STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0651

Stephen L. Vollmer,
as Personal Representative of the
Estate of Ula L. Lagergren,
Respondent,

vs.

Richard R. Lagergren,
Appellant.

Filed December 24, 2012
Affirmed
Stauber, Judge

Crow Wing County District Court
File No. 18CV10725

Thomas B. Hatch, Laura E. Nelson, Robins, Kaplan, Miller & Ciresi, L.L.P., Minneapolis, Minnesota (for respondent)

Gregory R. Troy, Law Office of Gregory R. Troy, P.A., New Brighton, Minnesota (for appellant)

Considered and decided by Stauber, Presiding Judge; Rodenberg, Judge; and Harten, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

STAUBER, Judge

This is an appeal from the denial of appellant's motion for judgment as a matter of law (JMOL) following a jury's determination that his wife was mentally incompetent at the time she purportedly deposited substantial sums received from her deceased brother's estate into a bank account that she held jointly with appellant. Appellant argues that the district court erred by denying his motion for JMOL because, under the presumptions established in the Minnesota Multiparty Accounts Act (MPAA), he is entitled to the joint accounts as the survivor, unless there is clear and convincing evidence of a "different intention," which evidence respondent did not produce. We affirm.

FACTS

In 1985, after her first husband passed away, Ula Lagergren (Ula) married appellant Richard Lagergren. Ula had four children with her first husband, and appellant also had an adult son from his prior marriage. Because it was their second marriage, Ula and appellant agreed that each would leave their respective assets to their own children upon death. Ula executed her will in 2003, designating her oldest child, respondent Stephen Vollmer, as her personal representative, and leaving her assets to her children. Stephen was also Ula's attorney-in-fact pursuant to her power of attorney made contemporaneously with her will-and-estate plan.

Consistent with their intent to keep their assets separate, appellant and Ula maintained separate checking accounts at Bremer Bank. But in October 2001, appellant became a joint owner of Ula's bank accounts, including Ula's checking account ending in

#7661 (the #7661 account). Ula's pension and social security checks were routinely deposited in the #7661 account.

In 2007, Ula received an inheritance from her brother's estate. The inheritance was paid in two distributions. The first distribution occurred in June 2007, when Ula received approximately $130,000. The second distribution occurred in December 2007, when Ula received approximately $107,000. Although Ula inherited the money individually, the inheritance distributions were deposited in the #7661 account.

In July 2008, Ula passed away and appellant moved to Florida to live with his son. Thereafter, respondent, as personal representative of Ula's estate, filed a complaint in district court alleging that Ula lacked capacity at the time the deposits from her brother's estate were made, and that appellant breached his fiduciary duty to safeguard her separate assets. Appellant answered, admitting that Ula inherited the funds, but denying the remaining allegations.

A jury determined that Ula lacked the "mental capacity to sign documents that had the legal effect of placing her funds into an account or accounts she owned jointly with [appellant]" on the dates of the deposits at issue. The jury also found that appellant did not exert undue influence over Ula. Finally, the jury found that $237,000 of Ula's funds were deposited into the #7661 account as a result of her signing documents while mentally incapacitated. Based on the jury's factual findings, the district court entered findings of fact, conclusions of law and judgment, holding that Ula's deposits were invalid, null and void, and rescinded. Appellant then moved for JMOL or in the alternative for a new trial, both of which were denied. This appeal followed.

D E C I S I O N

JMOL is appropriate under Minn. R. Civ. P. 50.02 if, when the evidence is viewed in the light most favorable to the nonmoving party, the verdict is "manifestly against the entire evidence" or if the moving party is entitled to judgment as a matter of law. *Langeslag v. KYMN Inc.*, 664 N.W.2d 860, 864 (Minn. 2003) (quotation omitted) (discussing the standard for a judgment notwithstanding the verdict (JNOV)); *see also Bahr v. Boise Cascade Corp.*, 766 N.W.2d 910, 919 (Minn. 2009) (applying the standard articulated in *Langeslag* to denial of JMOL). A district court's denial of a motion for JMOL after a verdict must be affirmed if, "in considering the evidence in the record in the light most favorable to the prevailing party, there is any competent evidence reasonably tending to sustain the verdict." *Langeslag*, 664 N.W.2d at 864 (quotation omitted). Whether to grant or deny a motion for JMOL is a question of law, which is reviewed de novo. *Id.*

A jointly held account is presumed to become the property of the surviving joint tenant on the death of the other tenant. *O'Rourke v. O'Rourke*, 283 Minn. 293, 297, 167 N.W.2d 733, 736 (1969). The MPAA[1] provides:

> Sums remaining on deposit at the death of a party to a joint account belong to the surviving party or parties as against the estate of the decedent unless there is clear and convincing evidence of a *different intention*, or there is a different disposition made by a valid will as herein provided, *specifically referring to such account*.

[1] The MPAA governs multiple party accounts. *In re Estate of Butler*, 803 N.W.2d 393, 397 (Minn. 2011). The MPAA was adopted to provide a comprehensive statutory scheme under which the statutorily designated form of the account, not common-law gift theory, determines whether there is a right of survivorship. *Id.* at 399 n.4.

Minn. Stat. § 524.6.-204(a) (2010) (emphasis added). Moreover, "[d]eposits made using a form of account containing the following language signed by the depositor shall be conclusive evidence of the intent of the depositor, in the absence of fraud or misrepresentation." Minn. Stat. § 524.6-213, subd. 1 (2010). The statute then provides an example of the applicable form. *See id.*

Appellant argues that under the presumptions established in Minn. Stat. sections 524.6-204(a), and 524.6-213, he "is entitled to the joint accounts as Ula's survivor, unless there is clear and convincing evidence of a 'different intention' by Ula 'specifically referring to such account(s).'" Appellant claims that the evidence presented at trial demonstrates that the joint-account deposits at issue include Ula's signature together with the requisite statutory language contained in section 524.6-213, subdivision 1. Appellant also claims that respondent did not rebut the conclusive presumption of Ula's intent by producing evidence of a "different intention," and the jury found no fraud or misrepresentation. Thus, appellant argues that the jury should not have been given any fact questions thereafter to permit them to undo Ula's joint-account designations.

To support his claim that evidence of a "different intention," was necessary, appellant cites *Butler*. In that case, the supreme court concluded that under Minn. Stat. § 524.6-204(a), the "surviving owner of a joint account is entitled to the funds in the account upon the death of the other joint owner, as against the decedent's estate, unless there is clear and convincing evidence of a different intention . . . which must specifically refer to the joint account." *Butler*, 803 N.W.2d at 398. The court then held that there

was insufficient evidence produced from which a reasonable jury could have concluded by clear and convincing evidence that the decedent had a "different intention" than to have the surviving owner receive the proceeds of the joint account upon the decedent's death. *Id.* at 400.

Respondent argues, and the district court concluded, that appellant's reliance on the MPAA and the *Butler* decision is misplaced. According to respondent, the adoption of the MPAA, and the *Butler* decision, "did nothing to change the common sense foundational requirement of capacity to make a valid deposit." As the district court found, appellant

> fails to recognize that just as a decedent's estate can prevent joint account funds from belonging to the surviving party by producing clear and convincing evidence that the decedent at some point after making the deposit formulated and communicated a different intention – so too, can the decedent's estate prevent that result by producing clear and convincing evidence that the decedent did not have the mental capacity to be able to formulate any kind of intention at all, at the time she initially deposited the funds into the joint account.

(Emphasis in original.) Thus, respondent argues that "even under the MPAA case law, the Court does not reach the question of the decedent's intention if she is incompetent at the time the deposits are made."

We agree. In *Butler*, because it was never alleged that the decedent was incompetent, the focus was necessarily on the decedent's intention pursuant to the MPAA. *See Butler*, 803 N.W.2d at 399-400 (focusing on whether there was sufficient evidence from which a reasonable jury could have concluded by clear and convincing

evidence that the decedent had a "different intention" than to have the surviving joint owner receive the proceeds of the joint account upon the decedent's death). In contrast, when the capacity of the decedent is challenged, the decedent's intention is not determinative. *See Estate of Nordoff*, 364 N.W.2d 877, 879 (Minn. App. 1985) (stating that the presumption of a surviving party's ownership of joint bank accounts under the MPAA does not arise if the person creating the joint accounts did not understand the effect of transferring funds into joint tenancy). Rather, the focus is on the decedent's mental capacity to understand the effect of transferring funds into joint tenancy. *See id.*

The MPAA has adopted a contract theory of analysis rather than a gift theory for determining whether a person has the capacity to set up a joint account. Minn. Stat. § 524.6-206 (2010); *Nordoff*, 364 N.W.2d at 880. A person is mentally capable if she "has the ability to understand to a reasonable extent the nature and effect of what [she] is doing." *Nordoff*, 364 N.W.2d at 880. The party challenging the survivorship designation has the burden of proving lack of capacity. *Merchants' Nat'l Bank v. Coyle*, 143 Minn. 440, 442, 174 N.W. 309, 309 (1919); *In re Estate of Grotta*, 386 N.W.2d 319, 320 (Minn. App. 1986).

Here, the narrow issue before the jury was whether Ula lacked capacity in June and December of 2007, when she made the deposits of the checks from her brother's estate into the #7661 account. The following evidence and testimony presented at trial supports the jury's conclusion that Ula lacked the requisite capacity. Ula's close friend Beverly Marx testified that when she saw Ula in 2005 and 2006, Ula did not recognize her and appeared "like she was lost." Similarly, Ula's daughter testified that when Ula

would stay with her in 2004-06, Ula would not know who she was, and would tell her that she was "sure lucky to have friends like you." Moreover, Ula's medical records reflect that Ula was prescribed Aricept for dementia prior to February 2005. And her medical records from 2005-08 repeatedly mention her "chronic medical problems consisting of dementia" and Alzheimer's. For example, when Ula was brought to the medical center in December 2006 for bruising on her shoulder after a fall, the records note that Ula was confused, disoriented as to time, and had a past medical history of Alzheimer's type dementia. And when Ula saw the doctor for a cold in February 2007, the records from that visit state that Ula "also has a history of dementia which seems to be worsening."

Although appellant claimed that "Ula's dementia was not medically diagnosed as progressive, but rather as symptomatic of her chronic incontinence and repeated" urinary tract infections, and presented testimony from Ula's banker that he did not observe any lack of understanding by Ula, the jury did not believe appellant's claims. When the case involves conflicting evidence presented at trial, this court defers to the jury's opportunity to observe the evidence and witnesses and weigh their credibility, and will not overturn the judgment unless the jury's verdict is manifestly contrary to the evidence. *Cox v. Crown CoCo, Inc.*, 544 N.W.2d 490, 497 (Minn. App. 1996); *see also Lamb v. Jordan*, 333 N.W.2d 852, 855 (Minn. 1983) (stating that when considering a motion for JNOV, the district court must (1) take into account all of the evidence in the case; (2) view the evidence in the light most favorable to the jury verdict; and (3) not weigh the evidence or judge the credibility of the witnesses). Here, the jury's verdict is not manifestly contrary

to the weight of the evidence. Accordingly, the district court did not err by the denying appellant's motion for JMOL.[2]

Affirmed.

[2] We also note that in appellant's main brief, he references the district court's decision to deny his motion for a continuance made four days before trial. Appellant also references the district court's refusal to allow appellant to call two witnesses that were not disclosed until trial began. It is not clear if appellant is challenging in this appeal the district court's denial of his motion for a continuance and the court's refusal to allow the witnesses to testify. But to the extent that these issues were raised, they have been waived due to appellant's failure to develop the issues and cite relevant legal authority. *See State Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (stating that appellate courts will generally not address issues that are inadequately briefed).