IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2007-CA-01624-COA

ESTATE OF MARSHA PAULETTE FORMAN GROVER, DECEASED: ROGER SIMMONS **APPELLANT**

v.

MARLENE HARRELL **APPELLEE**

DATE OF JUDGMENT:	09/06/2007
TRIAL JUDGE:	HON. DEBBRA K. HALFORD
COURT FROM WHICH APPEALED:	AMITE COUNTY CHANCERY COURT
ATTORNEY FOR APPELLANT:	RICHARDSON AYRES HAXTON
ATTORNEYS FOR APPELLEE:	K. MAXWELL GRAVES WALTER FRED BEESLEY
NATURE OF THE CASE:	CIVIL - WILLS, TRUSTS, AND ESTATES
TRIAL COURT DISPOSITION:	GRANTED HARRELL'S PETITION FOR THE CONTENTS OF THE SAFE-DEPOSIT BOX TO BE DISTRIBUTED OUTSIDE OF HER DAUGHTER'S ESTATE
DISPOSITION:	AFFIRMED: 12/16/2008
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

BEFORE MYERS, P.J., GRIFFIS AND ISHEE, JJ.

GRIFFIS, J., FOR THE COURT:

¶1. Marlene Harrell filed a petition with the Amite County Chancery Court that requested that the contents of a safe-deposit box which she opened with her daughter be distributed to her and not be included in her daughter's estate. The chancery court granted the petition. The administrator of her daughter's estate appeals and argues that the chancellor erred in granting the petition distributing the contents of the safe-deposit box to Harrell. We find no

error and affirm.

FACTS

¶2. On October 5, 2005, Harrell and her daughter, Marsha Paulette Foreman Grover ("Paulette"), executed a safe-deposit-box lease with First Bank in Liberty, Mississippi. The lease was witnessed by a bank employee. The lease agreement stated, in part:

JOINT TENANCY

> In addition to agreeing to the foregoing provisions of safe deposit box lease which are hereby made a part of this paragraph, the undersigned agree that each, or either of them is joint owner of the present and future contents of said box and said Bank is hereby authorized to permit access to said box by either of the undersigned and that in the event of the death of either of the undersigned the survivor shall have the right to withdraw said contents and upon said withdrawal said Bank shall be automatically relieved of any further obligation or responsibility to the heirs, legatees, devisees or legal representatives of the deceased.

¶3. After opening the safe-deposit box with Paulette, Harrell deposited $17,000 in the box. Harrell was the only person to access the box. Paulette never deposited any cash or any other contents in the box.

¶4. One year later, Paulette was shot and killed by her husband, Michael D. Grover. An estate was opened, and Roger Simmons was appointed the estate's administrator. Simmons is the adoptive father of Matthew Jordan Simmons, Paulette's son and sole heir-at-law.

¶5. Harrell filed a petition in the chancery court to have the contents of the safe-deposit box excluded from Paulette's estate. The chancellor held that the contents of the safe-deposit box were the sole property of Harrell and were not part of Paulette's estate.

¶6. The chancellor found the language of the lease ambiguous as to whether a survivorship right was created. Thus, she based her decision on parol evidence introduced

at a hearing that clearly established that Harrell was the only person to access the box. The entire amount of the cash contained in the box was deposited by Harrell. However, we find it unnecessary to consider this extrinsic evidence because, upon our de novo review, we find that the terms of the contract unambiguously created a joint tenancy with a right of survivorship. As parol evidence is only allowed to aid in the interpretation of ambiguous contract language, we need not consider it here. *See Thornhill v. Chapman*, 748 So. 2d 819, 823 (¶13) (Miss. Ct. App. 1999) (citations omitted).

¶7. Despite the chancellor's reliance on extrinsic evidence, the result we now reach is the same. As such, we affirm the chancellor's ruling but on different grounds, which we further discuss in this opinion. *See Sanderson Farms, Inc. v. Gatlin,* 848 So. 2d 828, 843 (¶44) (Miss. 2003) (holding that a decision may be affirmed "on appeal for a different reason than it was decided by the lower court").

STANDARD OF REVIEW

¶8. "The findings of a chancellor will not be disturbed when supported by substantial evidence unless there was manifest error or a[n] improper legal standard was applied." *In re Estate of Temple*, 780 So. 2d 639, 642 (¶15) (Miss. 2001) (citation omitted). However, an appellate court conducts a de novo review on any question of law. *In re Admin. of the Estate of Abernathy*, 778 So. 2d 123, 127 (¶13) (Miss. 2001) (citation omitted). "[T]he issue of whether a joint tenancy was created with regards to a rental agreement raises a question of law." *Id.* at (¶14). Therefore, it will be reviewed de novo.

ANALYSIS

Whether the safe-deposit-box lease created a joint tenancy with a right of

survivorship.

¶9. Simmons contends the safe-deposit-box lease did not create a joint tenancy with a right of survivorship because the agreement merely established joint ownership in the contents and provided the survivor *access* to the box, but it created no right of survivorship. Thus, Simmons argues that Paulette rightfully owned one-half of the contents of the box such that her share should pass through her estate to Matthew, Paulette's sole heir-at-law. Harrell responds that the lease created a joint tenancy with the right of survivorship based on the plain language of the contract.

¶10. To determine whether a joint tenancy was created, we begin by reviewing the language of the agreement pursuant to the four-corners rule of contract construction. *In re Estate of Harris*, 840 So. 2d 742, 745 (¶15) (Miss. Ct. App. 2003) (citation omitted). "If the language used in the contract is clear and unambiguous, the intent of the contract must be realized." *Id.*

¶11. The supreme court has held "that where a joint tenancy has been created by a clear and unambiguous agreement, and where there is no evidence to dispute that agreement, this Court will hold that a true joint tenancy exists with respect to the contents of a safe deposit box." *Abernathy*, 778 So. 2d at 128-29 (¶24) (citing *Duling v. Duling's Estate,* 211 Miss. 465, 479, 52 So. 2d 39, 45 (1951)). Furthermore, "the distinguishing characteristic of a joint tenancy is the right of survivorship." *Id.* at 129 (¶24) (citing *Vaughn v. Vaughn,* 238 Miss. 342, 349, 118 So. 2d 620, 622 (1960)). Where safe-deposit boxes are concerned, survivorship rights must be fastened to the contents of the box. *Id.* (citing *Duling,* 211 Miss. at 479, 52 So. 2d at 45).

¶12. The supreme court addressed the issue of creating a joint tenancy in a safe-deposit box in *Abernathy*. There, a patient added his nurse to a safe-deposit-box agreement. *Abernathy*, 778 So. 2d at 128 (¶23). However, the contract stated that "if the Lessee consists of two or more persons as Joint-Tenants, it is acknowledged and agreed that said Joint-Tenancy is created and exists solely with respect to the use and occupancy of the herein described safe deposit box, *and does not extend to, nor attempt to create an interest in, the contents of said safe deposit box*." *Id.* at 129 (¶26) (emphasis added). The supreme court held this contract clearly and unambiguously did not create a joint tenancy in the contents of the box, since the key feature of a joint tenancy is the right of survivorship. *Id.* at 129-30 (¶28). While the contract did use the term "joint tenancy," the court found this to be a mistake since the contract specifically stated that it did not create an interest in the contents of the box. *Id.* at 130 (¶29).

¶13. *Abernathy* is distinguishable from the instant case because the contract here does not contain an express provision excluding the contents of the box from the interest created. Again, we quote the pertinent language of the agreement:

> the undersigned agree that each, or either of them is *joint owner of the present and future contents* of said box and said Bank is hereby authorized to permit access to said box by either of the undersigned and that *in the event of the death of either of the undersigned the survivor shall have the right to withdraw said contents* . . . .

(Emphasis added). Here, the contract expressly stated that both Harrell and Paulette were "joint owner[s] of the present and future contents of said box." The contract created an ownership interest in the $17,000. Further, the language gives the surviving joint owner, in this case Harrell, the right to withdraw the contents. Thus, we find that the plain language

of the lease agreement unambiguously created a joint tenancy with the right of survivorship. There is no indication in the lease agreement, as there was in *Abernathy*, that would evidence any other intention than to create a joint tenancy with right of survivorship as to the contents of the box.

¶14. Simmons argues, and the dissent concludes, that the "right to withdraw" language merely refers to the right to access the contents and does not create survivorship rights. We disagree. The lease clearly made both parties a "joint owner" of the $17,000, in addition to granting access to the contents, and provided the survivor with the right to withdraw the entirety of the contents. We find that the safe-deposit-box lease created a joint tenancy with the right of survivorship; thus, Paulette's share of the $17,000 passes to Harrell as the surviving joint tenant and should not be included in Paulette's estate. Accordingly, this issue has no merit.

¶15. THE JUDGMENT OF THE CHANCERY COURT OF AMITE COUNTY IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLANT.

KING, C.J., LEE AND MYERS, P.JJ., CHANDLER, BARNES, ISHEE AND ROBERTS, JJ., CONCUR. CARLTON, J., CONCURS IN THE RESULT ONLY. IRVING, J., DISSENTS WITH SEPARATE WRITTEN OPINION.

IRVING, J., DISSENTING:

¶16. The majority finds that the safe-deposit box lease agreement executed by Marlene Harrell and her daughter, Marsha Paulette Foreman Grover, created a joint tenancy with the right of survivorship. I agree that it created a joint tenancy in the literal meaning of joint tenancy in that it provided for an equal ownership interest in the contents of the safe-deposit box. However, a true joint tenancy, one that provides for a right of survivorship, was not

created because before such a tenancy can be created, the parties must express their intention to do so in the clearest of language so that there is no question as to their intentions. Here, Harrell and Grover did not use language that meets this threshold. Therefore, I dissent.

¶17. The agreement in question provides in pertinent part:

> [Marlene Harrell and Paulette Grover] agree that each, or either of them is joint owner of the present and future contents of said box and said Bank is hereby authorized to permit access to said box by either of the undersigned and that in the event of the death of either [Harrell or Grover] the survivor shall have the right to withdraw said contents and upon said withdrawal said Bank shall be automatically relieved of any further obligation or responsibility to the heirs, legatees, devises, or legal representatives of the deceased.

¶18. The chancellor determined that the agreement was ambiguous on the question of right of survivorship and allowed parol evidence on the question of who was entitled to the contents of the safe-deposit box. The majority finds it unnecessary to consider parol evidence because "the terms of the [lease agreement] unambiguously created a joint tenancy with right of survivorship."

¶19. I find the majority's reasoning perplexing because the only language in the agreement remotely related to survivorship rights is the following sentence: "the survivor shall have the right to withdraw said contents and upon said withdrawal said Bank shall be automatically relieved of any further obligation or responsibility to the heirs, legatees, devisees or legal representatives of the deceased." It is exceedingly clear to me from this language that the parties only addressed the right of the survivor to withdraw the contents of the safe-deposit box with impunity to the bank for permitting the withdrawal. There is a great divide or chasm between the right of withdrawal and the right of ownership. The parties did not traverse this divide with the survivorship language used.

¶20. Although I agree with the majority's finding that it is unnecessary to consider the issue of parol evidence, it is my view that not only is it unnecessary, it is error to consider it. Consequently, I find that the chancellor erred in doing so, because like the majority, I find that the lease agreement is unambiguous. It is well-settled law that when an instrument is unambiguous, parol evidence must not be allowed to alter its terms.

¶21. In today's case, it is clear that the parties created a joint tenancy, but it also is equally clear that they did not provide for a survivorship right of ownership, only a right of withdrawal. Since no right of survivorship was created, who then is entitled to the contents of the safe-deposit box? In my judgment, the case of *In re Estate of Abernathy*, 778 So. 2d 123 (Miss. 2001) answers the question. In *Estate of Abernathy*, our supreme court held:

> The general rule established by this Court is that where a joint tenancy has been created by a clear and unambiguous agreement, and where there is no evidence to dispute that agreement, this Court will hold that a true joint tenancy exists with respect to the contents of a safe[-]deposit box. Our Court has held that the distinguishing characteristic of a joint tenancy is the right of survivorship. *However, courts continue to hold that people must, by contract, purposely fasten survivorship rights to items kept in a safe[-] deposit box*.

Id. at (¶24) (emphasis added) (citations omitted).

¶22. No fair reading of the lease agreement will yield the conclusion that Harrell and Grover "fasten[ed] survivorship rights to [the] items kept in [their] safe[-]deposit box." Therefore, the conclusion is inescapable that Harrell and Grover did not create a true joint tenancy, i.e., a joint tenancy with the right of survivorship.

¶23. For the reasons presented, I dissent. I would reverse and remand this case to the Chancery Court of Amite County with directions that an order be entered awarding to Grover's estate one-half of the proceeds that existed in the safe-deposit box at the time of

Grover's death.