

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 18, 2015

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2014AP2288

Cir. Ct. No. 2013CV43

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**MILES PHALEN, SPECIAL ADMINISTRATOR OF THE ESTATE OF
RAYMOND SKUBAL,**

PLAINTIFF-APPELLANT,

v.

SHARLENE SCHOENECK,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Oneida County:
MICHAEL H. BLOOM, Judge. *Affirmed.*

Before Stark, P.J., Hruz, J., and Thomas Cane, Reserve Judge.

¶1 PER CURIAM. Miles Phalen, Special Administrator of the Estate of Raymond Skubal (“the Estate”), appeals a summary judgment granted in favor of Sharlene Schoeneck. The Estate argues the circuit court erred by concluding

Schoeneck is entitled, as beneficiary, to the proceeds of a payable on death (P.O.D.) account established by Skubal. We reject the Estate's arguments and affirm the judgment.

BACKGROUND

¶2 On December 5, 2006, Raymond Skubal opened a P.O.D. account and completed a "P.O.D. Beneficiary Designation (and Revocation)" form for account No. 00336-07321. The form included the following language: "Upon the death of such depositor, ownership passes to the P.O.D. beneficiary(ies) named hereon." The only named beneficiary was his daughter, Schoeneck. The P.O.D. Beneficiary Designation also included the following language regarding revocation:

Each Depositor must sign the revocation below when any change (including revocation) in this designation is desired. Revised or new P.O.D. designations can only be made on a new designation form. Any such change is not effective until the original or copy thereof is received by Bank.

¶3 Skubal never revoked this designation form. He made various withdrawals from and nine deposits into this account. The deposit receipts for each of the nine deposits identified account No. 00336-07321 as the account into which the deposits were made. At the time of Skubal's death, the P.O.D. account had a balance of more than \$75,000, which was paid to Schoeneck. The Estate filed suit, and both parties moved for summary judgment. The circuit court granted summary judgment in Schoeneck's favor, and this appeal follows.

DISCUSSION

¶4 We independently review a grant or denial of summary judgment, using the same methodology as the circuit court. *Malzewski v. Rapkin*, 2006 WI

App 183, ¶11, 296 Wis. 2d 98, 723 N.W.2d 156. Summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2).¹

¶5 The Estate argues that “statutory and contractual ambiguity” require the nine deposits to be construed as nine separate accounts. We are not persuaded. Emphasizing variations between the deposit receipts, the Estate contends that “the intent for each deposit is an independent issue as to each transaction.” Specifically, the Estate notes that interest rates were not the same for each deposit and four of the deposit receipts were not signed by Skubal. The Estate also notes that three of the four unsigned deposit receipts did not have the “P.O.D. box” checked.²

¶6 WISCONSIN STAT. ch. 705 details the procedures to be employed in creating multiple party and agency accounts, including P.O.D. accounts. WISCONSIN STAT. § 705.02(3)³ provides that even where the statutory procedures

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

² The deposit receipt form included the following language: “This deposit receipt is affected by ___POA ___POD.”

³ WISCONSIN STAT. § 705.02(3) specifies, in its entirety:

(continued)

and forms are not followed, a deposit to an account shall nonetheless be deemed to create a P.O.D. relationship in accordance with whatever competent evidence is available concerning the depositor's intent. *Bruckner v. Prairie Fed. Sav. & Loan Ass'n*, 81 Wis. 2d 215, 222-23, 260 N.W.2d 256 (1977).

¶7 Here, Skubal completed a beneficiary designation identifying Schoeneck as the only beneficiary. Each of the nine deposit receipts included the account number referenced in the P.O.D. beneficiary designation. Skubal never revoked the beneficiary designation, nor completed a new designation form. Even if the depositor's intent could be inferred by the absence of a checkmark next to the P.O.D. box on three of the deposit receipts, those receipts were unsigned by

Any deposit made to an account created on or after July 1, 1975, and within the scope of this subchapter, which account is not evidenced by an agreement containing language in substantial conformity with this section, signed by the depositor in accordance with s. 705.01(1), shall nonetheless be deemed to create either a single-party relationship, with agency, or a joint or P.O.D. relationship, with or without the designation of one or more agents, or a marital relationship if the account is created after January 1, 1986, in accordance with whatever competent evidence is available concerning the depositor's intent at the time the account was created. Such relationship may differ from that established by any other depositor. A deposit which is made in conformity with the language and signature requirements of this section and s. 705.01(1) shall be deemed to create an account in accordance with this subchapter, with respect to such deposit and all other deposits by the same person, notwithstanding whatever relationships may be established by other depositors.

Skubal. The circuit court, therefore, properly concluded, as a matter of law, that all of the deposits into account No. 00336-07321 constituted a P.O.D. account.⁴

¶8 The Estate alternatively raises issues regarding alleged violations of federal banking regulations. The Estate, however, concedes those issues were not raised in the circuit court, and we decline the Estate’s invitation to address them for the first time on appeal. *See State v. Van Camp*, 213 Wis. 2d 131, 144, 569 N.W.2d 577 (1997) (arguments raised for first time on appeal generally deemed forfeited).

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

⁴ To the extent the Estate intimates that provisions of Skubal’s Will can somehow alter the P.O.D. beneficiary designation, WIS. STAT. § 705.04(3) provides that “[s]ubject to s. 853.15, a right of survivorship arising from the express terms of the account under this section, or a P.O.D. beneficiary designation, cannot be changed by will.”

