

**IN THE COURT OF APPEALS  
ELEVENTH APPELLATE DISTRICT  
ASHTABULA COUNTY, OHIO**

ESTATE OF:	:	<b>OPINION</b>
JACK R. GROSSMAN, JR., DECEASED	:	<b>CASE NO. 2020-A-0021</b>
	:	

Civil Appeal from the Ashtabula County Court of Common Pleas, Case No. 2016 EST 0079.

Judgment: Affirmed.

*Charles N. Lafferty*, Administrator, WWA for the Estate, pro se, P.O. Box 499, 365 Main Street, Conneaut, Ohio 44030 (Appellee).

*Michael P. Geary*, 55 North Chestnut Street, Jefferson, Ohio 44047 (For Appellee, Kelly Gilmore).

*Samuel L. Altier*, 1027 Lake Avenue, Ashtabula, Ohio 44004 (For Appellant, Tami Spaulding).

MARY JANE TRAPP, J.

{¶1} This issue in this case is whether a lease for a safe deposit box created a joint tenancy with a right of survivorship as to its contents or only as to the lease of the box itself. After holding a hearing on exceptions to the amended inventory filed by appellee, Kelly Gilmore, a beneficiary of the Estate of Jack R. Grossman (“the estate”), the Ashtabula County Court of Common Pleas found that the safe deposit box lease at issue created a joint tenancy with a right of survivorship between the decedent and one of his daughters, appellant Tami Spaulding (“Ms. Spaulding”), only as to the safe deposit

box lease. The court further found that by its express terms the lease did not create a joint tenancy with a right of survivorship as to the contents of the box.

{¶2} Ms. Spaulding now appeals, arguing that the probate court committed prejudicial error in denying her motion to amend the inventory because the safe deposit box lease at issue contained a survivorship provision. Thus, she contends the contents of the safe deposit box became her property upon her father's passing.

{¶3} We agree with the probate court that the safe deposit box lease explicitly provided that the lease did not create a joint tenancy with a right of survivorship as to the contents of the box. The judgment of the Ashtabula County Court of Common Pleas is affirmed.

### **Substantive and Procedural History**

{¶4} Settling the decedent's estate has been a matter fraught with procedural and factual irregularities since Ms. Spaulding filed an application to probate the decedent's will in March of 2016. Most telling is that the estate remains unsettled four years later.

{¶5} The decedent, Mr. Grossman, had three daughters who are his heirs and the beneficiaries of his estate: Ms. Spaulding, Kelly Gilmore ("Ms. Gilmore"), and Dana Armstrong. Ms. Spaulding was named the executor of the estate and is also the co-lessee of the safe deposit box at issue. The contents of the box, the amount of which is not in dispute, consists of \$38,000 in cash.

{¶6} In brief, as a lengthy procedural history is not pertinent to this appeal, James W. Jordan ("Attorney Jordan"), the original attorney representing Mr. Spaulding in her administration of the estate, withdrew, and, later, the probate court removed Ms.

Spaulding as executor of the estate. The court appointed a probate attorney, Charles N. Lafferty (“Mr. Lafferty”), as Administrator With Will Annexed (“WWA”), to “address the damage caused by Ms. Spaulding[’s] administration; to determine the desires of the other two heirs as to the real property, and in the interim obtain fair rent to the estate with arrears or an order to vacate; as well as determining whether assets of this estate have been misappropriated which might necessitate a surcharge proceeding.”

{¶7} In 2018, Ms. Gilmore filed “Exceptions of Kelly Gilmore to the Amended Inventory filed by Tami Spaulding on October 27, 2017.” Ms. Gilmore contended that Ms. Spaulding erroneously claimed the omission of \$39,492.05 from the amended inventory was made because the cash contained in the safe deposit box was held jointly by the decedent and Ms. Spaulding, subject to survivorship rights.

{¶8} Ms. Gilmore attached to her exceptions a copy of the joint tenant safe deposit box lease Ms. Spaulding had signed with the decedent. The “Huntington National Bank Safe Deposit Box Agreement” contains a provision that states, as follows:

{¶9} “Joint Owners – If this safe deposit box is leased by more than one person, then you have joint tenancy with right of survivorship in the safe deposit box and the lease. The ownership of the lease will not affect the title to any contents of the safe deposit box. Each of you may enter into the safe deposit box, cancel this lease, exchange or surrender the safe deposit box, or do anything else involving this safe deposit box. Any one of you may end the appointment of a deputy even though you are not the one who appointed that deputy. The death, bankruptcy, or incapacity of any one of you will not end the appointment of any deputy appointed by any of the rest of you. Upon the death of any one of you, each survivor, or any deputy appointed by a survivor, shall be permitted to

open the safe deposit box, except as restricted by law. If more than one of you survives, you shall remain as joint tenants with right of survivorship between you.”

{¶10} Later that year, Ms. Gilmore also filed “Exceptions to the Amended Inventory Filed by Charles Lafferty on May 25, 2018.”

{¶11} The probate court held a hearing regarding the amended inventories where it heard evidence and testimony regarding the inventory of the estate and determined that neither the original inventory filed May 31, 2016 nor Ms. Spaulding’s amended inventory of October 27, 2017 was an appropriate inventory submission. The court found the “inventory” of Mr. Lafferty to be less problematic but technically not an inventory. Rather, it was a declaration of those assets turned over to him by Ms. Spaulding after her removal as executor. Most fundamentally and cogent to this appeal, among the issues under consideration, was the issue of the type of tenancy created by the safe deposit box lease and whether it created a joint tenancy with a right of survivorship as to its contents.

{¶12} Based on the evidence and testimony at the hearing, the probate court issued a judgment entry on February 21, 2020, in which it found that the decedent added Ms. Spaulding to the safe deposit box lease and gave her a key in August of 2014, and that at that time, there was \$38,000 in the box. As to whether the money that was kept in the jointly leased safe deposit box is jointly owned, the court found that “there is no question that all sums contained in the lockbox were, and remain, an estate asset.” The court found that the lease itself, “under the heading, ‘Joint Owners’ makes clear: ‘The ownership of the lease will not affect the title to any contents of the safe deposit box.’ This contractual provision is dispositive, and there is no question that all funds in the safe deposit box were the funds of the decedent. The money contained in the safe deposit

box must be listed as an estate asset. Tami Spaulding has no claim to these funds other than as a beneficiary.”

{¶13} Ms. Spaulding requested findings of fact and conclusions of law solely on the issue of ownership of the cash found the decedent’s safe deposit box. The court reiterated in its findings of fact and conclusions of law that Ms. Spaulding “failed to prove the existence of any contractual right of joint tenancy with right of survivorship in the contents of the safe deposit box and/or the money at issue.” Further, “all evidence demonstrated the decedent did not intend to create, by contract, a present interest or right of survivorship in the contents of the safe deposit box in Spaulding.”

{¶14} Ms. Spaulding now appeals, raising the following assignment of error:

{¶15} “The Trial Court committed prejudicial error in denying Appellant’s Motion to Amend Inventory.”

### **Standard of Review**

{¶16} A probate court’s determination regarding the inventory and any exceptions thereto is generally reviewed under an abuse of discretion standard. *In re Wright*, 4th Dist. Gallia No. 18CA6, 2019-Ohio-3480, ¶16, citing *In re Estate of Shelton*, 154 Ohio App.3d 188, 2003-Ohio-4593, ¶8 (11th Dist.); *In re Estate of Scott*, 164 Ohio App.3d 464, 2005-Ohio-5917, ¶2 (2d Dist.). When the issue presents a question of law, however, we review the probate court’s decision de novo. *Id.*, citing *In re Estate of Shelton* at ¶8. Here the issue of whether the safe deposit box lease created a joint tenancy with a right of survivorship as to the contents of the box is a question of law we review de novo.

### **Law and Analysis**

{¶17} A review of the record reveals that Ms. Spaulding never filed a transcript of the hearing on the amended inventory. And, while none of the court's factual findings are in dispute, we must bear in mind that pursuant to App.R. 9(B), it is the appellant's duty to file a transcript with this court. An appellate court is limited to the record before it. In addition, this court has previously held that "[i]f appellant cannot demonstrate the claimed error then we presume the regularity of the trial court proceedings and affirm the judgment." (Citations omitted.) *In re Estate of Mahan*, 11th Dist. Trumbull No. 2003-T-0100, 2004-Ohio-6032, ¶7.

{¶18} Ms. Spaulding contends that the cash within a jointly owned safe deposit box becomes the property of the survivor upon the death of the other joint owner when the lease document for the box contains a survivorship provision. While Ms. Spaulding's contention may be correct as a general proposition, the explicit language of the lease document is controlling. Here, the language of the safety deposit box lease dictates the opposite conclusion because it explicitly provides that "the ownership of the lease *will not affect the title to any contents of the safety deposit box.*"

{¶19} The trial court found, and Ms. Spaulding does not contest, that "[t]he record establishes all money in the safe deposit box at issue were the funds of the decedent." Nor did Ms. Spaulding ever make a factual claim that she placed any portion of the money at issue into the box or introduce any evidence of the decedent's intent to create a joint tenancy with a right of survivorship in the contents of the box. Instead, she rests her arguments on the terms of the safe deposit box lease, which expressly undercuts any support for her argument.

{¶20} The safe deposit box lease explicitly states “[i]f this safe deposit box is leased by more than one person, then you have joint tenancy with the right of survivorship *in the safe deposit box and the lease. The ownership of the lease will **not** affect the title to any contents of the safe deposit box.*” (Emphasis added.)

{¶21} Thus, we agree with the trial court that by the express terms of the “joint owners” clause of the lease, there is no question the lease does not create a joint tenancy with a right of survivorship as to the contents of the safe deposit box.

{¶22} “The purpose of contract construction is to discover and effectuate the intent of the parties. \* \* \* The intent of the parties is presumed to reside in the language [used] in their agreement.” (Citations omitted.) *In re Estate of Shelton* at ¶23. When the terms included in an existing contract are clear and unambiguous, we cannot create a new contract by finding an intent not expressed in the clear and unambiguous language of the written contract. *Hamilton Ins. Servs., Inc. v. Nationwide Ins. Cos.*, 86 Ohio St.3d 270, 273 (1999), citing *Alexander v. Buckeye Pipe Line Co.*, 53 Ohio St.2d 241, 246 (1978).

{¶23} In Ohio, joint ownership with the right of survivorship is created by contract, and “[s]uch contract needs no consideration and may be unilaterally created.” (Emphasis deleted.) *Estate of Mathews v. Mathews*, 6th Dist. Lucas No. L-91-313, 1992 WL 206841, \*2 (August 28, 1992), quoting *Steinhauser v. Repko*, 30 Ohio St.2d 262, 266 (1972). However, in order to create a valid joint and survivorship contract it must be shown that the creator of the contract intended a present, equal joint interest in the *res* as well as the right of survivorship. *Id.*, citing *Steinhauser* at 268-69.

{¶24} Ms. Spaulding argues that the Supreme Court of Ohio in *Steinhauser* held that “assets in a Survivorship Safe Deposit Box go to the survivor upon death of the depositor.” However, *Steinhauser* is inapplicable to the facts and circumstances of the present case. In that case, the parties’ safe deposit agreement, by its express terms, created a joint tenancy with a right of survivorship as to the contents of the safe deposit box. *Id.* at paragraph two of the syllabus. This situation herein is in stark contrast to that situation. Thus, the safe deposit box lease expressly states that it does not create a joint tenancy with a right of survivorship in the contents of the safe deposit box.

{¶25} Finding Ms. Spaulding’s sole assignment of error to be without merit, we affirm the judgment of the Ashtabula County Court of Common Pleas.

TIMOTHY P. CANNON, P.J.,

THOMAS R. WRIGHT, J.,

concur.