

**NOTICE:** 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).

FOURTH DIVISION  
June 28, 2013

No. 1-12-2873

---

IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

---

In re Estate of CATHERINE J. O'BRIEN, Deceased.	)	
	)	Appeal from the
	)	Circuit Court of
	)	Cook County, Illinois,
Citation re: Margaret Ann Baker,	)	County Department,
	)	Probate Division.
	)	
DENNIS O'BRIEN and MARY KAY O'BRIEN, Petitioners-Appellants,	)	2007 P 3059
	)	
v.	)	Honorable
	)	Susan Coleman,
	)	Judge Presiding.
MARGARET ANN BAKER, Respondent-Appellee.	)	

---

JUSTICE FITZGERALD SMITH delivered the judgment of the court.  
Presiding Justice Lavin and Justice Epstein concurred in the judgment.

**ORDER**

¶ 1 *Held:* The circuit court properly denied the petitioners' citation to recover assets from the decedent's: (1) retirement savings account; (2) bank checking account; and (3) bank savings account. The circuit court properly denied the petitioners's request to determine whether the retirement savings account was a probate assets since that issue was then still pending on appeal before this court. The circuit court's ruling that the checking account was already an inventoried estate asset was not against the manifest weight of the evidence. Finally, the circuit court's ruling that the savings account was a nonprobate asset was also not against the manifest weight of the evidence. The petitioners failed in their burden to establish by clear and convincing evidence that the savings account was a

No. 1-12-2873

convenience account so as to rebut the presumption that by adding the respondent's name as a joint holder to that account the decedent intended the account as a gift.

¶ 2 This cause arises from the circuit court of Cook County's admission into probate the will of the deceased, Catherine J. O'Brien (hereinafter Catherine). After the will was admitted to probate, the petitioners, Catherine's nephew and niece, Dennis O'Brien and Mary Kay O'Brien, filed a citation to recover assets from the respondent, Margaret Ann Baker, one of Catherine's nieces and the named executrix of Catherine's will. The citation alleged that assets in three different accounts belonging to Catherine's estate were improperly distributed either to the respondent or to the respondent's mother, and Catherine's only living sibling, Dorothy A. Baker (hereinafter Dorothy). The assets at issue are: (1) \$398,516 from a benefit savings plan that Catherine earned during her lifetime employment with Illinois Bell Telephone, currently AT&T (hereinafter the AT&T Savings Plan); (2) \$36,416.76 from Catherine's Park National Bank checking account (hereinafter PNB checking account); and (3) \$276,592 from Catherine's Park National Bank savings account (hereinafter PNB savings account).

¶ 3 During the bench trial on the citation, the circuit court held that it would not address the \$398,516 in Catherine's AT&T Savings Plan, because the status of those assets was an issue pending on appeal before this appellate court. As to the two remaining assets in the PNB checking and savings accounts, after hearing the evidence, the trial court denied the petitioners' citation to recover those assets. The court ruled that the \$36,416.76 in Catherine's PNB checking account was already an inventoried asset in Catherine's estate. With respect to the \$276,592 in the PNB savings account, the court found that it did not belong to Catherine's estate, but rather to the respondent, who had a joint tenancy in it. The petitioners appeal, contending: (1) that the

trial court erred in refusing to address the assets in Catherine's AT&T account and (2) that the trial court's findings with respect to the assets in the two PNB accounts are against the manifest weight of the evidence. For the reasons that follow, we affirm.

¶ 4

#### I. BACKGROUND

¶ 5 The record below reveals the following facts and procedural history. During her life, Catherine, worked for Illinois Bell Telephone (now AT&T). While there, she enrolled in various employee benefit plans, including, *inter alia*, the AT&T Savings Plan. On June 10, 1969, Catherine signed and completed a beneficiary designation form, designating the recipients of the plan's assets in the event of her death. She designated her mother, Catherine T. O'Brien, as her primary beneficiary, and her sister, Mary T. O'Brien (hereinafter Mary), as her contingent beneficiary.

¶ 6 Catherine died on April 14, 2007, in Oak Lawn, Illinois, at the age of 79. Both of her parents predeceased her. Of Catherine's five siblings, only one, the respondent's mother, Dorothy, survived her. On May 11, 2007, Catherine's will, which was executed on February 12, 2007, was admitted to probate. The will named 36 legatees<sup>1</sup>, including the respondent, the respondent's mother, and the petitioners, and bequeathed Catherine's estate including, *inter alia*, "her home, personal effects, the household goods, automobiles, furnishings, stocks, bonds and bank accounts" in varied shares to all of them.

¶ 7 Beginning in August 2008, the petitioners commenced a series of challenges to the will

---

<sup>1</sup>These included the respondent, the petitioners, four other nieces and nephew, as well as numerous grand and great-grand nieces and nephews.

No. 1-12-2873

and to the distribution of Catherine's assets. The petitioners first filed a petition contesting the will, alleging that: (1) Catherine lacked the requisite mental capacity to execute it; (2) that she signed it under the undue influence of Dorothy and the respondent; and (3) that Dorothy and the respondent forged Catherine's signature. After a bench trial, the circuit court dismissed the petition, holding that the petitioners had failed to present any competent evidence to support any of their allegations. We affirmed that ruling on August 2, 2012. See *In re Estate of Catherine O'Brien*, 2012 IL App (1st) 111438-U.

¶ 8 The petitioners then filed two petitions to recover assets on September 29, 2010.<sup>2</sup> The first petition was against Dorothy and alleged that she improperly took \$389,516 in assets from Catherine's AT&T Savings Plan. According to the petition, the distribution of these assets to Dorothy was "contrary to the decedent's beneficiary designation," which specifically named Catherine's mother and sister Mary, the primary and contingent beneficiaries of the plan. The petitioners argued that "the AT&T beneficiary designation forms" explicitly provided that in the event that both of the named beneficiaries predecease Catherine, the account was to be paid to Catherine's estate. Accordingly, they sought the return of those assets to the estate. In support of these allegations, the petitioners attached numerous documents, including: (1) copies of different AT&T employee benefit plans' beneficiary designation forms signed by Catherine during her lifetime; (2) a copy of the federal estate tax return filed upon Catherine's death; and (3) the deposition of Edward B. Pierurcci, the certified public accountant (CPA) who prepared that tax return.

---

<sup>2</sup>Both were amended on October 14, 2010.

No. 1-12-2873

¶ 9 The second petition was against the respondent and made three separate allegations. First, the petitioners alleged that the respondent improperly helped her mother, Dorothy, take possession of the \$389,516 in assets from Catherine's AT&T Savings Plan. Second, the petitioners asserted that the respondent improperly "took title" of \$36,416.76 from Catherine's PNB checking account. Finally, they argued that the respondent should not have taken \$276,592 from Catherine's PNB savings account, because although that account named the respondent and Shannon M. Yuhasz (Catherine's adopted niece) (hereinafter Shannon) as "joint tenants" it was set up as a "convenience account," and Catherine had no intent of gifting its assets to the respondent. In support of these allegations, the petitioners attached numerous documents, *inter alia*, including: (1) a copy of the inventory of Catherine's assets prepared by the respondent as executrix of the estate, which included as item No. 15, the PNB checking account with the amount of assets totaling \$36,416.76; (2) copies of different AT&T employee benefit plans' beneficiary designation forms signed by Catherine during her lifetime; (3) a copy of the federal estate tax return filed upon Catherine's death, which lists the AT&T Savings Plan account under Schedule F--Other Miscellaneous Property Not Reportable Under Any Other Schedule and the PNB accounts under Schedule E—Jointly Owned Property, with Shannon, the respondent and the respondent's sister, Deborah Campbell, as joint tenants; and (4) a deposition of the respondent taken on October 21, 2008.

¶ 10 On October 18, 2011, Dorothy responded to the petition against her (involving the distribution of the assets in Catherine's AT&T Savings Plan) by filing a motion for summary judgment. Therein, she asserted that the petitioners incorrectly relied upon irrelevant beneficiary

No. 1-12-2873

designation forms from other benefit savings programs that Catherine had enrolled in while working at AT&T and which differed from the AT&T Savings Plan. Dorothy argued that the \$389,516 in assets were properly distributed to her because under the AT&T Savings Plan's default beneficiary rules, which are governed by ERISA (29 U.S.C. §1001 *et seq.* (2006)), as Catherine's only living sibling, she was the designated default beneficiary, entitled to the assets in the event that the two named beneficiaries predeceased Catherine. After reviewing the record before it, on March 30, 2012, the circuit court granted Dorothy's motion for summary judgment, finding that the assets in the AT&T Savings Plan were nonprobate assets. At the petitioners' request, the court added language pursuant to Illinois Supreme Court Rule 304 (eff. Feb.26, 2010), permitting them to appeal this issue. On April 30, 2012, the petitioners filed their appeal with this court.<sup>3</sup>

¶ 11 While this appeal was pending, the circuit court proceeded with discovery on the

---

<sup>3</sup>On review, we reversed the order of the circuit court finding that summary judgment was improper and that there remained genuine issues of material fact as to whether the AT&T Savings Plan was a probate or nonprobate asset. We held that while it was clear that under the current rules for the AT&T Savings Plan, Dorothy would have been the default beneficiary, there nevertheless remained genuine issues of material fact as to: (1) whether those current rules governed Catherine's AT&T retirement savings plan, and (2) whether she had ever been placed on either actual or constructive notice of those rules, so as to make them enforceable as to her. *In re Estate of Catherine O'Brien*, 2012 IL App (1st) 121280-U.

No. 1-12-2873

remaining petition against the respondent. During discovery, the respondent filed an answer to the petition for citation against her. Therein, she denied the allegations against her regarding the AT&T Savings Plan and the PNB savings account, but admitted that the PNB checking account belonged to Catherine's estate. She acknowledged that the PNB checking account was listed in the inventory of the estate assets and that at the time of Catherine's death it contained \$36,416 in assets.

¶ 12 A bench trial was held on August 28, 2010. As their first witness, the petitioners called the respondent as an adverse witness pursuant to section 2-1102 of the Code of Civil Procedure (735 ILCS 5/2-1102 (West 2008)). The respondent first admitted that her name was on Catherine's PNB checking account, and that this account was opened on March 26, 2005, as a convenience account. The respondent acknowledged that she used this account to deposit money for Catherine and to pay Catherine's bills, both before and after Catherine's death.

¶ 13 The respondent further admitted that she wrote checks for Catherine using that account, but denied that she wrote checks to herself. As a result, she was then asked to identify several checks she had signed, including a February 14, 2007, check for \$200, which was taken out for cash. The respondent could not recall what the check was used for because the memo section was blank. She stated, however, that Catherine was alive at the time the check was written and that the cash withdrawal could have been used for a number of things, such as reimbursing Shannon for traveling back and forth to Catherine's house or reimbursing the respondent for lunches. The respondent also identified several checks for cash that were written while Catherine was in the hospital, as well as several checks she had written and signed for cash after Catherine's

No. 1-12-2873

death.<sup>4</sup> She could not recall what they were used for.

¶ 14 Counsel for the petitioners next attempted to question the respondent about her involvement in the distribution of the assets in Catherine's AT&T Savings Plan to her mother, Dorothy, instead of Catherine's estate. Counsel for the respondent objected and indicated that the assets in that account were distributed directly from AT&T to Dorothy and not by the respondent. In addition, counsel for the respondent pointed out that the trial court had already ruled that the assets in the AT&T Savings Plan were nonprobate assets and that that the issue was currently pending on appeal. The following colloquy then took place between the trial court and the petitioners' counsel:

"THE COURT: I thought that was already established previously. It is on appeal.

MS. SMITH [Counsel for the petitioners]: It is on appeal. It is viable.

THE COURT: No, it's not viable. I already made a determination. If somebody else decides that that is not correct, then at that juncture that would be viable. At this juncture, it's not viable.

MS. SMITH [Counsel for the petitioners]: I do have case law, Judge, two cases from the Supreme Court of the United States that say the beneficiary's designation trumps the plan administrator. \*\*\*

THE COURT: I have already ruled on that, Counsel. I'm not re-ruling on that again. You have it up on appeal.

---

<sup>4</sup>Although the petitioners sought to have these checks admitted into evidence, the trial court denied that request, finding the checks to be "irrelevant" to the issue at bar.

No. 1-12-2873

If somebody else wants to change my ruling, they can do that. I am not considering it again. It's already the law of the case. Please move on.

MS. SMITH [Counsel for the petitioners]: I would like to make an offer of proof.

THE COURT: On this, we're not getting into this issue at all. This issue has already been determined by me. Please move on.

MS. SMITH [Counsel for the petitioners]: Your Honor, the citation is against her. Also, with regard to that issue of the ruling, with regard to that issue of getting the money, she was the one instrumental in giving it to [Dorothy.]

In other words, this is another issue. I have to determine how [Dorothy], her mother, got this money and it was through the aunt--it was through the auspices of the executor. This is another issue, Judge. And it will be another issue insofar as the money.

THE COURT: We disagree. Please move on."

¶ 15 The court then permitted counsel for the petitioners to cite to the two United States Supreme Court decisions that she had claimed were on point. When counsel then, once again, began to argue her case with respect to the AT&T Savings account and attempted to introduce into the record a copy of Catherine's AT&T Savings Plan, the court reminded counsel that it had already ruled that the assets in that account were nonprobate assets. The court then firmly stated:

"Let me be perfectly clear for you because I'm not doing this again. I've done it already. I am not doing it again. If I hear about the AT&T account through this witness, I'm going to start to hold you in contempt.

I'm going to fine you if you ask another question about it. So move on. I don't

want to do that, but I will have no alternative. So please move on."

¶ 16 Counsel for the petitioners abided by the court's instruction and proceeded to question the respondent about Catherine's PNB savings account. The respondent testified that both her and Shannon's names were on the account and that the account was opened while Catherine was still alive. According to the respondent, on December 15, 2005, Catherine took her to the bank where she had the respondent sign a signature card, so that the respondent's name could be added to the savings account. The respondent testified that at that time, Catherine told her that she was putting her name on the savings account "in case something happen[ed] to her," and that she was putting other people's names on other accounts for this same reason. The respondent could not recall when Shannon's name was added to the account. She further admitted that she never talked to Shannon about that account.

¶ 17 The respondent acknowledged that on April 16, 2007, less than a month after Catherine's death she withdrew \$138,088.10 from the PNB savings account, and used the money herself. She also admitted that eventually she closed out that account.<sup>5</sup>

¶ 18 The respondent was next asked whether she ever deposited any money for Catherine into the PNB savings account. When she answered in the negative, counsel for the petitioners

---

<sup>5</sup>When counsel for the petitioners attempted to question the respondent about whether she gave any money from the PNB savings account to Shannon, counsel for respondent objected, indicating that the question was irrelevant because as a joint tenant holder, the respondent was entitled to withdraw any amount she wanted from the account without Shannon's approval. The trial court sustained the objection.

No. 1-12-2873

showed her a statement for the PNB savings account revealing that a deposit of \$15,095.02 was made into that account on February 14, 2007, while Catherine was in the hospital. The respondent acknowledged that Catherine was in the hospital in 2007, but stated that she did not recall making that deposit for her.

¶ 19 The petitioners next called Shannon as a witness. Shannon testified that she was placed on the PNB savings account by Catherine. Counsel for the petitioners then attempted to question Shannon about a different account in a different bank, which Catherine wanted Shannon to take upon her death, by naming her as a beneficiary of that account. Counsel for the respondent objected on relevance grounds, and the trial court sustained that objection.

¶ 20 After the petitioners rested their case-in-chief, the court admitted into evidence three exhibits: (1) the federal estate tax return form filed after Catherine's death; (2) letters of office from the PNB savings account, naming the three joint account holders (Catherine, the respondent and Shannon); and (3) two bank statements from the PNB savings account.

¶ 21 The respondent then motioned the court for a directed finding as to both of the PNB accounts. After hearing arguments by both parties, the circuit court granted the motion. The court held that the respondent had admitted that the PNB checking account was an estate asset, which had already been inventoried in the probate estate "in the amount of the date of death value." The court further held that the PNB savings account was a joint tenancy account between Catherine, Shannon and the respondent, and that therefore there was a presumption that Catherine intended it as a gift to the respondent and Shannon. The court found that "there was absolutely no evidence presented" to support the allegation that "the savings account was merely

an account of convenience." Accordingly, the trial court denied the petition for citation to recover assets. The petitioners now appeal.

¶ 22

## II. ANALYSIS

¶ 23

### A. The AT&T Savings Plan

¶ 24 On appeal, the petitioners first attempt to argue, albeit inarticulately, that it was error by the trial court not to permit them to address the \$389,516 in assets from Catherine's AT&T Savings Plan. They urge us to address the merits of this issue on appeal and find that Dorothy was not a named beneficiary of those assets and that the assets instead belong to the estate.

¶ 25 The respondent counters that the trial court properly held that the petitioners' attempt to address whether the AT&T Savings Plan was a probate asset, was "not viable," since that issue was still pending on appeal before this court. According to the respondent, the trial court was therefore without jurisdiction to address this issue. For the reasons that follow, we agree.<sup>6</sup>

¶ 26 "It is axiomatic that once a notice of appeal is filed with a reviewing court, the lower court loses jurisdiction over that particular case." *Wheatley v. International Harvester Co.*, 166 Ill. App. 3d 775, 777 (1988); see also *In re Marriage of Agustsson*, 223 Ill. App. 3d 510, 515 (1992) ("a trial court loses jurisdiction over a matter once 30 days have passed if during that time neither party takes any 'legally proper action,' such as the filing of a post-judgment motion, which delays the running of the 30-day period, or the filing of a notice of appeal"); *Wierzbicki v.*

---

<sup>6</sup>We note that the petitioners appear to concede this jurisdictional argument, since nowhere in their yellow brief do they address, nor in any way attempt to address, the trial court's jurisdiction to decide the status of the assets in the AT&T Savings Plan.

No. 1-12-2873

*Gleason*, 388 Ill. App. 3d 921, 926-27 (2009) ("upon the filing of a notice of appeal, the circuit court is divested of jurisdiction to enter any order involving a matter of substance and thereafter retains jurisdiction only to decide matters independent of and collateral to a judgment."); *People ex rel. Barrett v. Board of Commissioners*, 11 Ill. App. 3d 666, 668 (1973) ("[T]he jurisdiction of the trial court extends to all matters put in issue by the pleadings, and such jurisdiction ceases 30 days after the entry of the final judgment or decree."); see also, *In re J.D.*, 317 Ill. App. 3d 445, 448 (2000) (" 'After 30 days have passed, a court is without jurisdiction to vacate or modify its final judgment.' ") (quoting *Western States Insurance Co. v. Weller*, 299 Ill. App. 3d 317, 322 (1998)). "Jurisdiction in the lower court is not revived unless the case is remanded to it by the reviewing court and only after the mandate of the reviewing court is filed in the lower court." *Wheatley*, 166 Ill. App. 3d at 77.

¶ 27 In the present case, the record reveals that on March 30, 2012, the trial court entered summary judgment in favor of Dorothy, denying the petitioners request that she return the assets in the AT&T Savings Plan to Catherine's estate. The court found that under the AT&T Saving Plan rules the assets were nonprobate assets and that Dorothy was the rightful beneficiary. The petitioners filed a timely notice of appeal on April 30, 2012. At the time of the bench trial on the instant petition against the respondent, on August 28, 2012, the issue of whether the assets in the At&T Savings Plan were probate assets was pending before this appellate court. We did not issue a ruling in this case until January 31, 2013.

¶ 28 Based on this record, it is clear that the circuit court properly refused the petitioners' request to address the assets in the AT&T Savings Plan, finding that the issue was "not viable,"

No. 1-12-2873

until it was resolved by this appellate court. Although the petitioners argued during trial that the issue was different as it involved the respondent's involvement in the distribution of those assets to Dorothy, their arguments below reveal that they essentially attempted to relitigate the issue of whether the assets rightfully belonged to Dorothy or rather should have reverted to the estate under the AT&T beneficiary designation forms signed by Catherine during her life. Had the circuit court chosen to address that issue while it was still pending before us, any order issued by that court would necessarily have been void. See *e.g.*, *American Smelting & Refining Co. v. City of Chicago*, 409 Ill. 99, 104 (1951) ("notice of appeal deprives the trial court of jurisdiction of the subject matter, and, of course, an order or judgment made without jurisdiction is void"); *People v. Vasquez*, 339 Ill. App. 3d 546, 551 (2003) (order by circuit court modifying sentence while appeal pending void for lack of jurisdiction); *People v. Kruger*, 327 Ill. App. 3d 839, 843 (2002) (court's order granting defendant's motion for directed verdict void because entered while interlocutory appeal pending); *Butler v. Illinois State Board of Elections*, 188 Ill. App. 3d 1098, 1100 (1989) (order certifying plaintiff as candidate for state senate void due to fact that appellate court's mandate returning matter to circuit court had not yet issued); *Wheatley*, 166 Ill. App. 3d at 777 (dismissal order entered by circuit court before appellate mandate returned "null and void").

¶ 29 In addition, contrary to what the petitioners appear to be requesting, at the present moment, we, ourselves, are without jurisdiction to readdress this issue. When we issued our mandate on January 31, 2013, we reversed the trial court's grant of summary judgment and remanded for further proceedings, instructing the court that there remained an issue of fact as to whether the AT&T Savings Plan rules were in place while Catherine was alive, and whether she

No. 1-12-2873

had actual or constructive notice of them. Until proper discovery is made on this issue and a new order, disposing of it in its finality is entered by the trial court, and then appealed to us, we are without jurisdiction to readdress it. See *In re Estate of K.E.J.*, 382 Ill. App. 3d 401, 423 (2008) ("Failure to file a timely notice of appeal, [specifying the order appealed from] deprives the appellate court of jurisdiction over the appeal."); see also Ill. Sup. Ct. R. 303(a)(1) (eff. June 4, 2008)) (any "notice of appeal must be filed with the clerk of the circuit court within 30 days after the entry of the final judgment appealed from, or, if a timely posttrial motion directed against the judgment is filed, whether in a jury or a nonjury case, within 30 days after the entry of the order disposing of the last pending postjudgment motion *directed against that judgment or order.* (Emphasis added.)").

¶ 30 B. The PNB Checking Account

¶ 31 We next turn to the petitioners' argument that the trial court erred when it denied its petition to recover assets with respect to the \$36,416.76 in Catherine's PNB checking account. "[T]he objectives of a citation proceeding are to obtain the return of personal property belonging to the estate but in the possession of, or being concealed by others, or to obtain information to recover estate property." *In re Joutsen's Estate*, 100 Ill. App. 3d 376, 380 (1981). A trial court's finding that certain property belongs to the estate will not be disturbed on appeal unless it is against the manifest weight of the evidence, since the trial court in such proceedings is authorized to determine all questions of title, claims of adverse title and the right of property. *In re Estate of Elias*, 408 Ill. App. 3d 301, 316 (2011).

¶ 32 We are somewhat puzzled by the petitioners argument, here, since the record before us

No. 1-12-2873

reveals that the trial court essentially ruled in their favor. While the circuit court denied the petitioners citation with respect to this asset, it did so because it found that there was a judicial admission that the asset was a probate asset, which had already been inventoried by the estate. There is nothing in the record that would remotely disturb this finding. The inventory of Catherine's estate prepared by the respondent, and attached to the petitioners' petition for citation, lists the PNB checking account as item No. 15 in the amount of \$36,416.76. The respondent's answer to that petition admits that the PNB checking account was listed in the inventory and that it belongs to the estate. What is more, during her testimony at trial, the respondent again admitted that the PNB checking account was listed on the inventory and is part of the estate. The respondent does not challenge the trial court's ruling on appeal. Accordingly, we find nothing manifestly erroneous in the trial court's decision to deny the petitioners' citation with respect to this asset. *In re Estate of Elias*, 408 Ill. App. 3d at 316.

¶ 33 C. The PNB Savings Account

¶ 34 The petitioners next argue that the trial court's finding that the PNB savings account is not a probate asset was against the manifest weight of the evidence. They contend that the account was a convenience account shared by the respondent and Shannon and used by them on behalf of Catherine. For the reasons that follow, we disagree.

¶ 35 It is well-settled that "when a sole owner of a bank account adds an apparent joint tenant to the account, the law presumes that the original owner intends a gift." *In re Estate of Shea*, 364 Ill. App. 3d 963, 968-69 (2006) The basic form of interest in a joint account is a statutorily created form of joint tenancy. See 765 ILCS 1005/2(a) (West 2008); see also *In re Estate of*

No. 1-12-2873

*Shea*, 364 Ill. Ap. 3d at 969 (citing *Murgic v. Granite City Trust & Savings Bank*, 31 Ill. 2d 587, 591 (1964)). The relevant statute provides that "[w]hen a deposit in any bank or trust company \*\*\* [is] made in the names of 2 or more persons payable to them when the account is opened or thereafter, the deposit or any part thereof \*\*\* may be paid to any one of those persons." 765 ILCS 1005/2(a) (West 2008). The presumption that a gift is created arises because "an instrument creating a joint account under the statutes presumably speaks the whole truth." *In re Estate of Shea*, 364 Ill. Ap. 3d at 969 (citing *Murgic*, 31 Ill. 2d at 591). A party challenging the presumption can overcome it only by clear and convincing evidence that the intent of the party was not to make a gift. *In re Estate of Shea*, 364 Ill. Ap. 3d at 969 (citing *Murgic*, 31 Ill. 2d at 591). Once the party challenging the ownership of the bank account has presented sufficient evidence to overcome the presumption of a gift, the presumption vanishes. *In re Estate of Shea*, 364 Ill. App. 3d at 969 (citing *In re Estate of Lewis*, 193 Ill. App. 3d 316, 319 (1990)). However, the burden of proof remains on the party challenging the ownership. *In re Estate of Shea*, 364 Ill. App. 3d at 969 (citing *Murgic*, 31 Ill. 2d at 591).

¶ 36 In Illinois, a party can use evidence establishing that a joint account was used as a convenience account to overcome the presumption of a gift. See *e.g.*, *Vitacco v. Eckberg*, 271 Ill. App. 3d 408, 412 (1995) (suggesting that *only* a showing that a joint account was used as a convenience account will overcome the presumption of a gift); *In re Estate of Blom*, 234 Ill. App. 3d 517, 519-20 (1992) (holding that the party challenging the transfer must show that the account was created only as a convenience). "A convenience account is an account that is nominally a joint account, but is intended to allow the nominal joint tenant to make transactions only as

No. 1-12-2873

specified by, and on behalf of, the account's creator." *In re Estate of Shea*, 364 Ill. App. 3d at 969; see also *In re Estate of Goldstein*, 293 Ill. App. 3d 700, 706 (1997); *In re Estate of Harms*, 236 Ill. App. 3d 630, 634 (1992) ("A 'convenience account' is an account, apparently held in some form of joint tenancy, where in fact the creator did not intend the other tenant to have any interest, present or future, but had some other intent in creating the account."). The typical purpose of such an account is to allow the nominal joint tenant to pay the true owner's bills while the true owner is unable to do so. *In re Estate of Shea*, 364 Ill. App. 3d at 969. The rationale is that one can reasonably assume that a person does not intend to give away the funds in the very account he or she relies on to pay bills. *In re Estate of Shea*, 364 Ill. App. 3d at 969.

¶ 37 In the present case, a review of the trial record reveals that the petitioners failed in their burden to present any evidence whatsoever, let alone clear and convincing evidence, that the PNB savings account was intended as a convenience account. The record reveals that Catherine created the PNB savings account and added the respondent's name to it, while she was alive. Both the letters of office for Catherine's PNB savings account, and the tax return filed after Catherine's death, list Catherine, the respondent, and Shannon as joint tenant holders of that account. What is more, at trial, the respondent testified that when she went to the bank with Catherine on December 15, 2005, so that Catherine could add her name to the PNB savings account, Catherine explicitly told her that she wanted the respondent to have the money in that account, in case "something happened to [Catherine]." According to the respondent, Catherine had made similar additions of family members to other accounts for this same reason. In contrast to the PNB savings account, the respondent testified at trial, that when Catherine added her name

No. 1-12-2873

to the PNB checking account on March 26, 2005, she instructed the respondent to use the funds in that account to pay Catherine's bills. Shannon's testimony further corroborates the respondent's. She testified that Catherine added her name to the account as a joint tenant. The petitioners failed to present any evidence whatsoever to rebut either Catherine's or Shannon's testimony. Under this record, we are compelled to conclude that the trial court's holding that the PNB savings account was not a convenience account but rather a joint tenancy account was not against the manifest weight of the evidence. *In re Estate of Elias*, 408 Ill. App. 3d at 316.

¶ 38 The petitioners nevertheless attempt to argue, albeit inarticulately, that by accepting Catherine's request to add her name to the PNB savings account, the respondent abused her fiduciary relationship, triggering a presumption of fraud. For the reasons that follow, we disagree.

¶ 39 We acknowledge that in addition to providing evidence of a convenience account, a party can also use the existence of fraud to overcome the donative intent presumption. See *In re Estate of Harms*, 236 Ill. App. 3d at 640. "A presumption of fraud attaches to a transfer by a fiduciary for his or her own use, and this presumption is only overcome by clear and convincing evidence." *Franciscan Sisters Health Care Corp. v. Dean*, 95 Ill. 2d 452, 464 (1983). Nevertheless, unless the party attempting to establish fraud shows that the joint accounts were created after the fiduciary relationship began, the presumption of fraud and gift "cancel each other out," leaving the trial court free to make a determination based on the facts of each case and the credibility of the witnesses involved. See *In re Estate of Harms*, 236 Ill. App. 3d at 640; *In re Estate of Rybolt*, 258 Ill. App. 3d 886, 890 (1994).

¶ 40 In the present case, the petitioners offered no evidence at trial whatsoever to negate the fact that the respondent became Catherine's fiduciary only after she was appointed executor of Catherine's will on May 11, 2007. This was 18 months after Catherine established the joint tenancy account. Under this record, we find nothing manifestly erroneous in the trial court's holding that Catherine intended to gift the assets in her PNB savings account to the respondent.

¶ 41 In coming to this decision, we have considered *In re Estate of Teall*, 329 Ill. App. 3d 83 (2002) and *In re Estate of Shea*, 364 Ill. App. 3d at 963, cited to by the petitioners and find them inapposite. Unlike in the present case, in *In re Estate of Teall*, the joint account holder was a neighbor, who was not related to the decedent, and who began to take care of the decedent after the decedent had an accident and fell at home. *In re Estate of Teall*, 329 Ill. App. 3d at 85. In addition, the neighbor obtained a power of attorney during the decedent's life, established a joint tenancy in several of the decedent's accounts and used them to pay the decedent's bills. *In re Estate of Teall*, 329 Ill. App. 3d at 85. Furthermore, the neighbor admitted that she never discussed with the decedent whether the decedent wished that the neighbor keep the money in the accounts after the decedent died. *In re Estate of Teall*, 329 Ill. App. 3d at 85. Under that record the court in *In re Estate of Teall* held that because the neighbor was a fiduciary at the time the account was opened, there was a presumption of fraud, and the joint account should be construed as a convenience account. See *In re Estate of Teall*, 329 Ill. App. 3d at 88.

¶ 42 Unlike in that case, here, as already noted above, the fiduciary relationship was created after Catherine's death. What is more, in the present case, the respondent, who was Catherine's niece, unequivocally testified at trial that Catherine placed her name on the account intending

No. 1-12-2873

that the respondent keep the money in that account after her death.

¶ 43 We similarly find the petitioners' reliance on *In re Estate of Shea*, 364 Ill. App. 3d at 963 misplaced. In that case too, the fiduciary relationship between the decedent and the neighbor was created prior to the decedent's death, when the neighbor was named both a joint tenant on various of the decedent's bank accounts, as well as the successor trustee of the decedent's revocable trust. We do not have the same set of circumstances here.

¶ 44

### III. CONCLUSION

¶ 45 Accordingly, for all of the aforementioned reasons, we affirm the judgment of the circuit court

¶ 46 Affirmed.