

COURT OF COMMON PLEAS OF PHILADELPHIA  
ORPHANS' COURT DIVISION

Estate of Effie O. Johnson, Deceased  
No. 1427 DE of 2008  
Control No. 090778

Sur account entitled First and Final Account of Bonita F. Caldwell, Administrator

The account was called for audit      May 4, 2009      By: **HERRON, J.**

Counsel appeared as follows:

Kathleen O'Connell, Esquire - for the Accountant  
Kevin B. Quinn, Esquire – for the Accountant  
David Denenberg, Esquire – for the Objectant

AMENDED ADJUDICATION

Effie O. Johnson died intestate on May 26, 2008. Her niece, Bonita Caldwell, obtained letters of administration on August 5, 2008 and then on March 31, 2009 filed an account of her administration of the estate.<sup>1</sup> Objections were filed by two intestate heirs, Melanie Caldwell and Frederick Smith, who claimed that the proceeds from certain bank accounts should have been included in the account. They assert that five days before Ms. Johnson's death, Bonita Caldwell "had her name placed on one or more bank accounts with the decedent" and that undue influence may have been "exerted on Ms. Johnson to make these changes to the account."<sup>2</sup>

A hearing was held on February 24, 2010 to consider the objections to the Account. After the objectants rested, a motion to grant a nonsuit was granted. For the reasons set forth below, the objectants failed to meet their burden of showing that the accountant exerted undue influence on Effie Johnson to induce her to add Bonita Caldwell's name to the bank accounts.

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<sup>1</sup> The accountant presented proof of the publication of the letters. The account covered the period May 26, 2008

***Factual Background: Joint Bank Accounts Issue***

During the hearing, the objectants presented only four witnesses: (1) Asha Chandriani, the banker at Citizens Bank in Bala Cynwd who was present on May 21, 2008, when Ms. Johnson signed bank forms to add Bonita Caldwell's name to her account; (2) Frederick Smith, the objectant who testified that he had last seen the decedent since 1997; (3) Bonita Caldwell, the accountant, and (4) Venton Caldwell, a grandnephew who offered no testimony adverse to the accountant. No expert testimony or evidence was presented as to Ms. Johnson's alleged mental weakness.

In April 2008, Effie Johnson ("Effie") was hospitalized at Chestnut Hill Hospital in Philadelphia. Her niece, Bonita Caldwell, came up on the weekend of April 17th from North Carolina to help supervise her care. According to Ms. Caldwell, Effie was admitted to the hospital suffering from dehydration, a urinary tract infection and possibly a stroke.<sup>3</sup> No medical records were presented by the objectants. During Ms. Caldwell's April visit, a power of attorney was prepared by an attorney for Effie and received by Ms. Caldwell.<sup>4</sup> After Effie was released from the hospital, Ms. Caldwell drove her to the Sacred Heart nursing home.<sup>5</sup> Ms. Caldwell flew back to Philadelphia again on May 17 to May 22, 2008 to help Effie move from the nursing home to the Simpson House.<sup>6</sup> According to Ms. Caldwell, Effie decided to make this move for personal and financial reasons. First, Effie did not like staying at the nursing home because she

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to March 6, 2009.

2 4/24/09 Objections to Account, ¶¶1-3.

3 2/24/10 N.T. at 40-42 (Caldwell).

4 2/24/10 N.T. at 42-43 (Caldwell). The testimony is not totally clear as to when Caldwell received the power of attorney that was drafted in April, but it appears that she received it in May 2008. See id. At 43-44 (Caldwell).

5 2/24/10 N.T. at 44 (Caldwell).

6 2/24/10 N.T. at 48 (Caldwell).

had to share a room and was in a hospital bed.<sup>7</sup> In addition, Effie could not afford the fees charged by the nursing home of \$5,000 to \$6000 a month.<sup>8</sup> The nursing home provided skilled nursing care, while Effie was looking for a more affordable, assisted living residence. The Simpson House, which charged \$3,800 a month, was therefore a more affordable option. Ms. Caldwell testified that she signed on as guarantor of her aunt's residence bills so that if her Aunt's money ran out, she would pay the fees out of pocket.<sup>9</sup>

On May 21, 2009, Ms. Caldwell drove Effie from the nursing home to Simpson House. On the way, they stopped at a branch of Citizens' Bank that was convenient to the Simpson House. According to Ms. Caldwell, there were three reasons for this visit to the bank: it was necessary to add her power of attorney to Effie's bank account; money had to be transferred from a money market account to pay the more than \$5,000 admission fee for Simpson House, and; checks had to be ordered.<sup>10</sup>

Ms. Caldwell testified that during this visit, Effie met with a Citizens Bank employee, Asha Chandriani, who "started having a conversation with auntie that did not include me, and after that conversation of her explaining the difference between the power of attorney and the joint ownership, auntie decided to add my name to the account."<sup>11</sup> As part of their case, the objectants introduced into evidence the updated Citizens Bank personal signature card dated May 21, 2008, that supported Ms. Caldwell's testimony that Effie had placed Bonita Caldwell's name on her bank account. In fact, the document establishes that Ms. Caldwell's name was placed on 3 bank accounts at Citizens Bank. Ex. P-2. The objectant also called as a witness the

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7 2/24/10 N.T. at 63-64 (Caldwell).

8 2/24/10 N.T. at 65 (Caldwell).

9 2/24/10 N.T. at 65-66 (Caldwell).

10 2/24/10 N.T. at 54, 50-51 (Caldwell).

bank employee who supervised the signing of these documents, Asha Chandriani.

Ms. Chandriani testified initially that she had no independent recollection of her meeting with Ms. Caldwell or Effie Johnson because she sees so many customers.<sup>12</sup> Based on the signature cards, however, Ms. Chandriani confirmed that Effie Johnson was present when the cards were signed “because I wouldn’t have updated the signature card without the customer being there before me.”<sup>13</sup> She further testified that when Effie Johnson appeared before her, she explained to Effie the significance of adding the words “joint tenants with the right of survivorship” to the account: “[t]his means that Bonita is going to be—it’s a 50/50 account. She will be a joint partner on this account.”<sup>14</sup> In addition, upon Effie’s death, “everything would go to Bonita Caldwell.”<sup>15</sup>

The only direct evidence as to Effie’s mental status at this time came from testimony by Bonita Caldwell and Venton Caldwell. Ms. Caldwell testified that in May 2008, Effie was alert though frail. Her gait was poor, but she had communicated her wishes to the bank representative, Ms. Chandriani and to her niece and had fully participated in the decision to move to the Simpson House.<sup>16</sup> Venton Caldwell, Effie’s grandnephew, who visited her during her stays at Sacred Heart and the Simpson House, likewise testified that she always knew who he was. He helped transport her furniture to the Simpson House, where he found her “just happy-go-lucky;” he was therefore shocked when he learned she had died so soon after moving to the

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11 2/24/10 N.T. at 55 (Caldwell).

12 2/24/10 N.T. at 19 (Chandriani).

13 2/24/10 N.T. at 19 (Chandriani).

14 2/24/10 N.T. at 23 (Chandriani).

15 2/24/10 N.T. at 23 (Chandriani).

16 2/24/10 N.T. at 63 (Caldwell).

Simpson House.<sup>17</sup> The fourth witness presented by the objectants was one of the objectants, Frederick Smith, who testified that he lived in Charlotte, North Carolina and had had not seen Effie since 1997.<sup>18</sup>

After presenting this evidence, the objectants rested. Respondent's motion for a nonsuit was granted due to the objectants' failure to meet their burden of showing that the change in the title of the three bank accounts had been procured through undue influence.

### *Legal Analysis*

Before September 1976 and the enactment of the Multiple Party Accounts Act (MPAA), 20 Pa.C.S. §§ 6301-06, the interests of parties to joint bank accounts were determined by common law. Under those common law principles, the creation of a joint bank account evidenced by the signature of all parties was prima facie evidence that the person funding the account had intended an inter vivos gift to the other parties. Estate of Meyers, 434 Pa. Super. 165, 170, 642 A.2d 525, 527 (1994), *quoting* In re Estate of Young, 480 Pa. 580, 584, 391 A.2d 1037, 1039 (1978). See generally Fuller v. Fuller, 372 Pa. 239, 246-50, 93 A.2d 462, 466-67 (1953)(applying common law principles to joint bank account). Once this rebuttable presumption of a valid gift was established, the burden shifted to the contestant to rebut this presumption with clear and convincing evidence. But if the objectant established a confidential relationship between the donor and donee, the burden shifted back to the donee "to establish that gift was free from undue influence or deception" and that it was "a free, voluntary and intelligent act of the donor." Estate of Meyers, 434 Pa. Super. at 170, 642 A.2d at 527 (citation omitted)(outlining legal evolution of joint bank account analysis).

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<sup>17</sup> 2/24/10 N.T. at 68-71 (Venton Caldwell).

After September 1976, however, the ownership interests in a joint bank account are governed by statute and the relevant case law. Under section 6304(a), upon the death of a party to a joint bank account, there is a presumption that the funds remaining in the account belong to the surviving party and not to the estate of the deceased party:

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 was created. 20 Pa.C.S. § 6304(a)

Consequently, a party seeking to show that a joint bank account was not intended to belong to the surviving party has the burden of proving this by clear and convincing evidence. Estate of Meyers, 434 Pa. Super. at 171. Clear and convincing evidence has been characterized as evidence that would “enable the [fact finder] to come to a clear conviction, without hesitancy, of the truth of the precise facts at issue.” Grottaria Estate, 4 Fid. Rep. 2d 49, 55 (Phila. O.C. 1983)(Gutowicz, J.)(citation omitted). This statutory burden of proof has resulted in a profound change in the prior common law where proof of a confidential relationship sufficed to shift the burden back to the survivor of the account. Instead, courts interpreting challenges to joint bank accounts under the MPAA on the grounds, inter alia, of undue influence have concluded that “the existence of a confidential relationship between the owners of a joint account does not alone shift the burden of proof.” Estate of Meyers, 434 Pa. Super. at 171, 642 A.2d at 528. See also King Estate, 3 Fid. Rep. 2d 229, 232 (Lancaster Cty. O.C. 1983)(“The effect of the statute is to remove the doctrine of confidential relationship as a means by which the burden is shifted to the survivor”); Grottaria Estate, 4 Fid. Rep. 2d 49, 52 (Phila. O.C. 1983)(“The doctrine of confidential relationship will not operate to shift the burden” to the survivor of a joint bank

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18 2/24/10 N.T. at 28, 30 (Smith).

account); Smelzer Estate, 4 Fid. Rep. 2d 9, 12-14 (Lancaster Cty. O.C. 1983)(invoking analysis of King Estate).

The existence of a confidential relationship, however, is still a relevant factor in assessing the decedent's intent as well as the existence of undue influence. Eichelberger v. Eichelberger, 19 Fid. Rep. 2d 196, 199 (Lebanon Cty. O.C. 1998). Undue influence has been characterized as a "subtle" and "illusive thing" that the "generally accomplished by a gradual, progressive inculcation of a receptive mind." Estate of Clark, 461 Pa. 52, 65, 67, 334 A.2d 628, 634-35 (Pa. 1975). Courts have therefore recognized a presumption of undue influence where the objectant presents evidence that demonstrates: "(1) that a person or persons in a confidential relationship with a testator or grantor has (2) received a substantial portion of the grantor's property, and (3) that the grantor suffers from a weakened intellect." Owens v. Mazzei, 847 A.2d 700, 706 (Pa. Super. 2004)(analyzing alleged undue influence in the creation of a bank account ITF bank employees).

The objectant in the present case failed to present evidence to establish either that there was a confidential relationship between Bonita Caldwell and Effie Johnson or that Effie Johnson suffered from a weakened intellect. There is "no precise formula" for determining the existence of a confidential relationship but courts have observed that a "confidential relationship exists where the parties do not deal on equal terms, but, on one side there is an overmastering of influence, or on the other weakness, dependence or trust justifiably reposed; in both unfair advantage is possible." Smelzer Estate, 4 Fid. Rep. 2d at 13 (quoting King Will, 369 Pa. 523). The objectants' primary source of evidence as to the relationship between Bonita Caldwell and Effie Johnson came from the testimony of Ms. Caldwell, and to a lesser extent, Venton Caldwell,

since the objectant Frederick Smith admitted he had not seen Effie since 1997.<sup>19</sup> According to Ms. Caldwell, there was no evidence that Effie was in a dependent relationship with her or that Ms. Caldwell had exercised an overmastering influence. Instead, Ms. Caldwell stated in unrebutted testimony that Effie participated fully in the decisions regarding her moves from the hospital to the nursing home and then the Simpson House. Effie discussed the establishment of the joint bank accounts with Ms. Chandriani,<sup>20</sup> the Citizens Bank officer, who likewise testified that she informed Effie of the implications of adding Bonita Caldwell's name to the account which meant that upon Effie's death, "[e]verything would go to Bonita Caldwell."<sup>21</sup> Effie's grandnephew, Venton Caldwell, who helped move Effie's furniture to the Simpson House likewise confirmed that she seemed happy with her decision to move to the Simpson House.<sup>22</sup>

Testimony was presented that Effie had created a power of attorney in April 2008, but the actual document was not placed into evidence. From the testimony, it appears that Effie had designated Bonita Caldwell as her agent.<sup>23</sup> While courts have indicated that a power of attorney may be one indicia of a confidential relationship, they focus on the facts of a particular case to determine whether a person with a power of attorney was in a confidential relationship with a decedent. Estate of Ziel, 467 Pa. 531, 542, 359 A.2d 728, 734 (1976). In particular, a power of attorney alone is not enough to establish a confidential relationship where the power was granted to aid the decedent in his business affairs. Estate of Fritts, 906 A.2d 601, 608-09 (Pa. Super. 2006)(quoting Estate of Angle, 777 A.2d 114, 123, 124, 125 (Pa. Super. 2001). In this case, Ms. Caldwell testified that she would assume responsibility for the payment of Effie's residence fees,

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19 2/24/10 N.T. at 30 (Smith).

20 2/24/10 N.T. at 63 (Caldwell).

21 2/24/10 N.T. at 23 (Chandriani).

22 2/24/10 N.T. at 71 (Venton Caldwell).



and one of the reasons for stopping at the bank, was to arrange for the payment of the \$5000 entrance fee for Simpson House.<sup>24</sup> Clearly, in this case the power was intended to facilitate the important business of providing for Effie's housing and care. Moreover, Ms. Caldwell testified that she never used the power.<sup>25</sup> Finally, Ms. Caldwell did not live nearby to Effie, but instead came up to Philadelphia only periodically when needed to assist in Effie's care.<sup>26</sup> Based on the facts of record in this case, therefore, objectants failed to establish a confidential relationship between Bonita Caldwell and Effie Johnson.

Objectants also failed to establish that Effie Johnson suffered from a weakened intellect. No medical evidence was presented on this issue. The only relevant testimony, again, came from Bonita Caldwell and Venton Caldwell. Both testified that Effie recognized them.<sup>27</sup> Ms. Caldwell characterized her aunt as being alert and in charge of her decisions in April and May 2008. Objectants thus failed to establish another key element of undue influence, so that a nonsuit was properly granted after they rested their case. The objections to the account are thus overruled.

The Accountant states that Pennsylvania Transfer Inheritance and Estate Tax was paid in the amount of \$ 17,000 on August 14, 2008, \$12,000 on August 14, 2008 and \$23,843.04 on February 5, 2009. A reserve of \$3,000 is requested pending additional taxes or administrative expenses.

According to the Account, the total balance of principal balance before distribution is \$130,460.95 and the balance of income before distribution is \$569.25 for a total of \$ 131,030.20.

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23 2/24/10 N.T. at 42-44 (Caldwell).

24 2/24/10 N.T. at 54 & 66 (Caldwell).

25 2/24/10 N.T. at 67 (Caldwell).

26 2/24/10 N.T. at 40 & 48 (Caldwell).

This sum, composed as stated in the Account, plus income received since the filing thereof, subject to distributions already properly made and subject to any additional transfer inheritance tax as may be due and assessed, is awarded as set forth in the Statement of Proposed Distribution as follows:

**Income**

Bonita Caldwell	50%
Venton Caldwell, Jr.	16.667%
Melanie Caldwell	16.666%
Frederick Smith	16.667%

**Principal**

Bonita Caldwell	50%
Venton Caldwell, Jr.	16.667%
Melanie Caldwell	16.666%
Frederick Smith	16.667%

Leave is hereby granted to the accountant to make all transfers and assignments necessary to effect distribution in accordance with this adjudication.

A schedule of distribution, containing all certifications required by Phila.O.C. Div. Rule 6.11.!(2), and in conformity with this adjudication, shall be filed with the Clerk within ninety (90) days of absolute confirmation of the account.

AND NOW, this \_\_\_\_\_ day of MARCH 2010, the account is confirmed absolutely.

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27 2/24/10 N.T. at 47 (Bonita Caldwell); 2/24/10 N.T. at 70 (Venton Caldwell).

Exceptions to this Adjudication may be filed within twenty (20) days from the date of the issuance of the Adjudication. An Appeal from this Adjudication may be taken to the appropriate Appellate Court within thirty (30) days from the issuance of the Adjudication. See Phila. O.C. Rule 7.1A and Pa. O.C. Rule 7.1 as amended, and Pa.R.A.P. 902 and 903.

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John W. Herron, J.