

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 20, 2012

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2011AP2076-FT

Cir. Ct. No. 2010CV238

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

JOYCE A. NIGG,

PLAINTIFF-APPELLANT,

V.

**MARVIN NIGG REVOCABLE TRUST DATED OCTOBER 17, 2005 AND
STEPHEN J. NIGG,**

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Oconto County:
MICHAEL T. JUDGE, Judge. *Reversed and cause remanded with directions.*

Before Hoover, P.J., Peterson and Mangerson, JJ.

¶1 PER CURIAM. Joyce Nigg appeals that part of a judgment determining three CoVantage Credit Union certificates of deposit are the property

of the Marvin Nigg Revocable Trust.¹ Joyce argues that an “account change card” signed by her husband, Marvin Nigg, unambiguously reclassified the subject CDs from individually owned to jointly owned with survivorship. Joyce therefore contends that the circuit court erred by relying on extrinsic evidence to conclude that Marvin intended the CDs to be part of the trust assets. We agree. That part of the judgment is therefore reversed and the matter is remanded to the circuit court with directions to declare that the CDs belong to Joyce.

BACKGROUND

¶2 Joyce and Marvin spent nearly seventeen years together and were married for over two of those years—from July 23, 2007, until Marvin’s death on December 13, 2009. In October 2005, Marvin established a revocable trust for the benefit of his children, step-children and Joyce. A marital property agreement dated July 23, 2007 provides, in relevant part:

Property titled in both parties’ names with designation of the right of survivorship shall be classified and owned as survivorship marital property. Any checking or savings accounts, certificates of deposit, share accounts, and other like arrangements titled in both parties’ names shall be further governed by the provisions of chapter 705.

¶3 On November 16, 2007, Marvin and Joyce signed an account change card reclassifying all five of Marvin’s individual CoVantage accounts, including the subject CDs, as joint accounts, with Joyce having the right of survivorship. Following Marvin’s death, Joyce executed another account change card reclassifying the CoVantage accounts as individual rather than joint. A dispute

¹ This is an expedited appeal under WIS. STAT. RULE 809.17. All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

arose over Marvin's estate, and Joyce consequently filed the underlying suit against the trust and its trustee, seeking declaratory and injunctive relief.

¶4 The trust counterclaimed alleging, in pertinent part, conversion of the CDs on the ground that Joyce "verbally acknowledged" that the CDs belonged to the trust. At a hearing, witnesses recounted that in the month following Marvin's death, Joyce told family members that she believed the CDs belonged to the trust. In turn, Joyce testified that after discovering documents at the marital residence, she concluded her statements were made in error. Finding that Joyce had not been pressured into making the statements regarding the CDs, the court concluded "it was not the intention of Marvin Nigg and Joyce Nigg to create a right of survivorship in the joint accounts they established." The court consequently deemed the CDs to be trust property. This appeal follows.

DISCUSSION

¶5 Contractual language must be given its plain and ordinary meaning. *Huml v. Vlazny*, 2006 WI 87, ¶52, 293 Wis. 2d 169, 716 N.W.2d 807. "While intent is a factual matter, ... the parol evidence rule prohibits a trial court from inquiring into the intent of parties to an unambiguous written agreement." *Schmitz v. Grudzinski*, 141 Wis. 2d 867, 872 n.4, 416 N.W.2d 639 (Ct. App. 1987) (citations omitted). Whether a contract is ambiguous is a question of law that we review independently. *Id.* at 871. "A contract is ambiguous when it is reasonably susceptible of more than one meaning." *Id.*

¶6 Here, the account change card listed Marvin's name and account numbers, and stated that the reason for the change was to add Joyce to the accounts. A box indicating that it would be a "Joint Account With Survivorship" was checked and the document was signed by both Marvin and Joyce on

November 16, 2007. To the extent the trust challenges the form and authenticity of the account change card, we are not persuaded.

¶7 With respect to form, the trust claims the document fails to comply with the Wisconsin statute for creating a joint account. WISCONSIN STAT. § 705.02(1) states, in relevant part:

Provisions in substantially the following form contained in a signature card, passbook, contract or instrument evidencing an account shall be effective to create the multiple-party accounts described in this subchapter when conspicuously printed or typewritten immediately above or adjacent to the place for the signatures of the parties to the account:

(a) Joint account: “THIS ACCOUNT/CERTIFICATE OF DEPOSIT IS JOINTLY OWNED BY THE PARTIES NAMED HEREON. UPON THE DEATH OF ANY OF THEM, OWNERSHIP PASSES TO THE SURVIVOR(S).”

¶8 The trust argues that the document does not include the statutory language for joint accounts and “does not appear conspicuously above the place for [Marvin]’s signature.” The statute, however, does not require the exact statutory language—only language in “substantially” the same form. As noted above, the account change card signed by Marvin and Joyce stated that the reason for the change was to add Joyce to the existing account. Further, the box indicating “joint account with survivorship” was checked. Because the stated purpose of the account change card satisfies the statutory notice requirements, we reject the trust’s claim that the document was invalid.

¶9 The trust also intimates that the circuit court erred by admitting the account change card into evidence despite the trust’s challenge to its authenticity. We review a circuit court’s decision to admit or exclude evidence for an erroneous exercise of discretion. *Martindale v. Ripp*, 2001 WI 113, ¶28, 246 Wis. 2d 67,

629 N.W.2d 698. Pursuant to WIS. STAT. § 909.01, “[t]he requirements of authentication or identification as a condition precedent to admissibility are satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.”

¶10 Rhonda Drexler, an assistant vice president of financial services at CoVantage, testified that consistent with its common practice, the credit union retained a scanned copy of the completed account change card. Drexler also testified that the account change card would not have been created unless Marvin had requested it. Acknowledging that the signatures on the card were not notarized, Drexler further explained that when a signature is not notarized, the credit union verifies the signature against previous signatures on the account. Drexler’s testimony was sufficient to establish the document’s authenticity.

¶11 Ultimately, the account change card unambiguously made Marvin and Joyce co-owners of the subject accounts with the right of survivorship. Because the account change card is clear on its face, the circuit court erred by using extrinsic evidence to challenge its effect.

By the Court.—Judgment reversed and cause remanded with directions.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

