IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN THE MATTER OF THE ESTATE OF WINIFRED M. DRYDEN, DECEASED.	)	
SUPPORTIVE CARE SOLUTIONS, LLC	)	C.A. No. 2020-0010-SEM
Petitioner,	)	
v.	)	
ELIZABETH H. THOMPSON, Personal representative of THE ESTATE OF JOSEPH A. SCHMIDT,	)	
Respondent.	)	

MASTERS FINAL REPORT

Final Report: June 22, 2021
Date Submitted: March 29, 2021

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MOLINA, M.

Joint bank accounts allow two or more people to combine their assets and income and pay shared expenses. But sometimes a joint account is set up merely as a convenience to the primary owner of the funds, who would like some assistance or support. The party assisting may be a friend or relative, who assumes the role of an informal advisor or appointed fiduciary. In these arrangements, the advisor or fiduciary does not own the funds within the joint account but, instead, manages and advises the owner, or stands ready to do so upon request. Unfortunately, whether someone was named as a convenience or as a joint owner is not always clear. I must determine whether, in this case, two joint accounts were meant to be joint in all respects or whether the non-contributing account holder was added merely as a convenience to the contributing account holder.

Stated another way, I am asked to determine whether the accounts at issue were joint accounts with rights of survivorship, which passed to the non-contributing account holder upon the death of the contributing account holder, or convenience accounts, which should pass through the estate of the contributing account holder. This comes to me on a motion for summary judgment, heard in lieu of the previously scheduled trial. I find one account clearly and unambiguously provides for a right of survivorship in the account opening documents, but the other is ambiguous and

will need the benefit of a full trial. As such, I recommend that the motion for summary judgment be granted in part and denied in part. This is my final report.

I. BACKGROUND[1]

The dispute before me relates to two bank accounts in the names of Winifred M. Dryden (the "Decedent") and Joseph A. Schmidt (the "Respondent"), who had a personal relationship before the Decedent's death on December 15, 2018.[2] The personal representative of the Decedent's estate, Supportive Care Solutions, LLC (the "Personal Representative"), contends the Respondent wrongfully retained the funds from two bank accounts jointly held by the Decedent and the Respondent, after the Decedent's passing, and that everything should have been turned over to the Decedent's estate for probate.[3]

Having set the stage, I look back to how we got here. On February 16, 2016, the Decedent executed her last will and testament and named her son, William A.

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[1] The record consists of four exhibits, all bank records, and the deposition testimony of Kaylee Erdner a former employee of WSFS. *See* Docket Item ("D.I.") 25. These exhibits are cited to as Mot. Ex. __".

[2] *See* D.I. 1. I use "Winifred" rather than "Winnifred" because it appears to be the Decedent's preferred spelling. *See id.* Ex. D. The Respondent passed on or about November 11, 2020, and the caption has been amended to reflect his personal representative stepping into his role in this litigation. D.I. 36. I refer to the Respondent individually in this decision for clarity purposes.

[3] As noted, and complicating this matter further, the Respondent passed during the pendency of this litigation and before he could be deposed, leaving us without the benefit of testimony from either account holder. *See* D.I. 20 (suggestion of death).

Dryden (the "Beneficiary"), as the sole beneficiary of the residuary of her estate and as her executor.[4] Over a year later, the Decedent and the Respondent opened the bank accounts at issue.

They first opened a checking account with WSFS on April 25, 2017, and it was titled as "Winifred Dryden or Joseph Albert Schmidt" (the "WSFS Account").[5] The WSFS Account signature card contains the signatures of both account holders, termed "Joint Owners" and contains an agreement that the signatories both reviewed certain "deposit account documents" including the "Deposit Account Agreement and Disclosure[.]"[6] The Petitioner has also provided me with a document titled "Relationship Reference Guide".[7] Page 4 of that document begins "[i]n this Deposit Account Agreement and Disclosures," which the Respondent argues makes the document part of the expressly referenced "deposit account documents" on the signature card.[8] That document goes on to provide, in pertinent part, that "[a]n

[4] *See* D.I. 1, Ex. D.

[5] Mot. Ex. B. Ms. Erdner is noted as the employee that opened the WSFS Account but she does not recall meeting with the Decedent and the Respondent. Mot. Ex. A at 21:15-18.

[6] Mot. Ex. B.

[7] Mot. Ex. C.

[8] *Id.* at p.4.

account with two or more Account Holders is a Joint Account. Joint Account Holders will be considered joint tenants with right of survivorship."[9]

Then, on September 1, 2017, the Decedent and the Respondent opened an account at M&T (the "M&T Account").[10] The signature card for the M&T Account is signed by both account holders and provides: "By signing below, I (we) acknowledge and agree that if the account is opened in the names of two or more individuals, the account will be a Joint Account with Right of Survivorship unless it is a fiduciary or custodial account."[11] There is nothing on the signature card indicating that the account was meant to be a fiduciary or custodial account. The M&T Account signature card also provides that the account holders received and agreed to the provisions in several documents including the "General Deposit Account Agreement".[12] That document provides:

> If your account is opened in the names of two or more individuals and is payable on request to or upon the order of one or more of them, it will be a joint account with right of survivorship, without regard to whether mention is made in the account opening documents or in any other record maintained by [M&T] with respect to the account of any right of survivorship, unless it is a fiduciary or custodial account[.][13]

[9] *Id.* at p.20.

[10] Mot. Ex. D.

[11] *Id.*

[12] *Id.*

[13] Mot. Ex. E at p.13. The right of survivorship is further clarified as: "Upon the death of a party to a joint account with right of survivorship, in the absence of a court order telling [M&T] not to do so, [M&T] can pay out any money in the account upon the authorized

Per the Petitioner, the WSFS Account and the M&T Account were both initially funded by the Decedent and the Decedent was the only person to contribute to and use the accounts during her lifetime.[14] At the time of the Decedent's death, the WSFS Account contained $168,320.31 and the M&T Account had $13,101.35.[15]

After the Decedent passed on December 15, 2018, the Beneficiary's application for letters testamentary was denied by the Register of Wills and the Personal Representative was issued letters on March 20, 2019.[16] The Personal Representative asked the Respondent to provide the funds in the WSFS Account and the M&T Account to the Decedent's estate; the Respondent refused. Thus, the Personal Representative initiated this action through a petition for declaratory judgment on January 7, 2020.[17] While the parties were preparing for trial scheduled for March 29, 2021, the Respondent filed a motion for summary judgment (the

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order of any surviving joint account party, without regard to the ownership of the funds in the account and notwithstanding that [M&T] may have received any notice from the estate of the deceased joint account party or any other third party claiming ownership rights to the money on deposit in the joint account." *Id.* at p.14.

[14] *See* D.I. 1.

[15] *Id.*

[16] *See In the Matter of Winifred M. Dryden*, 171301 AF, D.I. 5, 15. "Because the Register of Wills is a Clerk of the Court of Chancery, filings with the Register of Wills are subject to judicial notice." *Arot v. Lardani*, 2018 WL 5430297, at *1 n.6 (Del. Ch. Oct. 29, 2018) (citing 12 *Del. C.* § 2501; Del. R. Evid. 202(d)(1)(C)).

[17] *Id.*

"Motion").[18] The parties agreed to continue trial, fully brief the Motion, and have the Motion heard on the trial date.[19] As such, the matter was heard and submitted for my consideration on March 29, 2021.[20]

II. ANALYSIS

Under Court of Chancery Rule 56(c), summary judgment will be granted "only where the moving party demonstrates the absence of issues of material fact and that it is entitled to a judgment as a matter of law."[21] If the Respondent meets this burden, the Petitioner will need to demonstrate that there are material disputes of fact.[22] In my review, I remain cognizant that "[t]here is no 'right' to a summary judgment."[23] This Court "may, in its discretion, deny summary judgment if it decides upon a preliminary examination of the facts presented that it is desirable to inquire into and develop the facts more thoroughly at trial in order to clarify the law or its application."[24]

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[18] D.I. 21. *See also* D.I. 19 (November 24, 2020 letter confirming trial date of March 29, 2021).

[19] D.I. 30.

[20] *See* D.I. 31, 34-35.

[21] *Wagamon v. Dolan*, 2012 WL 1388847, at *2 (Del. Ch. Apr. 20, 2012).

[22] *Wild Quail Golf & Country Club Homeowners' Ass'n, Inc. v. Babbitt*, 2021 WL 2324660, at *2 (Del. Ch. June 3, 2021).

[23] *Telxon Corp. v. Meyerson*, 802 A.2d 257, 262 (Del. 2002).

[24] *In re El Paso Pipeline Partners, L.P. Deriv. Litig.*, 2014 WL 2768782, at *9 (Del. Ch. June 12, 2014) (citations omitted).

Although there are two claims at issue—for declaratory judgment and unjust enrichment—both turn on whether the WSFS Account and the M&T Account have a right of survivorship or are convenience accounts. For the reasons explained herein, I find that the M&T Account clearly established a joint tenancy with the right of survivorship but that the WSFS Account does not have sufficiently clear language in the opening documents to exclude parol evidence and rule on the current record. Thus, I find summary judgment should be denied as to the WSFS Account but granted as to the M&T Account.

A. *Walsh v. Bailey* provides a clear roadmap.

Walsh v. Bailey, a 1964 decision of the Delaware Supreme Court, remains the seminal case on how to determine if an account is a joint account with the right of survivorship or a convenience account.[25] Therein, the Supreme Court reversed the Court of Chancery's finding that a joint account did not include a right of survivorship, and should pass through a decedent's estate. The trial judge erred in accepting parol evidence when there was clear and unambiguous language in the account opening documents regarding the right of survivorship. Thus, *Walsh* stands for the proposition that if the account opening documents are clear and unambiguous, parol evidence may not be admitted to show a different intent.

[25] 197 A.2d 331 (Del. 1964).

> The clear and unambiguous language in *Walsh* was:
>
> JOINT ACCOUNT-PAYABLE TO EITHER OR SURVIVOR
>
> It is agreed and understood that any and all sums that may from time-to-time stand in this account, to the credit of the undersigned depositors, shall be taken and deemed to belong to them as joint tenants and not as tenants in common; while both joint tenants are living, either may draw and in case of the death of either, this Bank is hereby authorized and directed to deal with the survivor as sole and absolute owner thereof.
>
> It is especially agreed that withdrawals of funds by the survivor shall be binding upon us and upon our heirs, next of kin, legatees, assigns and personal representatives.
>
> Payment to or on check of the survivor shall be subject to the laws relating to inheritance and succession taxes and all rules and regulations made pursuant thereto.[26]

The *Walsh* court found the second paragraph above particularly instructive and explained that "the meaning . . . seems clear. The complete tenor of the instruments connotes a joint tenancy, not only by specific reference to such a relationship, but also by outlining the consequences upon the 'heirs, next of kin, legatees, assigns and personal representatives' which will flow from that relationship between the parties."[27] Finding the language clear, the Supreme Court excluded the contrary parol evidence and declared that the funds belonged to the surviving account holder. Using the *Walsh* standard, this Court has found many account opening documents

[26] *Id.* at 332 (cleaned up).

[27] *Id.*

sufficiently clear to connote a right of survivorship without permitting parol evidence.[28]

In *Messersmith v. Delaware Trust Co.*, Chancellor Seitz applied the *Walsh* standard, found the applicable language clear and unambiguous, but raised a concern about holding parties to clear language in form documents drafted by the banking institutions.[29] Chancellor Seitz stated a preference for the form account opening documents to exclude survivor-owner provisions, requiring parties to explicitly request that such provisions be added if that is their intent. He explained:

> Many times these accounts are opened merely as a convenience for one party who needs the assistance of another to pay his bills, etc. Yet, under the standard forms now employed, he may well create a situation where no evidence is admissible to show that he had such a limited intent. Such a change would in no wise weaken the protection otherwise offered to the institution involved. If the banks do not feel free to make the change, it could be a matter for the Legislature.[30]

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[28] *See, e.g., Messersmith v. Del. Tr. Co.*, 215 A.2d 721, 723 (Del. Ch. 1965) ("Certainly the language in the instruments creating the accounts which provides that 'upon the death of either, the balance then remaining in said joint account shall be the absolute property of the survivor' is at least as clear and comprehensive in effect as that relied upon by the Supreme Court in the Walsh case. Thus, no parol evidence was admissible to vary the clear meaning of the language in the instruments and legal title to the money passed to plaintiff."). There are two outliers in the *Walsh* progeny, but neither are relevant here. *See Farmers Bank of State of Del. v. Howard*, 258 A.2d 299, 300-301 (Del. Ch. 1969) (analyzing the issue under gift law because the account opening documents were not signed by both account holders); *Dillon v. Dillon*, 1987 WL 11282, at *3-*4 (Del. Ch. May 19, 1987) (addressing the equitable claim for a resulting trust because there was a later executed will).

[29] 215 A.2d at 723–24.

[30] *Id.* at 723–24.

Despite Chancellor Seitz's insight, parties continue to come to the Court with form documents that purport to establish a right of survivorship. Some forms are clear and unambiguous, some are not. This Court found the following to be clear and unambiguous regarding the right of survivorship:

- We hereby declare that we are joint owners of the money deposited . . . and . . . we do further declare that said funds, together with any additional deposits be, and our joint property to be held for us as joint tenants with the right of survivorship. . . . We hereby jointly and severally for ourselves, our and each of our heirs, executors, administrators and assigns, agree to indemnify and save harmless [the bank] for any and all liability, loss or damage by reason of the payment to the survivor of the balance remaining in said account at time of the death of either of us.[31]

- The funds to be held on deposit in this account shall be the property of the above as (Check one) ___ Individual ____ Joint Tenants-any one of whom may withdraw all of the funds upon his sole signature, and the survivor(s) of whom shall be the sole owner(s) of all funds remaining in the account after the death of the other tenant(s).[32]

Typically, when the Court finds the account opening documents are not clear and unambiguous, the underlying documents are simply lacking any relevant

[31] *Id.* at 723 (quotations omitted).

[32] *In re Estate of Wicks*, 1993 WL 1501283, at *3 (Del. Ch. Oct. 4, 1993). *See also In re Estate of Gedling*, 2000 WL 567879, at *4 (Del. Ch. Feb. 29, 2000) (similar language); *In re Estate of Barnes*, 1998 WL 326674, at *5 (Del. Ch. June 18, 1998) (finding that a form was clear and unambiguous; "[i]t might have been stated differently, but the fact is that it is written in plain language").

language.[33] But *Matter of White* provides a helpful example of language that hints to joint tenancy in an ambiguous and non-conclusive manner:

> If the agreement is signed initially or subsequently by more than one person, the terms and conditions apply to each of the persons signing the agreement and to all of them, *jointly and severally, and all are jointly and severally obligated hereunder* and notice to any one of them shall constitute notice to all.[34]

Presented with this language, Chancellor Marvel admitted parol evidence to ascertain intent. Building upon the concerns of Chancellor Seitz, Chancellor Marvel noted in *White* that the standard forms used by the banking institutions "serve the basic purpose of protecting the bank (i.e. to guard against payment to an unauthorized person) and not for the purpose of establishing 'ownership.'"[35] Thus, he found the ambiguous form language before him less persuasive and, after considering the admissible parol evidence, found no right of survivorship.

This Court has included in its clear-and-unambiguous review documents expressly incorporated by reference in the signature card, which were received and reviewed by the account holders.[36] But those documents do not always save the day.

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[33] *See, e.g.*, *Estate of Marvel*, 2018 WL 4762379, at *7 (Del. Ch. Oct. 1, 2018).

[34] *Matter of White*, 1979 WL 5969, at *1 (Del. Ch. Sept. 28, 1979) (quotation omitted).

[35] *Id.* at *3.

[36] *See, e.g.*, *Barnes*, 1998 WL 326674, at *2-*5.

Speed v. Palmer demonstrates when incorporated documents may be insufficient.[37] There, the account opening document was silent as to the right of survivorship but required the account holders to affirm that they received and read a customer agreement and "intend to be bound by the terms and conditions contained therein."[38] In that agreement, in fine print, was the following:

> unless otherwise agreed upon in writing and subject to applicable law, if two or more persons sign the application, a joint account with right of survivorship is created, as a result of which upon the death of one customer the account balance will be paid to the survivor or survivors equally.[39]

After careful review, then-Master Glasscock found that the agreement was "intended to insulate the bank from liability, but it [is] hardly conclusive of the intent of the parties."[40] After reviewing parol evidence, then-Master Glasscock found a tenancy in common and then addressed the equitable claims at issue.[41]

As demonstrated, the *Walsh* test lives on and requires an account-by-account application. I now address the accounts at issue in turn.

A. The WSFS Account opening documents are not clear and unambiguous regarding the right of survivorship.

[37] 2000 WL 1800247 (Del. Ch. June 30, 2000).

[38] *Id.* at *4.

[39] *Id.* (quotation marks omitted).

[40] *Id.*

[41] *Id.*

The WSFS Account signature card states nothing about joint tenancy or the right of survivorship. Like *White*, it uses the word "joint" but does not go further to explain the right of survivorship.[42] The Respondent argues that the missing information can be found in the WSFS Account "Relationship Reference Guide" because that document is the expressly incorporated "Deposit Account Agreement and Disclosure." But the title on the cover page of this lengthy document does not match the reference in the acknowledgment and I find this disconnect injects ambiguity into the account opening documents and makes the reference and allegedly intended right of survivorship unclear.[43]

There remains a dispute of fact regarding the parties' intent, which should be explored on a more developed record including parol evidence. In short, I find "further development of the factual record and the parties' legal arguments would help clarify the application of the law to the circumstances of the case."[44]

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[42] 1979 WL 5969, at *1.

[43] As counsel conceded, the document is only fair game during the plain and unambiguous review if it was expressly referenced and acknowledged by the account holders. *See* D.I. 35 12:8-12 (explaining that the document comes into play because it was specifically referenced in the signature card and conceding "[i]f Ms. Dryden did not specifically acknowledge having agreed to the terms of the deposit account agreement, we might be in a different situation"). Further, "[j]oint tenancy with right of survivorship is a disfavored estate at law, 'and can only be created by clear and definite language not reasonably capable of any different construction[.]'" *Speed v. Palmer*, 2000 WL 1800247, at *4 (quoting *Short v. Milby*, 64 A.2d 36, 38 (Del. Ch. 1949)).

[44] *Bouchard v. Braidy Indus., Inc.*, 2020 WL 2036601, at *16 (Del. Ch. Apr. 28, 2020).

Accordingly, I recommend that the Motion be denied as it relates to the WSFS Account and trial be rescheduled to address both claims as they relate to the WSFS Account.

B. The M&T Account opening documents do contain clear and unambiguous language as to the right of survivorship.

Unlike the WSFS Account opening documents, the M&T Account opening documents set forth clearly and unambiguously that a joint tenancy with the right of survivorship was created. On the signature card, the phrase "Right of Survivorship" is conspicuous, in the same sized font as the rest of the text, and the account holders both signed acknowledging that the account "will be a Joint Account with Right of Survivorship[.]"[45] The signature card also expressly incorporates the M&T Bank General Deposit Account Agreement which has additional language clarifying the right of survivorship, lest there be any question about what that means.[46] I find the language is clear and unambiguous and parol evidence to show a different intent

[45] Mot. Ex. D.

[46] *Speed v. Palmer* is distinguishable because the M&T Account signature card contains express language, which was acknowledged by the account holders, and the incorporated document, although lengthy, is meticulously annotated with an easy-to-navigate table of contents and clearly marked section on joint accounts with the right of survivorship. *See* Mot. Ex. E. I note, however, that I agree with Chancellor Seitz, Chancellor Marvel, and then-Master Glasscock that these types of documents are clearly aimed at protecting the bank from liability; nonetheless, I find the M&T Account opening documents are clear and unambiguous as to the right of survivorship, which is where my inquiry must end under *Walsh*.

should be excluded.[47] Thus, I recommend that the Motion be granted in the Respondent's favor on both counts as they relate to the M&T Account.

III. CONCLUSION

For the foregoing reasons, I recommend that judgment be entered in the Respondent's favor for all counts regarding the M&T Account. I recommend that the Motion be denied regarding the WSFS Account and that trial be rescheduled without delay. This is a final report and exceptions are stayed until my post-trial decision on the WSFS Account. This stay of exceptions will permit the parties to focus on trial preparation and present any exceptions in one round of briefing.

Respectfully submitted,

/s/ *Selena E. Molina*
Master in Chancery

[47] Petitioner appears to argue that equitable claims should be heard notwithstanding clear and unambiguous language. *Walsh* and its progeny direct otherwise. *Cf. Speed v. Palmer*, 2000 WL 1800247, at *6 (addressing equitable claims only after determining that the language was not clear and unambiguous as to the right of survivorship). Further, a joint account holder for an account with the right of survivorship has sufficient justification to retain the funds upon the death of the co-holder, defeating an unjust enrichment claim.