2015 IL App (1st) 130034-U

No. 1-13-0034

SIXTH DIVISION
February 20, 2015

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re ESTATE OF SOPHIE LEE, Deceased	)	Appeal from the
	)	Circuit Court of
(Ronald Lee, Diana Lee and David Lee,	)	Cook County.
	)	
Petitioners-Appellees,	)	
	)	
v.	)	No. 08 P 7995
	)	
Suzan Burnquist,	)	
	)	
Respondent-Appellant,	)	
	)	
Cynthia O'Brien and Cyril Koscinski,	)	Honorable
	)	Mary Ellen Coghlan,
Respondents.)	)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Justice Rochford concurred in the judgment.
Justice Hall dissented.

O R D E R

¶1 *Held*: The circuit court's finding—that the petitioners overcame the presumption of a gift to the niece because the decedent's joint tenancy bank accounts were set up merely for the decedent's convenience and not as an alternate form of testamentary disposition—was not against

the manifest weight of the evidence and the estate, rather than the niece, was entitled to the joint bank account funds.

¶2 Following a bench trial, the circuit court ordered respondent Suzan Burnquist, a niece of the decedent, Sophie Lee, to return to the estate funds that were held in two joint tenancy bank accounts by Suzan and Sophie. Suzan appealed, contending the petitioners failed to present clear and convincing evidence to overcome the presumption that Sophie's addition of Suzan to the accounts as a joint tenant meant that Sophie intended to make a gift of a joint tenancy interest in the two accounts to Suzan. Suzan also argues the petitioners failed to meet their burden to show by a preponderance of the evidence the estate's entitlement to the accounts. For the reasons that follow, we affirm the judgment of the circuit court.

¶3 I. BACKGROUND

¶4 This appeal involves a citation proceeding brought by petitioners, Ronald, Diana and David Lee, to recover assets against respondent Suzan Burnquist. Petitioners sought to recover about $72,000 of funds held in two accounts at Parkway Bank, which decedent Sophie Lee, who was Ronald's stepmother, had changed to joint tenancy accounts with her niece Suzan about 10 months before Sophie died. On appeal, the parties do not dispute that the accounts were set up as joint tenancy accounts in compliance with the applicable statutes.

¶5 Sophie was 96 years old when she died on July 28, 2008. Her husband Russel Lee had died in 2001. They had been married for 55 years and did not have children together, but Russel had a son, petitioner Ronald Lee, from a previous marriage. Ronald had two children, petitioners Diana and David Lee. Sophie had no children but had several nieces and nephews. Sophie and Russel had executed mutual and reciprocal wills in 2000, which essentially provided that the surviving spouse was the sole legatee of their respective estates, but in the event the spouse did not

survive, then half of the decedent's estate would go to Ronald, Diana and David Lee and the other half would go to named collateral relatives of Sophie.

¶6 After Russel died in 2001, his will was filed with the court. Thereafter, Sophie executed other wills that maintained the 50/50 division of property between Russel's family and Sophie's family. Sophie's October 2002 will was admitted to probate in December 2008, and attorney Kevin O'Brien, who was Sophie's grand-nephew, was appointed independent executor. However, in March 2010, the trial court terminated independent administration of Sophie's estate and new letters of administration were issued to attorney O'Brien as supervised executor.

¶7 In June 2010, attorney O'Brien filed the estate's first and final accounting, indicating total inventoried receipts of $316,215.93. The inventoried receipts did not include the approximately $790,000 balance of Sophie's American Fund brokerage accounts, which had designated beneficiaries, or the approximately $72,800 balance of her joint tenancy accounts at Parkway Bank.

¶8 Petitioners filed a response and objection to the first and final accounting, and the trial court granted them leave to file their petition for a citation to recover assets. Count I of their amended petition alleged an unjust enrichment claim against respondents Suzan, her brother Cyril Koscinski, and Sophie's niece Cynthia O'Brien, seeking recovery for the estate of brokerage accounts funds. Count II alleged that Sophie's joint accounts at Parkway Bank with Suzan were created merely for Sophie's convenience in replenishing her checking account and paying her routine expenses and real estate taxes, and the account balances and any funds wrongfully diverted from the accounts should be returned to the estate. Respondents filed a motion to dismiss, and the trial court, following a hearing in June 2011, dismissed count I with prejudice but denied the

motion to dismiss count II against Suzan. This court affirmed the dismissal of count I. See *In re Estate of Lee*, 2014 IL App (1st) 122450-U. A bench trial on count II was held in October 2012.

¶9 At the bench trial, Ronald testified that he lived in Aurora with his wife, was retired, and had two adult children, Diana and David. Russel and Sophie had lived in Harwood Heights and had accounts at nearby Parkway Bank. In Russel and Sophie's household, Russel primarily had handled the finances, paid all the bills and organized the couple's investments until his death in 2001. Two years before Russel died, he asked Ronald to help Sophie and run errands for her because Russel was no longer able to do it and Sophie did not drive. Ronald agreed to that request. When Russel died, Sophie was 89 years old and "pretty upset," so Ronald stayed at her house and lived with her for about five months. During the time he lived with her, he cooked all their meals, ran her errands, and took her to the bank, pharmacy, hairdresser, grocery store and church. Sophie rarely went out to eat. After Ronald returned to his Aurora home, he continued assisting Sophie with her errands, usually every Saturday from about noon until 6:30 p.m.

¶10 Ronald noticed around 2002 or 2003 that Sophie was forgetful. Several times when she went into the bathroom, she left the water running in the sink and flooded her bathroom and hallway. Ronald also noticed that Sophie had warped and blackened her solid steel pans by leaving them on the stove too long. During the last few years of her life, Sophie usually stayed at home, sitting on the couch and watching television or talking to her sisters on the telephone. Sophie could no longer live alone and needed help cooking, cleaning, bathing, using the bathroom and taking her medication. Consequently, a caregiver was eventually hired to live with Sophie 24 hours a day, 7 days a week.

¶11 Ronald testified that Sophie had several falls that necessitated hospitalization. She had problems with her balance and had tried unsuccessfully to use a cane. She used a walker most of

the time or would lean on the furniture to move around. She also had problems with her vision. She used trifocal glasses but still was unable to read fine print. Even after she received new glasses sometime after 2006, she still complained that she could not focus with them. Sophie had several different doctors and was taking several different medications. Ronald was aware that she was being treated for osteoporosis and had very high blood pressure, very swollen ankles and arthritis.

¶12 Prior to 2006, Ronald helped Sophie manage her checkbook. She did not write many checks because she was alone and just had ordinary bills. Her arthritis made it difficult for her to use a calculator or an adding machine and she did not understand how to get the machine to subtotal or total. She also had trouble updating her checkbook by adding deposits or subtracting checks. Consequently, she asked Ronald to check her calculations and update her checkbook to ensure that she had not made any mistakes. When he checked, he usually found one or two minor errors. Sophie would make out her checks, put them in an envelope, and give them to Ronald. Then they would go to either the bank or the mailbox together.

¶13 In 2006, Sophie was hospitalized after she fell and either broke or fractured her ribs. When Ronald visited her at the hospital, one of Sophie's nieces, Cynthia O'Brien, informed him that members of Sophie's family were now in charge of Sophie's financial matters and Suzan was in charge of Sophie's healthcare. Suzan, her husband, her brother Cyril Koscinski, and possibly Cyril's wife, were present when Cynthia made this announcement. The announcement surprised Ronald, but he honored their wishes because he did not feel that he could interfere, understood that Suzan could help Sophie more quickly because she lived close by, and did not feel that it was appropriate to discuss the matter in Sophie's hospital room. He stopped helping Sophie with her checkbook and banking responsibilities but continued to visit her about twice a month, often on a

weeknight after he finished work in nearby Mount Prospect. During those visits, Sophie seemed able to handle her everyday finances; however, if she got a bill or something in the mail that she did not understand, she would show it to Ronald and ask him what he thought about it.

¶14 Suzan Burnquist was called as an adverse witness. Her home was only two miles away from Sophie's house, and she, out of all of Sophie's relatives, lived the closest to Sophie's house. Suzan was aware that Ronald had lived with Sophie for several months after Russel's death and, at some point, her brother Cyril and a cousin Sharon also had looked after Sophie. Suzan acknowledged that Sophie's health was declining and she needed help. Cyril had done "a lot" for Sophie, but the caregiver that lived with Sophie "really took care of her the most." During the last 12 months of Sophie's life, Suzan and her mother would go to Sophie's house and take her to doctor appointments, the bank, the hairdresser or the pharmacy. Suzan helped Sophie pay her bills when Sophie wanted her help.

¶15 In May 2007, Suzan drove Sophie to Parkway Bank and Sophie opened a money market account with an initial deposit of $82,215. Four months later, on September 28, 2007, they went to Parkway Bank and Sophie added Suzan as a joint tenant to both Sophie's money market and checking accounts. Sophie's monthly $2,400 social security checks were deposited directly into the checking account, and the checking account balance was just over $21,000 when Suzan's name was added to that account. According to Suzan, although the money in both accounts was all deposited by Sophie, once Suzan's name was placed on the accounts, the money belonged to both of them. Suzan acknowledged that the money in the joint accounts was used to pay only Sophie's expenses. Suzan did not pay her own personal expenses from the joint accounts or deposit any of her own funds into those accounts. Moreover, only Sophie's name and address appeared on the checks, and the bank statements were mailed to Sophie's residence and kept there while she was

alive. Furthermore, two sequentially numbered $11,000 checks from the joint checking account were written to Suzan and her husband on March 17, 2008, signed by Sophie, and deposited by Suzan and her husband into their own checking accounts.[1] In addition, Suzan acknowledged that the money market account earned over $200 a month in interest and she never declared that interest on her personal tax return or filed a gift tax return for 2007.

¶16 When asked by petitioner's counsel whether Sophie, when she named Suzan as a joint tenant to the accounts in September 2007, intended for the joint account funds to be considered gifts to Suzan, Suzan responded, "She [Sophie] wanted me to be on the accounts because she wanted me to have the money." After Sophie died, Suzan gathered up the financial records and gave them to attorney O'Brien. The balance in the money market account at Sophie's death was approximately $49,000, and the balance in the checking account was approximately $23,700.

¶17 Attorney Kevin O'Brien testified that he had served as the executor of Sophie's estate since December 2008. The estate never filed a gift tax return for the Parkway Bank joint accounts that Suzan claimed were a gift to her. Attorney O'Brien was not aware of any gift tax return filed by Sophie. The petitioners rested their case, and the trial court denied Suzan's motion for a directed finding.

¶18 In respondent's case, Suzan testified that Sophie had no mental impairments in 2007, managed her own financial affairs, wrote her own checks, and directed Suzan to take her to the places she needed or wanted to go. When Suzan, Sophie, and her caregiver went to Parkway Bank on September 28, 2007, to add Suzan's name to Sophie's accounts, Sophie knew what she

[1] According to the record, four sequentially numbered checks for $11,000 each were written on March 17, 2008. The other two were written to Suzan's brother Cyril and his wife, for a total of $44,000. Furthermore, two March 11, 2008 checks from Sophie's American Funds brokerage account, one for $20,000 and another for $24,000, were endorsed by Sophie and deposited into the joint checking account on March 17, 2008.

was doing and could conduct her affairs as she saw fit. Sophie and Suzan signed signature cards for the money market and checking accounts that identified Sophie and Suzan as the title holders and provided that both accounts were joint accounts with the right of survivorship. It was Suzan's understanding that both she and Sophie had the right to withdraw funds from the accounts.

¶19 When Sophie fell in 2006 and was hospitalized, Suzan visited her at the hospital and Ronald was present. Initially Suzan testified that she was never at the hospital at the same time as Cynthia O'Brien, but Suzan subsequently testified that she did not remember being there at the same time as Cynthia. Suzan stated she did not recall anyone telling Ronald that Sophie's family had control over Sophie's finances. Suzan denied having a power of attorney for Sophie's healthcare.

¶20 Parkway Bank account manager Barbara Kabat testified that she had been employed at the bank for over 20 years. She did not know or remember Sophie Lee and had no specific memory of Sophie changing her sole owner checking and money market accounts to joint accounts with Suzan on September 28, 2007. Accordingly, Kabat referred to several business records during her testimony and testified to what would have been her usual practice as a Parkway Bank account manager in the ordinary course of business.

¶21 According to Kabat, when someone wanted to add another person to an existing account, both people would be present at the bank and Kabat would explain to them what a joint account with right of survivorship meant. Specifically, Kabat would explain that either person could close the account at any time and withdraw all or any part of the funds from the account. Concerning joint checking accounts, Kabat would explain that either account owner could separately write checks and withdraw funds at any time. Kabat would fill out the necessary documentation by writing in the relevant information, like the person's driver's license number or social security

number, and then both people would sign the signature cards as account owners in front of Kabat.

¶22 The record contains two exhibits—pages 167 and 169 of a group of Parkway Bank documents—which contain an explanation, in very small print, about joint account ownership. Pages 167 and 169 seem to be the reverse sides of the signature cards Sophie and Russel Lee signed in 1979 and 1983 for their joint checking account. The explanation seems to be part of the account agreement between Russel and Sophie and Parkway Bank. The explanation provides, in pertinent part, that Russel and Sophie agreed:

> "That all deposits or part thereof, now, heretofore and hereafter made in this account by or for any one or more of us, may be paid to us jointly or severally, and may also be paid upon our joint or several orders, whether the others or other be living or not, and the receipt and acquittance of the person to whom any such payment is made shall be valid and sufficient discharge and release from all of us to the bank for all payment so made. It is our intention to create a joint tenancy in this account and all deposits therein and all balances thereof, with the right of survivorship."

Kabat explained that this particular document containing the joint account explanation was not given to the customers. Instead, the bank employee would explain joint account ownership to the customers when they signed the account signature card.

¶23 The signature cards for Sophie and Suzan's joint checking and money market accounts were submitted into evidence. The signature cards contain very small print, which states that the ownership type is a joint account with right of survivorship. Above the signature lines, very small print informs the signers that "[i]f this account is designated as a joint account, the undersigned acknowledge they have received and read the terms related to joint accounts in the Account

Agreement." The signature cards signed by Sophie and Suzan did not contain a description or explanation of joint account ownership or the right of survivorship, and there was no evidence concerning an account agreement signed by Sophie and Suzan. There was no testimony in the record that when Sophie added Suzan as a joint account holder, Sophie was advised that if Suzan survived her, any remaining balance in the joint accounts would become the sole property of Suzan.

¶24 Cynthia O'Brien, M.D., testified that she was a licensed psychiatrist, her son—attorney Kevin O'Brien—was the executor of Sophie's estate, and she was Sophie's niece and goddaughter. Dr. O'Brien testified that, in the later years of Sophie's life, she spoke with Sophie maybe once every couple of months, mostly on the telephone. Dr. O'Brien stated that she had no difficulty understanding Sophie, and Sophie had no difficulty understanding her. Dr. O'Brien stated that Sophie was competent to handle her own affairs up until the last two days of her life when she went into renal failure. When Sophie fell in 2006, Dr. O'Brien visited her just once at the hospital and Suzan was not present. According to Dr. O'Brien, she saw Ronald at one of Sophie's later hospitalizations—after 2006 but prior to the final hospitalization that occurred before Sophie's death in 2008. Moreover, Dr. O'Brien merely exchanged greetings with Ronald as she was leaving Sophie's hospital room and did not tell him that Sophie's family was now in charge of Sophie's affairs. Dr. O'Brien could not recall the reason for Sophie's hospitalization because Sophie had numerous medical problems. Dr. O'Brien never helped Sophie with any of her financial affairs, and acknowledged—even though she asserted that Sophie was competent to handle her own affairs—that Sophie required the services of a 24/7 caregiver during the last years of her life.

¶25 On October 22, 2012, the trial court issued its written decision and order requiring Suzan to repay to Sophie's estate the funds from the joint checking and money market accounts. The court found that the credible evidence clearly and convincingly established that both joint accounts were used as convenience accounts. Specifically, the court found that Suzan's uncorroborated testimony that Sophie wanted her to have the money was not credible, so the evidence was sufficient to overcome the presumption of a gift from Sophie to Suzan. The court also found that petitioners met their burden of showing the estate's entitlement to both accounts. Thereafter, the trial court denied Suzan's posttrial motion, and Suzan appealed.

¶26 II. ANALYSIS

¶27 On appeal, Suzan argues the petitioners failed to present clear and convincing evidence to overcome the presumption of a gift when Sophie, as the sole owner of the checking and money market accounts, added Suzan to the accounts as a joint tenant with right of survivorship. Alternatively, Suzan argues that if petitioners overcame the presumption of a gift, then they failed to meet their burden to show by a preponderance of the evidence that the funds in the joint accounts belonged to Sophie's estate.

¶28 As a reviewing court, we will not set aside a judgment following a bench trial unless the judgment is against the manifest weight of the evidence. *In re Estate of Bennoon*, 2014 IL App (1st) 122224, ¶ 70. The trial court is in a superior position to observe the demeanor of the witnesses while testifying, to judge their credibility, and to determine the weight their testimony and the other trial evidence should receive. *Id*. ¶ 72. To be against the manifest weight of the evidence, the opposite conclusion must be clearly evident or the trial court's finding must be unreasonable, arbitrary or not based on the evidence presented. *Id*. ¶ 70. We will not overturn a

judgment merely because we might disagree with it or might have reached a different conclusion as the trier of fact. *Id*. ¶ 84.

¶29 Here, the trial court found that the joint accounts were convenience accounts and Suzan's uncorroborated testimony that Sophie wanted her to have the money was not credible.

> "A 'convenience account' is an account, apparently held in some form of joint tenancy, where in fact the creator did not intend that 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." *In re Estate of Harms*, 236 Ill. App. 3d 630, 634 (1992).

A joint account created as an alternate form of testamentary disposition is not a convenience account with regard to the right of survivorship. *Id*. at 634-35; *Johnson v. La Grange State Bank*, 73 Ill. 2d 342, 368 (1978) (the fact that the creator of the account contributed all the funds and retained the right to withdraw them or directed the other tenant to have no immediate use of the funds does not demonstrate a lack of donative intent).

¶30 "At the creation of a statutory joint tenancy, a presumption of donative intent arises and a 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." *Harms*, 236 Ill. App. 3d at 634, citing *Murgic v. Granite City Trust & Savings Bank*, 31 Ill. 2d 587, 589 (1964). Clear and convincing evidence has been defined as that quantum of proof that leaves no reasonable doubt in the mind of the fact finder about the truth of the proposition in question. *First National Bank of Chicago v. King*, 263 Ill. App. 3d 813, 819 (1994). The intent of the owner of the funds at the

time the joint account was created determines whether the account is a convenience account or a true joint tenancy account; however, in determining the creator's intent, the finder of fact may properly consider events occurring after the creation of the account. *Vitacco v. Eckberg*, 271 Ill. App. 3d 408, 412 (1995). "The form of the agreement is not conclusive regarding the parties' intentions (*In re Estate of Schneider*[, 6 Ill. 2d 180, 187 (1955)),] and each case must be evaluated on its own facts and circumstances." *In re Estate of Kaplan*, 219 Ill. App. 3d 448, 458 (1991) (citing *In re Estate of Hayes*, 131 Ill. App. 2d 563 (1971)).

¶31 Here, Suzan became a joint tenant of Sophie's accounts in September 2007, which was after Sophie fell and was hospitalized in 2006. Prior to that time, Ronald had been assisting Sophie every Saturday with her financial matters and errands because Sophie did not drive, was becoming forgetful, and had vision, balance and health problems. However, Ronald testified that when he went to visit Sophie at the hospital in 2006, Sophie's relatives told him that they were now in charge of her financial and healthcare matters, and Ronald honored their request and stopped assisting Sophie. Although Suzan denied that such an announcement was made to Ronald at the hospital in 2006, Suzan corroborated Ronald's testimony by acknowledging that Sophie's health was declining, she needed a full time caregiver to live with her, and Suzan began helping Sophie by taking her to appointments, the bank, and paying Sophie's bills from the funds in the joint accounts.

¶32 Out of all of the relatives, Suzan lived the closest to Sophie's home and, thus, was the logical choice to be added as a joint tenant to the accounts to help Sophie pay her bills and expenses. Suzan did not contribute her own money to the accounts and never used the account funds to pay her own expenses. In addition, the evidence showed that Sophie relied on the funds in the joint accounts for her daily living expenses. Most of her assets were held in her brokerage

accounts, and there was no evidence that she held any other bank accounts aside from the joint money market and checking accounts, which were at a bank just a few blocks from her home. Moreover, Sophie's social security checks were deposited directly into the joint checking account.

¶33 When Suzan's name was added to the joint accounts, Sophie, in addition to receiving help with the activities of daily living from a hired caregiver, also received help from relatives with paying her bills and expenses. Although Sophie was not mentally incapacitated, it is reasonable to conclude that she realized her health was declining, wanted to remain living in her home with the assistance of a hired caregiver, and prepared for her possible disability by adding a relative as a nominal joint tenant to her bank accounts merely to help her pay her bills when she became unable to do so. The evidence shows that Sophie wanted a family member to use the funds in the joint accounts to take care of her and pay her bills.

¶34 Furthermore, there was no testimony that Sophie ever told anyone, including Suzan, that Sophie wanted Suzan to have the money in the joint accounts either during Sophie's life or upon her death. *Cf. Altier v. Estate of Snyder*, 262 Ill. App. 3d 427, 436 (1992) (the decedent widow, with the assistance of her attorney, established joint accounts with her daughter-in-law, referred to the accounts as hers and the daughter-in-law's, and indicated that the daughter-in-law was to have the funds after the widow's death). Although Suzan asserted that Sophie wanted her to have the money in the joint accounts, a careful reading of the testimony establishes that Suzan's belief was not based on any conversations she or others had with Sophie. Suzan never testified about any conversation between her and Sophie wherein Sophie stated either that she wanted Suzan to have the funds in the joint accounts or that the funds belonged to both Suzan and Sophie. *Cf. Konfrst v. Stehlik*, 2014 IL App (1st) 132113, ¶¶ 2, 31 (the estate failed to prove the decedent's lack of donative intent to her niece regarding a money market account where the decedent was in good

health when she created that joint account and there was credible testimony that the decedent told the niece the funds would belong to the niece when the decedent died).

¶35 Moreover, it was significant that Susan and her husband each received gifts of $11,000 in checks signed by Sophie and drawn on the joint checking account and then deposited those checks into their own accounts. These transactions, which occurred just three months before Sophie died, refuted Suzan's testimony that she believed Sophie added her to the joint accounts because Sophie wanted her to have the money. If Suzan actually believed that the funds belonged to her either when she was added as an account owner or when she survived Sophie, there would have been no need to move the $22,000 into her own family's accounts. The trial court found Suzan's testimony that Sophie intended the joint accounts as a gift to Suzan was not credible, and the trial court was in the best position to determine the credibility of the witnesses.

¶36 In addition, there was no testimony that Sophie was ever advised that any funds remaining in the joint accounts would belong to Suzan if Sophie died and Suzan survived her. Kabat, the bank employee, never testified that she explained the significance of the right of survivorship to Sophie. Moreover, the evidence established that Sophie was 95 years old, had vision problems and could not focus despite her use of trifocal glasses, so she would not have been able to read the fine print on any of the bank documents that might have explained the right of survivorship. Furthermore, Ronald testified that Sophie's husband had handled all of the couple's finances during their marriage, and there was no evidence that Sophie received any independent advice on how to manage her accounts when she set up the joint accounts at issue here. Each case involving a joint tenancy account must be evaluated on its own facts and circumstances, and there is no satisfactory evidence in this case that Sophie understood the right of survivorship characteristic when she changed her sole-owner bank accounts to joint accounts with Suzan.

¶37 It is not this court's function to weigh the evidence or assess the credibility of the witnesses and set aside the trial court's determination merely because a different conclusion could have been drawn from the evidence. See *Bangaly v. Baggiani*, 2014 IL App (1st) 123769, ¶ 178. Applying the manifest weight standard of review and according deference to the trial court's determination on witness credibility, we cannot say that the trial court's finding—that the joint accounts were merely convenience accounts, no present or testamentary gift was intended, and the funds belonged to the estate—was against the manifest weight of the evidence.

¶38 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶39 Affirmed.

¶40 JUSTICE HALL dissenting:

¶41 I respectfully disagree with the majority's determination that the petitioners established by clear and convincing evidence that Sophie intended the Parkway Bank accounts to serve as convenience accounts and therefore overcame the presumption that Sophie intended a gift to the surviving joint tenant, Suzan.

¶42 It is undisputed that at the time of her death, Sophie had two accounts at the Parkway Bank: a money market and a checking account. It is further undisputed that, prior to her death, Sophie added Suzan as a joint tenant with the right of survivorship on both accounts. As the majority states, when joint accounts were opened, a bank employee would explain joint account ownership to the customers when the account signature cards were signed. The majority acknowledges, despite her physical problems, Sophie was not mentally incapacitated. There is no evidence that she was misled into adding Susan to her Parkway Bank accounts. In the absence of any contradictory evidence, Sophie received and understood the explanation of joint account ownership.

¶43 The majority's argument that Suzan's failure to exercise a present interest in the joint accounts rendered them convenience accounts was rejected in *Harms*. In that case, the reviewing court contrasted the uses of joint accounts, stating as follows:

> "A joint account is often used as a form of testamentary disposition, a will substitute, where 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. Such an account is a true joint tenancy account with the right of survivorship, whether or not the other tenant claimed any interest in the account during the creator's life. A joint account created as an alternative form of testamentary disposition is not a convenience account, at least not as far as the right of survivorship is concerned. It is illogical that an individual would place all her substantial assets in joint accounts if she just wanted someone to relieve her of the day-to-day burden of writing checks." *Harms*, 236 Ill. App. 3d at 634-35.

¶44 In *Konfrst*, this court addressed whether the executor had by clear and convincing evidence overcome the presumption of a gift of funds in a money market to the surviving joint tenant. We disagreed with the holding in *In re Estate of Shea*, 364 Ill. App. 3d 963 (2006), that the presumption of a gift is rebutted if the decedent intended to retain the funds during his or her lifetime and intended them to go to the joint tenant only upon death. *Konfrst*, 2014 IL App (1st) 132113, ¶ 27; see *Shea*, 364 Ill. App. 3d at 730. Instead, this court relied on the holding in *Harms*, *i.e.*, the fact that the surviving tenant had no interest in the joint account prior to the death of the other joint tenant did not overcome the presumption of a gift to the surviving joint tenant. *Konfrst*, 2014 IL App (1st) 132113, ¶ 31. Therefore, Suzan's failure to pay tax on the

interest or that she did not deposit her own money in the account, that the checks did not bear Suzan's name on them and were only mailed to Sophie's address did not support the conclusion that Sophie intended the Parkway Bank accounts to function as convenience accounts.

¶45 "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." *Harms*, 236 Ill. App. 3d at 635. Sophie's physical disabilities did not impair her mental capabilities, no allegations of fraud in the creation of the joint accounts were raised, and Suzan was not required to assert any interest in the joint accounts prior to Sophie's death. There is no compelling evidence that Sophie intended to create a convenience account from which Suzan could assist with paying Sophie's bills from her checking account and certainly no evidence that by adding Suzan as a joint tenant on the money market account Sophie intended the money market account to function as a convenience account.

¶46 Clear and convincing evidence is proof that leaves no reasonable doubt in the mind of the trier of fact about the truth of the proposition in question. The evidence relied on by the trial court falls short of the clear and convincing standard necessary to establish that Sophie intended the joint accounts to serve only as convenience accounts. Since the evidence did not overcome the presumption of a gift to Suzan as the surviving joint tenant, I would conclude that the judgment of the trial court was against the manifest weight of the evidence and should be reversed.

¶47 For all of the foregoing reasons, I respectfully dissent.