

IN THE COURT OF APPEALS OF IOWA

No. 1-456 / 10-1092
Filed July 27, 2011

ELAINE YOUNGBEAR,
Plaintiff-Appellant,

vs.

FORD MOTOR CREDIT COMPANY, L.L.C.,
Defendant-Appellee.

Appeal from the Iowa District Court for Tama County, Robert E. Sosalla,
Judge.

Joint owner of bank account appeals the court's summary dismissal of her
conversion action. **AFFIRMED.**

Melissa A. Nine and Barry S. Kaplan of Kaplan, Frese & Nine, L.L.P.,
Marshalltown, for appellant.

Angela E. Dralle of Dorsey & Whitney L.L.P., Des Moines, and David
Wetsch, Des Moines, for appellee.

Considered by Eisenhauer, P.J., and Potterfield and Tabor, JJ.

EISENHAUER, P.J.

Elaine Youngbear appeals the trial court's summary dismissal of her conversion claim against Ford Motor Credit Company L.L.C. We affirm.

In March 2009, Ford obtained a \$19,274.37 judgment against Oona A. Youngbear. In June 2009, funds in a bank account jointly owned by Oona and Elaine in the State Bank of Toledo were garnished. The court condemned the funds and ordered them made available to Ford. In July 2009, Ford filed its release and satisfaction of judgment.

Later in July 2009, Elaine filed a conversion action against Ford alleging: (1) Ford removed the funds "from a Tama County Bank Account owned by Oona Youngbear"; (2) "the monies were removed based upon a judgment entered in [Ford v. Oona Younbear]"; and (3) the monies removed were owned by Elaine and not by Oona. In March 2010, Ford sought summary dismissal arguing: "When the funds were garnished from the bank account 'owned by Oona Youngbear' in accordance with the Judgment and Order to Condemn said funds, no conversion resulted since the possession was not wrongful."

In April 2010, Elaine sought to amend her petition to allege the money was removed from a "bank account owned by Oona Youngbear and the Plaintiff, Elaine Youngbear." Elaine also resisted summary judgment and filed an affidavit from Oona stating Oona is Elaine's mother and Oona and Elaine "had a joint savings account." Further, Oona's affidavit asserted "the monies in this joint account were my daughter's and not mine. It was never our intent to comingle the monies in the account."

In July 2010, the trial court granted summary judgment to Ford. The court stated Elaine “contends that the intent of the parties that the funds did not belong to Oona Younbear controls” and noted Oona’s affidavit. The court ruled:

Even considering the summary judgment record in the light most favorable to [Elaine], the Court finds there is no genuine issue of material fact as to the only claim [Elaine] has stated against [Ford]—conversion. [Elaine] has not offered any fact showing that [Ford] exercised wrongful control over any property of [Elaine]. . . . [Elaine’s] Application to Amend Petition should be and is denied as moot.

On appeal, Elaine argues: (1) the court erred in ruling her application to amend is moot and (2) an issue of material fact exists as to what Oona and Elaine intended as to ownership of money in the joint bank account. Elaine seeks appellate attorney fees. We review for correction of errors at law. Iowa R. App. P. 6.907.

Even if we assume as fact the allegations contained in Elaine’s amended petition, we find no error. “Conversion is the wrongful control or dominion over another’s property contrary to that person’s possessory right to the property.” *Blackford v. Prairie Meadows Racetrack & Casino, Inc.*, 778 N.W.2d 184, 188 (Iowa 2010) (quotations omitted). Joint tenancy creates a rebuttable presumption the joint tenants hold in equal shares. *Anderson v. Iowa Dep’t of Human Serv.*, 368 N.W.2d 104, 106 (Iowa 1985). In *Anderson*, the Iowa Supreme court ruled the intent of three sisters in creating a joint bank account is a factor to consider in determining one sister’s eligibility for medical assistance benefits when the sister seeking benefits consistently “maintained she did not own the bank account.” *Id.* Here, both Elaine’s original and amended petition alleged Ford removed the money from a “bank account *owned by Oona*

Youngbear.” (Emphasis added.) Further Oona’s affidavit states “my daughter and I had a joint savings account.” Therefore, *Anderson* is inapplicable.

While joint tenancy continues, “each joint tenant has a liability to have his fractional interest taken for the satisfaction of his debts.” *Frederick v. Shorman*, 259 Iowa 1050, 1060, 147 N.W.2d 478, 482 (1966). “[A] joint tenant’s creditors can, by proper action . . . reach the interest or title to the property held in joint tenancy.” *Id.* Therefore, Oona’s interest in the joint bank account is subject to her creditors.

Nevertheless, Elaine argues:

Generally, a party to a joint bank account may only withdraw funds *without liability to her cotenant* when she is in fact the real owner of the money. *This reasoning can certainly extend to outside parties* who withdraw funds that belong to the wrong cotenant; that is, the joint tenant that does not actually own those monies.

(Emphasis added.) Elaine cites to conversion cases from other states, but the conversion in those cases occurred between and among joint account owners. Elaine cites no authority extending the reasoning to find a *wrongful taking by a third party*, when the third party (Ford) lawfully garnishes a joint bank account in accordance with a judgment. Accordingly, we find no genuine issue of material fact precluding summary judgment.

Based on our resolution of the case, we decline Elaine’s request for appellate attorney fees. Costs are taxed to Elaine.

AFFIRMED.