agreements and would have to spread the losses created to other non-defaulting parties.

In response, debtors have argued that a creditor must conduct discovery in advance of service of the garnishment summons, and the Savigs may argue that here. Even aside from the unnecessary expense that requirement for formal discovery would add to the collection process in virtually every case, such discovery does nothing to prevent a garnishee from retaining funds deposited by someone other than the judgment debtor, because funds in an account can rapidly be withdrawn or deposited and the intent of the depositing parties may change, rendering any discovery superseded. Moreover, privacy laws prevent judgment creditors from requesting the information from the banks directly absent court orders, and in any event the banks would also not necessarily know about the source of funds amongst joint account-holders. Additionally, judgment debtors, who have unique access to

² This reference is to the "Text Only Entry" of the federal court's verbal order, set forth as Docket Entry 31 at the cited Appendix pages. This order, set forth in the public docket, is appropriate evidence of the court's ruling, and is offered only to show that the federal court allowed the amendment in that case.

information about the accounts and are interested in preserving funds to themselves, do not readily or voluntarily disclose the relevant information, and even give misleading information. Finally, the actions of the garnishee, a third party, in responding to the garnishment summons, are not within the control of the judgment creditor or its attorney.

Because there is no practical way to determine in advance either whether the account or accounts reached are joint or the source of the deposits, the Savigs' theory, in effect, would eliminate bank garnishment as a remedy for judgment creditors. As a result, and as Judge Ericksen noted, the Savigs' argument would transform a joint account into the equivalent of a Swiss Bank Account. *Savig v. First Nat'l Bank of Omaha* (D. Minn. July 6, 2009), *Add.14*. Accordingly, the Savigs' contention that *Enright* prohibits service of a garnishment summons if a garnishee retains funds from a joint account in response to the summons must fail.

E. Minnesota Statutes Section 571.71 Does Not Deprive the Non-Debtor Account-Holder of Due Process.

The district court's opinion notes that, in the proceedings there, the Savigs suggested that garnishment under Minnesota Statutes chapter 571 could deprive a non-debtor account-holder of due process. As the court noted, the Savigs did not follow statutory requirements to contest the constitutionality of the statute, and did not meaningfully brief the topic. Nonetheless, the law does not deprive the account-holder of due process.

The Supreme Court has repeatedly emphasized that "due process is flexible and calls for such procedural protections as the particular situation demands." *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976). The determination is made by balancing the private interest affected by state action, the risk of erroneous deprivation under the procedures used, and the

government's interest, including consideration of fiscal and administrative burdens. *Id.* at 335.

The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. *Id.* at 333. Furthermore, “[t]he Court has consistently held that some kind of hearing is required at some time before a person is *finally* deprived of his property interests.” *Wolff v. McDonnell*, 418 U.S. 549, 557-58 (1974) (emphasis added).

“Where only property rights are involved, mere postponement of the judicial enquiry is not a denial of due process, if the opportunity given for ultimate judicial determination of liability is adequate.” *Mitchell v. W.T. Grant Co.*, 416 U.S. 600, 611 (1974).

Minnesota's statutes relating to post-judgment proceedings comply with the due process clause. Specifically, MINN. STAT. § 571.83 allows a non-party claiming an interest in the property attached to intervene in the garnishment proceeding. In this way, a non-debtor account-holder is not at risk of an erroneous final deprivation of property because he or she may join in the proceeding and have his or her interests adjudicated immediately. Thus, the Minnesota statute complies with the due process clause of the Fourteenth Amendment, and the Savigs' claims must fail.

III. The Account-Holders Bear the Burden of Establishing Contributions to the Joint Account.

The second certified question asks: “is it the judgment creditor or the account holders who bear the burden of establishing net contributions to the account during the garnishment proceeding”? *Add.17*. The Court in *Enright* did not answer that question. In *Enright*, it was undisputed that the non-debtor had contributed all of the funds in the joint

account. 735 N.W.2d at 329 (“Lehmann asserts, and Enright agrees, that Zandra deposited all the money in the joint accounts.”) Thus, while *Enright* establishes a rule that applies once net contributions are known, it does not speak to the burden of proving net contributions. *Add.9*. In short, who made the contributions is a separate and distinct question from whether a known contributor intended to confer ownership of certain funds. *Id.* To determine which party bears the burden with respect to proving net contributions to the account, the Court can look to the text of the statute, the legislative intent and similar cases, which together suggest that the burden falls on account-holders to prove net contributions.

A. Origin and Background of the Multiparty Accounts Act.

Although the Minnesota Multiparty Accounts Act has a tangled history, only a single provision of the Multiparty Accounts Act is at issue in this case:

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. STAT. § 524.6-203(a). The language of this provision is unchanged since the original Minnesota adoption in 1973. It is identical to the language as it appeared in Article Six, section 103(a) of the 1969 Uniform Probate Code. The same language, with some additions and changes not material to this question, appears in Article Six, section 211(b) of the 1989 Uniform Probate Code, and Article Two, section 11 of the Uniform Multiple-Person Accounts Act. Accordingly, cases interpreting any of those sources are of considerable aid in determining the meaning of MINN. STAT. § 524.6-203(a).

B. Legislative History Supports that the Burden Falls on the Account-Holders.

The legislative history of the Uniform Probate Code supports that the burden should fall on account-holders. The Court's primary objective in statutory interpretation is to ascertain the legislative intent from the statutory language and, if possible, to give effect to that intent. *H.D. v. White*, 483 N.W.2d 501, 502 (Minn. Ct. App. 1992). The intention of the drafters of a uniform act becomes the legislative intent upon enactment. *In re Butler*, 552 N.W.2d 226, 231 (Minn. 1996).

Here, the statute does not explicitly address the burden of proving net contributions to the account. However, the official commentary to the law states that it "contains no provision dealing with division of the account when the parties fail to prove net contributions." Comment, Uniform Probate Code, 8 U.L.A. § 6-103 (1969) (emphasis added). As used in that sentence, "the parties" must refer to parties to the account, because only the parties to the account have knowledge of their individual net contributions to the account. *Id.* Thus, the legislative intent suggests that the account-holders must prove net contributions.

C. Uniform Laws are Properly Construed Uniformly.

This Court should construe the Minnesota Multiparty Accounts Act consistently with those courts that have faced this similar issue under the Uniform Probate Code by holding that the account-holders must prove net contributions. The fundamental purpose of uniform laws is to achieve conformity in interpretation. *Holiday Inns, Inc. v. Olsen*, 692 S.W.2d 850, 853 (Tenn. 1985) (describing this purpose as "axiomatic"). The Minnesota legislature has made the directive explicit, such that "[l]aws 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. STAT. § 645.22, *cited in Enright*, 735 N.W.2d at 332. In addition, the text of the Uniform Probate Code, as well as its statutory adoption in Minnesota, both admonish that one of the “the underlying purposes and policies” of the Code is “to make uniform the law among the various jurisdictions.” U.P.C. § 1-102(b)(4); MINN. STAT. § 524.1-102(b)(4).

This Court has consistently recognized this axiomatic purpose, stating, for example: “Uniform laws are interpreted to effect their general purpose to make uniform the laws of those states that enact them.” *Johnson v. Murray*, 648 N.W.2d 664, 670 (Minn. 2002). The Court “give[s] great weight to other states’ interpretations of a uniform law.” *Id.* (citing *State v. Vail*, 274 N.W.2d 127, 132 n.9 (Minn. 1979)). Among the states that have adopted the Uniform Probate Code and have addressed the issue of who bears the burden of proving net contributions, they have unanimously found that burden falls on the account-holders.

1. Kentucky.

The Multiparty Accounts Act provision at issue is also the law in Kentucky. KY. REV. STAT. § 391.310(1). In *Brown v. Commonwealth*, 40 S.W.3d 873 (Ky. Ct. App. 1999), garnishment orders were served on two banks maintaining joint accounts held by a judgment debtor jointly with his wife. The Court held that “a party to a joint account may, for attachment and execution purposes, initially be presumed to own the entire account. *Brown*, 40 S.W.3d at 882. The Court concluded that on “notice and objection, however, the debtor or any third-party account tenant may rebut that presumption by proof of separate net

contributions to the account . . .” *Id.* Thus, the Kentucky Court placed the burden on the account-holders to prove their net contributions to the account.

2. Indiana.

The Indiana Court of Appeals saw a comparable set of facts in *Browning & Herdrich Oil Company, Inc. v. Hall*, 489 N.E.2d 988, 992 (Ind. Ct. App. 1986), an analogous case relied upon by the *Enright* Court. In *Browning*, it was an “undisputed fact” that “funds for . . . the savings account were contributed solely by Opal [the non-debtor],” and that Gerald, the judgment debtor, had not contributed any funds to the account. *Browning*, 489 N.E.2d at 989.

Browning interpreted the exact same statute at issue in *Enright* and at issue in this case. Ind. Code 32-4-1.5-3(a) (repealed 2002). Since, as in *Enright*, it was undisputed in *Browning* that a non-debtor deposited all the funds, the Court did not have the question of burden of proving net contributions before it. Nonetheless, in a concurring opinion, Judge Ratliff stated:

I agree that under the Indiana statute, Indiana Code section 32-4-1.5-3(a), ownership of a joint bank account during the lifetime of the parties is owned by them in proportion to their contributions. Therefore, only the funds in a joint account actually belonging to a judgment debtor may be reached by proceedings supplemental, garnishment, or execution in satisfaction of the debt.

* * *

The question left unanswered by the majority and not addressed by the parties is that of the burden of proof on the issue of ownership of the funds in the joint account. In other words, must a judgment creditor upon discovery of a joint bank account held by his debtor and another be held to the burden of proving his debtor’s interest, or do the joint depositors bear that

burden? I believe that burden properly rests with the joint depositors, and it has been so held.

Browning, 489 N.E.2d at 992 (Ratliff, J., Concurring).

3. Nebraska.

The Multiparty Accounts Act provision at issue was also adopted in Nebraska. NEB. Rev. Stat. § 30-2703(a) (1985) (repealed 1993). Following the same uniform act, a United States District Court sitting in Nebraska required the non-debtor depositors to intervene in order to assert their interest in a garnished joint account, was affirmed in this determination by the Eighth Circuit Court of Appeals, and petition for certiorari review by the United States Supreme Court was denied. *See Giove v. Stanke*, 882 F.2d 1316, 1318 (8th Cir. 1989), *cert. denied*, 494 U.S. 1081 (1990); *Giove v. Stanke*, No. CV-86-L-582, 1988 WL 80872 (D. Neb. July 20, 1988). The district court concluded that the non-debtor depositors must intervene in the garnishment action, and that the burden rests with the depositors to prove contributions to the account. *Giove*, 1988 WL 80872, at *6. There, the district court held:

As the comment to the “net contributions” rule indicates, “The [statute] contains no provision dealing with division of the account when the parties fail to prove net contributions. The omission is deliberate.” Comment to Neb. Rev. Stat. § 30-2703. Because the newer code does not purport to change the law on this point, I conclude take³ prior law still applies to place the burden upon the intervenor to establish ownership. Thus, the burden is on [the depositor/intervenor] to demonstrate the extent of the net contributions which are not attributable to the defendant judgment debtors.

³ [*sic*] Probably intended “that.”

Id. The Eighth Circuit explicitly affirmed this analysis of the burden of proving relative contributions to a joint account. *Giove*, 882 F.2d at 1319. These interpretations of the uniform act are entitled to great weight.

4. Cases in States that Have Not Adopted the Uniform Probate Code.

The non-uniform probate code states follow essentially the same rules as those states that have adopted the uniform probate code and hold that the burden of proving net contributions falls upon the account holders. At common law, jurisdictions applied four different theories to determine ownership of funds in joint accounts: contract theory, gift theory, trust theory, and joint tenancy theory. *Enright*, 735 N.W.2d at 332. *Park Enterprises v. Trach*, which was abrogated by the Multiparty Accounts Act, was an application of contract theory, because it determined the account-holders' ownership of the funds in the account "by reference to the terms of the contract creating it." 47 N.W.2d at 196. While this approach had the benefit of simplifying the law, few jurisdictions adopted it because of its potential to "violate historical principles of equity." Martha A. Churchill, Annot., *Joint Bank Account as Subject to Attachment, Garnishment, or Execution by Creditor of One Joint Depositor*, 86 A.L.R.5th § 2[a], at 527 (2007).

The majority approach is the "gift theory," in which the intent of the depositor to make or not make an inter vivos gift determines ownership of funds in a joint account. *Enright*, 735 N.W.2d at 331. This is the same standard codified in the Uniform Probate Code and at MINN. STAT. § 524.6-203(a): the funds belong to the depositor unless the depositor intended something else. Notwithstanding *Park*, cases in Minnesota predating adoption of the Multiparty Accounts Act had also applied the gift theory, rather than the

contract theory. *Erickson v. Kalman*, 189 N.W.2d 381, 384 (Minn. 1971) (“this court considers deposits [in a joint and several savings account] to be in the nature of gifts and to be governed by the rules applicable to gifts”).

Like courts in those states which have adopted the Uniform Probate Code, courts in the states that rely on the common law unanimously find that the burden of proving net deposits properly belongs with the account-holders. *Yakima Adjustment Service, Inc. v. Durand*, 622 P.2d 408, 411 (Wash. Ct. App. 1981) (“The burden of proving the ownership of the funds rests upon the joint depositors. This holding coincides with the majority rule”); *Hayden v. Gardner*, 381 S.W.2d 752, 754 (Ark. 1964) (“[T]he burden [is] on each joint depositor to show what portion of the funds he or she actually own[s]. We believe this is the fair and reasonable rule because the depositors are in a much better position than the judgment creditor to know the pertinent facts.”); *Hancock v. Stockmens Bank & Trust Co.*, 739 P.2d 760, 761-62 (Wyo. 1987) (“[T]he burden of proving what funds in a bank account, held jointly by the judgment debtor and another depositor, are not subject to execution is on the depositors.”); *Leaf v. McGowan*, 141 N.E.2d 67, 71 (Ill. App. Ct. 1957) (“[I]f a garnishee answers that a judgment debtor holds money in a joint bank account, this is sufficient proof to establish a prima facie case for the judgment creditor that the money in the account belonged to the judgment debtor. The burden is then upon the other party to the joint account to prove what part, if any, of the funds in such account belonged to him.”); *Baker v. Baker*, 710 P.2d 129, 134 (Okla. Civ. App. 1985) (“[I]t is presumed that the debtor, as a joint tenant, is entitled to the entire joint account, the burden is placed on the debtor or intervenor to prove otherwise. Such a result is the most equitable in light of the fact that the

joint tenants are in effect contradicting the terms of their joint account agreement.”); *Amarlite Architectural Products, Inc. v. Copeland Glass Co.*, 601 So.2d 414, 416 (Ala. 1992) (“[T]here is a rebuttable presumption that the funds in the joint account belong to the debtor. The burden is on the depositors to prove otherwise. We consider this to be the most equitable solution, because it is much easier for the depositors than the creditor to have or obtain proof of the ownership of the commingled funds.”) Thus, to the extent that the Multiparty Accounts Act does not directly address the question, the common law places the burden of proving net deposits on the account-holders. Accordingly, the depositors bear the burden of establishing net contributions to the account in Minnesota.

D. The *Bar-Meir* Decision Places the Burden on the Account-Holders.

Unpublished opinions of Minnesota appellate courts are not binding precedent, but they may be persuasive. MINN. STAT. § 480A.08, subd. 3; *Dynamic Air, Inc. v. Bloch*, 502 N.W.2d 796, 800-01 (Minn. Ct. App. 1993). In 2003 the Minnesota Court of Appeals concluded that the burden of proving “who contributed what to the account” rests upon the account-holder. *Bar-Meir v. N. Am. Die Casting Ass’n*, No. C6-03-331, 2003 WL 22015444, at #1 n.2 (Minn. Ct. App. Aug. 26, 2003). *A.206*. *Bar-Meir* reflects the majority rule, expressed by every other state to squarely consider the question, including states that have adopted the Uniform Act and those that have not. In reaching its decision, the court reasoned:

Appellant argues in the alternative that the funds are exempt because they were put into the account by his wife, not by himself. Again he fails to meet his burden of proving that his wife deposited the funds: there is no evidence of who contributed to the account. Because appellant has failed to meet his statutory burden of proving his claim that the funds in the account are exempt, respondent is entitled to proceed with garnishment pursuant to law.

Id. at *1. The Court then stated:

It is unnecessary for us to decide a possible conflict between Minn. Stat. § 524.6-203 (2002) (joint account belongs to parties in proportion to net contributions by each party), and *Park Enters., Inc. v. Trach*, 233 Minn. 467, 467, 47 N.W.2d 194, 195 (1951) (joint account can be garnished for individual debt of one depositor). Any conflict becomes irrelevant in the instant case because the burden remains with appellant to prove who contributed what to the account. Appellant offered no evidence of this.

Id. at *1 n.2. A.206. While *Bar-Meir* is unpublished and predates *Enright*, it addresses the narrower question of who bears the burden of proving net deposits, prior to the determination of a known depositor's intent. Nothing in *Enright* suggests that *Bar-Meir* was incorrectly decided, and the two cases are mutually consistent, insofar as *Bar-Meir* addresses the initial inquiry of relative net contributions, while *Enright* addresses the subsequent inquiry of the intent of a known depositor. It also comports with "[b]asic principles underlying the allocation of burdens of proof" in Minnesota to the extent that it places the burden on "the party with easier access to relevant information." *In re UnitedHealth*, 754 N.W.2d at 561. Accordingly, consistent with *Bar-Meir*, the depositors bear the burden of establishing net contributions to the account in Minnesota.

E. Requiring a Party Seeking to Defeat Garnishment to Demonstrate a Claim of Ownership in Funds in a Joint Account is Consistent with Minnesota Law.

Requiring a judgment debtor, or a non-debtor joint account-holder, to come forward and demonstrate exemption from garnishment is perfectly reasonable and is consistent with Minnesota law. MINN. STAT. § 550.37 sets forth numerous exemptions from garnishment,

all of which place on a debtor the responsibility to assert and prove entitlement to the exemption. MINN. STAT. § 550.37, subd. 20, provides:

550.37. Property Exempt

Subdivision 1. Exemption. The property mentioned in this section is not liable to attachment, garnishment, or sale on any final process, issued from any court.

* * *

Subd. 20. Traceable funds. The exemption of funds from creditors' claims, provided by subdivisions 9, 10, 11, 15, and 24, shall not be affected by the subsequent deposit of the funds in a bank or any other financial institution, whether in a single or joint account, if the funds are traceable to their exempt source. In tracing the funds, the first-in first-out method of accounting shall be used. The burden of establishing that funds are exempt rests upon the debtor. No bank or other financial institution shall be liable for damages for complying with process duly issued out of any court for the collection of a debt even if the funds affected by the process are subsequently determined to have been exempt.

(emphasis supplied). Defendants ask this Court to enforce a similar rule for the exemption of funds in a joint account when one of the joint owners is subject to garnishment under law. It is fully consistent to place the minimal burden of demonstrating that funds in a joint account are not the debtor's funds on the joint accountholder.

IV. The Judgment Debtor Is Presumed to Own All Funds in the Account, and the Judgment Debtor or Other Intervening Account-Holders May Rebut the Presumption by Providing Proof of Net Contributions in the Garnishment Proceeding.

Finally, the third certified question asks: "what applicable presumptions regarding ownership, if any, apply in the absence of proof of net contributions?" In every state that has articulated the procedure for contesting garnishment of a joint account, the law establishes a presumption of ownership which may, to varying degrees, be rebutted by the

account-holders. See, e.g., *Amarlite*, 601 So. 2d at 416; Lisa R. Mahle, *A Purse of Her Own: The Case Against Joint Bank Accounts*, 16 TEX. J. WOMEN & L. 45, 59 (2006); Martha A. Churchill, Annot., *Joint Bank Account as Subject to Attachment, Garnishment, or Execution by Creditor of One Joint Depositor*, 86 A.L.R.5th 527, §§ 7[a]-10[b] (2007). The majority of states use one of two presumptions: (1) equal shares, or (2) entire account. *Id.* at §§ 7-8.

A handful of states, none of which has adopted the uniform law in question, treat joint accounts as held in tenancy by the entireties under certain circumstances, and thus have a presumption that the ownership interest of either account-holder cannot be unilaterally severed. See *Beal Bank, SSB v. Almand & Assoc.*, 780 So.2d 45, 57 n.16 (Fla. 2001) (listing Arkansas, Delaware, the District of Columbia, Tennessee, Hawaii, and Vermont). Tenancy by the entireties is incompatible with the divisible ownership expressed in MINN. STAT. § 524.6-203. Moreover, Minnesota does not recognize tenancy by the entireties. *Snyder v. Snyder*, 212 N.W.2d 869, 872 (Minn. 1973). Accordingly, Minnesota must recognize some presumption of ownership as amongst account-holders.

A. The Common Law Supports a Presumption of Ownership of the Entire Account.

Where a statutory enactment is to abrogate common law, the abrogation must be by express wording or necessary implication. *Wirig v. Kinney Shoe Corp.*, 461 N.W.2d 374, 377-78 (Minn. 1990). The abrogation of common law effected by MINN. STAT. § 524.6-203 was by necessary implication. *Enright*, 735 N.W.2d at 334. The extent of abrogation of the common law by necessary implication is narrowly construed relative to the statute. *Shaw Acquisition Co. v. Bank of Elk River*, 639 N.W.2d 873, 877 (Minn. 2002). Statutes are presumed to be consistent with the common law, and legislative modification of the

common law is limited in its application and by its necessary implication to the removal of the mischief against which the statute is directed. *Jung v. St. Paul Fire Dept. Relief Ass'n*, 27 N.W.2d 151, 154 (Minn. 1947) (holding that in determining the extent to which the common law has been abrogated, the Court is “not at liberty . . . to substitute the horizon of judicial imagination for that of legislative intent”).

Because the subrogation logic of *Park* dominated Minnesota jurisprudence, Minnesota courts did not plainly articulate the presumption of ownership. Stated differently, under *Park*, the Court presumed that the debtor owned all the funds in the account, and that presumption was irrebuttable. *Brown*, 40 S.W.3d at 880 (describing the debtor as “conclusively presumed to own the entire balance” under *Park*). Without question, section 524.6-203 did away with the conclusiveness of this presumption. Under the law, account-holders are at liberty to show their net contributions to a joint account, thereby proving how much money in the account “belongs” to them.

However, the statute is consistent with the initial presumption that all the funds in the account belong to the judgment debtor. Note, *The “Poor Man’s Will” Gains Respectability: Using the Minnesota Multiparty Accounts Act*, 1 WM. MITCHELL L. REV. 48, 50 n.144 (1974) (stating that it is logical to assume such a presumption would continue under the newly-adopted Act because “the policy of preventing fraud upon creditors remains strong”). The “mischief” prevented by adoption of the Multiparty Accounts Act is that, under the contract theory articulated in *Park*, any depositor to a joint account could permanently lose their deposits through the actions of another account-holder. Under the Multiparty Accounts Act, that mischief is remedied, because the funds in the account belong to the depositors

according to their net contributions. The initial presumption is not changed by necessary implication of the statute. The necessary implication of the statute is that account-holders need to be able to show their ownership of funds and thereby retain them, not that the account-holders be presumed to own them in a particular ratio absent such a showing. Accordingly, section 524.6-203 does not abrogate the initial presumption expressed in *Park* that the judgment debtor owns all the funds in an account.

B. *Bar-Meir* Supports a Presumption of Ownership of Entire Account.

The *Bar-Meir* case likewise supports a presumption that the debtor owns all the funds in the account. The Court stated that the judgment debtor failed “to meet his burden of proving that his wife deposited the funds.” *Bar-Meir*, 2003 WL 22015444, at *1. *A.206*. Because the judgment debtor “offered no evidence” of the deposits, the judgment creditor was entitled to proceed with garnishment. *Id.* at *1. *A.206*. Thus, it was presumed that the judgment debtor owned the funds in the account, absent a showing of net contributions.

Bar-Meir is unusual for its presaging of the *Enright* case. The Court of Appeals gave credence to the “possible conflict” between *Park* and the Multiparty Accounts Act. Had the Court of Appeals straightforwardly relied on the contract theory of *Park*, the deposits on the account would have been irrelevant. Instead, *Bar-Meir* suggests that, even under the Multiparty Accounts Act, the judgment debtor is initially presumed to own all the funds in the account, subject to a judgment debtor’s offer of proof regarding “who contributed what to the account.” *Id.* at *1 n.2 *A.206*.

C. The Majority Rule Supports a Presumption of Ownership of The Entire Account.

“The presumption in a majority of states is that the creditor may reach the entire account but the debtor can raise evidence as to what portion of the account is his (or not as the case may be).” Lisa R. Mahle, *A Purse of Her Own: The Case Against Joint Bank Accounts*, 16 TEX. J. WOMEN & L. 45, 60 (2006). Among jurisdictions that have adopted the uniform law equivalent to MINN. STAT. § 524.6-203, the Courts have unanimously found a presumption of ownership of the entire account. *Brown*, 40 S.W.3d at 882 (holding a judgment debtor is “initially [] presumed to own the entire joint account”); *Giove*, 1988 WL 80872, at *4-5. This presumption is also the majority among jurisdictions that have not adopted the uniform law. *See, e.g., Maloy v. Stuttgart Mem. Hosp.*, 872 S.W.2d 401, 402 (Ark. 1994) (“We now adopt the majority view that the debtor presumptively holds the entire joint bank account but may disprove this supposition to establish his or her actual equitable interest.”); *Baker*, 710 P.2d at 134 (“[A] rebuttable presumption exists that the debtor who holds an interest in a joint account is entitled to use the entire account”); *Amarlite*, 601 So.2d at 416 (“[T]here is a rebuttable presumption that the funds in the joint account belong to the debtor.”). Accordingly, an initial presumption of ownership of the entire account should apply in Minnesota.

D. Legislative History Supports a Presumption of Ownership of Entire Account.

A statute should be construed so that no clause, word, or sentence will be superfluous, void, or insignificant. *Gale v. Comm’r of Taxation*, 37 N.W.2d 711, 715 (Minn. 1949). Where words of a law are not explicit, the intention of the legislature may be

ascertained by considering the circumstances under which it was enacted. *Munoz v. Kihlgren*, 661 N.W.2d 301, 304 (Minn. Ct. App. 2003). In general, a statute's reenactment is an adoption of the prior construction of that statute. *Enger v. Holm*, 6 N.W.2d 101, 105 (Minn. 1942). Courts presume that the legislature acts with full knowledge of existing law. *Meister v. Western Nat. Mut. Ins. Co.*, 479 N.W.2d 372, 378 (Minn. 1992).

Comparing the 1969 Uniform Probate Code provision adopted in Minnesota with the 1989 provision that the Minnesota legislature did not adopt is particularly instructive with respect to the presumption of ownership. The "Ownership During Lifetime" provision appearing in the 1969 Uniform Probate Code and adopted in Minnesota is 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.

8 U.L.A. § 6-103(a) (1974); MINN. STAT. 524.6-203(a). Conversely, the "Ownership During Lifetime" provision appearing in the 1989 Uniform Probate Code, and not adopted in Minnesota states:

During the lifetime of all parties, an account belongs to the parties in proportion to the net contribution of each to the sums on deposit, unless there is clear and convincing evidence of a different intent. As between parties married to each other, in the absence of proof otherwise, the net contribution of each is presumed to be an equal amount.

8 U.L.A. § 6-211(b) (2008). The 1989 uniform law contains an explicit proportional presumption of ownership, which the Minnesota legislature declined to adopt.

The National Conference of Commissioners on Uniform State Laws ("NCCUSL") submitted the 1989 uniform law to the Minnesota legislature. The NCCUSL proposals,

including § 6-211 above, were engrossed in House File Number 2124 (1992). In response to the proposals, the Minnesota State Bar Association Probate and Trust Law section convened a special committee to comment on the proposal and, in some cases, recommend different statutory provisions. A subcommittee of the MSBA committee submitted its report on November 9, 1992, and the full committee report was delivered on December 8, 1992. Both reports recommended merely renumbering the Multiparty Accounts Act, and not adopting any substantive changes.

Ultimately, the recommendation of the MSBA persuaded the legislature, which adopted an MSBA-sponsored bill renumbering the Multiparty Accounts Act, but not adopting any of the substantive changes promulgated in 1989 by the NCCUSL. Had the legislature intended Courts to apply a presumption of proportional ownership of funds in a joint account, it could have unambiguously done so through adoption of the 1989 uniform act. Legislative adoption of this uniform provision is the basis for several of the decisions which have applied an “equal shares” presumption. *See Harvey v. Harvey*, 841 P.2d 375, 378 (Colo. Ct. App. 1992) (applying the 1989 uniform law); *accord Lewis v. House*, 348 S.E.2d 217, 218-19 n.2 (Va. 1986) (applying a derivation of the 1969 uniform law that specifically added “that a joint account between persons married to each other shall belong to them equally . . . unless there is clear and convincing evidence of a different intent.”) The legislature’s decision not to adopt the revision of the uniform act that would have explicitly set forth an “equal shares” presumption reflects its intent that Courts follow the presumption of

ownership of the entire account.⁴ Accordingly, under Minnesota law, an initial presumption of ownership of the entire account should apply.

Conclusion

This Court's decision in *Enright v. Lehmann* confirmed that Minnesota would no longer adhere to a minority view that was rigid and categorical in its approach to ownership of funds in a joint account. *Brown*, 40 S.W.3d at 880 (describing *Park* as insensitive); *Leaf v. McGowan*, 141 N.E.2d 67, 71 (Ill. Ct. App. 1957) (describing *Park* as "unduly harsh"). The Court made it clear that section 524.6-203(a) would be applied according to its plain language, the same way it is applied in other states, to determine ownership during the lifetime of the parties based on the actual circumstances of the depositors.

The Savigs' argument, however, would extend *Enright* far beyond what it decided—it would swing the pendulum past *Enright's* fair interpretation of the law, and place Minnesota in an altogether new minority. Instead of the *Park* rule, which left all funds in a joint account subject to garnishment at any time, the Savigs advance a rule that leaves no funds in a joint account ever subject to garnishment. Such an absurd result would transform joint accounts into Swiss bank accounts, in derogation of the legislature's goal of providing "some measure" of protection for funds in a joint account. This Court did not announce such a drastic rule in *Enright*, and the Court should now make that clear.

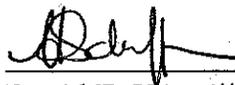
Accordingly, this Court's answers to the certified questions, consistent with the Multiparty Accounts Act, *Enright v. Lehmann*, and Minnesota law generally, should hold that:

⁴ Even, however, had the Legislature adopted the 1989 language, a judgment creditor still would be able to garnish a joint account and the presumption of 50/50 ownership would be rebuttable.

1. Yes, a judgment creditor may serve a garnishment summons on a joint account to satisfy the debt of an account holder when not all of the account holders are judgment debtors;
2. the account-holders bear the burden of establishing net contributions to the account in the garnishment proceeding; and
3. the judgment debtor is initially, but rebuttably presumed to own all funds in the account.

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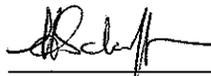
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CERTIFICATE OF BRIEF LENGTH

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subds. 1 and 3, for a brief produced with a proportional font. By automatic word count, the length of this brief is 9,351 words. This brief was prepared using Microsoft Word 2003.

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