FOURTH DIVISION
March 13, 2014

No. 1-13-2433

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re ESTATE OF JOAN STEINBRECHER, Deceased,	)	Appeal from the
	)	Circuit Court of
(MARY DOLAN, Ind. Executor,	)	Cook County.
	)	
Petitioner-Appellant,	)	
	)	
v.	)	No. 2010 P 5871
	)	
JOANNE CONNOLLY,	)	Honorable
	)	John F. Fleming,
Respondent-Appellee.)	)	Judge Presiding.

PRESIDING JUSTICE HOWSE delivered the judgment of the court.
Justices Fitzgerald Smith and Lavin concurred in the judgment.

ORDER

Held: The trial court's decision to grant respondent's section 2-1110 motion for a directed finding was not against the manifest weight of the evidence; the petitioner failed to rebut by clear and convincing evidence the presumption that by adding respondent's name as a joint holder to the accounts the decedent intended the accounts as a gift.

¶ 1 Mary Dolan, as Independent Executor of the Estate of Joan Steinbrecher, filed a petition for citation to recover assets pursuant to section 16-1 of the Code of Civil Procedure (the Code)

(755 ILCS 5/16-1 (West 2010)), that was directed to respondent, Joanne Connolly. The petition sought the return of the contents of a Chase checking account and Chase savings account to the decedent's estate. Following petitioner's case-in-chief, the trial court granted respondent's motion for a directed finding, holding that petitioner failed to overcome the presumption that the joint tenancy was a gift and to establish by clear and convincing evidence that the contents in both accounts were not intended by the decedent to be gifts. Petitioner now appeals the trial court's decision arguing that she did present clear and convincing evidence to overcome the presumption of a gift. For the reasons that follow, we affirm the trial court's ruling.

¶ 2 BACKGROUND

¶ 3 Petitioner filed a petition for citation to recover assets pursuant to section 16-1 of the Code (755 ILCS 5/16-1 (West 2010)) directed to respondent, Joanne Connolly, seeking the return of the contents of a Chase Bank, NA Checking Account and a Chase Bank, NA Savings Account, totaling $100,531.76. The petitioner argued in her petition that respondent was to return the money because her joint tenancy status on the accounts was for convenience purposes only and was not a gift. Respondent in turn argued that the accounts had been given to her as a gift and, therefore, the money properly belonged to her. The matter proceeded to a bench trial, and the following evidence was presented during petitioner's case-in-chief.

¶ 4 Respondent was called as an adverse witness. She testified that she met the decedent in the late 1970s and got to know her better in the 1980s. She began helping to assist the decedent in her day-to-day tasks after the decedent developed a heart condition in 2005. At that time, respondent would mostly drive her to and from her doctor's appointments. Sometime in 2009, the decedent was diagnosed with thoracic cancer. In the last years of the decedent's life, respondent drove her to doctor's appointments, picked up prescriptions for her, purchased

groceries for her, and helped her with her laundry. Respondent testified that the decedent had several other friends that would assist her on a daily basis, including petitioner, Yolanda Vetranno, Maggie McGinn, and Maureen Walsh.

¶ 5 Respondent testified that on July 22, 2010, the decedent called her and asked her if she would take her to Chase Bank the next day, July 23, 2010, and respondent responded that she would. On the way to Chase Bank, the decedent mentioned that she would be putting respondent's name on her accounts, but she did not explain why. Once at the bank, the decedent and respondent met with a Chase Bank employee. The decedent told the employee that respondent's name was to be put on the two accounts, and the bank employee said no problem and got the paperwork. The decedent and respondent then signed the paperwork, the employee gave them both his business card, and they left. Respondent does not recall the employee using the term "joint tenancy" during their conversation at the bank. Once back in the car, respondent asked the decedent, "Do you realize the seriousness of all this? You just gave me all your money." The decedent became angry with respondent for asking and responded, "I know what I'm doing." Respondent left the bank with the impression that the decedent had given her all the money in both her checking and savings accounts. Respondent testified that in the past, she was a joint tenant on her mother's account, along with her four siblings, so she understood a joint tenancy before going to the bank with the decedent on July 23, 2010. Respondent further testified that the decedent did not appear to be confused at all on the day they went to the bank because she was "clear as a bell."

¶ 6 From July 23, 2010, until August 13, 2010, the decedent continued to pay her own bills. After August 13, 2010, respondent carried out all the activity in the checking account. While the decedent was still alive, respondent made the following transactions:

1. An undated check made out to Methodist [Nursing] Home in the amount of $5,000.
2. A check made out to Minas (TV and Video) on 8/16/10 in the amount of $524.85 (for the purchase of an air conditioner for decedent's bedroom).
3. A check made out to Security Shop (Locks) on 8/18/10 in the amount of $80.
4. A check made out to Mary Dolan to reimburse her for groceries in the amount of $64 on 8/18/10.
5. A check made out to Merry Maids on 8/18/10 in the amount of $288.
6. Another reimbursement check made out to Mary Dolan in the amount of $40 on 8/18/10.
7. A check made out to Denzler Plumbing on 8/18/10 in the amount of $152.

¶ 7 The decedent died on August 19, 2010. Following the decedent's death, respondent issued the following checks:

8. A check to Maloney Funeral Home dated 8/19/2010 in the amount of $5,000.
9. A check to Queen of Heaven Cemetery dated 8/19/2010 in the amount of $1,400.
10. A check to Conn's Catering dated 8/19/2010 in the amount of $477.46.
11. A check to Mary Dolan to reimburse her for the purchase of a funeral outfit dated 8/19/10 in the amount of $140.70.
12. A check to Alpine for the mourner's luncheon dated 8/23/10 for $390.05.
13. A further check to Maloney Funeral Home in the amount of $6,354 dated 8/23/10.
14. A check to Peter Buttitta (music at funeral) dated 8/23/10 in the amount of $200.
15. A check to the Condominium Association dated 8/30/10 in the amount of $740 for the monthly assessments for September and October 2010 for decedent's condominium unit.
16. A check for "cash" made out to herself in the amount of $5,000 on 10/29/10.
17. A check for "cash" made out to herself in the amount of $10,000 on 11/9/10.

¶ 8 Respondent testified that petitioner asked her to return the checkbook, register, and condominium keys, and she complied with these requests. By giving the checkbook to petitioner as executor of the decedent's estate, respondent did not believe she was giving the estate the contents of the accounts, and respondent retained additional checkbooks for the accounts, which she later used to withdraw money. Respondent also gave the petitioner any information she had about the accounts, which included the business card of Ronald Popa, the man who placed her name on the accounts as a joint tenant. Respondent did this because petitioner asked for these items and because it was her understanding that anything she had pertaining to the decedent was to be handed over to the petitioner as executor of the estate.

¶ 9 Respondent testified that at the time the decedent made her a joint tenant on the accounts, her health had severely deteriorated, she was on strong pain medication, possibly oxycontin, and she required assistance from a number of people in her day-to-day activities. Respondent further testified that, although her and the decedent had never talked about it, she paid for the expenses incurred after the decedent's death because she thought that was the right thing to do in light of the decedent giving her all the money in her savings and checking accounts.

¶ 10 Petitioner then called Richard Goode to testify. Goode was an attorney who assisted the decedent in drafting her most recent will and who acted as the decedent's probate attorney following her death. Goode also knew the decedent because they belonged to the same parish, St. Gertrude's parish, and they were on the parish's finance committee for several years in the 1990s.

¶ 11 According to the will Goode drafted on behalf of the decedent on November 17, 2009, the decedent left her estate to the College of New Rochelle and to Loyola University Chicago, leaving her executor to decide what do to with any tangible personal property. Goode explained

to the decedent that her will would apply to any assets in her name at the time of her death. Also on that date, Goode drafted a power of attorney for healthcare at the decedent's request, which named petitioner as the decedent's primary agent. Goode testified that while he probably would have discussed with the decedent a power of attorney for financial matters, he typically does not recommend those and he did not in fact draft one for the decedent.

¶ 12 In October 2010, Goode went to Chase Bank with petitioner to remove money from the decedent's banks accounts and place those funds in the decedent's estate. At the bank, they were informed by a bank personnel that they could not have the funds because there was a joint tenant with the right of survivorship on the account. The bank personnel could not disclose the joint tenant on the account, but petitioner informed Goode that she thought it was respondent. Goode then spoke with respondent over the phone, and respondent informed him that she was in fact the joint tenant on the accounts. He then asked if she would come down and sign those accounts over to the estate, and respondent told him she would not.

¶ 13 Goode testified that the approximate size of the decedent's probate and nonprobate estate was in excess of a million dollars, and it included two retirement accounts, two bank accounts and a condominium. As such, the approximate $100,000 in the bank accounts at Chase made up less than ten percent of the decedent's assets upon her death. Goode testified that the decedent was a private person who was very steady and not subject to emotion. Goode testified that he had a telephone conversation with the decedent shortly before her death wherein she sounded to be very much like herself.

¶ 14 Next, petitioner was called to the stand. Petitioner testified that the decedent was her very good friend and that they had known each other for 18 to 20 years. Petitioner testified that when the decedent became ill, she, respondent, Maggie McGinn, Yolanda Vetranno, Eileen

Shrager, Maureen Walsh, and maybe some others would assist the decedent, with herself, respondent, McGinn, and Vetranno offering help on a daily or near daily basis. Petitioner testified that she would buy the decedent's groceries and pick up her prescriptions. The groceries were no more than $50 a week, and the prescriptions were mostly covered by insurance.

¶ 15 Petitioner testified that about five days before the decedent drafted her November 2009 will, the decedent called her to ask her if she would be the executor on her will; she said yes. After the will was drafted, both her and respondent signed the will as witnesses. As to the power of attorney for healthcare, the decedent made it clear to petitioner that she did not want to be in the hospital and further gave her a list of funeral instructions.

¶ 16 Petitioner testified that she went to the doctor with the decedent in June 2010, and after the appointment, the decedent began sobbing because she told petitioner that she would not be alive by the end of the summer as her cancer had progressed to stage 4 and she only had one to two months to live. At that point, the decedent did not receive further treatment; she just took pain medication and received hospice services. Petitioner testified that after the decedent's July 23, 2010 trip to Chase Bank, the decedent had dinner at her house. There, the decedent told her that she had put respondent's name on her accounts so that respondent could pick up her prescriptions and pay her bills.

¶ 17 A few weeks before the decedent's death, she had a fall in her condominium and hit her head, requiring her to be placed at Methodist Home for approximately 20 days until she passed away. After the decedent went to Methodist Home, petitioner and respondent went to the decedent's condominium to clean up. Petitioner testified that while cleaning, respondent found papers regarding the decedent's financial status and stated that she could not believe how much money Loyola was going to be getting, and that Loyola did not need all that money. Petitioner

also testified that respondent told her she had a friend, Ms. Delacoma, who told her that if your name is on a checking account, you automatically get the money in that account. During the conversation, respondent admitted that the decedent had put respondent's name on the checking account, however, respondent never specifically told petitioner that the money was hers.

¶ 18 Petitioner testified that in the course of her duties, she came across a prior will that the decedent had executed from 1992. According to the will, the decedent left one-fourth of the remainder of her property to the College of New Rochelle and three-fourths to Loyola University Chicago.

¶ 19 At some point in October 2010, petitioner became aware that respondent had withdrawn $15,000 from the decedent's checking account, which she brought up to Goode. She testified that prior to the accounts being frozen, there was $61,581.56 remaining in the checking account and $38,950.20 in the savings account. When the decedent passed away, petitioner gave attorney Goode a list of retirement accounts that the decedent had given her. The list contained account numbers and not dollar amounts so she did not know how much the retirement accounts were worth

¶ 20 Petitioner then called Norma Hudson, a woman who worked with the decedent at Loyola. The decedent had been the dean of student affairs at Loyola until she retired in 1995, but she came back to work in student affairs in 1998 and stopped working in 2009 when she became ill. Hudson described the decedent as very quiet and private. Hudson stayed in touch with the decedent up until she died.

¶ 21 Last, petitioner called Stephen Bourgeois, a man who lived with and had a romantic relationship with petitioner for almost 30 years. Bourgeois was also a friend of the decedent. He testified that the decedent would come over to their house quite often, and stated that the

decedent was a private person. He stated that he was present when the decedent told petitioner that she had put respondent's name on the bank accounts for the purpose of getting her prescriptions. He further testified that he heard the decedent state that she loved Loyola and she wanted all of her money to go to Loyola when she died.

¶ 22 Petitioner rested her case. Respondent then moved for a directed finding arguing that petitioner failed to present clear and convincing evidence to overcome the presumption of the gift. The trial court granted respondent's request for a directed finding pursuant to section 2-1110 of the Code (735 ILCS 5/2-1110 (West 2012)), holding that petitioner failed to overcome the presumption that the accounts were given to respondent as a gift with clear and convincing evidence that the accounts were not intended to be given as a gift. Specifically, the trial court judge stated:

> "The presumption is that it's a gift. There has been no evidence to overcome the presumption, other than other people may have helped her and why wouldn't she give other people money. That's not clear and convincing evidence.
>
> * * *
>
> Your evidence is all circumstantial evidence that why would she give it to one person and not the others when she was sick. And you have contradictory statements; one, that the administrator or the executor testified that she said she put her on the account, and then her friend testified she put her on the account and then added, only for the prescriptions, which is contradicted. Why would she put her on the savings account, also, if it was just

> for convenience? There has been no testimony that there were instructions given to her as to how to pay it.
>
> There has been testimony that from the time that the transfer was made that the person who received it made statements saying that – you first heard the testimony that she told her, you know you just gave me all your money? Second, that she told people, you know, I talked to someone at the bank and if I'm on the account it's my money.
>
> So there has been testimony all along that the person who got put on the joint tenancy account believed it was a gift from the beginning and did not believe it was just a convenience account, which is opposite from cases where people acted only in a matter of convenience. She gave back the checkbook for him to look at the bills, but also, as you pointed out, she kept the other checks and then wrote checks on them herself.
>
> So I don't see any clear and convincing evidence that overcomes the presumption. It's got to be clear and convincing. It can't be, well, this is unusual and I don't have to explain why she did it. You have to explain that it wasn't her intent. And that hasn't been explained to me."

Petitioner now appeals the trial court's ruling arguing that the trial court erred in granting respondent's motion for a directed finding. For the reasons that follow, we affirm the trial court's ruling.

¶ 23 ANALYSIS

¶ 24 The trial court granted respondent's motion for a directed finding pursuant to section 2-1110 of the Code (735 ILCS 5/2-1110 (West 2012)) because it found that petitioner failed to present clear and convincing evidence to overcome the presumption that the decedent's two banking accounts were given to respondent as a gift. A party challenging the presumption can overcome it only by clear and convincing evidence. *In re Estate of Shea*, 364 Ill. App. 3d 963, 969 (2006); *Murgic v. Granite City Trust & Savings Bank*, 31 Ill. 2d 587, 591 (1964). For the reasons below, we affirm the trial court's ruling.

¶ 25 Prior to addressing the trial court's ruling, we must determine the appropriate standard of review as petitioner argues that the standard of review should be *de novo*, while respondent argues that the standard of review should be whether the finding was against the manifest weight of the evidence. Section 2–1110 provides that in all cases tried without a jury, the respondent may, at the close of the petitioner's case, move for a finding or judgment in his or her favor. 735 ILCS 2-1110 (West 2012). In ruling on this motion, a court must engage in a two-prong analysis. *Kokinis v. Kotrich*, 81 Ill. 2d 151, 155 (1980). First, the court must determine, as a matter of law, whether the petitioner has presented a *prima facie* case. *People ex rel. Sherman v. Cryns*, 203 Ill. 2d 264, 275 (2003). A petitioner establishes a *prima facie* case by proffering at least "some evidence on every element essential to [the plaintiff's underlying] cause of action." *Kokinis*, 81 Ill. 2d at 154. If the petitioner has failed to meet this burden, the court should grant the motion and enter judgment in the respondent's favor. *Id.* at 155. Because a determination that a plaintiff has failed to present a *prima facie* case is a question of law, the circuit court's ruling is reviewed *de novo* on appeal. *Cryns*, 203 Ill. 2d at 275.

¶ 26 If, however, the circuit court determines that the petitioner has presented a *prima facie* case, the court then moves to the second prong of the inquiry. *Cryns*, 203 Ill. 2d at 275. In its role as the finder of fact, the court must consider the totality of the evidence presented, including any evidence which is favorable to the defendant, and must weigh all the evidence, determine the credibility of the witnesses, and draw reasonable inferences therefrom. *Id*.; *see also* 735 ILCS 5/2–1110 (West 2012). Where the trial court engages in the second-prong review, by weighing all the evidence presented to it, a reviewing court will afford deference to the trial court and will only reverse if the decision is against the manifest weight of the evidence. *Id*.; *Kokinis*, 81 Ill. 2d at 154; *Walsh/II In One Joint Venture III v. Metropolitan Water Reclamation District of Greater Chicago*, 389 Ill. App. 3d 138, 146 (2009) (although the trial court stated that "plaintiff failed to establish a prima facie case," because the trial court also discussed the quality of the evidence, it was clear that the court weighed the evidence and, therefore, its ruling merited deferential review).

¶ 27 Here, the record makes it clear that the trial court weighed all the evidence presented to it in petitioner's case-in-chief prior to making his ruling. The trial court judge repeatedly stated that petitioner failed to present clear and convincing evidence to overcome the presumption of a gift. Specifically, the trial court judge stated:

> "The presumption is that it's a gift. There has been no evidence to overcome that presumption, other than other people may have helped her and why wouldn't she give other people money. That's not clear and convincing."

Further, the trial court judge acknowledged the evidence presented by petitioner, but found that such evidence was circumstantial evidence that did not rise to the level of clear and convincing

sufficient to overcome the presumption of a gift. And, as noted by petitioner, the trial court credited certain statements made by certain witnesses, including several statements made by respondent, further showing that the trial court assessed the credibility of the witnesses who testified before him. Accordingly, the trial court's finding merits deferential review, and we will not disturb its ruling unless it is against the manifest weight of the evidence. A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or the determination is unreasonable, arbitrary, and not based on the evidence presented. *In re M.J.*, 314 Ill. App. 3d 649, 655 (2000).

¶ 28 "[W]hen 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 at 968–69; *Matter of Guzak's Estate*, 69 Ill. App. 3d 552, 554 (1979); *Murgic*, 31 Ill. 2d at 590. The presumption is not conclusive but the burden is upon the one who challenges the gift to present clear and convincing evidence that the intent of the party was not to make a gift. *Murgic*, 31 Ill. 2d at 590; *Matter of Guzak's Estate*, 69 Ill. App. 3d at 554. 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. *In re John R.*, 339 Ill. App. 3d 778, 781 (2003). Although stated in terms of reasonable doubt, courts consider clear and convincing evidence to be more than a preponderance, while not quite approaching the degree of proof necessary to convict a person of a criminal offense. *Id*.

¶ 29 When determining whether the donor actually intended to transfer his interest in the account at his death to the surviving joint tenant, it is proper to take into consideration the facts surrounding the creation of the joint account and all circumstances and events occurring after the creation of the joint account. *Matter of Guzak's Estate*, 69 Ill. App. 3d at 554. A party can

present evidence that establishes that a joint account was used as a convenience account to overcome the presumption of a gift. See *In re Estate of Shea*, 364 Ill. App 3d at 969. "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 specified by, and on behalf of, the account's creator." *Id*. "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." *Id*. The rationale is that one can reasonably assume that a person does not intend to give away funds in the very account he or she relies on to pay bills. *Id*.

¶ 30 Petitioner argues that the trial court erred when it granted respondent's motion for a directed finding because she presented sufficient evidence to overcome the presumption of a gift. Specifically, petitioner argues that the following evidence presented at trial was sufficient to overcome by clear and convincing evidence that presumption of a gift: (1) the decedent had other friends who helped care for her but did not receive any money; (2) the decedent's prior wills only named the College of New Rochelle and Loyola University as beneficiaries; (3) the decedent was in poor health at the time she made respondent a joint tenant on both accounts; (4) the decedent told petitioner and petitioner's romantic partner that she had put respondent's name on the accounts for the purpose of picking up her prescriptions; (5) a majority of the activity in the checking account was for the benefit of the decedent; (6) respondent gave the executor of the estate one of the decedent's checking books, checking account register and a bank business card when the executor requested these items; and (7) respondent did not ask to be reimbursed by the estate for her payment of the decedent's condominium assessment fees. While this is an extensive list of facts, none of these facts directly supports petitioner's contention that the accounts were not intended to be gifts. More importantly, though, the facts argued by petitioner

above do not amount to clear and convincing evidence sufficient to overcome the presumption of a gift, especially in light of the evidence showing that the decedent did intend to gift the accounts to respondent.

¶ 31 Initially we note that there was ample evidence presented at trial that the decedent was an educated woman with a master's degree and a PhD[1] who worked in various roles, including dean, in the department of student affairs at Loyola University Chicago until she became ill. There was also evidence that the decedent was on the finance committee at her local parish, and that she had been involved in her estate planning as early at 1992 when she drafted her first will. Such evidence supports that the decedent was well aware the significance of her actions when she named respondent as a joint tenant on both the checking and savings accounts and, accordingly, intended to gift those accounts to respondent.[2]

¶ 32 Second, respondent testified that after leaving Chase Bank she specifically asked the decedent: "Do you realize the seriousness of all this? You just gave me all your money," to which the decedent, who was "clear as a bell" at the time, responded "I know what I'm doing." Again, such evidence, which the trial court weighed and relied upon, shows that the decedent intended to gift the money in her checking and savings accounts to respondent by making her a joint tenant on both accounts. See *In re Estate of Shea*, 364 Ill App. 3d at 927 ("A decedent's statements of his or her intentions regarding an account are, naturally, relevant to deciding what his or her intentions were."). Although petitioner argues that these statements were self-serving and are to be viewed with skepticism based on *In re Estate of Trampenau*, 88 Ill. App. 3d 690,

[1] These facts were found in petitioner's attorney's opening remarks at trial.
[2] While the trial court heard evidence of the decedent's illness and the terminal nature of her thoracic cancer, there was no evidence presented to suggest that the decedent was not mentally sound at the time she named respondent as a joint tenant or her accounts, or at any time for that matter.

695-696 (1980), and *In re Estate of Hackenbroch*, 35 Ill. App. 2d 155, 162 (1962), the credibility of the witnesses was for the trial court to decide. *In re Estate of Shea*, 364 Ill. App. 3d at 973 (citing *In re Marriage of Smith*, 347 Ill. App. 3d 395, 400 (2004)). Here, the trial court gave weight to and relied upon respondent's statements regarding the decedent's intent at the time of placing respondent's name on the accounts as a joint tenant. Because "the trial court is in a superior position to hear and weigh the evidence and determine the credibility of the witnesses" (*In re Estate of Teall*, 329 Ill. App. 3d 83, 91 (2002)), we decline to substitute our judgment for that of the trial court.

¶ 33 Third, while a convenience account is set up for the purpose of paying the decedent's day-to-day expenses, here, the decedent, who was aware she only had a few months left to live, made respondent a joint tenant on accounts containing more than $100,000, which was wildly in excess of the day-to-day bills incurred by the decedent during her last months of life. The checking account alone contained over $60,000, which again, was well in excess of the decedent's expenses and bills. See *In re Estate of Harms*, 236 Ill. App. 3d 630, 635 (1992) ("It is illogical that an individual would place all of her substantial assets in joint accounts if she just wanted someone to relieve her of the day-to-day burden of writing checks."). The rationale of the creation of a convenience account—that one can reasonably assume that a person does not intend to give away funds in the very account she relies on to pay bills (*In re Estate of Shea*, 364 Ill. App 3d at 969)—is greatly weakened when the decedent's daily expenses are minimal and limited to a finite period of only a few months and where the total amount of money contained in the accounts is great. In such a scenario, as is the case here, there is little concern about funds in the account being depleted to the point where bills cannot be paid. Further, the decedent here, knowing she only had a few months to live, would have known that her monthly bills for

groceries, medications (which were mostly paid for by insurance), and condominium expenses would easily be covered by the monies in her checking account. Thus, there was no need for the decedent to also sign her savings account over to respondent unless, of course, she intended the accounts as gifts.

¶ 34 Fourth, as the trial court pointed out, respondent testified on numerous occasions that she believed the money belonged to her as soon as it was signed over to her in a joint tenancy. Not only did she make the comment in the car to the decedent expressing the seriousness of such a transfer, but she informed petitioner that the decedent had put her name on the accounts. And, although she gave the checking book and register back to petitioner, respondent kept some checking books, refused to give the money in the accounts to the estate when she was asked to do so by the probate attorney, and she withdrew $15,000 from the account in two separate transactions before the accounts were frozen. As such, there was evidence showing that respondent believed the money was hers from the moment the joint tenancy was created.

¶ 35 While we recognize that evidence of how the accounts were actually used can be used to show the decedent's intent for the purpose of the accounts (see *In re Estate of Shea*, 364 Ill App. 3d at 972), here, while a majority of the activity on the savings account was used for the benefit of the decedent, respondent did make several withdrawals from the account to pay for funeral expenses and mourning services, which had not been discussed by respondent and the decedent, and respondent further withdrew a total of $15,000 from the account for her own personal use. Thus, while the account was certainly used for the benefit of the decedent and her day-to-day expenses, there was evidence of the account also being used by respondent for purposes beyond the decedent's day-to-day expenses.

¶ 36 Fifth, the bank accounts that were gifted to respondent amounted to less than one tenth of

the decedent's total assets at the time of her death. So while petitioner suggests that it was illogical that no one else who provided assistance to the decedent received any money, the money that was gifted to respondent was only a small fraction of decedent's total assets at the time of her death. Thus, for all of the above reasons, we find that the trial court's ruling that petitioner failed to present clear and convincing evidence sufficient to rebut the presumption of a gift was not against the manifest weight of the evidence.

¶ 37 Petitioner further argues that we should reverse the trial court's ruling in light of the court's ruling in *In re Estate of Shea*. We disagree. In *In re Estate of Shea*, where the court affirmed the trial court's finding that the executor of the decedent's estate had overcome the presumption of a gift by clear and convincing evidence, the trial court made a specific finding that "[the surviving joint tenant on the account] could not provide any evidence that decedent intended the funds as a gift." *In re Estate of Shea*, 364 Ill. App. 3d at 967. Here, in stark contrast to the trial court's finding of no evidence of a gift in *In re the Estate of Shea*, as discussed at length above, there was direct and circumstantial evidence that the decedent intended to gift the money in the accounts to respondent. Specifically, and just to highlight one of the many points made above, when respondent told the decedent that she had just given her all of her money and asked her whether she understood the seriousness of doing so, the decedent replied "I know what I am doing." That is direct evidence of the decedent's intention to gift the money.

¶ 38 Further, in *In re Estate of Shea*, the respondent presented evidence that prior to creating the joint tenancy on the accounts, the decedent had two conversations with two different people about putting someone else's name on his accounts for the purpose of writing checks when he was no longer able to do so. Thus, when the decedent went ahead and added his neighbor's name

to his accounts, the evidence regarding the decedent's prior conversations painted "a believable picture of a person preparing for his possible disability by enabling his neighbor to pay his bills for him." *In re Estate of Shea*, 364 Ill. App. 3d at 972. Such evidence of a preexisting intent to create a convenience account is nowhere to be found in this case. And, in *In re Estate of Shea*, the original petition to issue a citation to recover assets was premised upon an alleged fiduciary duty between the decedent and the joint tenant. Here, there was no such allegation, and further, no such relationship between the decedent and respondent. As such, *In re Estate of She*a is distinguishable from the case at bar.

¶ 39 On appeal, respondent argues that under Illinois law the decedent had a right to create a joint account for convenience only or to create a traditional joint tenancy. See 205 ILCS 720/10(a) (eff. Jan. 1, 2010). Petitioner argues that respondent waived this argument because: (1) it was not presented to the trial court, and (2) it was not raised as an affirmative defense. With respect to waiver, we see no requirement that a written answer must be filed in response to a citation to recover assets; only that the respondent appear in court for examination under oath. See 755 ILCS 5/16 (West 2010). Moreover, waiver is a limitation on the parties and not the court (*Severino v. Freedom Woods, Inc.*, 407 Ill. App. 3d 238, 249 (2010) (it is well settled that "the waiver rule is an admonition to the parties and provides no limitation on this court's jurisdiction")), and the trial court is presumed to know the law. *People v. Mischke*, 278 Ill. App. 3d 252, 264 (1995) ("the trial court is presumed to know the law, to apply it properly, and to consider only competent evidence."). As such, respondent did not waive her argument regarding section 10(a) of the Bank Convenience Account for Depositors Act. 205 ILCS 720/10(a) (eff. Jan. 1, 2010).

¶ 40 Further, we may affirm the judgment of the trial court based on any reason appearing in

the record. *Alpha School Bus Co., Inc. v. Wagner*, 391 Ill. App. 3d 722, 734 (2009) (appellate court "may affirm the judgment of the trial court on any basis in the record, regardless of whether the trial court relied upon that basis or whether the trial court's reasoning was correct."). Here, the decedent is presumed to know the law. *People v. Ivy*, 133 Ill. App. 3d 647, 653 (1985) ("it is well settled that one is presumed to know the law and that ignorance of the law is no excuse"); *Pioneer Trust & Savings Bank v. Zonta*, 74 Ill. App. 3d 614, 617 (1979) ("The parties are presumed to know the law at the time the lease is made"); *Belfield v. Findlay*, 389 Ill. 526, 529 (1945) ("The law in this State is that a testator is presumed to have known the law and to have made his will in conformity therewith."). At the time the decedent named respondent as a joint tenant on both her checking and savings accounts, she had an absolute legal right to create a convenience account pursuant to Illinois law. 205 ILCS 720/10(a) (eff. Jan. 1, 2010) ("A banking organization may permit a depositor to open a convenience account for the purposes of permitting a convenience depositor to make deposits into that account. The convenience account shall be in the name of a depositor and the convenience depositor and be permitted to pay or deliver funds to either for the convenience of the depositor."). This absolute right existed regardless of whether the bank offered the decedent any information or paperwork regarding such convenience accounts. Thus, although the decedent could have created a joint account for convenience only under Illinois law, the decedent chose to create a joint tenancy on her accounts, as she was legally allowed to do. While petitioner argues that there is no evidence that Chase Bank ever offered the decedent the option to open a convenience account, as was the case in *In re Estate of Blom*, 234 Ill. App. 3d 517 (1992), here, the law giving the decedent the absolute legal right to open such an account was enacted in January 2010 and, as stated above, the decedent is presumed to know that law at the time she created the accounts. Further, it would

have been petitioner's burden to prove this fact by clear and convincing evidence. Therefore, whether the bank advised her of the option to create a convenience account is irrelevant given that she is presumed to know the law giving her that right. Because we presume that the decedent knew of her choice to create a convenience account or a joint tenancy, and this issue was not waived, it is clear that the decedent intended to create a joint tenancy and, accordingly, intended to gift the money in her Chase savings and checking accounts to respondent.

¶ 41 Last, we recognize that a party can also present evidence of fraud or a fiduciary relationship to overcome the donative intent presumption. See *In re Estate of Harms*, 236 Ill. App. 3d at 639. However, as conceded by petitioner in her reply brief, neither of these allegations was made in this case at any time including on appeal.

¶ 42 CONCLUSION

¶ 43 For the reasons stated above, we affirm the trial court's ruling that petitioner failed to present clear and convincing evidence sufficient to rebut the presumption of a gift as such a finding was not against the manifest weight of the evidence.

¶ 44 Affirmed.