

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

SIDNEY KRAIZMAN, as Personal Representative of  
the Estate of IDA S. CHAIMS, Deceased, SARAH  
EISENBERG, as Personal Representative of the Estate  
of JECHIEL CHAJMOVICZ, Deceased, and  
ABRAHAM CHAJMOVICZ,

UNPUBLISHED  
June 19, 1998

Plaintiffs-Appellants,

v

DAVID CHAIMS and ANITA CURRY,

No. 197644  
Oakland Co. Probate Court  
LC No. 93-228240 CZ

Defendants-Appellees.

---

Before: Young, Jr., P.J., and Michael J. Kelly and Doctoroff, JJ.

PER CURIAM.

Plaintiffs appeal as of right from two probate court orders, both dated August 14, 1996, reiterating the court's prior rulings that the property plaintiffs seek to recover is not subject to the joint will of defendants' parents, Arthur and Ida Chaims, because after the death of Arthur Chaims the property passed to Ida Chaims by operation of law or by contract. We affirm.

In 1985, Arthur and Ida Chaims executed a joint and mutual will leaving all of their assets to the surviving spouse and thereafter to their families and synagogue. A provision in the will declared that the parties would not change or annul the will except by written agreement acknowledged by both. Arthur Chaims died in 1987, and his estate was admitted to probate. However, the bulk of the real property passed to Ida Chaims outside the will because the properties were held mostly as tenants by the entireties between Ida Chaims and her late husband, and thus, she received the properties pursuant to her rights of survivorship. Over the next several years, Ida Chaims transferred all of her property to her children. At the time of her death in 1992, Ida Chaims did not own any assets solely in her own name; hence, there was no estate to probate. Plaintiffs filed this suit alleging that Ida Chaims transferred the properties to her children in violation of the contractual provision contained in the joint will. Plaintiffs requested that the probate court declare the transfer of the properties void and permit them to recover

the assets on behalf of the estate. Instead, the probate court declared that the properties were not subject to the joint will because they passed to Ida Chaims by operation of law. Therefore, she was the sole and rightful owner of the properties, and as such she was entitled to transfer them to whomever she desired. Accordingly, the probate court dismissed plaintiffs' action.

On appeal, plaintiffs first claim that the joint will should not have been declared unenforceable and the properties should be distributed to them in accordance with the will. We disagree.

The issue of whether a contract contained in a joint will is enforceable is a legal question that this Court reviews de novo. Thus, findings of a probate court will only be reversed where they were clearly erroneous. *In re Woodworth Trust*, 196 Mich App 326, 328; 492 NW2d 818 (1992).

In *Rogers v Rogers*, 136 Mich App 125; 356 NW2d 288 (1984), this Court addressed the precise issue raised in the instant case: whether a joint will applies to property that was passed to a surviving spouse by operation of law. Upon review of the facts, which are strikingly similar to those in the instant case, this Court found that although the joint will contained a valid and enforceable contract, the language in the will did not suggest an intent to terminate and destroy the right of survivorship inherent in a tenancy by the entirety. *Id.* at 134. This Court explained:

In a true tenancy by the entireties, each spouse is considered to own the whole and, therefore, is entitled to the enjoyment of the entirety and to survivorship. When real property is so held as tenants by the entireties, neither spouse acting alone can alienate or encumber to a third person an interest in the fee of lands so held. Neither the husband nor the wife has an individual, separate interest in entireties property, and neither has an interest in such property which may be conveyed, encumbered or alienated without the consent of the other.

One incident of an estate by the entireties is that the survivor, whether husband or wife, is entitled to the whole and such right cannot be defeated by a conveyance by one spouse to a stranger. [*Id.* at 134-135.]

With these principles in mind, this Court held that by placing the property in both names as tenants by the entireties, the couple intended for the property to be owned solely by the survivor upon the death of either. *Id.* at 136. Accordingly, the property was not subject to distribution by a joint will or otherwise. *Id.* See *Webber v Webber*, 217 Mich 178, 180; 185 NW 761 (1921); *McLean v United States*, 224 F Supp 726, 729 (ED MI, 1963).

Likewise, in this case, we agree with the probate court that with the exception of two particular properties which are not in dispute in this matter, all the real property in question was owned by Arthur and Ida Chaims as tenants by the entireties. Thus, upon the death of Arthur, Ida became the sole and rightful owner of the property pursuant to her right of survivorship, or as the named beneficiary of certain accounts. Accordingly, she was entitled to dispose of the assets in any way she desired and this

right could not be defeated by an alternate distribution in a joint will. Hence, plaintiffs' claim must fail. In light of this conclusion, it is unnecessary to address plaintiffs' remaining claims.

Affirmed.

/s/ Robert P. Young, Jr.

/s/ Michael J. Kelly

/s/ Martin M. Doctoroff