NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN RE: ESTATE OF RONALD MARK ORENAK APPEAL OF: ANN L. ORENAK, AS EXECUTRIX OF THE ESTATE OF RONALD MARK ORENAK	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1830 WDA 2015

Appeal from the Order Entered November 5, 2015
In the Court of Common Pleas of Indiana County
Orphans' Court at No(s): 32-15-0019

BEFORE: BENDER, P.J.E., RANSOM, J., and MUSMANNO, J.

MEMORANDUM BY BENDER, P.J.E.: **FILED DECEMBER 22, 2016**

Ann L. Orenak (Appellant), Executrix of the Estate of Ronald Mark Orenak,[1] appeals from the orphans' court's November 5, 2015 order that denied her Petition for Citation of Declaratory Judgment. The denial of the Petition directed that the funds in a joint bank account were to be distributed to Marilyn Burns and were not to be included in Ronald Orenak's estate or distributed in accordance with his will. After review, we affirm.

Appellant's statement of the question involved reads as follows: "Whether Ronald Orenak's Estate is entitled to Ronald's half of the funds in Anne Orenak's[2] joint accounts, where Ronald died only four (4) days after

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[1] Ann Orenak is Ronald Orenak's widow.

[2] Anne Orenak, Ronald's and Marilyn's mother, had established a joint bank account in her and her children's names.

co-owner, Anne Orenak[?]" Appellant's brief at 3. To support her statement of the question, Appellant sets forth the following three arguments:

> I. The MPAA[3] should not be applied mechanically to the factual anomaly of this case.
>
> II. There is sufficient evidence to rebut the survivorship presumption of the MPAA.
>
> III. ***Novosielski***[4] suggests that provisions of a [w]ill may be considered, and its progeny do not preclude rebuttal of the presumption.

Id. at 10, 13 and 18.

> In addressing these issues, we are guided by the following:
>
> Our standard of review of an orphans' court's decision is deferential. ***In re Estate of Strahsmeier***, 54 A.3d 359, 362 (Pa. Super. 2012). When reviewing an orphans' court decree, this Court must determine whether the record is free from legal error and whether the orphans' court's findings are supported by the record. ***Id.*** at 362-363. Because the orphans' court sits as the finder of fact, it determines the credibility of the witnesses and, on review, this Court will not reverse its credibility determinations absent an abuse of discretion. ***Id.*** at 363. However, this Court is not bound to give the same deference to the orphans' court conclusions of law. ***Id.*** Where the rules of law on which the orphans' court relied are palpably wrong or clearly inapplicable, we will reverse the court's decree. ***Id.*** Moreover, we point out that an abuse of discretion is not merely an error of judgment. However, if in reaching a conclusion, the court overrides or misapplies the law, or the judgment exercised is shown by the record to be manifestly unreasonable or the product of partiality, prejudice, bias, or ill will, discretion has been abused. ***Id.***

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[3] Multiple Parties Account Act, 20 Pa.C.S. §§ 6301-6306.

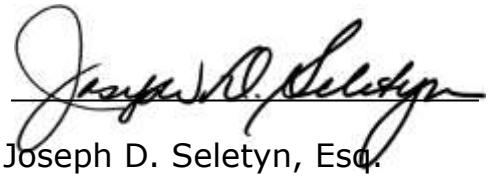
[4] ***In re Novosielski***, 992 A.2d 89 (Pa. 2010).

Estate of Sacchetti v. Sacchetti, 128 A.3d 273, 281-82 (Pa. Super. 2015) (quoting ***In re Estate of Zeevering***, 78 A.3d 1106, 1108 (Pa. Super. 2013)).

We have reviewed the certified record, the briefs of the parties, the applicable law, and the thorough opinion of the Honorable Carol Hanna of the Court of Common Pleas of Indiana County, dated November 5, 2015. We conclude that Judge Hanna's opinion accurately disposes of the issue and accompanying arguments presented by Appellant. Accordingly, we adopt her opinion as our own and affirm the order denying Appellant's petition on that basis.

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/22/2016

IN THE COURT OF COMMON PLEAS OF INDIANA COUNTY, PENNSYLVANIA

ORPHANS' COURT DIVISION

IN RE: THE ESTATE OF RONALD MARK ORENAK	:	
ANN L. ORENAK, AS EXECUTRIX OF THE ESTATE OF RONALD MARK ORENAK	:	No. 32-15-0019
Petitioner,	:	
v.	:	
MARILYN J. BURNS,	:	
Respondent.	:	

OPINION

This matter comes before the court on a Petition for Citation of Declaratory Judgement and a Motion for Reconsideration. For the reasons set forth below, the Court denies the petition and the motion.

FACTS AND PROCEDURAL HISTORY[1]

This case involves the assets and bank accounts of Anne Orenak, hereinafter "Anne". Anne lived in Allegheny County, at 318 Dora Drive, Elizabeth, Pennsylvania. Anne resided there with her daughter, Marilyn Burns hereinafter "Marilyn". Anne had two children, Marilyn and her son, Ronald Orenak, hereinafter "Ronald". Ronald resided in Indiana, Pennsylvania, with his wife, Ann L. Orenak, hereinafter "Petitioner".

The accounts and assets at issue are PNC bank accounts, opened by Anne on April 30, 2009, after the death of her husband. Anne executed her will on April 19, 2009. On April 30, 2009, Anne, accompanied by her children, went to PNC bank to change all of her accounts to joint accounts. Anne listed both children, Ronald and Marilyn, as joint owners to all accounts with right of survivorship. As of November 2014, the accounts had a total balance of $500, 687.18.

Anne passed away on November 16, 2014. Just four days later, on November 20, 2014, Ronald passed away. A dispute arose as to the disposition of the assets from the PNC bank accounts. Petitioner is the Executrix of Ronald's estate, and claims that half of the assets from

[1] The facts are derived from the pleadings and testimony taken at the 9/23/15 hearing.

Anne's funded PNC accounts should belong to Ronald's estate. Marilyn argues that the accounts were joint accounts, with a right of survivorship, and therefore she is entitled to the proceeds. A preliminary injunction hearing was held on April 13, 2015 and the preliminary injunction previously issued was continued. The Petitioner was also required to post a bond in the amount of $1,000. (Order of Court of April 13, 2015) A hearing on the Citation for Declaratory Judgment occured on September 23, 2015 and testimony was heard from two PNC bank representatives, Petitioner, and Marilyn concerning the distribution of the assets. After the September 23rd hearing, the Court granted both Petitioner and Respondent leave to file post-trial briefs. In addition, Petitioner filed a Motion for Reconsideration as to the admissibility of an exhibit on October 15, 2015.

ISSUE

Whether the Estate of Ronald Orenak is able to show by "clear and convincing" evidence, required by 20 Pa. C.S.A.. § 6304, that Anne

Orenak had intended the joint bank accounts to be divided equally and not be considered joint accounts with the right of survivorship.

DISCUSSION AND ANALYSIS

I. The PNC accounts at issue, are joint accounts and therefore subject to the MPAA.

On September 1, 1976, Pennsylvania enacted the Multiple Parties Account Act, (hereinafter "MPAA") which governs the rights among parties in regard to multiple party accounts. In the present case, the relevant portion of the MPAA, is 20 Pa. C.S.A.. § 6304, Section A, which states:

> **(a) Joint account.**--Any sum remaining on deposit at the death of a party to a joint account belongs to the surviving party or parties as against the estate of the decedent unless there is clear and convincing evidence of a different intent at the time the account is created. If there are two or more surviving parties, their respective ownerships during lifetime shall be in proportion to their previous ownership interests under section 6303 (relating to ownership during lifetime) augmented by an equal per capita share for each survivor of any interest the decedent may have owned in the account immediately before his death; and the right of survivorship continues between the surviving parties.
>
> 20 Pa. C.S.A.. § 6304

To be governed under § 6304 of the MPAA, the Court first needs to make the determination that the account is a "joint account" as defined in § 6301 of the MPAA. § 6301 defines a joint account as " an account payable on request to one or more of two or more parties whether or not mention is made of any right of survivorship." 20 Pa. C.S.A.. § 6301. Both parties acknowledge, by their pleadings and testimony, that the accounts created by Anne, on April 30 2009, were joint accounts, which listed Ronald, Marilyn, and Anne as co-owners. Therefore this Court recognizes that these are Joint Accounts and subject to § 6304 of the MPAA.

II.

Joint accounts have a rebuttable right of survivorship presumption.

When an account is deemed a joint account under the MPAA, certain presumptions are granted. In In Re Estate of Meyers, the Superior Court stated, "As to ownership of funds held in a joint account, the statute favors the surviving party over the estate of the decedent. By 20 Pa. C. S. A. Section 6304, the legislature has created a statutory presumption that survivorship rights are intended when a joint account is created." In re Estate of Meyers, 434 Pa. Super. 165,

642 A.2d 525 (1994). In addition, the Superior Court also noted: "This presumption can be overcome only by clear and convincing evidence of a contrary intent. The burden of establishing a contrary intent is on the party who opposes the presumption of survivorship." Id. In Myers, the Superior Court ruled that a neighbor, who was also the power of attorney of the decedent, still had the benefit of the survivorship presumption for joint accounts. Id. The Court ruled, that although the neighbor had a confidential relationship with the decedent, it was still the estate's burden to show, by clear and convincing evidence that the joint account was to be included in the estate. Id. at 530. Therefore, this court finds that the Petitioner must demonstrate "clear and convincing" evidence that Anne wanted the joint bank accounts to be divided equally and not include a right of survivorship.

The standard of "clear and convincing" evidence is the highest standard in civil cases. This standard "requires evidence so clear, direct, weighty, and convincing as to enable the trier of fact to come to a clear conviction, without hesitancy of the truth of the precise facts in issue." Manning v. WPXI, Inc., 2005 PA Super 343, 886 A.2d 1137 (2005). The Petitioner argues that Anne's will and Ronald's intent demonstrate "clear and convincing" evidence that Anne meant for the

PNC accounts to be divided equally. For the following reasons, this Court disagrees.

III.

Anne's will is not enough to rebut the survivorship presumption.

The Pennsylvania Supreme Court in In Re Estate of Novaleiski, ruled that a testatrix's will was not per se clear and convincing evidence that the testatrix had not intended to create a right of survivorship in a multiple party account." In re Novosielski, 605 Pa. 508, 992 A.2d 89 (2010). The Novosielski Court also stated, "The MPAA rather clearly evidences a legislative intent that, except when the instrument explicitly provides to the contrary or in the unusual case based on a heightened degree of evidence, individuals and institutions may safely rely upon the presumed right of survivorship of MPAA joint accounts." Id. at 91. In Novosielski, the decedent named her nephew Executor of her estate. Id. at 89. Decedent and her nephew later put the bulk of the estate in a treasury account to gain interest. Id. This treasury account was a joint account, with the decedent and nephew as owners. Id. Although the treasury account made up the vast majority of the decedent's estate, it was ruled that the decedent

willingly placed the funds in the treasury account, and therefore the proceeds went to the nephew rather than the estate. Id. at 90. The case was decided contrary to the language in the will (executed prior to the creation of the treasury account), which stated all her assets were to be divided equally between her sisters or her sisters' heirs. Id. This Court finds the Novosielski decision to be controlling in the present case.

In addition to Novosielski, the Superior Court in Meyers stated that the statutory presumption that survivorship rights are intended when a joint account is created can be overcome only by clear and convincing evidence of a contrary intent and the burden of establishing such intent is on the party who opposes the presumption. In re Estate of Meyers, *Supra* at 125. Not only has the will itself been held to not rebut the presumption of survivorship rights, the Superior Court also held a declaration rebutting survivorship rights, signed two years after the joint accounts were created, was not enough to rebut the right of survivorship presumption. In re Estate of Heske, 436 Pa. Super. 63, 647 A.2d 243 (1994). In Heske, the decedent had four open joint accounts, with she and her son as joint owners. Id. Two years after opening the accounts, decedent signed a declaration stating that

it was her intention that the four bank accounts be included in her estate, not for the sole use of her son. Id. In considering the signed declaration of intent against the right of survivorship, the Superior Court held that there was "not clear and convincing evidence to show the intent *at the time the accounts were created.*" Id. (emphasis added) It has been consistently held by higher courts, that a will itself is not enough to rebut the survivorship presumption in joint accounts. Therefore, Anne's will is not clear and convincing evidence of her intent to disregard the survivorship benefits of the joint accounts.

IV.

Petitioner's arguments.

Petitioner puts forth a multiple arguments to persuade this court not to follow or distinguish the Pennsylvania Supreme Court's ruling in Novosielski, including: 1) The "law of the case" doctrine instructs this court to look to Ronald's intent, 2) This is an "unusual case" as alluded to by the Novosielski Court, and 3) New accounts were created upon Anne and Ronald's deaths and therefore Ronald's intent controls. This Court holds: 1) the "law of the case" doctrine is inapplicable to the present case, 2) This is not an unusual case that compels this Court to

abandon the MPAA, and 3)New accounts were not created upon the death of Anne or Ronald.

A.

The "law of the case" doctrine

Petitioner initially argues that under the "law of the case" doctrine, this Court is bound by the decision of The Honorable William J. Martin, the President Judge of Indiana County Court of Common Pleas, during the preliminary injunction proceeding, held on April 13, 2015 in this matter. More specifically, Petitioner states that President Judge Martin's statement is controlling upon this Court:

> "It is not that Mrs. Orenak (Ann L. Orenak) is seeking this money for herself but rather on behalf of the (Ronald's) estate. Therefore, you do have to focus on Ronald's interest in that and whether under the act that interest vested and therefore, his estate would then be entitled to his share of the joint account and this would be under section 6304 of the act."

April 13, 2015, Hearing Transcript. Pg. 29.

This Court does not find this argument persuasive for two reasons; 1) the "law of the case" doctrine does not apply in this scenario and 2) although the Petitioner contends otherwise, President Judge Martin's use of the word "interest" does not mean intent.

The Pennsylvania Supreme Court has "long recognized that judges of coordinate jurisdiction sitting in the same case should not overrule each others' decisions." Commonwealth v. Starr, 664 A.2d 1326, 1331 (Pa. 1995). The rule of coordinate jurisdiction falls "within the ambit of a generalized expression of the 'law of the case' doctrine.[2] Furthermore, it is stated "Generally, the "coordinate jurisdiction rule" commands that upon transfer of a matter between trial judges of coordinate jurisdiction, a transferee trial judge may not alter resolution of a legal question previously decided by a transferor trial judge." Hunter v. City of Philadelphia, 80 A.3d 533 (Pa. Commw. Ct. 2013).

A significant departure from the rule states: "(the) General rule that judges of coordinate jurisdiction should not overrule each other's decisions does not apply where the motions underlying the rulings in question are of a different type." Id. President Judge Martin's previous statement originated during a hearing to determine the merits of Petitioner's Petition for a Preliminary Injunction, which was not the issue before this Court on September 23, 2015. It is well settled that the

[2] The Supreme Court of Pennsylvania adopted "the coordinate jurisdiction rule and all its attendant meanings and limitations expressed in previous caselaw into the law of the case doctrine in an effort to standardize and streamline the law to which courts must refer to when considering prior rulings of courts of coordinate jurisdiction and of courts of appellate jurisdiction in the same litigated matter. Com. v. Starr, 664 A.2d 1326, 1333 (Pa.1995).

"law of case" doctrine only applies if the issue that was decided was identical to the issue being presented. The legal issue presented at the April 13, 2015 proceeding, was a Preliminary Injunction issue. The legal issue presented at the September 23, 2015, concerns the true owner or owners of the PNC Bank Accounts opened on April 30, 2009. President Judge Martin did not decide the legal question currently before this Court. On the contrary, President Judge Martin stated "I think that this is the status quo that we are trying to preserve." April 13, 2015, Hearing Transcript. Pg. 29. Thus, this Court finds that President Judge Martin intentionally preserved the legal issue to be heard at the September 23, 2015, hearing. Therefore, this Court concludes President Judge Martin did not render any finding that would bind this Court under the "law of the case" doctrine.

Petitioner assets that President Judge Martin's language, specifically "interest", means that President Judge Martin concluded that Ronald's intent should control the distribution of assets. The Court does not find this argument persuasive. President Judge Martin stated that "you do have to focus on Ronald's interest in that and whether under the act that interest vested and therefore, his estate would then be entitled to his share of the joint account and this would be under

Section 6304 of the act." "Interest" clearly means whether Ronald's claim in the accounts vested prior to his death under the MPAA. Petitioner's argument that "interest" is equivalent to intent, does not persuade this Court.[3] [4]

B.

The "unusual" case exception

Petitioner also argues that the present case is the "unusual case" discussed by the Supreme Court in Novosielski, and therefore the will should be considered clear and convincing evidence to rebut the survivorship presumption.[5] Novosielski, *Supra* at Id. The circumstances presented, Anne's death followed within days by Ronald's unexpected death, are tragic. In support of her position, Petitioner puts forth the Supreme Court's decision in In re Gladowski's Estate, which held that the decedent's intent overrode the right of survivorship presumption. In re Gladowski's Estate 483 Pa. 258, 396

[3] In addition, Black's Law Dictionary defines Interest as: "1. Advantage or profit, esp. of a financial nature. (2). A legal share in something; all or part of a legal or equitable claim to or right in property"
Intent is defined as: "1. The state of mind accompanying an act, esp. a forbidden act..."

[4] During the proceeding on September 23, 2015, the Court took under advisement the admissibility of Petitioner's Exhibits 6 through 11. Marilyn's counsel objected to these exhibits on the basis of relevance. Petitioner's counsel argued that these exhibits were relevant as to Ronald's intent. For the reasons stated in this section of the Opinion, the Court finds that Ronald's intent is not determinative to the resolution of this matter and sustains Marilyn's objection on the basis of relevance.

[5] The MPAA rather clearly evidences a legislative intent that, except when the instrument explicitly provides to the contrary or in the *unusual* case based on a heightened degree of evidence, individuals and institutions may safely rely upon the presumed right of survivorship of MPAA joint accounts.
In re Novosielski, 605 Pa. 508, 529, 992 A.2d 89, 102 (2010) (emphasis added)

A.2d 631 (1979). The Gladkowski case involves a father, essentially, having two assets, his home and a joint bank account with his daughter listed as co-owner. Id. The Father executed a will after the joint account was created, leaving his home to his daughter and the rest was to be divided equally between his seven children. Id. The Court ruled that there was clear and convincing evidence that the Father wanted the account to be divided equally because he left his daughter his home and his will which was drafted after the account creation, would be rendered meaningless by granting the daughter the assets in the joint account. Id. at 632. This case is distinguishable in two ways. The first difference in Gladkowski is that the will was executed after the accounts were created. Id. Here, that is not the case. Anne drafted her will on April 19, 2009 and opened the joint accounts on April 30, 2009. The second distinguishable factor is that Anne left her home to Ronald and Marilyn as tenants in common, and therefore Ronald's share will pass to his estate. As a result, Anne's will is not rendered meaningless by this Court, but rather the subsequent creation of the joint accounts with a right of survivorship controls. In Gladkowski, the Court was able to find "clear and convincing evidence" to rebut the survivorship presumption. Here, this Court finds none.

C.

New accounts were created upon Anne's death

Nor is this Court is persuaded by Petitioner's contention that upon Anne's death, a new joint account was created that included Ronald and Marilyn. On the contrary, in accordance with the PNC employees' testimony[6], the accounts remained the same, albeit less an owner. Upon Anne's death the joint account became owned by two people rather than three, and upon Ronald's death, the accounts became solely owned by Marilyn.

D.

Ronald's intent on November 16, 2014 should be controlling

Additionally, Petitioner argues that Ronald's intent, after Anne's death, should be recognized as controlling. The Court finds that this argument does not comply with the plain language of 20 Pa. C.S.A.. § 6304 or the Superior Court's rationale in Heske. In re Estate of Heske, *Supra* at Id. The statute plainly states that to rebut the survivorship presumption, clear and convincing evidence is needed at ***the time the***

[6] Ms. Sharyn Davis and Ms. Tallon Drabick testified on 9/23/15. Their testimony consisted of detailing the types of accounts Anne had opened, explaining that no new account was created upon the death of either Anne nor Ronald, and the dates they were notified of the deaths of Ronald and Anne.

accounts were created. (emphasis added) Id. The accounts were created on April 30, 2009. New accounts were not created upon the death of Anne or Ronald. Petitioner does not put forth "clear and convincing" evidence of Anne's intent to rebut the survivorship rights on April 30, 2009. The only evidence to divide her estate in equal shares was her will, which the Supreme Court in Novosielski, has held is not enough to rebut the presumption of survivorship. Novosielski, *Supra* at Id. Only if new accounts were created upon Anne's death, would Ronald's intent be relevant. As evidenced through testimony by the PNC employees and the language located in the account creation documents, no new accounts were created. Therefore, Ronald's intent is irrelevant when deciding ownership of the PNC accounts. This Court finds the last paragraph of the Novosielski opinion to be particularly applicable:

> We understand Appellee's disappointment... However, Decedent was wholly within her right to do with her property as she wished during her life, including placing the bulk of her property in a joint account with a right of survivorship. Absent a finding based on clear and convincing evidence that the account was fraudulently created, or accomplished through a breach of trust of the attorney-in-fact who had aided in the creation of the account, the lower courts were simply required to apply the MPAA to resolve the dispute. Because the lower courts erred in their interpretation of the MPAA and failed to properly apply its provisions, and because no clear and convincing evidence of an intent contrary to right of survivorship is evident in the record...
>
> In re Novosielski, 992 A.2d 89, 107-08 (2010).

V.

Motion for Reconsideration of Admissibility

During the hearing, which occurred on September 23, 2015, Petitioner attempted to enter into to evidence, a letter from Attorney Robert Lucas, dated November 28, 2014.[7] Attorney Robert Lucas prepared the Last Will and Testament of Anne, but was not present at the hearing and did not testify. The letter, written by Attorney Robert Lucas to Petitioner, contained information on a proposed distribution of Anne's estate. It is disputed as to whether the estate included the joint PNC accounts or solely Anne Orenak's probate assets, as the letter makes no reference to the joint accounts.

Respondent objected to the admittance of the letter, on the basis that it was hearsay. The Court sustained the objection. Following the September 23rd hearing, Petitioner filed a Motion for Reconsideration of Admissibility and argued that the letter fell under the authorized agent hearsay exception.

In her post-trial motion, Petitioner argues that under Pa.R.Evid. 803(25)(C): The statement is offered against an opposing party and

[7] This Court notes, through testimony, that Attorney Robert Lucas is a relative of Attorney David Lucas. Attorney David Lucas is representing Marilyn Burns (Respondent) in the present case.

was made by a person whom the **party authorized to make a statement on the subject**, the letter should be admitted. (Pa.R.E. 803).(emphasis added) This Court emphasizes that for a statement to fall under this exception, the agent must be authorized by the opposing party to make the statement. The Superior Court stated that for this exception to apply "(r)equires that for a statement to be admissible, the offering party must show that the declarant was the agent of a party against whom admission was offered, and that he had authority to speak for that party." Durkin v. Equine Clinics, Inc., 376 Pa. Super. 557, 546 A.2d 665 (1988). More specifically with relation to an attorney's statement, "If admissions by an attorney are made out of court and not in the presence of the client, the attorney's authority to make statements, or knowledge or assent of the client thereto, must be shown in order for such statements to be admissible under vicarious admission exception to the rule against hearsay." DeFrancesco v. W. Pennsylvania Water Co., 329 Pa. Super. 508, 478 A.2d 1295 (1984). More recently, the courts have held three elements must be present for the authorized agent exception to apply: (1) the declarant was an agent or employee of the party opponent; (2) the declarant made the statement while employed by the principal; and (3) the statement

concerned a matter within the scope of the agency or employment. Sehl v. Vista Linen Rental Serv. Inc., 2000 PA Super 331, ¶ 9, (2000). The burden of proving that these elements are present rests on the proponent of the hearsay exception. Harris v. Toys "R" Us-Penn, Inc., 2005 PA Super 281, 880 A.2d 1270 (2005).

Therefore, it is Petitioner's burden to prove that this exception applies to the instant case. No testimony was presented at the September 23rd hearing that demonstrated Attorney Robert Lucas was an authorized agent of Respondent. When Petitioner asked Respondent if Robert Lucas was her Attorney, Respondent replied "No, he was my mother's." No further testimony or evidence was provided to demonstrate that Attorney Robert Lucas was acting as an authorized agent for Respondent when he wrote the letter. The burden of persuasion belongs to Petitioner to demonstrate that the hearsay exception applies to the letter. Petitioner failed to show that Robert Lucas was Respondent's authorized agent when drafting the letter. This Court finds that Petitioner was unsuccessful in meeting this burden by

either testimony or evidence, and therefore Petitioner's Motion for Reconsideration is DENIED.[8]

Conclusion

Therefore, because this Court finds no "clear and convincing" evidence, as required by 20 Pa. C.S.A.. § 6304 and the holdings of Heske and Novosielski, to rebut the survivorship presumption, the Petition must be denied. Additionally, Petitioner failed to meet her burden to demonstrate that Attorney Robert Lucas was Respondent's authorized agent, and her Motion for Reconsideration is denied.

An appropriate order will be entered.

[8] This Court notes that in making this decision, the contents of the letter were not considered. Respondent argues that the letter is irrelevant, because it speaks only to Anne's probate assets, which are not at issue. This argument was not properly before the court, since it was not raised at trial, and was therefore not considered.

IN THE COURT OF COMMON PLEAS OF INDIANA COUNTY, PENNSYLVANIA

ORPHANS' COURT DIVISION

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ANN L. ORENAK, AS EXECUTRIX OF THE ESTATE OF RONALD MARK ORENAK	:	No. 32-15-0019
Petitioner,	:	
v.	:	
MARILYN J. BURNS,	:	
Respondent.	:	

ORDER OF COURT

HANNA, J.

AND NOW, this 5th day of November, 2015, upon consideration of Plaintiff's Petition for Citation of a Declaratory Judgement AND Motion for Reconsideration, it is hereby ORDERED and DIRECTED that the Petition and the Motion are denied. The preliminary injunction issued on March 25, 2015 and continued on April 13, 2015 is vacated.

BY THE COURT,

Carol Hanna, Judge

IN THE COURT OF COMMON PLEAS OF INDIANA COUNTY, PENNSYLVANIA

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This matter comes before the court on a Petition for Citation of Declaratory Judgement and a Motion for Reconsideration. For the reasons set forth below, the Court denies the petition and the motion.

FACTS AND PROCEDURAL HISTORY[1]

This case involves the assets and bank accounts of Anne Orenak, hereinafter "Anne". Anne lived in Allegheny County, at 318 Dora Drive, Elizabeth, Pennsylvania. Anne resided there with her daughter, Marilyn Burns hereinafter "Marilyn". Anne had two children, Marilyn and her son, Ronald Orenak, hereinafter "Ronald". Ronald resided in Indiana, Pennsylvania, with his wife, Ann L. Orenak, hereinafter "Petitioner".

The accounts and assets at issue are PNC bank accounts, opened by Anne on April 30, 2009, after the death of her husband. Anne executed her will on April 19, 2009. On April 30, 2009, Anne, accompanied by her children, went to PNC bank to change all of her accounts to joint accounts. Anne listed both children, Ronald and Marilyn, as joint owners to all accounts with right of survivorship. As of November 2014, the accounts had a total balance of $500, 687.18.

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Orenak had intended the joint bank accounts to be divided equally and not be considered joint accounts with the right of survivorship.

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> (a) Joint account.--Any sum remaining on deposit at the death of a party to a joint account belongs to the surviving party or parties as against the estate of the decedent unless there is clear and convincing evidence of a different intent at the time the account is created. If there are two or more surviving parties, their respective ownerships during lifetime shall be in proportion to their previous ownership interests under section 6303 (relating to ownership during lifetime) augmented by an equal per capita share for each survivor of any interest the decedent may have owned in the account immediately before his death; and the right of survivorship continues between the surviving parties.
>
> 20 Pa. C.S.A.. § 6304

To be governed under § 6304 of the MPAA, the Court first needs to make the determination that the account is a "joint account" as defined in § 6301 of the MPAA. § 6301 defines a joint account as " an account payable on request to one or more of two or more parties whether or not mention is made of any right of survivorship." 20 Pa. C.S.A.. § 6301. Both parties acknowledge, by their pleadings and testimony, that the accounts created by Anne, on April 30 2009, were joint accounts, which listed Ronald, Marilyn, and Anne as co-owners. Therefore this Court recognizes that these are Joint Accounts and subject to § 6304 of the MPAA.

II.

Joint accounts have a rebuttable right of survivorship presumption.

When an account is deemed a joint account under the MPAA, certain presumptions are granted. In In Re Estate of Meyers, the Superior Court stated, "As to ownership of funds held in a joint account, the statute favors the surviving party over the estate of the decedent. By 20 Pa. C. S. A. Section 6304, the legislature has created a statutory presumption that survivorship rights are intended when a joint account is created." In re Estate of Meyers, 434 Pa. Super. 165,

642 A.2d 525 (1994). In addition, the Superior Court also noted: "This presumption can be overcome only by clear and convincing evidence of a contrary intent. The burden of establishing a contrary intent is on the party who opposes the presumption of survivorship." Id. In Myers, the Superior Court ruled that a neighbor, who was also the power of attorney of the decedent, still had the benefit of the survivorship presumption for joint accounts. Id. The Court ruled, that although the neighbor had a confidential relationship with the decedent, it was still the estate's burden to show, by clear and convincing evidence that the joint account was to be included in the estate. Id. at 530. Therefore, this court finds that the Petitioner must demonstrate "clear and convincing" evidence that Anne wanted the joint bank accounts to be divided equally and not include a right of survivorship.

The standard of "clear and convincing" evidence is the highest standard in civil cases. This standard "requires evidence so clear, direct, weighty, and convincing as to enable the trier of fact to come to a clear conviction, without hesitancy of the truth of the precise facts in issue." Manning v. WPXI, Inc., 2005 PA Super 343, 886 A.2d 1137 (2005). The Petitioner argues that Anne's will and Ronald's intent demonstrate "clear and convincing" evidence that Anne meant for the

PNC accounts to be divided equally. For the following reasons, this Court disagrees.

III.

Anne's will is not enough to rebut the survivorship presumption.

The Pennsylvania Supreme Court in In Re Estate of Novaleiski, ruled that a testatrix's will was not per se clear and convincing evidence that the testatrix had not intended to create a right of survivorship in a multiple party account." In re Novosielski, 605 Pa. 508, 992 A.2d 89 (2010). The Novosielski Court also stated, "The MPAA rather clearly evidences a legislative intent that, except when the instrument explicitly provides to the contrary or in the unusual case based on a heightened degree of evidence, individuals and institutions may safely rely upon the presumed right of survivorship of MPAA joint accounts." Id. at 91. In Novosielski, the decedent named her nephew Executor of her estate. Id. at 89. Decedent and her nephew later put the bulk of the estate in a treasury account to gain interest. Id. This treasury account was a joint account, with the decedent and nephew as owners. Id. Although the treasury account made up the vast majority of the decedent's estate, it was ruled that the decedent

willingly placed the funds in the treasury account, and therefore the proceeds went to the nephew rather than the estate. Id. at 90. The case was decided contrary to the language in the will (executed prior to the creation of the treasury account), which stated all her assets were to be divided equally between her sisters or her sisters' heirs. Id. This Court finds the Novosielski decision to be controlling in the present case.

In addition to Novosielski, the Superior Court in Meyers stated that the statutory presumption that survivorship rights are intended when a joint account is created can be overcome only by clear and convincing evidence of a contrary intent and the burden of establishing such intent is on the party who opposes the presumption. In re Estate of Meyers, *Supra* at 125. Not only has the will itself been held to not rebut the presumption of survivorship rights, the Superior Court also held a declaration rebutting survivorship rights, signed two years after the joint accounts were created, was not enough to rebut the right of survivorship presumption. In re Estate of Heske, 436 Pa. Super. 63, 647 A.2d 243 (1994). In Heske, the decedent had four open joint accounts, with she and her son as joint owners. Id. Two years after opening the accounts, decedent signed a declaration stating that

it was her intention that the four bank accounts be included in her estate, not for the sole use of her son. Id. In considering the signed declaration of intent against the right of survivorship, the Superior Court held that there was "not clear and convincing evidence to show the intent *at the time the accounts were created.*" Id. (emphasis added) It has been consistently held by higher courts, that a will itself is not enough to rebut the survivorship presumption in joint accounts. Therefore, Anne's will is not clear and convincing evidence of her intent to disregard the survivorship benefits of the joint accounts.

IV.

Petitioner's arguments.

Petitioner puts forth a multiple arguments to persuade this court not to follow or distinguish the Pennsylvania Supreme Court's ruling in Novosielski, including: 1) The "law of the case" doctrine instructs this court to look to Ronald's intent, 2) This is an "unusual case" as alluded to by the Novosielski Court, and 3) New accounts were created upon Anne and Ronald's deaths and therefore Ronald's intent controls. This Court holds: 1) the "law of the case" doctrine is inapplicable to the present case, 2) This is not an unusual case that compels this Court to

abandon the MPAA, and 3)New accounts were not created upon the death of Anne or Ronald.

A.

The "law of the case" doctrine

Petitioner initially argues that under the "law of the case" doctrine, this Court is bound by the decision of The Honorable William J. Martin, the President Judge of Indiana County Court of Common Pleas, during the preliminary injunction proceeding, held on April 13, 2015 in this matter. More specifically, Petitioner states that President Judge Martin's statement is controlling upon this Court:

> "It is not that Mrs. Orenak (Ann L. Orenak) is seeking this money for herself but rather on behalf of the (Ronald's) estate. Therefore, you do have to focus on Ronald's interest in that and whether under the act that interest vested and therefore, his estate would then be entitled to his share of the joint account and this would be under section 6304 of the act."

April 13, 2015, Hearing Transcript. Pg. 29.

This Court does not find this argument persuasive for two reasons; 1) the "law of the case" doctrine does not apply in this scenario and 2) although the Petitioner contends otherwise, President Judge Martin's use of the word "interest" does not mean intent.

The Pennsylvania Supreme Court has "long recognized that judges of coordinate jurisdiction sitting in the same case should not overrule each others' decisions." Commonwealth v. Starr, 664 A.2d 1326, 1331 (Pa. 1995). The rule of coordinate jurisdiction falls "within the ambit of a generalized expression of the 'law of the case' doctrine.[2] Furthermore, it is stated "Generally, the "coordinate jurisdiction rule" commands that upon transfer of a matter between trial judges of coordinate jurisdiction, a transferee trial judge may not alter resolution of a legal question previously decided by a transferor trial judge." Hunter v. City of Philadelphia, 80 A.3d 533 (Pa. Commw. Ct. 2013).

A significant departure from the rule states: "(the) General rule that judges of coordinate jurisdiction should not overrule each other's decisions does not apply where the motions underlying the rulings in question are of a different type." Id. President Judge Martin's previous statement originated during a hearing to determine the merits of Petitioner's Petition for a Preliminary Injunction, which was not the issue before this Court on September 23, 2015. It is well settled that the

[2] The Supreme Court of Pennsylvania adopted "the coordinate jurisdiction rule and all its attendant meanings and limitations expressed in previous caselaw into the law of the case doctrine in an effort to standardize and streamline the law to which courts must refer to when considering prior rulings of courts of coordinate jurisdiction and of courts of appellate jurisdiction in the same litigated matter. Com. v. Starr, 664 A.2d 1326, 1333 (Pa.1995).

"law of case" doctrine only applies if the issue that was decided was identical to the issue being presented. The legal issue presented at the April 13, 2015 proceeding, was a Preliminary Injunction issue. The legal issue presented at the September 23, 2015, concerns the true owner or owners of the PNC Bank Accounts opened on April 30, 2009. President Judge Martin did not decide the legal question currently before this Court. On the contrary, President Judge Martin stated "I think that this is the status quo that we are trying to preserve." April 13, 2015, Hearing Transcript. Pg. 29. Thus, this Court finds that President Judge Martin intentionally preserved the legal issue to be heard at the September 23, 2015, hearing. Therefore, this Court concludes President Judge Martin did not render any finding that would bind this Court under the "law of the case" doctrine.

Petitioner assets that President Judge Martin's language, specifically "interest", means that President Judge Martin concluded that Ronald's intent should control the distribution of assets. The Court does not find this argument persuasive. President Judge Martin stated that "you do have to focus on Ronald's interest in that and whether under the act that interest vested and therefore, his estate would then be entitled to his share of the joint account and this would be under

Section 6304 of the act." "Interest" clearly means whether Ronald's claim in the accounts vested prior to his death under the MPAA. Petitioner's argument that "interest" is equivalent to intent, does not persuade this Court.[3] [4]

B.

The "unusual" case exception

Petitioner also argues that the present case is the "unusual case" discussed by the Supreme Court in Novosielski, and therefore the will should be considered clear and convincing evidence to rebut the survivorship presumption.[5] Novosielski, *Supra* at Id. The circumstances presented, Anne's death followed within days by Ronald's unexpected death, are tragic. In support of her position, Petitioner puts forth the Supreme Court's decision in In re Gladowski's Estate, which held that the decedent's intent overrode the right of survivorship presumption. In re Gladowski's Estate 483 Pa. 258, 396

[3] In addition, Black's Law Dictionary defines Interest as: "1. Advantage or profit, esp. of a financial nature. (2). A legal share in something; all or part of a legal or equitable claim to or right in property" Intent is defined as: "1. The state of mind accompanying an act, esp. a forbidden act..."

[4] During the proceeding on September 23, 2015, the Court took under advisement the admissibility of Petitioner's Exhibits 6 through 11. Marilyn's counsel objected to these exhibits on the basis of relevance. Petitioner's counsel argued that these exhibits were relevant as to Ronald's intent. For the reasons stated in this section of the Opinion, the Court finds that Ronald's intent is not determinative to the resolution of this matter and sustains Marilyn's objection on the basis of relevance.

[5] The MPAA rather clearly evidences a legislative intent that, except when the instrument explicitly provides to the contrary or in the *unusual* case based on a heightened degree of evidence, individuals and institutions may safely rely upon the presumed right of survivorship of MPAA joint accounts. In re Novosielski, 605 Pa. 508, 529, 992 A.2d 89, 102 (2010) (emphasis added)

A.2d 631 (1979). The Gladkowski case involves a father, essentially, having two assets, his home and a joint bank account with his daughter listed as co-owner. Id. The Father executed a will after the joint account was created, leaving his home to his daughter and the rest was to be divided equally between his seven children. Id. The Court ruled that there was clear and convincing evidence that the Father wanted the account to be divided equally because he left his daughter his home and his will which was drafted after the account creation, would be rendered meaningless by granting the daughter the assets in the joint account. Id. at 632. This case is distinguishable in two ways. The first difference in Gladkowski is that the will was executed after the accounts were created. Id. Here, that is not the case. Anne drafted her will on April 19, 2009 and opened the joint accounts on April 30, 2009. The second distinguishable factor is that Anne left her home to Ronald and Marilyn as tenants in common, and therefore Ronald's share will pass to his estate. As a result, Anne's will is not rendered meaningless by this Court, but rather the subsequent creation of the joint accounts with a right of survivorship controls. In Gladkowski, the Court was able to find "clear and convincing evidence" to rebut the survivorship presumption. Here, this Court finds none.

C.

New accounts were created upon Anne's death

Nor is this Court is persuaded by Petitioner's contention that upon Anne's death, a new joint account was created that included Ronald and Marilyn. On the contrary, in accordance with the PNC employees' testimony[6], the accounts remained the same, albeit less an owner. Upon Anne's death the joint account became owned by two people rather than three, and upon Ronald's death, the accounts became solely owned by Marilyn.

D.

Ronald's intent on November 16, 2014 should be controlling

Additionally, Petitioner argues that Ronald's intent, after Anne's death, should be recognized as controlling. The Court finds that this argument does not comply with the plain language of 20 Pa. C.S.A.. § 6304 or the Superior Court's rationale in Heske. In re Estate of Heske, *Supra* at Id. The statute plainly states that to rebut the survivorship presumption, clear and convincing evidence is needed at *the time the*

[6] Ms. Sharyn Davis and Ms. Tallon Drabick testified on 9/23/15. Their testimony consisted of detailing the types of accounts Anne had opened, explaining that no new account was created upon the death of either Anne nor Ronald, and the dates they were notified of the deaths of Ronald and Anne.

accounts were created. (emphasis added) Id. The accounts were created on April 30, 2009. New accounts were not created upon the death of Anne or Ronald. Petitioner does not put forth "clear and convincing" evidence of Anne's intent to rebut the survivorship rights on April 30, 2009. The only evidence to divide her estate in equal shares was her will, which the Supreme Court in Novosielski, has held is not enough to rebut the presumption of survivorship. Novosielski, *Supra* at Id. Only if new accounts were created upon Anne's death, would Ronald's intent be relevant. As evidenced through testimony by the PNC employees and the language located in the account creation documents, no new accounts were created. Therefore, Ronald's intent is irrelevant when deciding ownership of the PNC accounts. This Court finds the last paragraph of the Novosielski opinion to be particularly applicable:

> We understand Appellee's disappointment... However, Decedent was wholly within her right to do with her property as she wished during her life, including placing the bulk of her property in a joint account with a right of survivorship. Absent a finding based on clear and convincing evidence that the account was fraudulently created, or accomplished through a breach of trust of the attorney-in-fact who had aided in the creation of the account, the lower courts were simply required to apply the MPAA to resolve the dispute. Because the lower courts erred in their interpretation of the MPAA and failed to properly apply its provisions, and because no clear and convincing evidence of an intent contrary to right of survivorship is evident in the record...
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> In re Novosielski, 992 A.2d 89, 107-08 (2010).

V.

Motion for Reconsideration of Admissibility

During the hearing, which occurred on September 23, 2015, Petitioner attempted to enter into to evidence, a letter from Attorney Robert Lucas, dated November 28, 2014.[7] Attorney Robert Lucas prepared the Last Will and Testament of Anne, but was not present at the hearing and did not testify. The letter, written by Attorney Robert Lucas to Petitioner, contained information on a proposed distribution of Anne's estate. It is disputed as to whether the estate included the joint PNC accounts or solely Anne Orenak's probate assets, as the letter makes no reference to the joint accounts.

Respondent objected to the admittance of the letter, on the basis that it was hearsay. The Court sustained the objection. Following the September 23rd hearing, Petitioner filed a Motion for Reconsideration of Admissibility and argued that the letter fell under the authorized agent hearsay exception.

In her post-trial motion, Petitioner argues that under Pa.R.Evid. 803(25)(C): The statement is offered against an opposing party and

[7] This Court notes, through testimony, that Attorney Robert Lucas is a relative of Attorney David Lucas. Attorney David Lucas is representing Marilyn Burns (Respondent) in the present case.

was made by a person whom the party authorized to make a statement on the subject, the letter should be admitted. (Pa.R.E. 803).(emphasis added) This Court emphasizes that for a statement to fall under this exception, the agent must be authorized by the opposing party to make the statement. The Superior Court stated that for this exception to apply "(r)equires that for a statement to be admissible, the offering party must show that the declarant was the agent of a party against whom admission was offered, and that he had authority to speak for that party." Durkin v. Equine Clinics, Inc., 376 Pa. Super. 557, 546 A.2d 665 (1988). More specifically with relation to an attorney's statement, "If admissions by an attorney are made out of court and not in the presence of the client, the attorney's authority to make statements, or knowledge or assent of the client thereto, must be shown in order for such statements to be admissible under vicarious admission exception to the rule against hearsay." DeFrancesco v. W. Pennsylvania Water Co., 329 Pa. Super. 508, 478 A.2d 1295 (1984). More recently, the courts have held three elements must be present for the authorized agent exception to apply: (1) the declarant was an agent or employee of the party opponent; (2) the declarant made the statement while employed by the principal; and (3) the statement

concerned a matter within the scope of the agency or employment. Sehl v. Vista Linen Rental Serv. Inc., 2000 PA Super 331, ¶ 9, (2000). The burden of proving that these elements are present rests on the proponent of the hearsay exception. Harris v. Toys "R" Us-Penn, Inc., 2005 PA Super 281, 880 A.2d 1270 (2005).

Therefore, it is Petitioner's burden to prove that this exception applies to the instant case. No testimony was presented at the September 23rd hearing that demonstrated Attorney Robert Lucas was an authorized agent of Respondent. When Petitioner asked Respondent if Robert Lucas was her Attorney, Respondent replied "No, he was my mother's." No further testimony or evidence was provided to demonstrate that Attorney Robert Lucas was acting as an authorized agent for Respondent when he wrote the letter. The burden of persuasion belongs to Petitioner to demonstrate that the hearsay exception applies to the letter. Petitioner failed to show that Robert Lucas was Respondent's authorized agent when drafting the letter. This Court finds that Petitioner was unsuccessful in meeting this burden by

either testimony or evidence, and therefore Petitioner's Motion for Reconsideration is DENIED.[8]

Conclusion

Therefore, because this Court finds no "clear and convincing" evidence, as required by 20 Pa. C.S.A.. § 6304 and the holdings of Heske and Novosielski, to rebut the survivorship presumption, the Petition must be denied. Additionally, Petitioner failed to meet her burden to demonstrate that Attorney Robert Lucas was Respondent's authorized agent, and her Motion for Reconsideration is denied.

An appropriate order will be entered.

[8] This Court notes that in making this decision, the contents of the letter were not considered. Respondent argues that the letter is irrelevant, because it speaks only to Anne's probate assets, which are not at issue. This argument was not properly before the court, since it was not raised at trial, and was therefore not considered.

IN THE COURT OF COMMON PLEAS OF INDIANA COUNTY, PENNSYLVANIA

ORPHANS' COURT DIVISION

IN RE: THE ESTATE OF RONALD MARK ORENAK	:	
ANN L. ORENAK, AS EXECUTRIX OF THE ESTATE OF RONALD MARK ORENAK	:	No. 32-15-0019
Petitioner,	:	
v.	:	
MARILYN J. BURNS,	:	
Respondent.	:	

ORDER OF COURT

HANNA, J.

AND NOW, this 5th day of November, 2015, upon consideration of Plaintiff's Petition for Citation of a Declaratory Judgement AND Motion for Reconsideration, it is hereby ORDERED and DIRECTED that the Petition and the Motion are denied. The preliminary injunction issued on March 25, 2015 and continued on April 13, 2015 is vacated.

BY THE COURT,

Carol Hanna, Judge