

Commonwealth Of Kentucky

Court Of Appeals

NO. 1997-CA-002821-MR

DARLENE HARRISON,
RICK SUMPTER, AND
CHARLES SUMPTER

APPELLANTS

v.

APPEAL FROM PULASKI CIRCUIT COURT
HONORABLE WILLIAM T. CAIN, JUDGE
ACTION NO. 95-CI-000065

COMMUNITY TRUST BANK, FSB;
FIRST AND FARMERS BANK OF SOMERSET;
SHARON SUMPTER WALKUSKI,
CO-INDEPENDENT PERSONAL REPRESENTATIVE
OF THE ESTATE OF RICHARD SUMPTER,
DECEASED; JACK R. POINTON, CO-
INDEPENDENT PERSONAL REPRESENTATIVE OF
THE ESTATE OF RICHARD SUMPTER

APPELLEES

OPINION

AFFIRMING

** ** * * * * *

BEFORE: BUCKINGHAM, MCANULTY, AND MILLER, JUDGES.

MILLER, JUDGE: Darlene Harrison, Rick Sumpter, and Charles Sumpter bring this appeal from a September 8, 1997, judgment of the Pulaski Circuit Court. We affirm.

The facts are these: Richard Sumpter (decedent) died on August 25, 1994. The decedent had a safety deposit box at First and Farmers Bank in Somerset, Kentucky. The decedent's personal representatives--Jack R. Pointon and Sharon Walkuski--opened the safety deposit box and found, among other things, four certificates of deposit (CDs). One was solely in the decedent's name and is not relevant to this appeal. The remaining three CDs were individually contained in "little red books." Apparently, inside each CD was a handwritten note. The relevant items found in the safety deposit box were summarized as follows by appellees:

1. CD #064473 from First and Farmers Bank in an amount of \$60,000.00 to Richard Sumpter, payable on death to Richard John Sumpter and a note enclosed and signed by Richard John Sumpter, which said: "I Richard John Sumpter bear no claim to C.D.s in Richard Sumpter's name. 11/12/92 ~~Richard Sumpter~~"

2. CD #061207494-5 from First Federal Bank in an amount of \$100,000.00 to Richard Sumpter or Darlene Smith and a note enclosed and signed by Darlene Smith, which said: "~~My name is on this C.D. for the purpose of getting insurance coverage I have interest or claim to its value what so ever. I belong to Richard Sumpter, or his estate Darlene Smith, X Darlene F. Smith 5-1-92 Witness Ova J. Gim 381-60-3212~~"

3. CD #061207495-3 from First Federal Bank in an amount of \$100,000.00 to Richard Sumpter or Charles Sumpter and a note enclosed and signed by Charles "Chuck" Sumpter, which said: "~~My name is on this C.D. for the purpose of getting insurance coverage I have interest or claim to it what so ever. I belong to Richard Sumpter or his estate Chuck Sumpter X Chuck Sumpter Witness Ova J. Gim~~"

A dispute arose between the estate and Richard John Sumpter, Darlene Smith, and Charles "Chuck" Sumpter regarding ownership of the three CDs. The matter was heard before the circuit court without a jury. On September 8, 1997, the court

determined that the estate properly held ownership of the three CDs in question. This appeal followed.

Appellants contend that the circuit court erroneously admitted certain evidence. Specifically, appellants contend that the circuit court should not have admitted the handwritten notes found with each CD in question. Appellants maintain that the handwritten notes do not specify any particular CD and that they were written or signed some time before the CDs were actually created.

Ky. Rev. Stat. (KRS) 391.315(1) states in relevant part as follows:

Sums remaining on deposit at the death of a party to a joint account belong to the surviving party or parties as against the estate of the decedent unless there is clear and convincing evidence of a different intention at the time the account is created.
[Emphasis added.]

We believe appellants' objections go to the weight given the notes rather than the admissibility of same. We view the notes as relevant, probative evidence bearing upon whether the decedent intended to create joint accounts with rights of survivorship under KRS 391.315(1).

Additionally, appellants argue that the notes were inadmissible because they failed to conform with the mandates of KRS 391.320. Appellants maintain that this statute dictates the sole method available to decedent for "changing the form of the account." KRS 391.320 states in relevant part as follows:

The provisions of KRS 391.315 as to rights of survivorship are determined by the form of the account at the death of a party. This form may be altered by written order from any party able to request present payment without

the joinder of any other party given to the financial institution to change the form of the account or to stop or vary payment under the terms of the account. The order must be signed by said party, received by the financial institution during the party's lifetime, and not countermanded by other written order of the same party during his lifetime. [Emphasis added.]

We believe the provisions of KRS 391.320 are relevant only in changing the status of soundly-created joint accounts with rights of survivorship. In contrast, the issue presented in this appeal is whether the decedent ever created joint accounts with rights of survivorship. Indeed, KRS 391.315(1) addresses such a situation. It clearly provides that sums remaining in a joint account naturally go to the surviving party "unless there is clear and convincing evidence of a different intention at the time the account is created." We believe the handwritten notes are admissible to prove decedent's different intention at the time the CDs were created. Hence, we are of the opinion that the court did not err in admitting these handwritten notes into evidence.

Next, appellants assert that the circuit court committed reversible error by admitting hearsay evidence. The evidence was summarized by appellants as follows:

Judy Rutledge, Sumpter's former girlfriend, stated that Sumpter had asked her to place her name on a Certificate of Deposit in order to obtain FDIC insurance. Likewise, Dinah Young, a longtime friend of Sumpter, testified--again over the objection of Appellants' counsel--that he had also told her that he had placed the Certificates of Deposit in the Appellants' names for insurance purposes

Even if such evidence constituted hearsay, we are of the opinion that its admission was harmless error. Kentucky Rule of Evidence 103. Indeed, we are unable to conclude that absent the admission of this evidence a reasonable possibility exists that the result would have been different. See Crane v. Commonwealth, Ky., 726 S.W.2d 302 (1987). Ova Guinn, the decedent's girlfriend, testified the decedent put CDs in his name and someone else's name solely for the purposes of securing federal depositor's insurance. Indeed, two of the notes found with the CDs confirm such testimony. Upon the whole, we are of the opinion that any error in admitting the complained of hearsay evidence was harmless.

Last, appellants contend that the circuit court erred by concluding that clear and convincing evidence existed that the decedent did not intend to create joint accounts with rights of survivorship. We disagree. Considering the handwritten notes and bank personnel testimony that FDIC insurance was important to the decedent, we believe clear and convincing evidence existed that the CDs were held jointly for the sole purpose of obtaining FDIC insurance. Indeed, the evidence overwhelmingly suggests that decedent did not intend to jointly share ownership of the CDs or to divest his estate of their ownership. As such, we are of the opinion that the circuit court did not commit reversible error by concluding that the decedent's estate owned the subject CDs.

For the foregoing reasons, the judgment of the circuit court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANTS:

David Austin Tapp
Somerset, KY

BRIEF FOR APPELLEES/WALKUSKI
AND POINTON:

John T. Mandt
Somerset, KY