STATE OF MICHIGAN

COURT OF APPEALS

In re Estate of JOHN L. MAXWELL.

PHILLIP MAXWELL, Personal Representative of the ESTATE OF JOHN L. MAXWELL,

Petitioner-Appellant,

v

PAULETTE MAXWELL,

Respondent-Appellee.

UNPUBLISHED
November 9, 2010

No. 294357
Gladwin Probate Court
LC No. 07-013354-DE

Before: BECKERING, P.J., and JANSEN and TALBOT, JJ.

PER CURIAM.

Phillip Maxwell contests the trial court's order requiring the equal distribution of all estate assets in accordance with the decedent's will. We affirm.[1]

Under the terms of his will, the decedent John L. Maxwell required the distribution of his estate assets in equal shares to his three adult children, Phillip Maxwell, Paulette Maxwell and Barbara West. This disposition of the estate is undisputed. Before the probate estate was opened, Phillip provided his sister Paulette with an "early distribution" in the amount of $34,866 from the joint account the decedent maintained with Phillip purportedly to ease an immediate financial burden she was experiencing. Phillip asserts it was understood and his intention that this amount constituted a loan that would be offset against Paulette's share of the probate estate. Phillip contends that the joint account is solely his and not part of decedent's estate. Based on testimony in the lower court, it would appear that Phillip also paid $25,000 to his other sister, Barbara, from this joint account but that no offset occurred for her in the distribution of the estate assets.

[1] This appeal has been decided without oral argument pursuant to MCR 7.214(E).

In the final accounting provided to the probate court, it was indicated that each of the three heirs would receive a distribution from the estate of $48,540.17. Paulette objected as Phillip deducted $34,866 from her share but did not reflect this discrepancy in the final accounting. Paulette contended that, in accordance with the will, she was entitled to her full share of the estate assets of $48,540.17 without any deductions and the trial court concurred. In ruling, the trial court stated, in relevant part:

> [T]here was a distribution made outside of the terms of the estate from a joint account the decedent had; that distribution was made to the three devisees—the three heirs, and then at the time of the accounting—the final account . . . there has been a deduction from one of the distributions of those three out of the joint account leaving the three distributions from the estate an unequal amount of money. That's not consistent with the last Will and testament which is—dictates this matter.

The trial court determined that "the distributions from both joint account that's outside of the estate proceedings and the distribution from the net proceeds of the estate . . . have gotta be equal for all three heirs." The trial court indicated it was not concerned with the means by which the equality of distribution was effectuated directing the parties to accomplish this "[e]ither by putting the joint account assets into the estate or simply making an adjustment within the estate." Phillip inartfully argues on appeal that he was the sole owner of the joint account and that Paulette had no entitlement to any funds from the joint account and that to award Paulette her full share of the estate, without a deduction for this "early distribution" would be inequitable and contrary to the intent of the decedent.

At the outset, we recognize, "Michigan's joint ownership statute regarding bank accounts provides that a deposit made in a jointly held bank account with the right of survivorship becomes the property of the joint tenants and may be paid to any one of such individuals during his or her lifetime or to the survivor or survivors of such individuals. Moreover, that statute provides that a deposit made in a jointly held bank account with the right of survivorship shall, in the absence of fraud or undue influence, be prima facie evidence of the depositor's intention to vest title to the deposit in a surviving joint owner."[2] Our Supreme Court has determined:

> The creation of a joint bank account does not conclusively establish title in the surviving depositor after the death of one of the depositors but merely creates a presumption of ownership in the survivor rebuttable by competent evidence to the contrary.[3]

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[2] *In re Cullmann Estate*, 169 Mich App 778, 782-783; 426 NW2d 811 (1988), citing MCL 487.703.

[3] *Pence v Wessels*, 320 Mich 195, 199; 30 NW2d 834 (1948) (internal quotation marks and citation omitted).

Although Phillip presents his appellate argument as an issue of ownership of the joint account, this was not actually an issue in the lower court. Neither Phillip nor Paulette disputed his entitlement to the account. Rather the dispute centers on whether monies he distributed from the account were gratuitous, comprising gifts to his sisters or were "early distributions" that would be offset from an, as yet, unopened estate. Contrary to Phillip's contention that there was an agreement to treat these monies as an "early distribution," there was no evidence or writing presented in the lower court to support his assertion that the distributions to Paulette (or Barbara), were anything other than gratuitous in nature based on a sibling relationship.

It is undisputed that the decedent's will required an equal distribution of the estate assets to all three of his children. Based on the language of the will and declared intent of the decedent, the trial court correctly determined that the failure of Phillip, as the personal representative, to pay each of the heirs an equal amount from the estate assets could not be approved and that the final accounting, which reflected a distribution that did not actually occur, could not be accepted. The only error by the trial court was in the suggestion that it was Phillip's option whether to include the joint account in the estate assets or implying that the joint account was also subject to equal distribution among the heirs. While inclusion of the joint account with the estate assets may have altered in some manner the amount due each beneficiary under the terms of the will, such an inclusion is not discretionary. Simply, there was no dispute that the joint account belonged to Phillip. The issue was whether he gratuitously provided funds to his siblings from this account or whether there was a contractual agreement that any distribution received would be set off against each sibling's share of the estate. No such written agreement was provided or placed in evidence and Phillip's own disparate treatment of how such distributions from the joint account were handled is contrary to his assertion that these monies comprised loans subject to repayment, at least in the case of Paulette. The trial court had no discretion or authority to award monies from outside the estate to any beneficiary or to equalize what constituted gratuitous disbursements by the owner of the account.

Affirmed.

/s/ Jane M. Beckering
/s/ Kathleen Jansen
/s/ Michael J. Talbot