STATE OF MICHIGAN

COURT OF APPEALS

In re Estate of FRANCES M. EARL.

KAY F. AMPEY, Personal Representative,

Plaintiff-Appellant,

v

ELNORA RODRIGUEZ,

Defendant-Appellee.

UNPUBLISHED
November 25, 2008

No. 279321
Kalamazoo Circuit Court
LC No. 06-000113-CZ

Before: Murphy, P.J., and Sawyer and Smolenski, JJ.

PER CURIAM.

Plaintiff Kay F. Ampey, personal representative of the estate of Frances M. Earl, appeals as of right the order dismissing her claims against defendant Elnora Rodriguez. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff argues that the trial court clearly erred when it held that defendant was entitled to the money held in joint bank accounts under the survivorship statute, MCL 487.703. The creation of a joint bank account, absent fraud or undue influence, is prima facie evidence that the depositors intended to vest title in the survivor. MCL 487.703. This creates a presumption that can only be rebutted with reasonably clear and persuasive proof. *Lau v Lau*, 304 Mich 218, 224; 7 NW2d 278 (1943); *Wechsler v Zen*, 2 Mich App 438, 441; 140 NW2d 581 (1966). The presumption remains as a permissive inference when there is evidence to the contrary. *Kirilloff v Glinisty*, 375 Mich 586, 588, 591; 134 NW2d 707 (1965); *Jacques v Jacques*, 352 Mich 127, 135-138; 89 NW2d 451 (1958).

In the present case, there was no evidence that the deceased Frances Earl stated her reasons for adding defendant's name to her accounts. Plaintiff argues that defendant's name was added only for convenience in paying bills and funeral expenses. Compare *Van't Hof v Jemison*, 291 Mich 385, 392; 289 NW 186 (1939). However, this was not necessarily inconsistent with an additional intent to gift the remaining money to defendant after Earl's death. See *Serkaian v Ozar*, 49 Mich App 20, 26-27; 211 NW2d 237 (1973), quoting *Jacques*, *supra* at 138; see also *Kirilloff*, *supra* at 589. Plaintiff argues further that it was greatly important that defendant did not contribute money to the accounts, citing *Danielson v Lazoski*, 209 Mich App 623; 531 NW2d 799 (1995). However, that decision did not involve the joint survivorship statute. *Id.* at 625-626. That only one party contributed to the accounts or withdrew money does not necessarily

rebut the presumption that it was intended to vest in the survivor after death. See *Schrage v Schram*, 39 F Supp 906, 907 (ED Mich, 1941).

Plaintiff also argues that the trial court improperly considered the services defendant provided, allegedly without pay. However, the services without payment made it more likely that Earl felt grateful toward defendant and wished to give her money after her death. In *Van't Hof, supra* at 388-389, the Court noted that the deceased always compensated the defendants for their services. In the present case, defendant also testified that Earl said she should wait when she requested payment, which suggested that Earl intended her to have money after her death. The witnesses offered conflicting testimony regarding defendant's relationship with Earl; however, the trial court had reason to find the son's testimony unreliable because of internal inconsistencies. Defendant testified that Earl was like a mother or older sister throughout much of their lives.

Plaintiff also argues that, regardless whether the presumption of intent was otherwise rebutted, undue influence should be presumed, shifting the burden to defendant to show no undue influence. Undue influence is presumed when there was a confidential relationship between a grantor and fiduciary, the fiduciary benefited from the transaction, and the fiduciary had an opportunity to influence the grantor's decision. *In re Karmey Estate*, 468 Mich 68, 73; 658 NW2d 796 (2003). Although Earl placed trust in defendant and granted her a power of attorney in 2000, plaintiff did not establish a fiduciary or confidential relationship at the time Earl added defendant's name to her accounts in 1996. Further, defendant retained the benefit of the permissible inference that the account was intended to pass to the survivor. *Habersack v Rabaut*, 93 Mich App 300, 305-306; 287 NW2d 213 (1979). She also testified that she provided friendship, as well as services, and did not charge for her services. The only evidence that defendant put any pressure on Earl was vague and unreliable.

We defer to the trial court's judgment, because it was in a better position to view all the evidence, and only reverse a decision upon a definite and firm conviction that the trial court made a mistake. *Hill v City of Warren*, 276 Mich App 299, 308-309; 740 NW2d 706 (2007). The trial court did not clearly err when it held that plaintiff failed to overcome the presumption that the deceased intended to vest survivorship rights in defendant when she added defendant's name to her accounts and she was not compelled by undue influence.

Affirmed.

/s/ William B. Murphy
/s/ David H. Sawyer
/s/ Michael R. Smolenski