

**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).

FIRST DIVISION  
May 12, 2014

No. 1-13-2859  
2014 IL App (1st) 132859-U

---

IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

---

JUDITH WIESER,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County
	)	
v.	)	No. 2010 P 7712
	)	
PATRICIA HEINOL and DENISE HEINOL,	)	
	)	Honorable
Defendants-Appellees.	)	John J. Fleming,
	)	Judge Presiding.

---

PRESIDING JUSTICE CONNORS delivered the judgment of the court.  
Justices Hoffman and Cunningham concurred in the judgment.

**ORDER**

*Held:* Complaint for tortious interference with a  
inheritance expectancy was properly  
dismissed where the complaint did not  
identify a valid expectancy interest.

¶ 1 Defendants Patricia Heinol and Denise Heinol allegedly fraudulently induced Josephine Kerr, who is now deceased, to redeem nearly \$130,000 worth of savings bonds that she held jointly with plaintiff Judith Wieser. During probate proceedings after Kerr's death, plaintiff discovered that the bonds had been cashed

out. Plaintiff filed this lawsuit, alleging tortious interference with an inheritance expectancy. The circuit court dismissed the complaint, and we affirm.

¶ 2 According to plaintiff's second amended complaint, which we take as true for purposes of reviewing a motion to dismiss (see *Kovac v. Barron*, 2014 IL App (2d) 121100, ¶ 78), plaintiff is decedent's niece. Patricia Heinol is decedent's niece by marriage and Denise Heinol is Patricia's daughter and decedent's great niece. Each of the three women held a number of assets jointly with decedent. The bonds that plaintiff held with decedent totaled around \$130,000, and decedent also held another \$245,000 in joint accounts in various forms with defendants. Near the end of her life, many of decedent's daily needs were taken care of by defendants, and the complaint alleges that they also handled decedent's finances and bills.

¶ 3 On April 14, 2008, unbeknownst to plaintiff, decedent liquidated the savings bonds that she held jointly with plaintiff. According to the complaint, defendants then transferred the proceeds to accounts not held by decedent, at least one of which was held exclusively by Patricia. Exactly what happened to the funds afterward is not entirely clear, but it appears that defendants drew on the accounts over the next several years in order to pay for decedent's living expenses and eventually exhausted the accounts. Interestingly enough, only the savings bonds held by plaintiff were liquidated and those accounts held by defendants remained largely untouched.

¶ 4 Decedent died on September 20, 2010, and during the probate of her estate plaintiff discovered that the savings bonds had been liquidated. Plaintiff filed a

citation to discover and recover assets against defendants, and she also filed this collateral tort action as an alternative remedy. In her second amended complaint, which is the version at issue here, plaintiff raised two counts of tortious interference with an inheritance expectancy. Plaintiff contended that defendants had either fraudulently induced decedent to cash the savings bonds or had simply forged decedent's signature on the bonds, thus preventing plaintiff from realizing her expected sole interest in the bonds upon decedent's death. The circuit court dismissed the complaint with prejudice under section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2010)), though the record is silent as to the reason. Plaintiff has now appealed.

¶ 5 On appeal, plaintiff argues that dismissal of the complaint was improper because she pled sufficient facts to survive a motion to dismiss. We review *de novo* an order dismissing a complaint under section 2-615, and the question on appeal is “whether the allegations of the complaint, when viewed in the light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief can be granted.” *Kovacs*, 2014 IL App (2d) 121100, ¶ 78. Importantly for this case, “Illinois is a fact-pleading jurisdiction that requires a plaintiff to file both a legally and a factually sufficient complaint.” *Id.* While we “must take all well-pleaded facts as true,” we must also “disregard any legal and factual conclusions that are unsupported by allegations of fact.” *Id.*

¶ 6 Tortious interference with an inheritance expectancy does not challenge the will itself but is instead an independent tort action directed at individual

defendants. See *In re Estate of Ellis*, 236 Ill. 2d 45, 52 (2009). In order to establish a claim for tortious interference with an inheritance expectancy, a plaintiff must plead five elements: “(1) the existence of an expectancy; (2) defendant's intentional interference with the expectancy; (3) conduct that is tortious in itself, such as fraud, duress, or undue influence; (4) a reasonable certainty that the expectancy would have been realized but for the interference; and (5) damages.” *Id.*

¶ 7 The problem in this case is that while it is undisputed that plaintiff had an interest in the savings bonds that defendants allegedly fraudulently liquidated, her interest was not an expectancy because the bonds were held in joint tenancy by plaintiff and decedent. Property held in joint tenancy is a present interest rather than a future expectancy. See *Snyder v. Heidelberger*, 2011 IL 111052, ¶ 14. Upon the death of one joint tenant, the property immediately becomes the sole property of the remaining tenant. See *id.* Because joint tenants both have present interests in the property and the jointly held property becomes the sole property of the surviving joint tenant immediately upon the death of one tenant, such property is not considered an asset of a decedent’s estate and thus is not an inheritance expectancy.

¶ 8 In some circumstances, property held in joint tenancy is used as a type of testamentary disposition or will substitute. In these situations, “the creator does not intend the other tenant to have any present interest, but does intend the other tenant to have the account on the creator's death.” *In re Estate of Harms*, 236 Ill. App. 3d 630, 634 (1992). The problem, however, is that the property is still a valid

joint tenancy with the right of survivorship and thus a present interest, “whether or not the other tenant claimed any interest in the account during the creator's life.”

*Id.* at 634-35. In such cases, the property is presumed to be an *inter vivos* gift rather than a testamentary bequest. See *Vitacco v. Eckberg*, 271 Ill. App. 3d 408 (1995).

¶ 9 That presumption is a significant problem for plaintiff's claim here, given that an essential element of intentional interference with an inheritance expectancy is the existence of an expectancy. Plaintiff has alleged that savings bonds at issue here were held in joint tenancy with decedent, which means that they are presumed to be a present interest rather than an expectancy.

¶ 10 There is an exception to this presumption for property held in a convenience account, which “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. An example of a convenience account is an account where the creator only wanted the other tenant to write checks at the creator's direction, and not to have any share in the account during the creator's life or on the creator's death.” *Harms*, 236 Ill. App. 3d at 634. Convenience accounts are considered to be assets of the estate rather than *inter vivos* gifts, but the “party claiming adversely to the instrument creating the joint account has the burden of proving by clear and convincing evidence that a gift was not intended.” *Id.*

¶ 11 Plaintiff does allege that the savings bonds were intended to be convenience accounts, but the fatal flaw in the complaint is that it does not contain any allegations from which we could reasonably infer that decedent did not intend the bonds to be an *inter vivos* gift. Illinois is a fact-pleading jurisdiction, which means that “a pleading must be both legally and factually sufficient. It must assert a legally recognized cause of action and it must plead facts which bring the particular case within that cause of action.” *Chandler v. Illinois Central Rail Co.*, 207 Ill. 2d 331, 348 (2003). In this case, however, the complaint does not explain what convenience decedent might have intended by placing the bonds in joint tenancy with plaintiff. *Cf. Harms*, 236 Ill. App. 3d at 635 (“A lack of knowledge as to the purpose for creation of a survivorship account is insufficient as a matter of law to overcome the presumption of donative intent.”) Instead, it merely alleges that the savings bonds should be treated as convenience accounts without offering any facts in support of that conclusion.

¶ 12 The complaint does contain one allegation regarding decedent’s intent in establishing the joint tenancy, but it is not helpful to plaintiff. The complaint alleges that “[plaintiff] and Decedent understood that the savings bonds would *always* stay jointly named until Decedent’s passing, at which time the savings bonds would exclusively belong to [plaintiff].” (Emphasis in original.) There are two problems with this allegation. First, the complaint contains no supporting facts that might explain how decedent expressed this understanding. That is not sufficient to state a claim. See *Kovacs*, 2014 IL App (2d) 121100, ¶ 78. Second, this

allegation supports the inference that decedent intended the bonds to be a non-estate asset that would pass immediately to plaintiff on decedent's death. That is a scenario that could happen with property held in joint tenancy but not with property treated as a convenience account, which properly belongs to the estate. This allegation therefore undermines rather than supports plaintiff's claim that the bonds were a convenience account.

¶ 13 In sum, plaintiff's claim in this case is only viable if the savings bonds can be considered a convenience account and thus an asset of the estate that plaintiff can reasonably expect to inherit. The complaint, however, does not plead sufficient facts that, if taken as true, would rebut the presumption that decedent intended the bonds to be an *inter vivos* gift rather than a testamentary bequest. The circuit court was therefore correct to dismiss the complaint.

¶ 14 Affirmed.