

STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of BLANCHE M. DAVIS, Deceased.

ROGER SWARTZ, Personal Representative of the
Estate of BLANCHE M. DAVIS,

UNPUBLISHED
January 22, 1999

Petitioner-Appellee,

v

NANCY WINANS,

No. 202390
Cheboygan Probate Court
LC No. 96-011334 IE

Respondent-Appellant.

Before: Hood, P.J., and Neff and Markey, JJ.

PER CURIAM.

Respondent appeals by right the probate court's order imposing a constructive trust in favor of petitioner as the personal representative of the Estate of Blanche Davis, deceased, on the proceeds of a joint bank account held by Davis and respondent Nancy Winans. We reverse.

Respondent knew Davis for over fifty years. Approximately one and one-half years before her death and after suffering a heart attack, Davis put respondent's name on her checking account. More than a year later, Davis had another heart attack and surrendered possession of her checkbook to respondent, asking respondent to take care of her household bills. Respondent closed the account approximately six months after Davis died when bank employees told her that the account's proceeds belonged to her.

In Michigan, "the holders of a joint bank account are joint tenants with the right of survivorship." *Department of Treasury v Comerica Bank*, 201 Mich App 318, 325; 506 NW2d 283 (1993). MCL 487.703; MSA 23.303 provides:

When a deposit shall be made, in any bank by any person in the name of such depositor or any other person, and in form to be paid to either or the survivor of them, such deposits thereupon and any additions thereto, made by either of such persons, upon the making thereof, shall become the property of such persons as joint tenants,

and the same together with all interest thereon, shall be held for the exclusive use of the persons so named and may be paid to either during the lifetime of both, or to the survivor after the death of 1 of them. . . .

* * *

The making of the deposit in such form shall, in the absence of fraud or undue influence, be prima facie evidence, in any action or proceedings, to which either such banking institution or surviving depositor or depositors is a party, of the intention of such depositors to vest title to such deposit and the additions thereto in such survivor or survivors.

Under the statute, “a presumption of ownership is created when a person opens a bank account and names a joint owner with rights of survivorship.” *In re Wright Estate*, 430 Mich 463, 467; 424 NW2d 268 (1988). “Reasonably clear and persuasive proof . . . is required to overcome the presumption” that the deposits become the property of the surviving joint depositors. *Id.* at 467-468.

In the present case, the probate court clearly erred in awarding the proceeds of the joint account to petitioner. Although there was evidence of a confidential relationship between Davis and respondent such as to give rise to an inference of undue influence, *Kar v Hogan*, 399 Mich 529, 537; 251 NW2d 77 (1976), respondent presented sufficient evidence of a close relationship, her voluntary assistance to Davis with no request for payment, and of Davis’ mental acuity until her death to rebut any presumption of undue influence. See *In re Conant Estate*, 130 Mich App 493, 497-498; 343 NW2d 593 (1983). Thus, the heavy burden was on petitioner to rebut by “clear and persuasive proof” the evidence of Davis’ intent to vest title in the account with respondent. MCL 487.703; MSA 23.303. Petitioner failed to meet this burden, nor did the court in its opinion cite any evidence whatsoever from petitioner on this issue.

Evidence that Davis retained the checkbook until shortly before her death or asked respondent to pay her bills does not rebut the statutory presumption that Davis intended title to pass to respondent. See *In re Cullmann Estate*, 169 Mich App 778, 785-789; 426 NW2d 811 (1988). Also, there was no evidence that Davis intended that the proceeds go to someone other than respondent upon her death. To the contrary, Davis apparently intended for respondent to inherit her estate. See *Allstaedt v Ochs*, 302 Mich 232, 237-238; 4 NW2d 530 (1942); *Snow v National Bank of Ludington*, 16 Mich App 595, 597-598; 168 NW2d 482 (1969). Moreover, the strict common law requirements for a valid inter-vivos gift need not be complied with in order to create a joint bank account and vest title in another. *Jacques v Jacques*, 352 Mich 127, 134; 89 NW2d 451 (1958); *Habersack v Rabaut*, 93 Mich App 300, 305; 287 NW2d 213 (1979).

Because petitioner did not overcome the statutory presumption by “clear and persuasive proof,” *In re Wright Estate, supra* at 467, the probate court clearly erred in awarding petitioner the proceeds of the joint account.

We reverse and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Harold Hood
/s/ Janet T. Neff
/s/ Jane E. Markey