IN THE COURT OF APPEALS OF IOWA

No. 0-576 / 10-0095
Filed October 6, 2010

IN THE MATTER OF THE ESTATE OF GLEN J. KLINGAMAN, Deceased.

GWYNNE J. ROSEMON, Individually and as Executor of the Estate of Glen J. Klingaman, and MICHAEL R. KLINGAMAN,
Plaintiffs-Appellees,

vs.

JERRY A. KLINGAMAN,
Defendant-Appellant.

Appeal from the Iowa District Court for Linn County, Robert E. Sosalla, Judge.

Jerry Klingaman appeals from the district court's ruling requiring him to surrender property held in joint tenancy with his late father to his father's estate. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.**

Kenneth F. Dolezal and Kyle A. Sounhein, Cedar Rapids, for appellant.

Robert J. O'Shea of Brady & O'Shea, P.C., Cedar Rapids, for appellees.

Considered by Vogel, P.J., and Doyle and Schechtman, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

SCHECHTMAN, S.J.

The burden before us is the determination of the ownership of property held (or previously held) in joint tenancy, after the death of the joint tenant who had created and funded the joint tenancies.

I. Background Facts and Proceedings.

Glen Klingaman died testate on March 15, 2008, at the age of eighty-six. He was survived by his three children, Gwynne (also his executor), Michael, and Jerry, equal distributees under his will.

After the death of Glen's wife in April 2004, the Klingamans' children collectively conferred in Glen's presence about the Title XIX requirements for medical and long-term care funding when his health declined. Conversations between the siblings ensued, directed to the sagacity of making transfers to reduce Glen's assets to an appropriate level to qualify for those benefits, should that need ever arise. Gwynne pressed the time provision, asserting the Iowa Department of Human Services scans back five years for transfers without consideration. *See, e.g.*, Iowa Code § 249A.5(2) (2003) (stating the provision of medical assistance to an individual who is fifty-five years of age or older creates a debt due the department from the individual's estate upon the individual's death). Jerry seemed the obvious choice for a transferee as he lived in Solon, relatively close to Glen's home in Cedar Rapids, while the other siblings lived in Nevada and North Carolina.[1] Glen's reaction was indifferent, plainly stoic. At that juncture, Glen's primary assets, besides his home, were checking and

[1] The appellees do not assert there was any enforceable contract between the siblings to split any remaining funds. In any event, it is Glen's intent to create a joint tenancy, not the intent of his children, that is the issue.

savings accounts, and certificates of deposit (CDs), all in U.S. Bank, N.A., those liquid assets approximating $147,500.

A month later, in May 2004, without any of the children's input or urging, Glen added Jerry as a joint owner to two CDs. Three months later, he added Jerry's name as a joint tenant to his checking and saving accounts, again solely of his own volition. Jerry did not learn of any of these transfers until Glen told him to go to the bank to sign signature cards for the accounts. In November 2004, Glen converted an IRA CD, withdrew a portion ($30,000) of the joint savings account, and purchased two annuities from Allstate Life Insurance Company, totaling about $72,000. Glen designated Jerry as the sole beneficiary on each annuity. In January 2005, Glen purchased a new $5000 CD, again with Jerry as a joint tenant.

During this time period, Glen's health started to steadily decline. He was moved to Jerry's home in August 2005. Michael and Jerry agreed Jerry would receive eighty dollars per day for Glen's care, plus some reimbursement for groceries and utilities.

On August 17, 2005, Jerry sought the advice of an attorney. A durable power of attorney was drawn and executed by Glen, appointing Jerry as his attorney-in-fact. In September 2005, Jerry cashed in the three remaining CDs, all of which he held as a joint tenant with Glen. He deposited $5000 into the joint checking account and the remainder, about $47,000, into two CDs in his sole name. Those funds remain intact and were valued at trial at about $55,000. In February 2006, Jerry closed the joint savings account, transferring that balance

to his personal checking account (about $25,000),[2] without Glen's knowledge. Operating under the power of attorney, Jerry sold Glen's residence in April 2006, placing those funds in Jerry's personal money market account.[3]

Glen was placed in a long-term care facility in April 2006, assuming an expense hovering around $4000 per month,[4] where he continued to reside until his death. His only income was about $900 monthly from Social Security, which required Jerry to make periodic transfers from the Allstate annuities or from other funds originally Glen's, but transferred to his name. On March 7, 2008, eight days prior to his father's demise, the joint checking account had a balance of only $2582.85, after outstanding checks were credited. The monthly nursing home bill was due. Jerry closed out the last annuity in the sum of $26,759.57, depositing it into the joint checking account.[5] At the time of Glen's death, in addition to that checking account, there were the two CDs in Jerry's name, and about $53,000 in Jerry's money market account that arose mostly from the house sale.

In May 2008, Gwynne, individually and as executor of Glen's estate, and Michael filed a petition in equity against Jerry, alleging the transfers Glen made to Jerry during his lifetime were the product of undue influence and should be set

[2] It is unclear if any of these funds were used for Glen's benefit or otherwise transferred.
[3] Under the terms of the power of attorney, the trial court directed Jerry to account to the estate for these funds and others, and to file a claim for any unpaid services or advances. This portion of the ruling was not contested at trial or on this appeal.
[4] In total, about $85,500 was paid out for Glen's nursing home expenses before his death.
[5] After death, Jerry paid the cemetery for internment, advanced $8000 to his brother Michael, and transferred all but a few cents to his own money market account. When the accounting is done in the probate proceedings, these distributions should be considered in arriving at final credits and distributive shares.

aside. The petition further alleged that Jerry breached his fiduciary duties to Gwynne and Michael by transferring Glen's property to himself. Gwynne and Michael sought "a complete accounting as to all acts performed by Jerry," punitive damages, and attorney fees.

The district court denied the claims of (1) undue influence; (2) existence of a confidential relationship; (3) breach of fiduciary duty; (4) punitive damages; and (5) an award of attorney fees, from which there has been no cross-appeal. The court nevertheless concluded that (1) Glen's intent in establishing the joint CDs and joint bank accounts was controlling; (2) the joint tenancies were for convenience only to "allow Jerry access to his funds in the event Glen needed someone to manage his affairs"; (3) it was Jerry's understanding that the transfers to his name were to remove Glen's name for Title XIX eligibility; and (4) Jerry held the proceeds remaining at death in a constructive trust for Glen's estate. The court directed Jerry to surrender all the subject property to the executor, make a complete accounting of all property coming into his hands, set forth all expenditures made, including dispositions to himself and his two siblings, and directed that the probate proceeding should determine any claims and make such adjustments to their legacies as is appropriate.

In response to a motion to enlarge filed by Jerry, the district court concluded Jerry terminated his death benefits to the annuities when he cashed them, and he could not create a survivorship interest through his self-serving act of depositing those funds into the joint checking account.

Jerry appeals, focusing on his survivorship claims to the joint checking account, the funds from the joint savings account, and the two CDs in his name.

II. Standard of Review.

The parties agree that because this is an equitable proceeding, our review is de novo. *See In re Estate of Johnson*, 739 N.W.2d 493, 496 (Iowa 2007). We accordingly give some deference to the factual findings of the court but are not bound by them. *Id.* Because this is a de novo review, we will make our own legal conclusions, as we are not bound by and give no deference to the trial court's conclusions of law. *Id.*

III. Analysis.

Jerry contends it was error for the trial court to rely solely upon Glen's intent to establish ownership of the funds remaining after his death from the joint tenancy CDs, the joint savings account, and the joint checking account; that it also requires the application of contract law. Jerry does not contend he obtained any ownership in these assets during Glen's lifetime, but instead argues he succeeded to them as a surviving joint tenant. Jerry's testimony corroborates that posture. Also, his brief on appeal states: "It is undisputed that Jerry had little or no proportional interest in the property held by his father. His interest was accretive, the survivorship interest."

Gwynne and Michael assert that the court correctly used the element of Glen's intent in denying any ownership in Jerry to the joint tenancy assets. In so arguing, they do not acknowledge any difference in analyzing pre-death or post-death ownership, or proportional interests as contrasted to accretive interests.

Rather, they assert the joint tenancy arrangement for the joint CDs and the joint savings account were voided by their transfer to Jerry's sole name and his beneficial interests in the annuities were terminated by their redemption. They accordingly claim Jerry must now turn these assets over to the estate for an accounting and distribution therein.

To analyze joint tenancy property in Iowa, it is necessary to understand its nature. As our supreme court explained in *In re Estate of Kirk*, 591 N.W.2d 630, 634 (Iowa 1999),

> Joint tenancy property is property held by two or more parties jointly, with equal rights to share in the enjoyment of the whole property during their lives, and a right of survivorship which allows the surviving party to enjoy the entire estate.

The survivorship interest is also known as the accretive interest, while the joint tenant's undivided interest, during the joint tenant's lifetime, is referred to as the proportional interest. *In re Estate of Thomann,* 649 N.W.2d 1, 6 (Iowa 2002); *In re Estate of Lamoureux,* 412 N.W.2d 628, 631 (Iowa 1987). The exact share or extent of the undivided proportional interest by a particular joint tenant may be determined from their agreement, if any. *Anderson v. Iowa Dep't of Human Servs.,* 368 N.W.2d 104, 109 (Iowa 1985). Generally, joint tenants' respective rights in joint accounts are governed by contract law, and the intent of the parties is controlling. *Id.*

Each joint tenant is presumed to own an undivided interest in the entire estate, with an attached right of survivorship, which presumption is rebuttable. *Id.* The rule is that a bank deposit with alternate payees becomes the surviving payee's upon the depositor's death, in the absence of extrinsic evidence showing

the depositor had a different intention. *In re Estate of Williams*, 515 N.W.2d 552, 553 (Iowa Ct. App. 1994). When substantial evidence is presented in an effort to show a contrary intention, an issue of fact arises. *Id.* at 553-54. But when the offered evidence is not substantial, a joint tenancy exists as a matter of law. *Id.* at 554. The right to the withdrawal of funds from a joint bank account depends on the agreement or understanding of the party. *Anderson*, 368 N.W.2d at 110.[6] Withdrawal in excess of one's real interest may create a liability to the other joint tenant. *Id.*

Anderson provides a good example of employing intent in determining a proportional interest. The petitioner in that case, Dolly, was denied medical assistance by the Iowa Department of Human Services because a joint bank account in her name with her two sisters, Dorothy and Doris, exceeded the eligibility standards. *Id.* at 105-06. Dorothy opened the account and placed her sisters' name on it to provide access to the funds in the event of her death. *Id.* at 106. Neither Dolly nor Doris had ever made any deposits in it. *Id.* Our supreme court held that it was error for the department to have ignored the intent of the parties in creating the joint tenancy, finding the presumption of equal ownership was overcome by the parties' intent to not give Dolly any proportional interest. *Id.* at 110. The court's discussion of the rights of the joint tenants was specifically "limited to the time before the death of a co-owner and does not include consideration of survivorship rights." *Id.* at 109.

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[6] Iowa Code section 524.806 (2007) protects the bank from any inappropriate withdrawal or conversion. *See Petersen v. Carstensen*, 249 N.W.2d 622, 625 (Iowa 1977).

We need to separate our analysis of the CDs/savings account and checking account, as each involves different facts and legal considerations of intent, severance, contract, and fiduciary responsibilities.

A. Certificates of Deposit.

The district court correctly decided that the intent of Glen was an appropriate issue for, at least, a partial resolution of this controversy—that Jerry did not acquire any interest in the CDs (or, for that matter, the other joint tenancy accounts) during Glen's lifetime. But our inquiry cannot rest there; it is extended to determine whether there was a valid severance of the survivorship or accretive interest.

The joint CDs Jerry held with Glen were cashed in by Jerry during his father's lifetime, after he was appointed as Glen's attorney-in-fact. Pursuant to boilerplate language in the power of attorney document, Jerry had the authority to "purchase, renew, or cash certificates of deposit."

Other portions of the record would indicate the bank allowed Jerry to cash the CDs as a joint tenant. Irrespective of which hat he was wearing, the result is the same.

We have little quarrel with the trial court's finding that Jerry did not succeed to the CDs at Glen's death, but for disparate reasons. When the CDs were cashed out, the issue of severance of the joint tenancies arose, which the trial court failed to adequately explore.

A joint tenancy may be severed, prior to the death of either joint tenant, by agreement, conveyance, or other alienation of title by one of the joint tenants.

Lamoureux, 412 N.W.2d at 633. Because Jerry had the right to redeem the CDs (with or without retribution), we are not confronted with those cases that deny a severance when the conveyance or transfer is void or voidable. *See, e.g.*, *Johnson*, 739 N.W.2d at 501. A severance generally creates a tenancy in common, *see Thomann*, 649 N.W.2d at 6, but the trial court found (and Jerry admits) he had no proportional interest that could mature into a tenancy-in-common interest. Iowa has expressly adopted the intent-based approach to determine if a joint tenancy has been created or severed.[7] *Johnson*, 739 N.W.2d at 497. Though intent of the parties would ordinarily refer to the intent of the joint tenants, in situations of unilateral severance, such as here, the inquiry is confined to the intent of the singular party. *Id.* at 498 n.7.

There is no evidence that Glen agreed to or had knowledge of this severance. Jerry's admitted intent was to remove Glen's name from the CDs, retain them for Glen's benefit, and start the clock rolling for the five-year period for Title XIX eligibility.[8] To accomplish this goal, the CDs needed to be cashed.

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[7] *Johnson* concluded that the old common-law approach of the "four unities" of interest, title, time, and possession has gradually been losing steam and most states, including Iowa, were gravitating toward the adoption of the intent-based principle. 739 N.W.2d at 497.

[8] Jerry testified:

> Q. . . . [You] took your dad's name off the old CD, created a new CD in your own name individually? A. Yes.
>
> Q. Once again your dad's money? A. Yes.
>
> Q. No intent that it was available for your use, it was there for his benefit? A. Yes.
>
> Q. During his lifetime? A. Always.
>
> Q. And you made these transfers for this Title XIX purpose? A. Yes.
>
> Q. That is to get the money out of his name? A. Yes.
>
> Q. But it's there if you need it? A. Yes.

It was not his intent that he personally maintain a proportional interest in the CDs or, for that matter, that they descend to him alone at Glen's death. *See, e.g.*, *Thomann*, 649 N.W.2d at 7 (stating the "hallmark characteristic of a joint tenancy" is the right of survivorship). That Jerry changed his mind after Glen's death, in response to the conduct of his siblings, does not alter his intention at the time of the severance.[9] Nor does the fact that the source of those funds has stayed intact. A valid severance occurred. Though Jerry contends that a contract existed to pay these funds to the survivor upon the other's death, exemplified by the dual names on the account,[10] he conveniently forgets the joint CDs no longer exist and the law of contracts no longer apply.

Accordingly, our result with the CDs is the same as the district court, although our reasoning is strikingly dissimilar. We find, by substantial evidence, that it was Glen's intent to place Jerry's name on the CDs so the funds were available to him to assist Glen in his financial and medical affairs, should that need ever arise; that Jerry had no proportional interest during Glen's lifetime; that the survivorship or accretive interest was validly severed by Jerry's unilateral act of converting them to his name alone; that severance was intended to assist in Title XIX eligibility; and any contract theory became irrelevant when the

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> Q. And if it's ever left, then if any of these monies were left, your intent at that time was to split it three ways between you and your sister and brother? A. Yes.

[9] Jerry's testimony indicates that it was his father's deathbed wish that he alone succeed to the joint properties. Jerry stated that he was nevertheless willing, at one point, to abide by an equal division with his siblings, but when accusations began to fly, he decided to follow what his father had wanted done in creating the joint tenancies.

[10] There was a stipulation at trial that the CDs "were jointly held with the Defendant Jerry Klingaman and his father Glen Klingaman and joint ownership with rights of survivorship."

severance occurred. These funds, represented by CDs in Jerry's name, now frozen by court order, shall be transferred to the executor and be subject to the directives of the court.

B. Joint Savings Account.

The joint savings account was closed out by Jerry after he had been given the power of attorney. These funds were transferred to an account in Jerry's name. A similar analysis is appropriate, relating to Jerry's intention to sever the joint tenancy arrangement, as rendered for the CDs. A severance of the joint tenancy occurred and those funds (about $25,645.75) shall be accounted for by Jerry to the executor and be subject to the district court's directives.

C. Joint Checking Account.

The joint checking account has a different history, as the joint tenancy arrangement was never severed and remained at Glen's death. We disagree with the trial court's findings and conclusions relating to its ownership and conclude the presumption of ownership by the survivor was not rebutted. *See Anderson*, 368 N.W.2d at 109.

The bank statements reflect that Jerry started writing checks on the joint checking account on September 15, 2005. The names on the monthly bank statements were changed by the bank to "Glen J. Klingaman or Jerry A. Klingaman," effective November 24, 2005.[11]

Glen exercised dominion over this account for a substantial period after he created it. He alone made the deposits and drafted/signed the checks for his

[11] A deposit, made payable to the depositor "or" another party, has been held to be in joint tenancy with rights of survivorship. *In re Estate of Martin*, 261 Iowa 630, 638, 155 N.W.2d 401, 405 (1968).

bills. He placed Jerry's name on it by his own choosing. Glen was described as "his own person," frugal, and not one to flippantly give away any of his money. Yet with no urging or persuasion, he placed Jerry's name on this account (as well as the sizable savings account), followed by a direction to Jerry to go to the bank and sign a signature card. Glen subsequently invested in the two annuities, where he opted to insert Jerry as the sole beneficiary, not his estate. These transfers had no favorable effect upon Title XIX eligibility, as Glen retained ownership and control. In any event, there was no evidence that Glen had bought into the needed diversion of funds for Title XIX benefits.

The subscription to these relatively sizeable annuities, at a time when Glen was taking care of his own financial affairs and mentally competent, is persuasive evidence that Glen similarly did not intend any equal split between the siblings in this checking account after his death. Gwynne testified that Jerry was Glen's favorite. Michael reiterated a conversation with Glen in September 2005 where Glen said, "I think I gave Jerry all my money. . . . I've got Jerry's name on all my accounts." Though Michael did not object to that situation due to the rules of Title XIX, it does show Glen's intentions, understanding, and paternal affection for his son, Jerry.

Intent can be determined by its form, unless there is a written agreement:

> The intent of the parties may indicate and determine the right of survivorship. Where no other evidence of intent is available, the form of the deposit may control; but when such intent is evidenced by a written agreement, the question of intention ceases to be an issue and the courts are bound by the agreement.

In re Estate of Murdoch, 238 Iowa 898, 903, 29 N.W.2d 177, 179 (1947) (citation omitted); *accord Burns v. Nemo,* 252 Iowa 306, 314, 105 N.W.2d 217, 221 (1960). *Murdoch* involved the ownership of two joint checking accounts, after the death of one of the depositors, with signature cards in evidence. 238 Iowa at 903, 29 N.W.2d at 179. The court concluded the cards were agreements between the joint depositors, enforceable in the absence of fraud, duress, or mistake; extrinsic evidence to the contrary was not competent. *Id.* at 903-04, 29 N.W.2d at 179-80.

But contrary to Jerry's urging, we are not able to decide this issue on the basis of an agreement, as the signature card (or cards) was not offered into evidence. Though it is obvious that Jerry signed one, given that he wrote checks on the account, we are not able to presume or guess its terms, or that Glen endorsed the same or similar one. But in our de novo review, we do conclude it was Glen's intent to create a joint checking account with a survivorship interest (though not a proportional interest) for Jerry. *See Williams*, 515 N.W.2d at 554 ("[W]hen the evidence offered to show a contrary intention is not substantial, a joint tenancy exists as a matter of law.").

A question could have arisen as to whether the amount for the survivorship interest is $2582.45 (the balance in the account on March 6, 2008, before Jerry deposited money from the annuity, less a small outstanding check presented prior to death), or the sum of $29,342.42, the balance at Glen's death following Jerry's deposit of the annuity's balance. But Jerry, in his appellate brief requested the following relief:

> [T]he reversal should instruct the district court to order that all property that was jointly held in the CD's, savings account, and checking account and is directly traceable to those accounts be deemed the sole property of Jerry Klingaman. The remainder of the estate, namely the proceeds of the transferred annuities and the sale of the house proceeds, be divided according to the will.

"[O]ur review is confined to those propositions relied upon by the appellant for reversal on appeal." *Hyler v. Garner*, 548 N.W.2d 864, 870 (Iowa 1996). This forecloses any need to address any fiduciary duty infringements for making these transfers to an account with a survivorship texture.

IV. Conclusion.

The balance, including accumulated interest, in the two joint CDs and the joint savings account, represented by the two CDs and savings account in Jerry's name shall be transferred to and become assets in the estate. Jerry, as the surviving joint tenant, shall succeed to the balance in the checking account on the date of Glen's death, less the deposit of the annuity on March 7, 2008 ($26,759.57), being the sum of $2582.85. The matter is remanded to the district court for compliance with this ruling, and the directions and accounting ordered by the district court, as refined herein. Costs on appeal are taxed equally to the appellant and appellees.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.