

No. 1-13-0447

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN THE MATTER OF THE ESTATE OF)
SALVATORE V. FERRERA,)
)
Deceased.)

VINCENT FERRERA, ANTHONY FERRERA,)
REGINA FERRERA, ELIZABETH FERRERA,)
CHRISTINE ANN FERRERA, STEPHANIE)
FERRERA, and VICTORIA FERRERA, the)
Decedent's Adult Children and Former Spouse)
)
Petitioners-Appellants,)
v.)

Appeal from
the Circuit Court
of Cook County
No. 11 P 5720

ELLEN DICK-FERRERA, the Decedent's)
Spouse,)
Respondent-Appellee.)

Honorable
John J. Fleming,
Judge Presiding.

PRESIDING JUSTICE QUINN delivered the judgment of the court.
Justices Simon and Pierce concurred in the judgment.

ORDER

¶ 1 *HELD*: Where the decedent held title to certain bank accounts in his name alone without

reference to any trust account, the circuit court was correct in holding that the accounts became a part of his estate at his death as there was insufficient evidence that the trust had any equitable interest. Where certain bank accounts were re-established in the name of decedent and his wife with joint access to funds, and there was no trust agreement in existence that named the decedent and wife as co-trustees, the circuit court was correct in implementing the provisions of the Illinois Trust and Payable on Death Account Act (205 ILCS 635/3 (West 2012)) and holding that the accounts were held jointly by the named parties with right of survivorship.

¶ 2

INTRODUCTION

¶ 3 This appeal involves the interplay of a probate intestate estate opened by the decedent's surviving spouse and a chancery action brought by the decedent's six adult children and ex-wife who are beneficiaries of decedent's revocable living trust together with the surviving spouse and how certain assets should be allocated. Following the death of Salvatore V. Ferrera, a dispute arose between decedent's current wife of over 15 years and his six adult children together with his ex-wife over the ownership of two Legacy Treasury Direct accounts totaling approximately \$80,000.00 and three Citibank accounts totaling approximately \$126,262.91. The circuit court ruled that the two Legacy Treasury Direct accounts were the sole property of the decedent at the time of his death, were not assets he transferred into his revocable living trust and, therefore, properly belonged in his estate. Additionally, the circuit court noted that because the three Citibank accounts identified Salvatore V. Ferrera and his current wife, Ellen Ferrera, as joint signatories and co-trustees to the three accounts, the revocable living trust established by Salvatore V. Ferrera in 1993 could not serve as the document to define the relationship of the named co-trustees to the Citibank accounts because Salvatore V. Ferrera was the sole named trustee in his revocable living trust and his wife was not named as his co-trustee in that trust. Therefore, the court applied section 625/3 of the Illinois statute entitled "Illinois Trust and Payable On Death Accounts Act," (205 ILCS 623/3 (West 2012)) and

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held that the decedent and his wife held the three Citibank accounts in joint tenancy, with right of survivorship. Therefore, the circuit court awarded the surviving spouse, Ellen Ferrera, the right to the three Citibank account funds.

¶ 4 The six adult children and ex-wife appealed, arguing that all accounts should flow through the revocable living trust Salvatore V. Ferrera established in which they, together with his surviving spouse, Ellen Ferrera, are beneficiaries.

¶ 5 **BACKGROUND**

¶ 6 Salvatore Ferrera and his first wife, Stephanie were married and had six children between 1957 and 1968. Their marriage ended in divorce. Salvatore Ferrera subsequently married Ellen and they remained married for approximately fifteen years until Salvatore's death on December 7, 2010, at age 77.

¶ 7 On November 30, 1993, Salvatore established a revocable living trust. He was the sole trustee of that trust. His current wife, Ellen and his two adult sons from his prior marriage, Vincent and Anthony, were named as successor co-trustees of his revocable living trust following his incapacity or death. Salvatore died on December 7, 2010. No one filed a valid will for Salvatore V. Ferrera after his death. His surviving spouse opened an intestate estate. Salvatore's attorney produced a document entitled Funding Verification Report and dated March 4, 2010 which appears to be a list of Salvatore's various assets with notations as to which assets the client informed his attorney he had transferred into the trust and which ones he transferred into his wife's name and which ones he kept as owner. Neither the attorney nor Salvatore signed this document. The three Citibank accounts at issue in this case appear as the first three assets in this document under the

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heading "Cash Accounts." There are no notations on this document indicating that Salvatore's attorney received any confirmation from Salvatore that those three Citibank accounts were transferred into his revocable living trust. The same page lists two other cash accounts from Charter One where it is indicated for each account that the "[c]lient called and confirmed that this had been transferred into the name of the trust."

¶ 8 The decedent also had five Legacy Treasury Direct accounts at the time of his death. Three of these accounts were registered in the name of decedent as Trustee under the Salvatore V. Ferrera Revocable Living Trust dated November 30, 1993, and are not in dispute in this lawsuit. The remaining two Legacy Treasury Direct accounts were listed solely in decedent's name at the time of his death. These two accounts are the subject of this lawsuit. The six adult children and ex-wife claimed that the two accounts belong as part of the decedent's revocable living trust.

¶ 9 Decedent's attorney's office assisted the co-trustees of the revocable living trust in collecting the three Legacy Treasury Direct accounts designated as part of the revocable trust and depositing them as part of the trust to be distributed. The law office then prepared an Illinois Small Estate Affidavit which the co-trustees signed to collect the two Legacy Direct Treasury accounts held solely in decedent's name to transfer those two accounts into the trust, which was accomplished.

¶ 10 After Salvatore's death, his surviving spouse and his two adult sons from his prior marriage became co-trustees of his revocable living trust. The terms of the trust required the unanimous agreement of all three co-trustees to act. The co-trustees did not agree about basic trust provisions such as reimbursement to the surviving spouse for Salvatore's funeral expenses or even whether all co-trustees must agree before any of the co-trustees could take action on behalf of the trust. As a

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result, Salvatore's attorney, who now represented the co-trustees, withdrew from representation. The six adult children and ex-wife then hired an attorney to represent them. That attorney eventually filed a petition for declaratory relief on their behalf in chancery court against the surviving spouse and co-trustee of the trust, Ellen, alleging breach of her fiduciary duties.

¶ 11 The surviving spouse filed a petition to be appointed special administrator of her deceased husband's intestate estate in probate court as Salvatore's original will could not be found. On October 31, 2011, letters of administration were issued naming the surviving spouse as independent administrator of decedent's estate. On November 8, 2011, the six adult children and decedent's ex-wife sought to revoke the letters of administration issued to the surviving spouse and to file what they represented to be a copy of the decedent's last will. After the surviving spouse objected to the document, the petitioners voluntarily withdrew their petition to admit the copy as decedent's last will. No document determined to be decedent's will is a part of this case. To resolve the remaining dispute regarding the letters of administration, a third party, John Krafcisin, was named administrator of the decedent's estate.

¶ 12 On January 4, 2012, the surviving spouse, Ellen, filed a petition in probate court for issuance of a citation to recover certain assets (755ILCS 5/16-1(West 2012)) on behalf of the estate consisting of the two Legacy Treasury Direct accounts worth approximately \$80,000 that she alleged were wrongfully cashed and transferred into the decedent's revocable living trust as they were held solely in the name of her husband and not designated by him as a part of his revocable living trust.

¶ 13 On October 19, 2012, the six adult children together with Salvatore's ex-wife filed a petition for declaratory judgment (735 ILCS 5/2-701 (West 2012)) in chancery court requesting that the three

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Citibank accounts totaling approximately \$126,262.91 be turned over to the revocable living trust decedent had created during his lifetime.

¶ 14 The surviving spouse asserted in a pleading that back on May 11, 2010, while decedent was alive, but in ill health, decedent deliberately altered the way these three Citibank accounts were titled, had his wife sign a signature card for the accounts and informed his wife that the purpose of changing these accounts was due to his failing health so as to ensure she would be able to pay bills and care for herself upon his death. On June 2, 2010, decedent delivered the updated signature card to Citibank. The only evidence in the record evidencing how these three accounts were retitled is an 8.5 by 11 inch piece of paper containing what purports to be a photocopy of the 4 x 5 inch signature card that was refaxed and photocopied numerous times. The printed form language on the card is illegible. The parties have represented various language regarding how the accounts were retitled. From the only exhibit in the record, this court observes that the handwritten language inserted on the first line of the signature card and extending past the card onto the paper reads as follows: "Salvatore V. Ferrera, Ellen A. Dick-Ferrera, ATF Salvatore V. Ferrera Revocable Living Trust Dated 11/30/1993." The words "Revocable Living Trust Dated 11/30/1993" represent three additional inches of handwriting past the size of the signature card and appear not on the signature card but on the blank piece of paper the signature card was photocopied onto.¹ No trust agreement was filed by either party which named decedent and his surviving spouse as co-trustees of any revocable living trust. The surviving spouse closed the three Citibank accounts following her husband's death and

¹ Attached as an appendix to this order is a copy of what the parties presented as a copy of the signature card, appearing several times in the original record at R.573, 591, 605, 624, and 638.

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deposited the funds into an account in her name.

¶ 15 By agreement of the parties and with the court's consent, the two petitions were consolidated into the probate action for resolution by the circuit court. A hearing was held and an order was entered on January 2, 2013, which granted the surviving spouse's petition to recover assets and denied the adult children and ex-wife's petition for declaratory judgment. The court ruled that because the two Legacy Treasury Direct accounts were held solely in decedent's name at the time of his death and never designated as an asset in his revocable living trust, they belonged as part of the decedent's estate. Additionally, the court ruled that the three Citibank accounts were the property of the decedent and his surviving spouse as joint tenants at the time of his death, were not designated as part of the decedent's revocable living trust and, therefore, belonged to the surviving spouse. The court observed that no trust document existed that named both Salvatore V. Ferrera and his wife, Ellen, as co-trustees as purported to be listed on the signature card for the three Citibank accounts. Therefore, the court determined that the existing revocable living trust created by the decedent naming decedent as the sole trustee during his lifetime could not be used to define the relationship for the decedent and his wife named as co-trustees for these Citibank accounts. The court looked to Illinois statutory law for resolution and determined that pursuant to 205 ILCS 625/3 (West 2012), the decedent and surviving spouse held the three accounts in joint tenancy, with right of survivorship.

¶ 16 The six adult children and ex-wife filed a timely notice of appeal regarding the ruling on both petitions.

¶ 17

JURISDICTION

¶ 18 This appeal is governed by rule 304(b)(1) which provides that "[a] judgment or order entered in the administration of an estate, guardianship, or similar proceeding which finally determines a right or status of a party," (Ill. S. Ct. R. 304(b)(1) (eff. Feb. 26, 2010)), is appealable without the requirement contained in Rule 304(a) that there be an express written finding by the circuit court "that there is no just reason for delaying either enforcement or appeal or both." Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010). The circuit court orders dated January 2, 2013, finally determined the parties' rights to all accounts at issue in this consolidated probate and chancery trust proceeding which caused the orders to be appealable under Rule 304(b)(1). Ill. S. Ct. R. 304(b)(1) (eff. Feb. 26, 2010).

¶ 19 The notice of appeal filed by the adult children together with decedent's ex-wife was timely filed on January 31, 2013. Ill. S. Ct. R. 303(a) (eff. June 4, 2008).

¶ 20

STANDARD OF REVIEW

¶ 21 Appellants submit that the circuit court's ruling on the surviving spouse's petition to recover assets should be reviewed *de novo* because there was no factual dispute about this issue. We disagree that there was no factual dispute. The parties submitted what documentary evidence they had and made argument regarding the decedent's intent in both the surviving spouse's petition to recover assets and in the adult children's and ex-wife's petition for declaratory judgment. The circumstances surrounding the proper ownership of all accounts were considered by the circuit court together. The appellate court provides *de novo* review to orders granting declaratory judgment actions that are not based on factual determinations. *In re Marriage of Rife*, 376 Ill. App. 3d 1050, 1059-60 (2007). Further, when the court's decision is based on documentary evidence, the appellate court may review

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the record *de novo*. *Addison Insurance Co. v. Fay*, 232 Ill. 2d 446,453 (2009). The same review is given for a petition for declaratory judgment that is based solely on documentary evidence. *Abruzzo v. City of Park Ridge*, 231 Ill. 2d 324, 332 (2008). Additionally, the terms of a contract, such as a bank account, are questions of law given *de novo* review. *Kirschenbaum v. Northwestern University*, 312 Ill. App. 3d 1017, 1029 (1999). The circuit court's application of a statute is also given *de novo* review. *In re D.D.*, 312 Ill. App. 3d 806,809 (2000).

¶ 22

ANALYSIS

¶ 23

(A) The Two Legacy Direct Treasury Accounts

¶ 24 The ownership of bank deposits is usually determined by contract law. A bank account is simply a contract between the bank and the depositor. A bank signature card filled out by a depositor is evidence of ownership of the account. The bank signature card is *prima facie* proof of ownership of the account. However, such proof is rebuttable. In other words, the contract between the bank and the depositor is not conclusive proof of ownership. *In the Matter of the Estate of Muhammad*, 123 Ill. App. 3d 756 (1984); see also *In the Matter of the Estate of Muhammad*, 165 Ill. App. 3d 890 (1987) (appeal after remand).

¶ 25

It has been the law for well over one hundred years that courts are free to exercise their equitable powers to determine the beneficial or equitable ownership of a bank account. Our United States Supreme Court has stated that “the relation between the bank and the depositor is that merely of debtor and creditor, and the balance due on the account is only a debt, yet the question is always open, To whom in equity does it beneficially belong?” *National Bank v. Insurance Company*, 104 U.S. 54, 66 (1881); accord, *Union Stock-Yards Bank v. Gillespie*, 137 U.S. 411, 422 (1890).

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However, in order to impose an equitable ownership right on an account or, as in this case, to justify the imposition of the terms of decedent's revocable living trust on an asset he never transferred into the trust during his lifetime, the evidence must be (1) clear, (2) convincing and (3) unmistakable. *Hanley v. Hanley*, 14 Ill. 2d 566, 571 (1958).

¶ 26 Applying the above three requirements to the actual evidence presented by the petitioners seeking that the two Legacy Treasury Direct accounts be deemed a part of decedent's revocable living trust, the circuit court was correct in its ruling. The decedent never parted with exclusive dominion and control over these two accounts. During his lifetime, he could have easily and voluntarily transferred these two assets into his revocable living trust, as he had transferred the other three Legacy Treasury Direct accounts, but did not do so. The "evidence" presented by the petitioners regarding his desires or his intentions did not turn the account into a testamentary disposition or convert the accounts into assets of his revocable living trust, but amounted to mere speculation. "[I]n order to go behind the terms of the [bank account deposit] agreement, the one claiming adversely thereto has the burden of establishing by clear and convincing evidence that [their claim is valid]. This burden does not shift to the party claiming under the agreement." *Murgic v. Granite City Trust & Savings Bank*, 31 Ill. 2d 587, 591 (1964).

¶ 27 Our affirmance of the circuit court's ruling is consistent with our prior decisions when faced with ownership of a bank account *vs.* equitable considerations regarding a beneficial interest. In *Roth*, a mother established savings accounts in her name and the names of her two sons as joint tenants. It was undisputed that when the accounts were opened, the mother intended the funds to be used for her support during her lifetime and were to be divided equally among all of her children at

her death. She made this intent explicitly known to all her children that Henry and the other son held these funds in trust for all her children upon her death. Thereafter, the mother suffered a heart attack and resided with one son, Henry, who cared for her. Testimony was presented that the mother, after her heart attack, wished for Henry and one other son to share the money exclusively. After the mother died, Henry, as one of the joint tenants of the accounts, withdrew the money. The estate sought recovery of the money for the benefit of the entire estate. The court held that the original, undisputed, donative intent of the mother when creating the accounts was not overcome by the evidence presented that only Henry and another son had a right to the money. The court held that the money in four accounts was intended for all of the mother's children. *Estate of Roth v. Roth*, 96 Ill. App. 2d 292 (1968).² Relying on our supreme court's pronouncement that although ownership of a bank account may be established as a joint ownership, the court acknowledged that it could sit as a court of equity and could look behind the original form of the transaction. However, the original form of the transaction surrounding the bank account cannot be varied or altered unless there is clear and convincing evidence that something other than the original position was intended. *Frey v. Wubbena*, 26 Ill. 2d 62, 70 (1962).

¶ 28 Applying that holding to this case, we come to the same conclusion as the circuit court that the decedent's creation of the two accounts in his name alone with no transfer to his revocable living trust or creation of joint tenancy with his wife or someone else, controls their testamentary

² We note that the *Roth* case was decided almost twenty years before our legislature implemented the Illinois Trust and Payable on Death Accounts Act. 205 ILCS 625/3(West 2012) We also note, however, that prior to 1985, similar statutory provisions were contained in the Illinois Savings and Loan Act. See Ill. Rev. Stat. ch. 32 sec. 770 (a) and (b).

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disposition. The petitioners submitted argument, supposition and speculation regarding the decedent's intent, which is insufficient to go behind the terms of the original establishment of the accounts. When it comes to ascertaining the desire and intent of the decedent with regard to disposition of these accounts, these accounts rightly belong as a part of his estate.

¶ 29 (B) The Three Citibank Accounts

¶ 30 The circuit court held that section 3 of the Illinois Trust and Payable on Death Accounts Act controlled the disposition of the three Citibank accounts in the case. 205 ILCS 625/3 (West 2012).

Section 3 provides as follows:

“Trust Account Incidents. If one or more persons opening or holding an account sign an agreement with the institution providing that the account shall be held in the name of a person or persons designated as trustee or trustees for one or more persons designated as a beneficiary or beneficiaries, the account and any balance therein which exists from time to time shall be held as a trust account and unless otherwise agreed in writing between the person or persons opening or holding the account and the institution:

(a) If two or more persons are designated trustees of the account, as between them they shall hold the account and all balances therein which exist from time to time as joint tenants with right of survivorship and not as tenants in common;

(b) Any trustee during his or her lifetime may change any of

the designated beneficiaries without knowledge or consent of the other trustees or the beneficiaries by a written instrument accepted by the institution;

(c) Any trustee may make additional deposits to and withdraw any part or all of the account at any time without the knowledge or consent of the other trustees or the beneficiaries subject to the bylaws and regulations of the institution, and all withdrawals shall constitute a revocation of the agreement as to the amount withdrawn; and

(d) Upon the death of the last surviving trustee the designated beneficiary (i) who is then living, if the beneficiary is a natural person, or (ii) that maintains a lawful existence under the state or federal authority pursuant to which it was organized, if the beneficiary is not a natural person, shall be the sole holder of the account, unless more than one beneficiary is named and then living in which case said beneficiaries shall hold the account in equal shares as tenants in common. If no beneficiary is then living or in existence, the proceeds shall vest in the estate of the last surviving trustee.” 205 ILCS 635/3 (West 2012).

¶ 31 The above statutory provision has been in effect since January 1, 1986 with a slight amendment to part (d), effective July 21, 2010. The parties have not cited to any cases which have

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interpreted this statutory provision since its enactment in 1986 and this court could find none. What we do acknowledge is that bank accounts are expressly governed by this statute. The statutory provisions create broad and comprehensive rights of survivorship in bank accounts. The six adult children and ex-wife, in challenging the surviving wife's survivorship interest in these three accounts, never directly argue against application of the statute. Their argument is mainly equitable in nature and, again, they argue that the court should look beyond the form of the decedent's re-establishment of the account at the time he became ill in 2010, should determine the real and beneficial interests of the parties in the account and hold that the original intent of the person establishing the account should control, not his subsequent alteration of the accounts. However, where the parties have expressed their intent by clear terms in re-establishing the account and altering the original terms when the account was first established, the new terms cannot be altered by a court of equity without clear, convincing and unmistakable evidence that the account was established in derogation of the party's intention. *Hanley v. Hanley*, 14 Ill. 2d 566, 571 (1958). Additionally, if the intention as described in the re-establishment of the account is found to be faulty, as it was in this case, our legislature has set up carefully crafted default positions to follow with regard to ownership of bank accounts. There is no admissible evidence of the degree required and necessary to establish that these assets are a part of the revocable living trust created by the decedent and, therefore, the beneficiaries of the trust have no claim to them.

¶ 32 In the case at bar, the circuit court could not rely on the written description of the account signature card which appeared to identify Salvatore and his wife, Ellen, as joint owners and as co-trustees. There was no written trust agreement establishing Salvatore and Ellen as co-trustees of any

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trust. But, that does not mean that this court should take the default position suggested by the adult children and ex-wife that the Citibank accounts should flow to the decedent's revocable living trust that established decedent as the sole trustee during his lifetime and his two adult sons and surviving spouse as co-trustees, following his incapacity or death. This is especially true when our legislature has created a statutory scheme for establishing who holds legal title. In the absence of a written trust agreement that outlines the named trustees' obligations with regard to the accounts in question, Illinois statute provides that the named co-trustees hold the accounts as joint tenants, with rights of survivorship. 205 ILCS 625/3 (West 2012). The equitable arguments made by the adult children and ex-wife are not so clear, convincing and unmistakable such that it should cause this court to avoid those statutory provisions.

¶ 33

CONCLUSION

¶ 34 For the foregoing reasons, the judgment of the probate court is affirmed in its entirety.

¶ 35 Affirmed.

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MAR-04-2011 11:44 FROM: CITIBANK FC50
MAR-02-2011 15:53 FROM: CITIBANK

7084880036
3128530299

TO: 3125789303

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citi Revocable Living Trust dated 11/30/1993

Account: **Salvatore V Ferrera, Ellen & back Ferrera**

Address: **918 Fair Oaks Oak Brook, IL 60002**

Phone: **913 746 9731 / 913 747 6041 / 916 221 6225**

NAME	SSN	TRUSTEES TO CARD
Salvatore V Ferrera	352-2162853	YES
Ellen A Dick - Ferrera	352-36-8467	NO

Check appropriate box: I am not a U.S. citizen or resident alien. I am a U.S. citizen or resident alien.

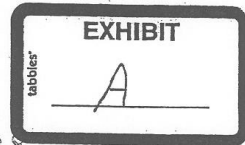
TAX CERTIFICATION
Under penalties of perjury, I certify that (1) The number(s) I have provided is/are correct taxpayer identification number, and (2) I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service that I am subject to backup withholding, and (3) I am a U.S. citizen or resident alien or other U.S. person as defined in the instructions.

CERTIFICATION INSTRUCTION You must cross out item 2b above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all income and deductions on your tax return.

The Internal Revenue Service does not require your consent to any provision of this Document other than the certification(s) required to avoid backup withholding.

Signature: **Salvatore V Ferrera** Date: **6/3/10**
Signature: **Ellen Dick Ferrera** Date: **5/11/10**

APPENDIX TO ORDER



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