

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT SHAEFFER, Personal Representative of
the Estate of MARY E. SHAEFFER,

UNPUBLISHED
March 23, 2010

Plaintiff-Appellee,

v

MARY BURGHARDT,

No. 284428
Macomb Probate Court
LC No. 04-182077-CZ

Defendant-Appellant.

Before: Borrello, P.J., and Markey and Stephens, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted the trial court's January 14, 2008, order denying defendant's motion to reform judgment on remand from this Court's prior opinion affirming in part, vacating in part and remanding for further proceedings.¹ *Shaeffer v Burghardt*, unpublished opinion per curiam of the Court of Appeals issued May 15, 2007 (Docket No. 267717). We affirm.

The doctrine of the law of the case controls this latest appeal. It provides that "if an appellate court has passed on a legal question and remanded the case for further proceedings, the legal questions thus determined by the appellate court will not be differently determined on a subsequent appeal in the same case where the facts remain materially the same." *Grievance Administrator v Lopatin*, 462 Mich 235, 259; 612 NW2d 120 (2000) (citation omitted). The doctrine also binds lower courts, which, on remand, may not act inconsistently with an appellate court's decision on the case. *Id.* at 260. Because defendant on remand requested relief inconsistent with this Court's opinion in *Shaeffer, supra*, the trial court properly denied defendant's motion.

This case arises out of a dispute between the decedent's five children who survived her. Defendant had been named as joint owner with rights of survivorship on various Knights of

¹ On May 22, 2008, the trial court entered an order partially granting a motion to reform after remand the amount of the judgment at issue. It was revised to \$279,328.31 plus statutory interest.

Columbus credit union accounts, which this Court opined “had a balance of approximately \$192,902.08” near the time of the decedent’s passing.² *Shaeffer, supra*, slip op at 2. Plaintiff asserted the decedent did not intend these accounts to pass to defendant on her death but rather to the estate and ultimately to all her children in equal shares. *Id.* Plaintiff asserted similar claims regarding two annuities on which defendant had been named as primary beneficiary. In addition, plaintiff claimed that during the decedent’s lifetime defendant breached her fiduciary duty by writing checks to herself for her own personal benefit from the joint accounts. *Id.* It is not disputed these checks totaled \$34,424. *Id.* at 4. After trial, the jury returned a general verdict for plaintiff in the amount of \$236,000 plus interest, apparently accepting plaintiff’s theories of silent fraud, breach of fiduciary duty, and conversion. *Id.* at 2, 8. Although this Court determined that plaintiff had failed to properly plead a claim for silent fraud, *id.* at 3-4, this Court held the evidence supported the jury’s finding of conversion during the decedent’s lifetime regarding the checks totaling \$34,424. *Id.* at 4-5. Pertinent to this appeal, this Court had held that the evidence supported the jury’s determination that the decedent did not intend the Knights of Columbus accounts to pass to defendant on her death. She had intended the balance of the accounts to be distributed according the terms of the decedent’s will. This Court concluded:

The remainder of the conversion issue focuses on plaintiff’s contention that the decedent never intended defendant to receive the remainder of the Knights of Columbus accounts as the surviving joint owner. Plaintiff asserts defendant was placed as the joint owner on the accounts merely as a convenience to assist the decedent in bill payment and that the decedent intended the accounts to be distributed equally upon her death to all beneficiaries, in accordance with the residuary clause of her will. [*Shaeffer, supra*, slip op at 5.]

The Court noted that its resolution of the silent fraud issue did not affect its determination regarding conversion and that the presumption of rights of survivorship may be rebutted “by reasonably clear and persuasive proof to the contrary.” *Id.* at 5, quoting *In re Estate of Cullman*, 169 Mich App 778, 786; 426 NW2d 811 (1988). This Court further opined that admissible evidence supported plaintiff’s theory of conversion by rebutting the presumption of survivorship. *Shaeffer, supra*, slip op at 5-6. “Because evidence existed to rebut the presumption of survivorship, we will not overturn the jury’s determination on the issue of conversion.” *Id.* at 6. Thus, this Court in affirming the jury’s verdict held that the Knights of Columbus credit union accounts did not pass to defendant on decedent’s death through rights of survivorship but became part of the estate. This Court’s judgment affirming the jury’s verdict finding defendant liable to the estate for the credit union accounts under the theory of conversion is the law of the case. Although discretionary and not a limit on the courts’ authority, the law of the case doctrine is sufficiently important that it applies without regard to whether the prior decision was actually correct. *Hill v City of Warren*, 276 Mich App 299, 308; 740 NW2d 706 (2007).

² Plaintiff asserts in this appeal that the figure of \$192,902.08 was only one of several Knights of Columbus credit union accounts that totaled \$244,000 as shown on trial exhibit 7.

This Court went on to hold, however, that the evidence did not support plaintiff's claims to the two annuities that were at issue. *Shaeffer, supra*, slip op at 6-7. Consequently, this Court found that defendant's motion for remittitur had merit because the approximate value of the credit union accounts near the time of the decedent's death was believed to be \$192,908.08, and the checks converted during the decedent's lifetime totaled \$34,424. Together, the sum of these converted funds was believed to be less than the jury's general verdict of \$236,000. This Court opined, "remittitur is justified when a jury verdict exceeds the highest amount supported by the evidence. MCR 2.611(E)(1). Based on our determination of error in awarding plaintiff the proceeds of the two annuity accounts, remittitur is required and we remand this matter to the trial court for recalculation of the judgment." *Shaeffer, supra*, slip op at 8.

On remand, however, defendant moved to reform the judgment entered in this case to limit plaintiff's award to the \$34,424 that defendant improperly converted during the decedent's lifetime. But the relief defendant requested was clearly inconsistent with this Court's prior judgment in *Shaeffer, supra*: The material facts of this case had not changed, and defendant made no argument that an intervening change of law justified its motion to reform the judgment. See *Grievance Administrator, supra* at 259-260; *Ashker v Ford Motor Co*, 245 Mich App 9, 13; 627 NW2d 1 (2001) (the law of the case doctrine may not apply where the law has changed subsequent to the appellate decision). Consequently, we conclude the trial court properly denied defendant's motion. Indeed, we conclude that defendant had no reasonable legal basis for either moving on remand to reform the judgment to limit plaintiff's award to \$34,424 or in appealing the trial court's denial of her motion. See MCR 7.216(C).

We affirm. Plaintiff may tax costs pursuant to MCR 7.219 as the prevailing party.

/s/ Stephen L. Borrello
/s/ Jane E. Markey
/s/ Cynthia Diane Stephens