STATE OF MICHIGAN

COURT OF APPEALS

PHYLLIS E. YECK, Personal Representative of the Estate of LOUISE BROWN and the Estate of GERTRUDE DAVIS,

Plaintiff-Appellant,

v

MARY DOBROWOLSKI,

Defendant-Appellee.

UNPUBLISHED
September 28, 1999

No. No. 211856
Cheboygan Probate Court
LC No. 97-000007 CZ

Before: Bandstra, C.J., and Jansen and Whitbeck, JJ.

PER CURIAM.

Plaintiff-appellant Phyllis E. Yeck, the personal representative of the estates of Louise Brown and Gertrude Davis, appeals as of right from an order of the probate court granting summary disposition for defendant-appellee Mary Dobrowolski pursuant to MCR 2.116(C)(10).[1] The probate court ruled that Dobrowolski acquired title to all funds in a bank account to which her name was added after the account was originally created pursuant to the Joint Account Statute, MCL 487.703; MSA 23.303. While the probate court also summarily disposed of Yeck's breach of fiduciary duty, undue influence, abuse of invited confidence and convenience account claims, Yeck only raises arguments regarding the probate court's interpretation of the Joint Account Statute. We affirm.

I. Statutory Provisions

The Joint Account Statute provides for the creation of a joint bank account that includes a right to survivorship. The statute provides that the opening of such an account is prima facie evidence that the depositors intended that title to the entire account vests in the survivor or survivors. It provides in part:

> When a deposit has been made, or shall hereafter be made, in any banking institution transacting business in this state, in the names of 2 or more persons, payable to either or the survivor or survivors, such deposit or any part thereof or any interest or

> dividend thereon and any additions thereto, made by any 1 of the said persons, shall become the property of such persons as joint tenants, and the same shall be held for the exclusive use of the persons so named and may be paid to any 1 of said persons during the lifetime of said persons or to the survivor or survivors after the death of 1 of them, and such payment and the receipt or acquittance of the same to whom such payment is made shall be a valid and sufficient release and discharge to said banking institution for all payments made on account of such deposits prior to the receipt by said bank of notice in writing not to pay such deposit in accordance with the terms thereof.
>
> 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 proceeding, 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. [MCL 487.703; MSA 23.303.]

II. Basic Facts And Procedural History

Louise Brown and Gertrude Davis were elderly sisters who resided together in Cheboygan County. In mid-September, 1986, Davis opened a savings account at Citizens National Bank with Brown and a family friend, Marion Stempky. Davis opened the account (the "joint account") as a joint account with rights of survivorship. The joint account consisted of $100,739.30, which Davis transferred from her own, separate account.

Stempky died in January 1996, and Davis added Dobrowolski as a signatory to the joint account on January 25, 1996. Dobrowolski, who was Stempky's niece, had known Brown and Davis since she was a child, and her family had been close to the sisters for years. Dobrowolski testified that Davis asked her to go to the bank with her on January 25, 1996, and that Davis told a bank official that she wanted to add Dobrowolski's name to the joint account. Dobrowolski testified that she was unaware until she signed the signature card for the joint account that Stempky's name had been on the account with Davis and Brown. No new signature card was created when Dobrowolski's name was added to the joint account; instead, Dobrowolski signed the old signature card. Dobrowolski stated that the bank official told her she would be able to withdraw money immediately once added to the account. Brown did not accompany Dobrowolski and Davis to the bank when Davis added Dobrowolski to the joint account. Dobrowolski was not aware of the contents of the joint account at the time her name was added. Dobrowolski never contributed any money to the joint account, nor was any money deposited when her name was added to the account.

Davis died on February 12, 1996. Dobrowolski alleged that on that day, Brown handed her the passbook for the joint account and told her to close the account since the money belonged to Dobrowolski[2]. The following day, Dobrowolski withdrew the contents of the joint account ($123,000) and deposited the sum into her own personal account. Until that day, no money was ever withdrawn from or deposited into the account since it was opened in 1986. Brown died in a nursing home in February 1998, aged ninety-seven.

Yeck was Brown's conservator while Brown was alive and was later named the personal representative of the estates of both Davis and Brown. In June 1997, Yeck filed this action for a determination of title to the funds withdrawn by Dobrowolski from the joint account. As relevant to this appeal, Yeck claimed that the funds should be paid to the estates of Davis and Brown because they were the survivors of Stempky, the first of the joint tenants to die.

Yeck filed a motion for summary disposition of her complaint pursuant to MCR 2.116(C)(10) and Dobrowolski filed a cross-motion for summary disposition. Thereafter, the probate court entered a written decision and order denying Yeck's motion for summary disposition of her claims. The probate court ruled that Yeck failed to provide any case law or statutory support for her claim that a joint tenancy is not created when a party is added to a bank account after the account is created.

Additionally, the probate court entered a decision and order granting Dobrowolski's motion for summary disposition. As relevant to this appeal, the probate court again stated that neither the joint account statute nor case law provided that a later added party did not acquire a vested ownership interest or survivorship rights, even when a new account and signature card were created. Citing *Equitable & Central Trust Co v Zdziebko*, 260 Mich 366; 244 NW 505 (1932), the probate court noted that the Michigan Supreme Court approved the creation of a joint account without a new signature card or new account. Relying on *Zdziebko*, the probate court ruled that Davis and Dobrowolski had sufficiently complied with the statutory requisites to create a joint tenancy. The probate trial court ruled that Dobrowolski became the sole owner of the joint account upon the death of Brown, meaning that Brown's estate had no interest in the account.

III. Preservation Of The Issue And Standard Of Review

Yeck argued to the probate court that Dobrowolski was not a joint tenant with a right of survivorship in the joint account number pursuant to the Joint Account Statute; however, the probate court found that Dobrowolski had a right of survivorship. Therefore, this issue is preserved for review. This Court reviews orders granting summary disposition de novo to determine if the moving party was entitled to judgment as a matter of law. *Stehlik v Johnson (On Reh)*, 206 Mich App 83, 85; 520 NW2d 633 (1994). MCR 5.001(A) provides that procedure in the probate court is governed by the rules applicable to other civil proceedings except if modified. While Yeck avers that MCR 5.802(B)(1) and MCL 600.866(1); MSA 27A.866(1) provide the standard of review of a probate proceeding, these provisions do not provide a standard of review of motions for summary disposition.[3]

IV. Interpretation Of The Joint Account Statute

Yeck argues that the probate court erred in ruling that Dobrowolski acquired title to all funds in the joint account pursuant to the Joint Account Statute. We disagree.

The Joint Account Statute provides for the creation of a joint bank account that includes a right of survivorship. The statute provides that the opening of such an account is prima facie evidence that the depositors intended that title to the entire account vest in the survivor or survivors. A key aspect of the statute and all the cases interpreting the statute, however, is that the person creating a joint account

has the power to withdraw the money in the account at any time. *First Federal Savings & Loan Ass'n v Savallisch,* 364 Mich 168, 173; 110 NW2d 724 (1961). Under the Joint Account Statute, a depositor may limit the co-signatories' use of the account. Unless designated as non-revocable, the depositor always has the right to change co-tenants or limit payment to the depositor. *Rasey v Currey's Estate,* 265 Mich 597, 602; 251 NW 784 (1933). Here, the depositor, Davis, maintained the only passbook to the joint account, indicating that she was not making an outright gift to the other signatories. Until the moment of her death, therefore, Davis had the right to withdraw all the funds herself. *Esling v City National Bank & Trust Co of Battle Creek*, 278 Mich 571, 577; 270 NW 791 (1936); *Manufacturers National Bank v Schirmer,* 303 Mich 598, 603-604; 6 NW2d 908 (1942).

A number of cases share the view that the formalities of the joint account statute will not stand in the way of following the wishes of the depositor. See *Roach v Plank*, 300 Mich 43, 53; 1 NW2d 446 (1942); *Zdziebko, supra* at 372; *State Savings Bank v Baker*, 257 Mich 666, 669; 241 NW 842 (1932); *In re Taylor's Estate,* 213 Mich 497, 502; 182 NW 101 (1921). Here, while the strict formalities of the statute were not followed, as in *Zdziebko, supra* at 373, the depositor's clear intent is evident and should not be foiled by a technical deficiency.

Yeck argues that *Zdziebko* is not applicable since it addresses the statutory predecessor to the Joint Account Statute. However, the language of the Joint Account Statute is substantially identical to the older law. Under *Zdziebko,* Davis' intent to create a joint account with right of survivorship should not be foiled by her failure to follow the strict formalities of the Joint Account Statute. We conclude that the probate court did not err in ruling that Dobrowolski acquired a joint ownership interest in the joint account. It is evident from Davis' retention of the passbook to the joint account that she intended that title in the funds would only become fully vested in her survivors after Davis' death. See *In re Cullmann Estate,* 169 Mich App 778, 785; 426 NW2d 811 (1988). Further, while an account may be joint without automatically carrying the right of survivorship, *Danielson v Lazoski,* 209 Mich App 623, 625-626; 531 NW2d 799 (1995), citing *Leib v Genesee Merchants Bank & Trust Co*, 371 Mich 89, 95; 123 NW2d 140 (1963), here the signature card expressly provided for such a right.

Affirmed.

/s/ Richard A. Bandstra
/s/ Kathleen Jansen
/s/ William C. Whitbeck

[1] As noted below, Yeck originally filed a motion for summary disposition pursuant to MCR 2.116(C)(10) and Dobrowolski filed a cross-motion for summary disposition. The trial court granted Dobrowolski's cross-motion for summary disposition. It is this decision of the trial court, no not its denial of Yeck's original motion, that is before us, as it was a *final* order appealable as of right because it resolved all of Yeck's claims against Dobrowolski. See MCR 7.203(A).

[2] After Davis' death, an effort was made to have Brown admitted into a Medicaid sponsored nursing home. However, the government learned of the joint account and construed Brown's giving of the

passbook to Dobrowolski as an effort to wrongfully divest of assets to qualify for the benefits. Yeck appealed this ruling. In the course of the administrative hearing, Yeck stated that all the money in the joint account belonged to Davis and that Dobrowolski was placed on the account as a "tenant or a co-owner." The hearing referee affirmed the ruling that Brown was not entitled to nursing home benefits. This issue became moot, however, because Brown died shortly before the opinion was issued.

[3] MCL 600.866(1); MSA 27A.866(1) provides:

> All appeals from the probate court shall be on a written transcript of the record made in the probate court or on a record settled and agreed to be the parties and approved by the court. *An appeal shall not be tried de novo.* [Emphasis supplied.]

MCR 5.802(B)(1) likewise provides:

> An appeal from the probate court is on the papers filed and a written transcript of the proceedings in the probate court or on a record settled and agreed to by the parties and approved by the court. *The appeal is not de novo.* [Emphasis supplied.]

It is evident that the preceding statute and court rule provide that appellate review of a probate court decision will be "de novo" in the sense of the reviewing court conducting a new trial or creating a larger factual record. Such a prohibition on a "de novo" trial or expansion of the factual record is in no way inconsistent with de novo review, e.g. review without formal deference to the reasoning of the lower court, of the probate court's legal conclusions in deciding the motions for summary disposition.