IN THE UTAH COURT OF APPEALS

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In the Matter of the Estate of Nina E. Tolley.	MEMORANDUM DECISION (Not For Official Publication)
Donald Ray Tolley, Petitioner and Appellant,	Case No. 20060489-CA
v.	F I L E D (April 19, 2007)
Michael Tolley and Marie Jess, Respondents and Appellees.	2007 UT App 129

Third District, Salt Lake Department, 033901695
The Honorable Leslie A. Lewis

Attorneys: William B. Ingram and Brian C. Johnson, Salt Lake City, for Appellant
C. Richard Henriksen Jr. and Robert M. Henriksen, Salt Lake City, and Stephen J. Buhler, West Valley City, for Appellees

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Before Judges Davis, Orme, and Thorne.

DAVIS, Judge:

Petitioner Donald Ray Tolley appeals the trial court's grant of Respondents Michael Tolley and Marie Jess's motion for summary judgment dismissing Petitioner's claim for declaratory judgment and recovery of property.[1] We affirm.

Under rule 56(c) of the Utah Rules of Civil Procedure, a party is entitled to summary judgment when "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." Utah R. Civ. P. 56(c). "[W]hen an appellate court reviews a district court's grant of summary judgment, the facts and all reasonable

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[1]Petitioner does not address his fraud, conversion, and constructive trust claims in his appellate brief, so we do not address these claims on appeal.

inferences drawn therefrom [are viewed] in the light most favorable to the nonmoving party, while the district court's legal conclusions and ultimate grant or denial of summary judgment are reviewed for correctness." Massey v. Griffiths, 2007 UT 10,¶8, 152 P.3d 312 (second alteration in original) (quotations and citation omitted).

Petitioner argues that the trial court erred when it determined that there was no confidential relationship between Nina Tolley (the Decedent) and Respondents. "A confidential relationship arises when one party, having gained the trust and confidence of another, exercises extraordinary influence over the other party." Kuhre v. Goodfellow, 2003 UT App 85,¶18, 69 P.3d 286 (quotations and citation omitted). However,

> "[m]ere confidence in one person by another is not sufficient alone to constitute such a relationship. The confidence must be reposed by one under such circumstances as to create a corresponding duty, either legal or moral, upon the part of the other to observe the confidence, and it must result in a situation where as a matter of fact there is superior influence on one side and dependence on the other."

Webster v. Lehmer, 742 P.2d 1203, 1206 (Utah 1987) (quoting Bradbury v. Rasmussen, 16 Utah 2d 378, 401 P.2d 710, 713 (1965)). Finally, "[i]f a confidential relationship is found, any transaction that benefits the party in whom trust is reposed is presumed to have been unfair and to have resulted from undue influence and fraud." Id. (quotations and citation omitted).

Here, the trial court ruled that there was no confidential relationship because Petitioner "ha[d] not provided one shred of evidence which would counter the overwhelming amount of [a]ffidavit and deposition testimony, including from independent third-parties, indicating that the [D]ecedent remained mentally capable, strong willed[,] and not susceptible to undue influence up until the time of her death." We agree. Petitioner does not dispute the fact that "[e]ven up until the end of her life, [the Decedent] was mentally sharp, decisive, strong willed[,] and knew exactly what she wanted and what she did not want." Further, the banker with whom the Decedent worked to set up the joint tenancy account agreed that the Decedent was "alert, convivial, [and] funny, even though she was bedridden." As such, there was no superior influence exerted by Respondents over the Decedent, and

the trial court properly dismissed Petitioner's confidential relationship claim.[2]

Next, Petitioner asserts that the Decedent did not intend for the money in her joint bank accounts to be taken out of her estate and to pass automatically to her joint tenant, Respondent Jess. Under Utah law, "[s]ums remaining on deposit at the death of a party to a joint account belong to the surviving party or parties as against the estate of the decedent unless there is clear and convincing evidence of a different intention at the time the account is created." Utah Code Ann. § 75-6-104(1) (1993). Further,

> where there is a written agreement of joint tenancy with right of survivorship, there is a presumption of validity and it will be given effect unless it is successfully attacked for fraud, mistake, incapacity, or other infirmity, or unless it is shown by clear and convincing evidence that the parties intended otherwise.

Tangren v. Ingalls, 12 Utah 2d 388, 367 P.2d 179, 184 (1961).

Our review of the record affirms the trial court's conclusion that Petitioner failed to produce clear and convincing evidence that the Decedent did not intend for Respondent Jess to receive the balance of the joint accounts. A response to a summary judgment motion "must set forth specific facts showing that there is a genuine issue for trial." Utah R. Civ. P. 56(e). Although the banker stated that he did not explain to the Decedent the effect the joint accounts would have on her will, this lack of evidence is insufficient to rebut the presumption of validity afforded the joint bank accounts. While we recognize that in some cases an individual may open a joint bank account "because of necessity and/or convenience" even though his or her "true desire is to retain ownership" of the account, McCullough v. Wasserback, 30 Utah 2d 398, 518 P.2d 691, 693 (1974), there is

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[2]Petitioner also argues, based on Walker Bank & Trust Co. v. Walker, 17 Utah 2d 390, 412 P.2d 920 (1966), that a confidential relationship existed because Respondent Jess acted as the Decedent's trustee when she wrote checks to various relatives in accordance with the Decedent's wishes. However, Respondent Jess's uncontroverted testimony establishes that she was not under "any legal obligation to give [the money] to anybody." Thus, the instant case is clearly distinguishable from Walker Bank, wherein the party admitted that he held the assets in trust. See id. at 921.

no evidence to rebut the presumption of validity here. The Decedent was mentally competent when she opened the joint bank accounts, and the banker explained to her that Respondent Jess would be a co-owner of the funds in the accounts. Further, there is no evidence of any discord between Respondent Jess and the Decedent. Indeed, Respondent Jess cared for the Decedent on a daily basis.[3]

Moreover, there is no indication that the Decedent intended to provide for Respondent Jess by any means other than the joint accounts, such as by giving Respondent Jess a cash gift or updating her will. Cf. Tangren, 367 P.2d at 184-85 (reversing summary judgment on issue of decedent's intent to create a joint tenancy where decedent gave his joint tenant a cash gift, which was the full amount decedent intended the joint tenant to take from his estate). As such, we affirm the trial court's determination that Petitioner failed to establish a genuine issue for trial respecting his claim that the Decedent did not intend for her money in the joint accounts to pass to Respondent Jess through the right of survivorship.

Finally, Petitioner claims that the trial court erred by dismissing certain material facts and incorrectly drawing inferences in favor of Respondents. Petitioner has failed to provide any evidence showing the existence of a confidential relationship, or that the Decedent did not intend for the funds in her bank accounts to pass to Respondent Jess. Furthermore, Petitioner has inadequately briefed his final argument, and "an appellate court will decline to consider an argument that a party has failed to adequately brief." State v. Thomas, 1999 UT 2,¶11, 974 P.2d 269 (quotations and citation omitted); see also Utah R. App. P. 24(a)(9) (requiring that appellate briefs contain "the contentions and reasons of the appellant with respect to the issues presented, . . . with citations to the authorities, statutes, and parts of the record relied on"). We therefore

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[3]Petitioner claims that First Security Bank of Utah v. Demiris, 10 Utah 2d 405, 354 P.2d 97 (1960), requires us to reverse the trial court. In Demeris, the supreme court held that the turbulent marital history between the decedent and his estranged wife demonstrated that the decedent did not intend to give funds held in joint tenancy to his wife. See id. at 100. The instant case, however, is clearly distinguishable from Demeris because here there is no evidence disputing the fact that the Decedent and Respondents had a loving relationship.

affirm the district court's grant of Respondents' motion for summary judgment.

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James Z. Davis, Judge

WE CONCUR:

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Gregory K. Orme, Judge

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William A. Thorne Jr., Judge