

<p><b>NOTICE</b></p> <p>This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).</p>
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IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

<p>In re: the Estate of NORMA L. KINNEY, Deceased, CLIFFORD L. KINNEY, Independent Executor of the Estate of NORMA L. KINNEY,                     Petitioner-Appellee,                     v. VICCI L. KINNEY,                     Respondent-Appellant.</p>	<p>) Appeal from ) Circuit Court ) Vermilion County ) No. 08P107 ) ) ) ) Honorable ) Michael D. Clary, ) Judge Presiding.</p>
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PRESIDING JUSTICE KNECHT delivered the judgment of the court:  
Justices Steigmann and McCullough concurred in the judgment.

**ORDER**

*Held:* The trial court properly denied a claim for reimbursement of funeral expenses made by the daughter of the decedent. The court concluded the daughter had already received estate funds when the decedent's granddaughter transferred money into the daughter's account. In so doing, the court found the decedent, when she opened a joint checking account with her granddaughter, did not intend to give the granddaughter the funds in the account upon her death.

Claimant, Vicci Kinney, appeals the order of the trial court denying her claim for reimbursement of \$6,866.94 for her mother Nicole Kinney's funeral expenses. Vicci maintains the court's order was against the manifest weight of the evidence. We affirm.

I. BACKGROUND

Decedent had three children: Vicci; Clifford Kinney,

the executor; and Rodney Kinney. Decedent, Vicci, and Rodney lived in three residences next door to each other. Decedent had five grandchildren. Rodney had three daughters. One of his daughters, Nicole Kinney, shared a joint checking account with decedent, her grandmother, and for a time separately resided with decedent and with Vicci. Before the trial court, the parties disputed whether decedent intended the funds in the joint checking account (\$6,866.94) to be a gift to Nicole upon decedent's death. Vicci asserted the funds were a gift to Nicole and not part of the estate. She maintained she paid over \$10,000 in funeral expenses and was entitled to reimbursement for the full amount. The executor argued, however, the joint-checking-account funds belonged to the estate and the estate was thus entitled to a credit against the amount Vicci paid in funeral expenses. Accordingly, the estate only paid Vicci \$3,134.06 for funeral expenses.

Before the trial court, Vicci testified on her own behalf and presented the testimony of two other witnesses: Francis Becker and Nicole. The estate also presented testimony from Nicole and the executor.

Becker testified she knew decedent and Nicole. A trial exhibit established Becker also knew Vicci, as the two shared at least one bank account. Becker had known decedent for approximately 35 years, until decedent's February 2008 death. Becker

met decedent at the bar decedent and decedent's husband operated in the 50s or 60s. In the last 10 years or so of decedent's life, Becker prepared decedent's taxes and advised her on other matters. Becker testified decedent questioned her about adding a name to her checking account in 2006. Decedent asked Becker if she thought it would be a good idea to add Nicole's name to the account. Becker told decedent if something happened to decedent, who "was already having some more problems," the money would belong to Nicole. Becker testified decedent said she wanted Nicole to have the money. Decedent did not give a reason. Becker believed it was because Nicole was having financial problems.

Vicci testified, from 2003 until summer 2006, Nicole, who by that time had finished high school, lived at Vicci's house. Vicci testified Nicole was not welcome in Rodney's home after Rodney remarried. During this time, Vikki paid Nicole's car payment, car insurance, cell-phone bills, and dental and doctor bills and supplied clothing, food, and gas for Nicole's car. Nicole did not pay rent or help with utility bills. Vicci submitted into evidence copies of the checks she wrote on Nicole's behalf. The total amount of those checks and cash loans was \$14,418.44. Nicole's work schedule was "sporadic." Vicci testified Nicole owed her the above amount and, before decedent's death, had not paid any of it.

Vicci testified, after decedent's death, Nicole paid the money she inherited from the checking account to Vicci toward the money Nicole owed. In May 2008, Nicole took Vicci to New Horizon Credit Union, where the account was held. Nicole closed her checking account and deposited the funds into Vicci's savings account Vicci had shared with decedent. Vicci then closed the savings account and withdrew the money. Vicci did not tell Nicole she was giving the money to the estate. The amount paid was \$6,866.94. Vicci considered Nicole's debt to her paid in full.

Nicole testified she resided with decedent after high school, in the fall 2002, for "maybe about 2 years." Nicole then lived with Vicci until "around Labor Day of 2007." During the time Nicole lived with decedent and Vicci, Nicole regularly performed tasks for decedent, such as grocery shopping and picking up prescriptions. Nicole also helped around the house, cleaning and cooking. When running these errands, Nicole would take a signed blank check from decedent's checking account. Near Christmas 2006, while running an errand for decedent, Nicole took a blank check signed by decedent to a store, and the employee refused to accept it. After this incident, decedent, in January 2007, added Nicole's name to the checking account.

Nicole testified, after she was added to the checking account, she took the checkbook with her as she ran errands.

Nicole wrote 43 checks on the checking account. Regarding four specific checks, Nicole testified one was written for the veterinary bill for her father's dog. Nicole acknowledged she received the dog as a gift, but she testified the dog belonged to her father. Nicole believed her father would have paid back decedent for the veterinary bill for his dog, because "[t]hat's just how we did things." Another check Nicole signed for the treatment of her foot. She reimbursed decedent for those costs. After decedent's death in February 2008, Nicole wrote six checks against the account to pay decedent's final bills.

According to Nicole, she went to New Horizon Credit Union because Vicci "kept saying that we, we should go close it." Nicole remembered Vicci saying she wanted to close it "[i]n case things get ugly." Nicole and Vicci met at the credit union. The money from the savings account was transferred into the joint savings account of Vicci and decedent. Nicole did not tell Vicci to give the money to the executor.

Nicole testified she did not believe the money in the checking account was hers. Nicole thought all that decedent owned, including the money in the checking account, would be distributed according to the will. Nicole did not use the checking account money to pay her own bills because she did not believe it was her money. Nicole denied telling anyone she inherited the money.

Nicole testified at the time she closed the checking account she did not owe Vicci any money. Nicole did not tell Vicci she was repaying her loans with the checking account funds. Vicci made Nicole's car payments for Nicole while Nicole had health problems. Nicole had repaid Vicci for most of those payments but continued to owe \$2,000. In July 2006, Nicole and Vicci made an agreement to relieve Nicole of the remaining \$2,000 debt. Nicole gave the car to her sister Lindsey, who also resided with Vicci, and Lindsey would pay the \$2,000 balance.

As for the cash loans Vicci made to Nicole, Nicole repaid those loans. Nicole testified she would repay each loan within a short time after the loan was made.

Nicole testified she did not spend much time with the executor. He would visit around the holidays. Nicole believed she had a closer relationship with Vicci than with Clifford.

On cross-examination, Nicole testified her name was placed on the checking account after the store incident. Nicole did not remember talking to decedent about it. Nicole did not believe she had paid Vicci \$14,000. She testified she did not "keep track of things like that," but if "someone loaned [her] money [she] paid it back."

From 2003 until summer 2006, Nicole was in the construction industry. She worked as a heavy-equipment operator since 2002. In the slower months, Nicole received unemployment

compensation. When she started working, she did not work the entire summer.

The executor testified between February 1, 2007, a few days after the joint checking account was opened, until decedent's February 2008 death, 271 checks were written on the account.

In rebuttal, Vicci presented the testimony of Debie Sergent. Sergent testified Vicci had been "a best friend \*\*\* for probably over 40 years." Sergent was decedent's hairdresser. When decedent's health worsened, Sergent would go to decedent's residence to do her hair and then they would have supper. Sergent also knew Nicole. According to Sergent, in March 2008, Nicole and Vicci stopped by Sergent's house to plan for a family member's birthday. Nicole told Sergent Nicole's name was on the joint checking account and the money belonged to Nicole.

In May 2010, the trial court denied Vicci's claim for reimbursement. The court found the evidence rebutted the presumption decedent intended the money in the checking account to be a gift to Nicole. This appeal followed.

## II. ANALYSIS

On appeal, Vicci presents two issues for review. First, she claims she proved the executor owes her \$6,866.94 for funeral expenses because the money in the joint account belonged to Nicole as surviving joint tenant. Second, Vicci argues the

trial court's order denying her claim is against the manifest weight of the evidence.

Although Vicci lists two issues in her brief, the case turns on only one question: whether decedent, upon her death, intended Nicole own the funds in the joint checking account. If she did, then the funds in the account were Nicole's to spend or give away as she chose. If she did not, the funds belonged to the estate and thus were part of Vicci's share.

When a deposit is made and a joint-tenancy account is created, a presumption of donative intent arises. *In re Estate of DeJarnette*, 286 Ill. App. 3d 1082, 1088, 677 N.E.2d 1024, 1028 (1997). The presumption of donative intent may be overcome by clear and convincing evidence a gift was not intended. *DeJarnette*, 286 Ill. App. 3d at 1088, 677 N.E.2d at 1029. On appeal, we will not overturn a trial court's decision on this issue unless it is against the manifest weight of the evidence. See *In re Estate of Harms*, 236 Ill. App. 3d 630, 636, 603 N.E.2d 37, 41-42 (1992).

The trial court's decision finding the presumption of donative intent was overcome is not against the manifest weight of the evidence. The testimony on both sides establishes decedent opened the joint checking account as a convenience. Before the joint checking account was opened in both decedent's and Nicole's names, Nicole used blank checks signed by decedent to

purchase items on decedent's behalf. Within a short time of a specific store refusing to honor a check Nicole presented, decedent opened the joint account. Nicole testified she did not believe the funds were hers, and, supporting this conclusion, the checks written against the account following decedent's death were on decedent's behalf.

Vicci, emphasizing Becker's testimony, disputes this conclusion and argues decedent intended Nicole receive the funds in the account on decedent's death. While Becker testified decedent wanted Nicole to have the money, the trial court did not have to believe her. Credibility determinations are within the purview of the trial court, which sits in a superior position to this court on credibility matters. *Construx of Illinois, Inc. v. Kaiserman*, 345 Ill. App. 3d 847, 858, 800 N.E.2d 1267, 1276 (2003). Because trial courts have the opportunity to view the witnesses and their demeanor during their testimony, we will not disturb a court's finding unless it is against the manifest weight of the evidence. *Kaiserman*, 345 Ill. App. 3d at 858, 800 N.E.2d at 1276. A finding is "against the manifest weight of the evidence only when an opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on evidence." *Hogan v. Adams*, 333 Ill. App. 3d 141, 148, 775 N.E.2d 217, 223 (2002).

Here, the evidence shows Becker and Vicci shared a bank

account. Given Becker and Vicci's relationship, the record does not establish the trial court's decision to disregard Becker's testimony is "unreasonable, arbitrary, or not based on evidence." The court was also not obligated to believe Sergent. We cannot find the court's decision is against the manifest weight of the evidence.

Vicci's case law does not establish a contrary result is mandated. Vicci heavily relies upon *Johnson v. La Grange State Bank*, 73 Ill. 2d 342, 383 N.E.2d 185 (1978). *Johnson* is, however, factually distinguishable. In *Johnson*, donative intent was clearly specified in the decedent's will: "'I have set up certain accounts in joint tenancy with the right of survivorship which are to pass by operation of law and are not to be made part of my estate in probate.'" *Johnson*, 73 Ill. 2d at 353, 383 N.E.2d at 190.

### III. CONCLUSION

For the reasons stated, we affirm the trial court's judgment.

Affirmed.