

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR SUSSEX COUNTY

KATHERINE M. TRAUTE-UGONE,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 099-S
)	
THE ESTATE OF ALBERT G. UGONE)	
and DOLORES GILES, EXECUTRIX,)	
and DOLORES GILESE, individually,)	
)	
Defendant.)	

MASTER'S REPORT
(Motion for Summary Judgment)

Date Submitted: January 23, 2006
Final Report: January 30, 2006

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Beth B. Miller, Esquire, Noel E. Primos, Esquire, Schmittinger & Rodriguez, P.A., Dover, Delaware; Attorneys for Defendant.

GLASSCOCK, MASTER

This suit involves a dispute over assets belonging now or formerly to Katherine M. Traute-Ugone (“Katherine”) and Albert G. Ugone (“Albert”), either as husband and wife (the “Ugones”) or individually. Katherine, the plaintiff, is the widow of Albert; Dolores Gilese (“Dolores”) was Albert’s girlfriend at the time of his death and is the executrix and major beneficiary under his will. Dolores appears here as defendant both individually and as executrix representing Albert’s estate.¹

Facts

Katherine and Albert were married in 1987. Initially, they lived as husband and wife in New Jersey. By the year 2000, they had determined to relocate to Delaware to escape New Jersey property taxes. In March of that year, they bought a house in Greenwood and listed the New Jersey house for sale. Both houses were owned by the Ugones by the entireties.² The Ugones were able to sell their New Jersey property in August 2001. They received net proceeds from that sale of approximately \$351,000. These proceeds were deposited in a bank in Milford as follows: \$100,000 was placed in a money market account titled jointly, and \$51,000 was placed in a joint checking account. The remaining \$200,000 was used to purchase two certificates of deposit, one titled in Katherine’s name “In Trust for

¹ In addition to the property claims, a separate suit was filed by Katherine demanding her elective share in the estate. That matter has been consolidated with the property claims under this complaint, but is not a subject of the instant motion for summary judgment.

² That is, the plaintiff has stated that the New Jersey house was owned by the entireties and the defendant has not contested this statement. I have not independently researched New Jersey law regarding forms of ownership of marital property.

Albert Ugone” and the other titled in Albert’s name: “In Trust for Katherine Traute-Ugone.” In May 2002, the latter certificate was cashed and the proceeds deposited in the joint money market account. The Ugones also owned a number of United States Savings Bonds, titled jointly. In June, 2002, the bank in Milford used by the Ugones was taken over by Citizen’s Bank. When Citizen’s reissued the money market account, it was in the name of Albert, solely.

At about this time, Albert began a romantic involvement with Dolores, a former neighbor from New Jersey. Katherine became aware of this relationship. In the summer of 2002, Albert purchased property in Milford, and had a house constructed there. He purchased the property and paid for the construction with funds from the joint accounts,³ but had title to the property recorded in his name, solely. In September of 2002 the Milford house was completed and Albert and Dolores moved into it and lived there together. Albert had in his possession there 31 of the savings bonds jointly titled with Katherine. Katherine continued to live in the Greenwood home. In October 2002, Albert named Dolores his attorney-in-fact under a durable power of attorney and executed a new will naming her as beneficiary and executrix. On April 27, 2003, Albert had a heart attack and was admitted to the hospital. The next day, Dolores, as Albert’s attorney-in-fact, took the 31 savings bonds titled jointly in the name of Albert and Katherine, cashed them and deposited the resulting

³ Albert used funds from the joint checking account and the formerly-joint money market account to purchase and improve the Milford property.

funds (approximately \$17,000) into a bank account in her name. Albert was unable to recover from his heart attack. He never left the hospital, and died there on June 7, 2003.

Dolores, either individually or as executrix, retains the proceeds of the sale of the 31 savings bonds. She (or the estate) also remains in possession of the Milford house, which was titled solely in Albert's name. She (or the estate) also possesses the proceeds remaining in the formerly-jointly-titled money market account, which had been retitled in June 2002 in Albert's name solely.

The plaintiff seeks imposition of a resulting or constructive trust over the funds in the money market account, the Milford house and the proceeds of the savings bonds redeemed by Dolores. The plaintiff seeks summary judgment on these trust claims. For the reasons that follow, the request for summary judgment must be denied.

Legal Standard

In order to grant a motion for summary judgment under Rule 56, the Court must find, after construing the record against the moving party, that there is no genuine issue of material fact and that the moving party is consequently entitled to judgment as a matter of law. *E.g.*, Mattas v. Green, Del. Supr., 171 A.2d 916 (1961).

Discussion

The New Jersey property (and the funds resulting from the sale of that property) was owned by the entireties. Similarly, the savings bonds were owned by the entireties. Under that form of ownership, the property is considered owned by both, and not by each individually. *E.g.*, In re Griffith, Del. Ch., 93 A.2d 920, 922 (1953). In other words, the owner of the savings bonds and the New Jersey property was the marital unit, not Albert or Katherine. *See, e.g.*, Bickling v. Bickling, Del. Ch., No. 1726-S, Chandler, Ch. (February 14, 2000)(Mem. Op.)(adopting Master's Report). Katherine argues as follows: The re-titling of the money market fund in Albert's sole name, Albert's use of entireties funds to purchase the Milford property titled in his sole name, and the redemption of the savings bonds in Albert's possession (by Dolores as his attorney-in-fact) were unilateral acts done by Albert, not by the marital unit. There was never a decision by that unit—that is, by Albert and Katherine together—to destroy the nature of the ownership of these assets by the entireties. Therefore, that form of ownership persisted and attached to the sole money market account, the solely-titled real estate and the proceeds of the redeemed savings bonds. If that is the case, then all of those assets were assets of the marital unit, owned equitably by the entireties, at the time of Albert's death. Upon Albert's death, under this scenario, they became the sole property of his widow, Katherine.

Dolores argues that the Ugones, in light of their failing marriage, had agreed to divide the marital assets sometime in 2002. Under Dolores' theory, the money market account was retitled, the Milford house purchased solely in Albert's name and 31 of the savings bonds

were taken to Milford by Albert as part of Katherine and Albert's agreement to distribute the assets of the marriage. Presumably, under this theory, Katherine was to be solely seized of the Greenwood house and the balance of the jointly-held property, although none of this property was retitled solely in Katherine's name.⁴ In any event, implicit in Dolores' theory is the assertion that Katherine and Albert, as a married couple possessing property by the entirety, jointly decided to destroy that form of ownership and distribute certain of the property solely, pursuant to which distribution Albert became the sole owner of the funds used to purchase the Milford property, the 31 savings bonds in his possession and the money market account. If this theory is correct, the Milford property, the money market funds and the proceeds of the savings bonds are all the property of Albert's estate, and pass to Dolores under the terms of Albert's will, subject to Katherine's claim to a widow's share against the estate.

Katherine argues that she is entitled to summary judgment because the sole direct evidence for the intent of the married couple is her testimony that the couple did not agree to destroy the marital unit's tenancy in the disputed property by the entirety. Dolores argues strenuously, on the other hand, that the circumstantial evidence—the fact that Katherine did not object to the titling of the money market account or the Milford house in Albert's name, and did not object to his physical possession of the joint savings bonds—evinces the couple's intent to destroy the tenancy by the entirety and render a

⁴ Katherine did redeem the certificate of deposit she held "In Trust for Albert," and presumably retains the resulting funds.

distribution of this property from the marital unit to Albert. Katherine attempts to rebut this inference, pointing to deposition testimony that she was afraid of confronting Albert and believed that she could not prevent him from retitling the property in any event.

The question, then, is one of intent: what was the intent of the marital unit with respect to the property that it held by the entirety, and that is now the subject of this dispute? The question of intent, of course, is a factual one. It should be resolved here after a trial, in which Katherine's testimony (as well as those of her supporting witnesses) may be tested by cross-examination and her demeanor reviewed by the Court. Because this issue of fact—the intent of the marital unit—remains viable, summary judgment must be denied.

/s/ Sam Glasscock, III
Master in Chancery

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