

STATE OF MICHIGAN
COURT OF APPEALS

STATE TREASURER,

Plaintiff-Appellee,

v

DENNIS GUY ERDMAN,

Defendant-Appellant,

and

DANIEL GIG ERDMAN,

Intervening Defendant-Appellant,

and

FIRST FEDERAL OF MICHIGAN and
GILBERT ERDMAN,

Defendants.

UNPUBLISHED

July 9, 2002

No. 227689

Wayne Circuit Court

LC No. 98-822086-CZ

Before: White, P.J., and Murphy and Fitzgerald, JJ.

PER CURIAM.

Defendant appeals as of right from the circuit court's order granting plaintiff summary disposition in this action for reimbursement of imprisonment costs under the State Correctional Facility Reimbursement Act (SCFRA), MCL 800.401 *et seq.* We reverse.

I

Defendant Dennis Erdman has been incarcerated in state correctional facilities since November 1989. On July 14, 1998, plaintiff State Treasurer brought suit under the SCFRA against defendant, defendant's father, Gilbert Erdman, and First Federal of Michigan, for reimbursement of \$177,560.00, representing defendant's incarceration costs from November 1989 to July 15, 1998. On that date, the circuit court issued an order to show cause and ex-parte order appointing a receiver, requiring that defendant show cause by September 4, 1998 why an order should not be entered appropriating and applying his assets to reimburse the state for his confinement, and appointing First Federal of Michigan as receiver of "the account(s) of

Defendant Dennis Guy Erdman pending further order of this Court.” The circuit court ordered First Federal to “place a hold (freeze) on the account(s) of Defendant Dennis Guy Erdman pending further order of this Court.” The order also provided that defendant’s father, “Defendant Gilbert Erdman is prohibited from transferring any assets held on deposit at First Federal of Michigan in the name of Defendant Dennis Guy Erdman until further order of the Court.”

Defendant Dennis Erdman, proceeding in propria persona in the circuit court, responded to plaintiff’s motions, and filed affirmative defenses, in which he asserted that the court lacked jurisdiction over his father, Gilbert Erdman, and over defendant First Federal; that any monies held by First Federal were in the name of and belonged to Gilbert Erdman; and that the SCFRA did not apply to savings accounts of family members of a prisoner. Defendant requested that the court stay proceedings, noting that he was still appealing his state convictions in federal court; and that the court should grant an evidentiary hearing on the issue of ownership of the bank accounts. In a brief filed August 31, 1998, defendant added that Gilbert Erdman had deposited the monies while he (Dennis Erdman) was in prison, and had named him (Dennis Erdman) as beneficiary of the four accounts. Defendant argued that since Gilbert Erdman had not died, the monies belonged to Gilbert Erdman, and the SCFRA thus did not apply.

Defendant’s father, Gilbert Erdman, was served but never appeared in the suit, and plaintiff never sought a default against him.

On September 4, 1998, plaintiff filed its response to defendant’s request for discovery, response to complaint and affirmative defenses. Plaintiff stated in pertinent part:

1. Upon receipt of Defendant’s pleadings Plaintiff subpoenaed bank records at issue. The records submitted in response are attached as exhibit 1 . . .
2. Exhibit one establishes that there are four accounts at issue.
3. Account number 349-3-04172-2 is held in the name of Dennis G. Erdman (Defendant) as beneficiary, with Gilbert Erdman as trustee.
4. Account numbers 349-3-00573-4; 349-3-00574-2; and 349-3-00586-6 are each held joint[ly] and severally by Dennis G. Erdman (Defendant) and Gilbert Erdman. Each of these accounts is held under the Social Security Number of Defendant Dennis G. Erdman.

Plaintiff filed another motion for summary disposition, under MCR 2.116(C)(9), asserting that “[d]efendant’s only claim is that the funds at issue belong not to him, but to Gilbert Erdman.” Plaintiff attached an affidavit of defendant’s father, Gilbert Erdman, stating:

Now comes Defendant, Gilbert Erdman, and states that the funds in First Federal of Michigan, account #349-3-04172-2, are his funds and his alone and that Dennis Guy Erdman is only a beneficiary of these funds. The other accounts held in First Federal of Michigan, namely account numbers 349-03-000573-4, 349-03-000574-

2, and 349-03-000586-6, belong to Dennis Guy Erdman and Gilbert Erdman claims no interest in them.[¹]

Defendant Dennis Erdman's response to plaintiff's motion and accompanying affidavits asserted that:

Defendant Gilbert Erdman suffers from "Senile Demensia" [sic] due to his advanced age and poor health. Defendant Gilbert Erdman's affidavit is not knowing, due to his diminished capacity.

This Court should ask Defendant Gilbert Erdman: "Where and whom did you get the check from for the moneys with regards to account numbers 349-3-00573-4, 349-3-00574-2, and, 349-00586-6? Amber Lawson was the person that had given Defendant Gilbert Erdman the check for approximately \$50,000.00; not Defendant Dennis Guy Erdman #205858, see attached, Sworn Affidavit of Dennis Guy Erdm#205858 [sic].

* * *

. . . Summary disposition is not appropriate. There is a genuine issue of material facts [sic].

Gilbert Erdman passed away on December 28, 1999. On January 12, 2000, plaintiff filed a "supplemental pleading in support of plaintiff's motion for summary disposition," which noted Gilbert Erdman's passing and asserted that defendant was now the sole owner of the bank accounts.

On January 21, 2000, defendant, still proceeding in propria persona, filed supplemental affirmative defenses, a memorandum, and an affidavit, asserting that his brother, Daniel Erdman, was the sole heir to and executor of Gilbert Erdman's estate, that the court lacked subject matter jurisdiction, that plaintiff failed to state a claim, that plaintiff lacked the legal capacity to sue Gilbert Erdman's estate, and that the court should thus deny plaintiff's third motion for summary disposition and issue a scheduling order forthwith. Defendant noted that Gilbert Erdman had been 82 years old, terminally ill with cancer for a very long time, and on medication, when he signed the affidavit at plaintiff's behest.

Without a hearing, the circuit court granted plaintiff's third motion for summary disposition.²

¹ The affidavit is notarized and dated May 17, 1999.

² The circuit court's final opinion and order stating in pertinent part:

Summary Disposition is GRANTED as Defendant Dennis G. Erdman has failed to show cause why an order should not be entered at this time appropriating and applying Defendant Dennis G. Erdman's assets to reimburse the State of
(continued...)

II

This Court permitted Daniel Erdman, brother of defendant Dennis Erdman, to intervene in this appeal.³ Daniel Erdman resides in Texas and has proceeded in propria persona. Daniel

(...continued)

Michigan for the cost of Dennis G. Erdman's confinement in a correctional facility, and specifically:

1. 90% of Defendant Dennis G. Erdman's assets be paid to the State of Michigan as reimbursement for expenses incurred for his incarceration. This amount is not to exceed the actual costs of incarceration.

2. Any funds currently on deposit in the account(s) currently held in receivership by First Federal of Michigan or its successor in interest Charter One Bank F.S.B., including accounts numbered 349-3-00573-4, 349-3-00574-2 and 349-3-00586-6 shall be disbursed as follows:

a. 90% to the "State of Michigan" . . . Attn: SCFRA

b. 10% to Defendant Dennis G. Erdman.

3. All receiverships shall be terminated upon the above disbursements.

4. This case shall be dismissed without prejudice, and without costs to either party.

³ Daniel Erdman filed a motion to file an amicus curiae brief in this Court. This Court treated it as a motion to intervene, and granted the motion by order dated January 18, 2001. Daniel Erdman submitted a sworn affidavit to this Court stating inter alia that:

5. Somehow, the State of Michigan Attorney General had found about [sic] . . . and, obtained an ex parte court order, freezing the above bank accounts at First Federal of Michigan, and, by preventing my father from withdrawing his moneys from the bank.

My father did go to the bank and attempt to withdraw the funds; but, was prevented from withdrawing the same; pursuant to a ex parte [sic] court order from the Plaintiff-Appellee. [Emphasis added.]

Also attached to Daniel Erdman's appellate brief is an affidavit of his wife, Lorena Erdman, attesting that she witnessed Gilbert Erdman's last will and testament, and that Gilbert Erdman complained to her that the state through its attorneys "forced him to sign an affidavit based upon threats of forfeiture of his entire estate over moneys owed the State of Michigan by Dennis Guy Erdman." Lorena Erdman's affidavit states that Gilbert Erdman told her "immediately after he was sued by the State of Michigan, he attempted to withdraw the funds that were held at First Federal of Michigan. The bank manager refused . . . based upon a ex parte [sic] order freezing the bank accounts."

Erdman submitted as an exhibit a document purporting to be Gilbert Erdman's last will and testament, dated November 1, 1999:

I, Gilbert /Erdman . . . being of sound mind and in contemplation of the certainty of death, do hereby declare this instrument to be my last will and testament.

I hereby revoke all previous wills and codicils.

I direct that the disposition of my remains be as per my son Daniel Erdman's instructions.

I give all the rest and residue of my entire estate to my son Daniel Erdman and no one else. Also, the Certificate of Deposits [sic] in First Federal of Michigan Bank that are in my name and beneficiary to my other son Dennis Erdman is [sic] revoked by me and now is to go to my other son Daniel Erdman only. Dennis Erdman gets nothing from my Estate.

If none of my designated beneficiaries services [sic] me, I give all the rest of my estate to my Daughter in law Lorena B. Erdman. If neither Daniel or Lorena Erdman survives me, I give all the rest and residue of my estate to my heirs as determined by the laws of the State of Michigan, to descent and distribution. Dennis Erdman gets nothing.

I appoint Daniel Erdman only as executor of this will, to serve without bond. Should Daniel Erdman only be unable or unwilling to serve, then I appoint Lorena Erdman to act as executor of this will.

I herewith affix my signature to this will on this the First day of November, 1999 . . . the present [sic] of the following witnesses and subscribed this will at my request, and in my presence.[⁴]

III

Defendant Dennis Erdman argues on appeal that a plain reading of the SCFRA evinces that prisoner's families can not be held financially liable for prisoner's costs. Plaintiff acknowledges that the SCFRA does not apply to assets held solely by a prisoner's family members,⁵ but argues that defendant fails to recognize that plaintiff sought a portion of defendant

⁴ Gilbert Erdman's will was witnessed by Daniel G. Erdman, Lorena Erdman, and Lourdes Acevedo.

⁵ The SCFRA provides in pertinent part:

Sec 1a. As used in this act:

(a) "Assets" means property, tangible or intangible, real or personal, belonging to or due a prisoner . . . including income or payments to such prisoner
(continued...)

Dennis Erdman's assets. Plaintiff argues that the circuit court's factual finding that the funds in the First Federal accounts were an asset of defendant Dennis Erdman was not clearly erroneous.

We review the circuit court's grant of summary disposition de novo. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). The circuit court went beyond the pleadings in considering plaintiff's motion, thus we consider it under MCR 2.116(C)(10). A motion under MCR 2.116(C)(10) tests the factual support for a claim. *Id.* The documentary evidence filed or submitted must be viewed in the light most favorable to the opposing party. *Id.* "If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted." *Id.* at 455, quoting *Quinto v Cross & Peters Co*, 451 Mich 358, 363; 547 NW2d 314 (1996).

We conclude that a genuine issue of material fact remained regarding the ownership of the accounts. From the outset of these proceedings, defendant Dennis Erdman disclaimed ownership, and argued that he should be allowed to conduct discovery regarding the ownership of the accounts. Gilbert Erdman was alive for 1 ½ years after plaintiff filed suit, and defendant raised below that Gilbert Erdman suffered from dementia, was on medication, and that the affidavit plaintiff procured from him was not knowingly or understandingly made. It is clear that three of the First Federal accounts were jointly held between Gilbert and Dennis Erdman, and plaintiff acknowledged that Gilbert Erdman had the right to all of the monies in those accounts before he died in December 1999. Placing money in a joint bank account is not the equivalent of making an inter vivos gift. *Jacques v Jacques*, 352 Mich 127, 134; 89 NW2d 451 (1958). The depositor may at any time change the co tenants or simply withdraw the money. *First Federal Savings & Loan Ass'n v Savallisch*, 364 Mich 168, 173; 110 NW2d 724 (1961); *Rasey v Currey's Estate*, 265 Mich 597, 601-602; 251 NW 784 (1933). However, the instant accounts were frozen by the circuit court's ex-parte order of July 14, 1998 appointing First Federal as receiver of the accounts; thus Gilbert Erdman could not have withdrawn monies or changed the beneficiary. Instead, defendant maintains, Gilbert Erdman demonstrated his intent to withdraw the funds and change the beneficiary by attempting to make a withdrawal and making a will naming intervening defendant Daniel Erdman sole heir and executor to his estate, including to the accounts at issue.

Thus, prior to Gilbert's death, a genuine issue was raised regarding the ownership of the accounts. Under the circumstances that the issue was raised and the accounts were frozen before

(...continued)

from social security, worker's compensation, veteran's compensation, pension benefits, previously earned salary or wages, bonuses, annuities, retirement benefits, or from any other source whatsoever, but does not include any of the following:

(i) The homestead of the prisoner up to \$50,000.00 in value.

(ii) Money saved by the prisoner from wages and bonuses paid the prisoner while he or she was confined to a state correctional facility. [MCL 800.401a.]

Gilbert's death, we reject plaintiff's argument that defendant Dennis Erdman became sole owner of the funds by operation of law on Gilbert's death. Gilbert's rights must be determined as of the time the claim was made, and if it is determined that the funds were his, it must be determined whether he was prevented from disposing of the funds in some other fashion by the receivership. We conclude under these circumstances that summary disposition was improperly granted.

IV

Intervening defendant Daniel Erdman argues on appeal that only he has standing to seek this Court's review on behalf of Gilbert Erdman's estate because the funds at issue belong to him, as the sole heir to and executor of Gilbert Erdman's estate. In an appellate reply brief, defendant Dennis Erdman argues that he lacks standing for the same reason argued by intervening defendant, and that his brother should be substituted as a party defendant for his deceased father on behalf of Gilbert Erdman's estate.

Plaintiff filed a brief in opposition to intervening defendant's brief on appeal, arguing that although intervening defendant Daniel Erdman does have standing to claim funds on behalf of the estate, the claim lacks merit because to the extent the funds in the three First Federal accounts belonged to Gilbert Erdman at all, they passed to joint account holder Dennis Erdman upon Gilbert Erdman's death and without becoming part of the estate. Plaintiff's argument ignores, however, that Gilbert Erdman was never defaulted, that defendant Dennis Erdman asserted before Gilbert's death that the funds belonged to Gilbert, and further asserted that Gilbert lacked the capacity to protect his interests, and that Daniel Erdman asserts that Gilbert attempted to withdraw the funds before his death but was not permitted to do so because of the receivership.⁶

Because it is not clear from the present record whether an estate has been opened and whether Daniel Erdman has been appointed personal representative, we leave it to the circuit court to determine the proper parties on remand.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Helene N. White

/s/ E. Thomas Fitzgerald

⁶ We recognize that these assertions are somewhat inconsistent regarding Gilbert's capacity and the significance of his actions, but these are matters to be resolved below.