

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

PAULA A. CLARK	:	JUDGES:
	:	Hon. Sheila G. Farmer, P.J.
Plaintiff-Appellant	:	Hon. John W. Wise, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	
KEVIN L. MCCAULEY	:	Case No. 2010CA00131
	:	
Defendant-Appellee	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Appeal from the Stark County Court of
Common Pleas, Case No. 2010CV00738

JUDGMENT: AFFIRMED

DATE OF JUDGMENT ENTRY: October 18, 2010

APPEARANCES:

For Plaintiff-Appellant

CRAIG T. CONLEY
604 Huntington Plaza
220 Market Avenue South
Canton, OH 44702

For Defendant-Appellee

TERRENCE L. SEEBERGER
3475 Ridgewood Road
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Delaney, J.

{¶1} Plaintiff-Appellant Paula A. Clark appeals the April 21, 2010 and May 3, 2010 judgment entries of the Stark County Court of Common Pleas, General Division, to transfer Case No. 2010CV00738 to the Stark County Court of Common Pleas, Probate Division, and consolidate it with Probate Court Case No. 204989 involving the same parties and issues.

STATEMENT OF THE FACTS AND THE CASE

{¶2} On December 30, 2008, an estate was opened for Cletus P. McCauley in the Stark County Court of Common Pleas, Probate Division, captioned *In re Estate of Cletus P. McCauley*, Case No. 204989. Plaintiff-Appellant Paula Clark was appointed Executrix of the estate. Appellant is also the Trustee of the Cletus and Mary McCauley Irrevocable Trust (5/29/07). Kevin L. McCauley is the principal beneficiary of the Trust, and the Trust is the principal beneficiary of the Estate.

{¶3} On April 7, 2009, the Guardian of the Person of Kevin L. McCauley filed Objections to the Inventory and Appraisal filed by Appellant. The Guardian objected on the belief that significant assets were not included in the Inventory and Appraisal. On April 8, 2009, Defendant-Appellee, Philip S. Kaufmann, Guardian of the Estate of Kevin L. McCauley filed objections to the Inventory alleging that assets were missing from the inventory. Among the assets alleged to be missing from the inventory were seven joint and survivorship bank accounts, explained in more detail below. A hearing was scheduled on the objections on April 21, 2010.

{¶4} On February 22, 2010, Appellant filed a declaratory judgment action in the Stark County Court of Common Pleas, General Division. In her complaint, she

requested declaratory judgment to determine the validity of the seven joint and survivorship bank accounts. Appellant alleged that on August 14, 2008, Cletus McCauley updated signature cards at certain banks creating four joint and survivorship accounts held jointly by him and his daughter, Appellant. On August 18, 2008, Cletus McCauley gave Appellant a power of attorney. Utilizing the power of attorney, Appellant and Cletus McCauley created three more joint and survivorship accounts held jointly by her and her father. Cletus McCauley died on December 23, 2008.

{¶5} On March 24, 2010, Appellee filed an action in the Probate Court (Case No. 208532) to remove Appellant as Executrix and Trustee. Appellee alleged that Appellant sought to retain funds that belonged to the Estate and Trust.

{¶6} In the General Division case, Appellee filed a motion captioned, "Motion to Transfer Case to Probate Court; Alternatively to Consolidate with Probate Case No. 204989 for Trial." Appellant filed a response to the motion.

{¶7} On April 21, 2010, the trial court granted Appellee's motion to transfer the case and to consolidate it with the pending Probate Division Case No. 204989.

{¶8} Appellant filed a motion to vacate or motion for reconsideration on April 28, 2010. The trial court denied the motion.

{¶9} It is from this decision Appellant now appeals.

{¶10} Appellant raises two Assignments of Error:

{¶11} "I. THE TRIAL COURT BELOW ERRED IN GRANTING DEFENDANT'S/APPELLEE'S MOTION TO TRANSFER AND/OR MOTION TO CONSOLIDATE.

{¶12} “II. THE TRIAL COURT BELOW ERRED IN DENYING PLAINTIFF'S/APPELLANT'S SUBSEQUENT MOTION TO VACATE AND/OR MOTION FOR RECONSIDERATION.”

I., II.

{¶13} This case comes to us on the accelerated calendar. App. R. 11.1, which governs accelerated calendar cases, provides, in pertinent part:

{¶14} “(E) Determination and judgment on appeal. The appeal will be determined as provided by App. R. 11.1. It shall be sufficient compliance with App. R. 12(A) for the statement of the reason for the court's decision as to each error to be in brief and conclusory form. The decision may be by judgment entry in which case it will not be published in any form.”

{¶15} One of the important purposes of accelerated calendar is to enable an appellate court to render a brief and conclusory decision more quickly than in a case on the regular calendar where the briefs, facts, and legal issues are more complicated. *Crawford v. Eastland Shopping Mall Assn.* (1983), 11 Ohio App.3d 158, 463 N.E.2d 655.

{¶16} This appeal shall be considered in accordance with the aforementioned rules.

{¶17} Appellant argued her Assignments of Error simultaneously in her brief and we will likewise concurrently analyze Appellant's arguments.

{¶18} Appellee raised his motion to consolidate under Civ.R. 42(A). The Rule states, “When actions involving a common question of law or fact are pending before a court, that court after a hearing may order a joint hearing or trial of any or all the matters

in issue in the actions; it may order some or all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.”

{¶19} A trial court has discretionary authority in ruling on a motion to consolidate, and a reviewing court will not reverse a trial court’s decision absent a finding of abuse of discretion. *State ex rel. Natl. City Bank v. Maloney*, 103 Ohio St.3d 93, 814 N.E.2d 58, 2004-Ohio-4437, ¶ 11 (citations omitted).

{¶20} The question is whether the trial court abused its discretion when it transferred the declaratory judgment action from the General Division to the Probate Division so the declaratory judgment action could be consolidated with the pending case before the Probate Division. Upon a review of the record, we find no abuse of discretion.

{¶21} It is well settled that “a declaratory judgment action may be brought in the probate court to determine the validity of *inter vivos* transfers where the property transferred would revert to the estate if the transfers are invalidated.” *State ex rel. Lipinski v. Cuyahoga Cty. Common Pleas Court, Probate Div.* (1995), 74 Ohio St.3d 19, 22, 655 N.E.2d 1303 citing *Bobko v. Sagen* (1989), 61 Ohio App.3d 397, 406-407, 572 N.E.2d 823, 829; see, also, *Corron, supra*, 40 Ohio St.3d at 79, 531 N.E.2d at 712; *Carlin v. Mambuca* (1994), 96 Ohio App.3d 500, 505, 645 N.E.2d 737, 740; *Eger v. Eger* (1974), 39 Ohio App.2d 14, 18, 68 O.O.2d 150, 153, 314 N.E.2d 394, 400.

{¶22} In *Goldberg v. Maloney*, 111 Ohio St.3d 211, 2006-Ohio-5485, 855 N.E.2d 856, the Ohio Supreme Court stated:

{¶23} “The cases permitting probate courts to determine the validity of preguardianship or predeath transactions have been held to be ‘consonant with the modern and prevailing view that the ends of justice are expedited and best served by the disposition of as many issues as is possible in a single proceeding.’ *Grannen v. Ey* (1974), 44 Ohio App.2d 55, 60, 73 O.O.2d 52, 335 N.E.2d 735.” *Id.* at ¶36.

{¶24} In this case, Appellee has objected to the seven bank accounts in the Probate Division case. The validity of the seven bank accounts is the subject of the declaratory judgment action filed by Appellant in the General Division. Pursuant to the above-stated law, the Probate Division has jurisdiction over the matters raised in the declaratory judgment action.

{¶25} In the interests of judicial economy and to ensure consistency in the results of the case as espoused by the Ohio Supreme Court in *Goldberg*, supra, we find the trial court did not abuse its discretion in transferring the declaratory judgment action to the Probate Division and consolidating it with the pending action in the Probate Division.

{¶26} Appellant’s first and second Assignments of Error are overruled.

{¶27} The judgment of the Stark County Court of Common Pleas is affirmed.

By Delaney, J.

Farmer, P.J. and

Wise, J. concur.

HON. PATRICIA A. DELANEY

HON. SHEILA G. FARMER

HON. JOHN W. WISE

