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2015 IL App (3d) 140126-U

Order filed February 3, 2015

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2015

In re ESTATE OF AUGUSTINE J. NILLES,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Deceased	)	Will County, Illinois.
	)	
(Charles A. Nilles,	)	
	)	
Petitioner-Appellant,	)	Appeal No. 3-14-0126
	)	Circuit No. 12-P-171
v.	)	
	)	
Mary Nemetz,	)	
	)	The Honorable
Respondent-Appellee).	)	J. Jeffrey Allen,
	)	Judge, presiding.

JUSTICE CARTER delivered the judgment of the court.
Justices Lytton and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held*: In a probate case, the appellate court affirmed the circuit court's rulings that: (1) granted summary judgment in favor of the respondent, on a petition for citation to discover assets, because certain savings and checking accounts were not part of the estate; and (2) denied the petitioner's request for termination of independent administration.

¶ 2 The petitioner, Charles A. Nilles, filed a motion for termination of independent administration and a petition for citation to discover assets after his father's will was admitted to probate and the respondent, Mary Nemetz, was named independent administrator of the estate. The circuit court denied Charles's motion for termination of independent administration and granted summary judgment in favor of Mary regarding Charles' petition for citation to discover assets. On appeal, Charles argues that the circuit court erred when it: (1) granted Mary's summary judgment motion; and (2) denied his motion for termination of independent administration. We affirm.

¶ 3 FACTS

¶ 4 In December 2011, Augustine Nilles died testate. Among other things, his will bequeathed the residue of his estate in equal shares to his four children—the petitioner, Charles Nilles; Timothy Nilles; the respondent, Mary Nemetz; and Jeanne Long. Mary was named executor, and the will provided specifically:

> "I give my Executor the following powers and discretions, in each case to be exercisable without court order:
>
> A. To sell at public or private sale all or part of the property of my estate, except as stated in paragraph THIRD above [referring to his home].
>
> B. To settle claims in favor of or against my estate;
>
> C. To distribute the residue of my estate in cash or in kind or partly in each, and for this purpose the determination of the Executor as to the value of any personal property distributed in kind shall be conclusive;

D. To execute and deliver any deeds, contracts, or other instruments necessary or desirable for the exercise of the powers and discretions as Executor; and,

E. To do any act in regard to management of my estate that I would have power to do in my lifetime."

¶ 5 On February 24, 2012, Mary filed a Petition for Probate of Will and Letters Testamentary, which she amended on March 15, 2012. The amended petition listed the value of the estate as $140,000, of which $130,000 was real property and $10,000 was personal property. Also on March 15, 2012, the circuit court entered an order naming Mary as "independent executor."

¶ 6 On April 16, 2012, Charles filed a Petition to Terminate Independent Administration, which he amended on July 5, 2012. Charles alleged, *inter alia*, that the will did not provide for independent administration, and that good cause for termination existed because Mary took possession of assets she held in joint tenancy with Augustine when those assets should have been part of the estate.

¶ 7 On July 23, 2012, the circuit court held a hearing on Charles's Petition to Terminate Independent Administration. After hearing arguments, the court ruled that the provision in Augustine's will giving power to the executor "[t]o do any act in regard to management of my estate that I would have power to do in my lifetime" was sufficiently broad to comply with the requirements of Illinois law on independent administration. The court also ruled that Charles failed to establish good cause for Mary's removal as independent administrator, as any dispute regarding the bank accounts could likely be cured with a discovery citation to determine whether the accounts were joint tenant accounts or were merely for convenience.

¶ 8 On August 13, 2012, Charles did in fact file a Petition for Citation to Discover Assets in which he sought information related to accounts Augustine may have had. On October 11, 2013, Mary filed a motion for summary judgment in which she alleged that Augustine's two savings accounts and two checking accounts were joint tenant accounts that passed to Mary and therefore did not belong to Augustine's estate.

¶ 9 Mary appended several documents to her summary judgment motion, including two documents—one from the Canals & Trails Credit Union (CTCU) and the other from the State Bank of Illinois in Mokena (Mokena bank)—that purportedly listed Augustine and Mary as joint owners.

¶ 10 Also appended to Mary's motion were the depositions of Mary, Timothy, and Jeanne. In her deposition, Mary stated that Augustine lived in his Lockport home until February 2011 when his Parkinson's disease required him to move into a nursing home. Up to that point, he controlled his own finances and normally paid his bills with cash or money orders. However, he had a savings account and a checking account with the Mokena bank for automatic payment of an insurance bill. Mary believed the Mokena bank accounts were funded by Augustine's social security checks and pension payments. Augustine also had a savings account and a checking account with CTCU. In March 1998, Augustine added Mary to the CTCU savings account as a joint account holder.[1] Augustine added Mary to the Mokena bank accounts as a joint account holder in March 2009. Mary also stated that she never drew any money from the accounts until February 2011, when she started to pay Augustine's bills from the accounts at his request. With

[1] Mary stated that to the best of her knowledge, she was initially added to the CTCU savings account and was added to the CTCU checking account at some later time—she could not recall if it was also 1998 or if it was later.

the exception of one $60 payment she made on a landscaping bill[2] she had, Mary only used the money in the accounts to pay Augustine's bills and to pay for expenses related to his funeral and his home.

¶ 11 In addition, Mary stated that Augustine told her on many occasions that the money in the accounts was hers. One such time was when he made her a joint account holder on the Mokena bank accounts. Mary stated that Augustine "trusted [her] inherently" and that "[h]e wanted me to do with the money as I felt appropriate for both myself and for others." Mary also relayed that Augustine had "concerns that he was passionate about," which were his three grandchildren, Tim, and a church food pantry to which he regularly donated. She also said that "[m]y father never said he wanted to take care of these things." Rather, these were just potential uses Mary could make of the money. Mary stated that:

> "My father said that he trusted me implicitly. My father said that he wouldn't be where he was today if it hadn't been for me. My father and I had a very close relationship and he knew that he could count on me and he wanted me to be able to share in this money. And he knew that I would respect this [money] as I respected him."

Further, Mary stated that both Tim and Jeanne knew since 2009 that she held the accounts jointly with Augustine and that both knew they had no interest in the accounts.

¶ 12 Mary also stated that, outside of her presence, Augustine gave Mary powers of attorney for property and for health care on August 24, 2000. She signed the forms later in Augustine's presence. She stated that during Augustine's lifetime, she never exercised the power of attorney for property, but she did exercise the power of attorney for health care.

[2] Jeanne stated in her deposition that Mary withdrew this amount accidentally and repaid it.

¶ 13 Tim stated in his deposition that Augustine was mentally fit and capable of handling his own affairs after Augustine's wife died in 2000. It was not until 2010 that Augustine showed some signs of difficulty in focusing. Augustine had told Tim that Mary was in charge of the accounts, and Tim knew that the accounts were in both Augustine and Mary's names at the time Augustine died. Augustine did mention to Tim that he wanted some money to go to a food pantry, but he also told Tim that he trusted Mary and that Mary was going to handle the money in the accounts. Tim stated that Mary could not have made Augustine do anything that he did not want to do. Further, Tim believed that the accounts did not belong in the estate; they belonged to Mary.

¶ 14 Jeanne stated in her deposition that Augustine had told her on several occasions that he wanted his estate to provide Tim with a place to stay and that the rest should go toward funding the education of his grandchildren. Jeanne stated that Augustine remained mentally sharp through 2010 and that Mary could not have made Augustine do anything that he did not want to do. Augustine had told Jeanne that he trusted Mary and that Mary was also named on the savings and checking accounts. Jeanne also stated that her understanding of the accounts was that they belonged to Mary, who could do whatever she wanted with the accounts.

¶ 15 On January 2, 2014, the circuit court held a hearing on Mary's summary judgment motion. After hearing arguments, the court took the matter under advisement. One week later, the court issued a written order in which it found that Augustine's savings and checking accounts were valid joint tenancies and did not belong in the estate. Accordingly, the court denied Charles' petition for citation to recover assets and granted Mary's summary judgment motion. Charles appealed.

¶ 16 ANALYSIS

¶ 17 Charles' first argument on appeal is that the circuit court erred when it granted Mary's summary judgment motion. Charles specifically argues that a genuine issue of material fact existed as to whether Augustine's savings and checking accounts were valid joint tenancies or merely convenience accounts.

¶ 18 Summary judgment is appropriate if "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2012). We review a circuit court's decision to grant summary judgment under the *de novo* standard. *General Casualty Insurance Co. v. Lacey*, 199 Ill. 2d 281, 284 (2002).

¶ 19 "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." *In re Estate of Harms*, 236 Ill. 2d 630, 634 (1992). A means of overcoming that presumption is through clear and convincing evidence that the account was intended to be a "convenience account." *Vitacco v. Eckberg*, 271 Ill. App. 3d 408, 412 (1995). Convenience accounts are joint accounts created for the purpose of allowing another person to withdraw funds from the account at the original account holder's direction and for the purpose of that original account holder. *Id.*; see also *Harms*, 236 Ill. 2d at 634. The focus of determining whether an account was created for convenience only is on the original account holder's intent at the time of creation, although subsequent events may also be considered. *Vitacco*, 271 Ill. App. 3d at 412. Additionally, we note that "[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.

¶ 20 Our review of the record reveals no error in the circuit court's finding that the accounts were valid joint tenancies. Charles claims that the depositions indicate that Augustine's "legacy" was for the money in the accounts to go to the grandchildren and a food pantry. Charles's argument, however, takes Augustine's comments out of context, and in fact ignores that Augustine made multiple comments to Mary, Tim, and Jeanne that he trusted Mary and that the money was Mary's to use as she thought best. The fact that Augustine may have discussed potential uses for the money with his children does not undermine the statements Augustine made with regard to Mary's ability to decide how to use the money. Moreover, the fact that Mary only used the accounts to pay Augustine's bills while he was still living—and did not do so until February 2011, when Augustine's health declined—is of no avail to Charles. Simply because Mary was responsible and respectful in her position as a joint tenant on the account does not translate to proof that the accounts included Mary as a joint tenant merely for convenience.

¶ 21 In addition, contrary to Charles's contentions, there is no indication that any fraud or undue influence occurred with regard to Mary being added as a joint tenant on the accounts. Despite Charles's claim that Augustine "relied on the defendant for financial advice because she was an attorney and enjoyed a special relationship of trust with [him]," there were no statements in the depositions or other materials to support such a contention. In fact, the depositions indicated that Augustine managed his own financial affairs. Additionally, Mary had not been given any powers of attorney until 2000, which was over two years after she was added as a joint tenant on at least one of Augustine's CTCU accounts. While she had the powers of attorney for property and health care when she was added as a joint tenant on the Mokena bank accounts, the deposition testimony indicated that Augustine was of sound mind at the time Mary was added to the Mokena bank accounts and that Augustine had not been subjected to—and in fact was not susceptible to—any undue influence by Mary.

¶ 22 For the foregoing reasons, we hold that no genuine issue of material fact existed with regard to whether the accounts were valid joint tenancies.[3] Accordingly, we hold that the circuit court did not err when it granted Mary's summary judgment motion.

¶ 23 Charles's second argument on appeal is that the circuit court erred when it denied his motion to terminate independent administration.

¶ 24 We apply the *de novo* standard of review to questions regarding the interpretation of a will (*In re Estate of Williams*, 366 Ill. App. 3d 746, 748 (2006)), as well as questions of statutory interpretation (*Hooker v. Retirement Board of Firemen's Annuity and Benefit Fund of Chicago*, 2013 IL 114811, ¶ 15).

¶ 25 Section 28-4(a)(1) of the Probate Act of 1975 provides:

> "(a) Upon petition by any interested person, mailed or delivered to the clerk of the court, the court shall enter an order terminating the independent administration status of the estate, except: (1) If the will, if any, directs independent administration, independent administration status shall be terminated only if the court finds there is good cause to require supervised administration." 755 ILCS 5/28-4(a)(1) (West 2012).

¶ 26 Initially, we note that Charles misconstrues section 28-4 in his argument on this issue. Charles contends that because Mary was an interested person, the independent administration should have been terminated. However, the plain language of subsection (a) states that the

[3] The aforementioned reasons also serve as our basis to reject Charles's argument that the circuit court should have imposed a constructive trust.

"interested person" is the petitioner, not the independent administrator. There is nothing in the language of section 28-4(a) that would require the termination of independent administration simply because the independent administrator was an interested person.

¶ 27 Charles also alludes to a belief that good cause existed to terminate the independent administration because Augustine's will did not direct it. We disagree. In Augustine's will, he specifically directed:

> "I give my Executor the following powers and discretions, in each case to be exercisable without court order:
>
> A. To sell at public or private sale all or part of the property of my estate, except as stated in paragraph THIRD above [referring to his home].
>
> B. To settle claims in favor of or against my estate;
>
> C. To distribute the residue of my estate in cash or in kind or partly in each, and for this purpose the determination of the Executor as to the value of any personal property distributed in kind shall be conclusive;
>
> D. To execute and deliver any deeds, contracts, or other instruments necessary or desirable for the exercise of the powers and discretions as Executor; and,
>
> E. To do any act in regard to management of my estate that I would have power to do in my lifetime."

This list contains several similarities to the powers specifically enumerated in section 28-8 of the Probate Act of 1975 (755 ILCS 5/28-8 (West 2012)), and is in fact preceded by an explicit statement of independent administration. We hold that this language, including the broad grant of powers contained in provision E, in fact directed independent administration. We also hold that Charles has not shown any violation in this case of the statutory scheme regarding independent administration. See 755 ILCS 5/art. XXVIII (West 2012).

¶ 28 For the foregoing reasons, we hold that the circuit court did not err when it denied Charles's motion to terminate independent administration.

¶ 29 CONCLUSION

¶ 30 The judgment of the circuit court of Will County is affirmed.

¶ 31 Affirmed.