

PHILADELPHIA COURT OF COMMON PLEAS  
ORPHANS' COURT DIVISION

Estate of Joseph Dupoldt, Deceased  
O.C. No. 1232 DE of 2009  
Control No. 100643

OPINION

During his last years, Joseph Dupoldt struggled with an addiction to heroin, going in and out of rehab. As his wife Lorraine Velasco recalled, Joseph “truly died trying to stay sober” but he “couldn’t do it. He never gave up trying.”<sup>1</sup> After his death intestate on February 15, 2007, his daughter by a prior marriage, Leah Dupoldt, filed a complaint in the civil trial division against his widow. In her complaint, Ms. Dupoldt sought to recover half of the workman’s compensation payment of \$72,494.10 that her father had received on December 16, 2005 a little more than a year before his death. Most of this payment was initially deposited in a Commerce Bank account in the joint names of Joseph Dupoldt and Lorraine Velasco who were married at that time and until Joseph’s death.<sup>2</sup>

Plaintiff claimed that a constructive trust should be placed on all of the funds received from the workers compensation payment based on two theories. First, she claimed that when the bank account was opened “a confidential relationship existed between decedent and defendant” which was used to the “disadvantage of decedent.” Second, she claimed that the defendant “induced decedent to open the joint account and transfer the additional funds to defendant through fraud, duress, psychological coercion, and undue influence.”<sup>3</sup> Ms. Velasco filed preliminary objections to the complaint asserting that the action had been filed in the wrong court and should have been filed instead in the Orphans’ Court division which has jurisdiction over property of a decedent. The parties eventually filed a stipulation dated June 19, 2009 that this matter should be transferred to the Orphans’ Court.

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<sup>1</sup> 1/13/10 N.T. at 32 (Velasco).

<sup>2</sup> Complaint, Leah Dupoldt v. Lorraine Velasco, February 2008, No. 3736 (hereinafter “Complaint”), ¶¶ 3-13 & Ex. B.

<sup>3</sup> Complaint, ¶¶ 17-18 & “wherefore” clause.

After the case was transferred to this court, two days of hearings were held. At the outset of the first hearing, this court emphasized its unusual procedural posture. Instead of a petition directed against the widow, the preferred approach would be for an interested party to take out letters of administration so that an account could be filed and objections posed thereto.<sup>4</sup> This approach would assure protection of all parties in interest including creditors to the estate.

In the course of the hearing, Leah Dupoldt presented testimony from herself, from Nancy Klinghoffer, the sister of decedent, from Frank Dupoldt, the decedent's brother, from Carmella Dupoldt, the decedent's mother and from the respondent Lorraine Velasco. Ms. Velasco presented testimony by Rhonda Bashir, the bank teller who was present when the joint account was opened, by Steven Bruccoleri, the decedent's attorney, and herself. Certain relevant facts emerged from this testimony.

Joseph Dupoldt, who had been employed as an ironworker, was injured in 2003 while working on Citizens Bank Park. On December 16, 2005, he received a workers' compensation payment of \$72,494.10.<sup>5</sup> Ten days later, \$67,999 of this settlement was deposited in a joint account at Commerce Bank in the names of both Lorraine Velasco and Joseph Dupoldt. The remaining \$4,494 was deposited in an account in Lorraine Velasco's name alone, because they needed access to it to pay debts.<sup>6</sup> The deposit account agreement for the joint account that was submitted into evidence characterized the ownership of the account as "Joint (Right of Survivorship)" in the names of Lorraine Velasco and Joseph Dupoldt.<sup>7</sup>

Shortly after the joint account was opened, Joseph's sister, Nancy Klinghoffer, became curious about the check and had her brother execute a power of attorney dated January 4, 2006 naming her as his agent.<sup>8</sup> At the time he signed this document, Ms. Klinghoffer testified, her brother Joseph was "very clear-headed."<sup>9</sup> Rhonda Bashir, an employee of Commerce Bank, was contacted when the power of attorney sought to close out the joint account. As Ms. Bashir testified, this was an unusual action so she

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<sup>4</sup> 10/22/09 N.T. at 4-6.

<sup>5</sup> 1/13/10 N.T. at 9 (Velasco); 10/22/09 N.T. at 14; Complaint, ¶ 7.

<sup>6</sup> 1/13/10 N.T. at 13-14 (Velasco) & Ex. D-10a & Ex. D-10b.

<sup>7</sup> Ex. D-11.

<sup>8</sup> 10/22/09 N.T. at 37-38 (Klinghoffer). Ex. D-5a (January 4, 2006 power of attorney).

<sup>9</sup> 10/22/09 N.T. at 62 (Klinghoffer).

probably notified Lorraine Velasco. Bashir recalled that Lorraine and Joseph came into the bank and agreed to open a new account. Joseph also revoked the power of attorney by a document dated January 9, 2006. Ms. Bashir testified unequivocally that she had no doubts about Joseph's capacity to revoke the power of attorney.<sup>10</sup>

On January 9, 2006, the money from the joint account was transferred to a new account which named Lorraine's mother, Florence N. Sciambi as Trustee, and which was held "in trust for" both Lorraine Velasco and Joseph Dupoldt.<sup>11</sup> Lorraine explained that if her husband had access to the money, he would have used it buy drugs to feed his \$200 or \$300 a day habit.<sup>12</sup> Various family members likewise confirmed that Joseph Dupoldt suffered from a serious drug addiction.<sup>13</sup> In an effort to turn his life around,<sup>14</sup> he entered—but then left-- two rehabilitation facilities: Keystone and Mission Teens.<sup>15</sup> In June 2006, Joseph agreed to seek rehabilitation at Mission Teens, but he left rehab by November or December.<sup>16</sup>

According to Lorraine, she and her husband had an agreement that Joseph would stay in rehab for a year, but if he left early, any money remaining in their "in trust account" would be redeposited in an account in her name alone.<sup>17</sup> On December 20, 2006, Lorraine withdrew \$16,400 from the "in trust for account" and deposited in an account in her name alone.<sup>18</sup> She also gave Joseph \$1,000.<sup>19</sup>

At this point, Joseph moved in for awhile with his mother and changed his driver's license to her address. On January 9, 2007, he changed the beneficiary of his Iron Workers Benefit and Pension Fund

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<sup>10</sup> 10/22/09 N.T. at 84-91 & 93-95 (Bashir) & Ex. D-5b.

<sup>11</sup> 10/22/09 N.T. at 156-57 (Velasco) & Ex. P-8 & P-9.

<sup>12</sup> 10/22/09 N.T. at 156 (Velasco); 1/13/10 N.T. at 15 (Velasco).

<sup>13</sup> See, e.g., 10/22/09 N.T. at 25 (Leah Dupoldt)("My Dad had a drug problem"); 10/22/09 N.T. at 68 (Klinghoffer)(her brother "had a drug addiction").

<sup>14</sup> Joseph's sister, Nancy Klinghoffer noted that her brother had entered Mission Teens because he had a drug problem and wanted to turn his life around. 10/22/09 N.T. at 68 (Klinghoffer).

<sup>15</sup> 10/22/09 N.T. at 180-83 (Velasco). Leah Dupoldt concedes that \$5,450 was paid to Keystone on Joseph's behalf from the workers compensation settlement. 10/22/09 N.T. at 9 (Dolfman).

<sup>16</sup> 10/22/09 N.T. at 180-81 (Velasco).

<sup>17</sup> 10/22/09 N.T. at 158 & 184-85 (Velasco).

<sup>18</sup> 10/22/09 N.T. at 139-40 (Velasco) & Ex. P-26.

<sup>19</sup> 10/22/09 N.T. at 190-91 (Velasco).

to his daughter Leah Dupoldt.<sup>20</sup> On that same day, Joseph was admitted to the hospital for a drug overdose. He was released to a halfway house, and then he moved on to a friend's home until his death on February 14, 2007.<sup>21</sup> Joseph was 47 years old when he died.<sup>22</sup>

When asked about the nature of her marriage to Joseph, Ms. Velasco testified that their relationship was turbulent and unstable, depending, in large measure, on whether or not her husband was high on drugs.<sup>23</sup> At one point, she obtained a protection from abuse decree.<sup>24</sup> Because of Joseph's drug problems, Lorraine assumed responsibility for paying the family bills.<sup>25</sup> As a family, they suffered serious financial distress. They lost their car and their home.<sup>26</sup> Eventually, they filed for bankruptcy.<sup>27</sup>

Lorraine testified that she used the money from the workers compensation settlement to pay household bills.<sup>28</sup> After December 2005, the family's main source of income was her husband's monthly disability check of about \$1450 as well as her salary as a secretary. She also estimated monthly family expenses of at least \$2500 for mortgage, electricity, gas and water, food, back taxes.<sup>29</sup> She testified that her husband's stay at Keystone Rehab had cost \$9,000.<sup>30</sup>

At the hearing, the total amount Leah Dupoldt appeared to be seeking was approximately \$32,957.<sup>31</sup> In her subsequent post-hearing brief, however, she claims \$21,707.50<sup>32</sup> As a counterclaim, Lorraine Velasco sought \$4,000 which came from Joseph's Iron Workers Death Benefit whose beneficiary was changed on January 9, 2007 to name Joseph's daughter, Leah. In addition, she sought recovery for one half of the balance due on the funeral expenses in the amount of \$3,875. Ms. Velasco

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<sup>20</sup> 1/13/10 N.T. at 29 (Velasco). See Ex. D-1 (document dated January 1, 2007).

<sup>21</sup> 1/13/2010 N.T. at 29-34 (Velasco).

<sup>22</sup> 10/22/09 N.T. at 99 (Frank Dupoldt).

<sup>23</sup> 10/22/09 N.T. at 123, 148, 156, 181 (Velasco).

<sup>24</sup> 10/22/09 N.T. at 125 (Velasco).

<sup>25</sup> 10/22/09 N.T. at 123 (Velasco).

<sup>26</sup> 10/22/09 N.T. at 156, 174-75 (Velasco). Lorraine attributed these losses to her husband's drug addiction.

<sup>27</sup> 10/22/09 N.T. at 174-75 (Velasco).

<sup>28</sup> 10/22/09 N.T. at 132 (Velasco).

<sup>29</sup> 10/22/09 N.T. at 173-77 (Velasco).

<sup>30</sup> 10/22/09 N.T. at 183 (Velasco).

<sup>31</sup> The total workers' compensation settlement is \$72,494.10. Ms. Dupoldt concedes that \$5,450 for checks made out to Keystone for Joseph's rehabilitation and the \$1,000 that was given to Joseph directly. 10/22/09 N.T. at 9-10 (Dolfman). This leaves a balance of \$66,044.10. As an intestate heir, Ms. Dupoldt claims one-half of that amount or approximately \$32,957. 10/22/09 N.T. at 12-15.

<sup>32</sup> 3/5/10 Dupoldt brief at 10.

has already paid \$1,000 for those expenses; Leah Dupoldt, however, denies any responsibility for paying her father's funeral expenses.<sup>33</sup>

After the petitioner presented her case, Ms. Velasco moved for a nonsuit. In the arguments and briefs thereafter, she conceded a confidential relationship with her husband. The nonsuit was therefore granted as to the claim of undue influence, but denied as to the confidential relationship.<sup>34</sup> At the conclusion of the hearing, Ms. Velasco's counterclaim was denied.<sup>35</sup> The petitioner's counsel argued that with the establishment of a confidential relationship, the burden shifts to the wife to show that she did not take advantage of her husband when the workers' compensation payment was deposited.<sup>36</sup>

### *Legal Analysis*

The parties cast their arguments over whether a constructive trust should be imposed on the workers' compensation payment in terms of a gift analysis. Petitioner asserts, for instance, that once the confidential relationship was established, the burden shifts to Velasco "to justify the gift" and to demonstrate "that she did not abuse the confidential relationship."<sup>37</sup> But, as petitioner herself emphasizes, the funds at issue were initially placed into a joint account in the names of both Joseph Dupoldt and Lorraine Velasco.<sup>38</sup> Neither party, however, grapples with the implications of the Multiple Party Accounts Act (MPAA), 20 Pa. C.S. §§ 6301-06. Prior to the enactment of the MPAA in 1976, the interests of parties to joint accounts were determined by common law which necessitated a gift analysis of bank deposits to determine their ownership. See generally Estate of Meyers, 434 Pa. Super 165, 170, 642 A.2d 525 (1994). After September 1976, the ownership interests in a joint bank account are governed by statute and relevant precedent. There are two main scenarios addressed by the statute: ownership of joint accounts upon the death of one of its parties and ownership of the assets during the lifetime of the parties.

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<sup>33</sup> 10/22/09 N.T. at 12 -13(Canuso); 10/22/09 N.T. at 19 (Dolfman)(arguing that since no estate was raised, the widow who contracted for the funeral should be solely liable for that expense).

<sup>34</sup> 10/22/09 N.T. at 165-68; 4/6/10 Velasco Brief at 4.

<sup>35</sup> 1/13/10 N.T. at 50-53.

<sup>36</sup> 1/13/10 N.T. at 58 (Dolfman).

<sup>37</sup> 3/5/10 Dupoldt Brief at 2 (citations omitted).

<sup>38</sup> 3/5/10 Dupoldt Brief at 2.

Under section 6304 (a) of the PEF code there is a presumption that upon the death of a party to a joint bank account the funds remaining belong to the survivor absent “clear and convincing evidence of a different intent at the time the account is created.” See 20 Pa.C.S. § 6304(a). This comparatively clear cut presumption of ownership does not apply to the facts of the Dupoldt case, however, because the workers compensation funds that were placed in the joint account in the name of Joseph and Lorraine were withdrawn prior to Joseph’s death. Under these facts, therefore, section 6303 would apply, which provides that a “joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions by each to the sum on deposit, unless there is clear and convincing evidence of a different intent.” 20 Pa. C.S. §6303(a). The comments to section 6303 make it clear that “[t]his section reflects the assumption that a person who deposits funds in a multiple-party account normally does not intend to make an irrevocable gift of all or any part of the funds represented by the deposit....The assumption may be disproved by proof that a gift was intended.” The two necessary elements for a valid gift are donative intent and delivery. Rankin v. Kabian, 414 Pa. 554, 556-57, 201 A.2d 424, 426 (1964).

There is no dispute that the entire \$67,990 that was deposited into the joint account on December 26, 2005 came from Joseph’s workers compensation payment.<sup>39</sup> The particular facts of this case are unique, however: a husband deposited funds in a joint account with his wife who used those funds during his lifetime to pay for their joint household or entreties expenses. The issue then becomes whether by depositing his workers compensation check into the account, Joseph intended a gift to his wife, Lorraine.

One case petitioner relies upon recognizes a presumption that where a spouse deposits money into a joint account which is then used for the purchase of entreties property a gift is presumed unless there is an abuse of a confidential relationship. Butler v. Butler, 464 Pa. 522, 347 A.2d 477 (1975). See also Fulton v. Fulton, 72 Mont. Cty. L. Rptr. 571, 573 (Mont.Cty. 1956)(“There is a presumption that a bank account created in the wife’s name with the money of the husband constitutes a gift to her and strong evidence is required to rebut it”). Although the accounts set up in Butler and Fulton pre-dated the enactment of the MPAA, more recent cases likewise recognize a presumptive gift to a spouse where funds

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<sup>39</sup> See Ex. P-3.

are deposited in a joint account. The key factor is that the parties are married and not the words on a document. Constitution Bank v. Olson, 423 Pa.Super. 134, 140, 620 A.2d 1146, 1149 (1993)(“An intention to create the entirety is assumed from the deposit of an asset in both the names of a husband and wife, without more, and from the fact of a marital relationship”); Carney v. Carney, 449 Pa. Super. 179, 673 A.2d 367 (1996)(placing a veteran’s disability benefits initially in a joint bank account and then in a joint annuity created an estate by the entireties in such funds “resulting in a complete gift to the marriage” based on the court’s conclusion that the MPAA was preempted by the relevant provisions contained in the Divorce Code).

In this case, Ms. Velasco admitted a confidential relationship with decedent. A confidential relationship has been defined as arising when “the circumstances make it certain the parties do not deal on equal terms, but on one side there is overmastering influence, or, on the other, weakness dependence or trust, justifiably reposed.” Frowen v. Blank, 493 Pa. 137, 425 A.2d 412, 416 (1981)(citations omitted). The Pennsylvania Supreme court, however, has emphasized that “the marital relationship is not confidential as a matter of law. It is a question of fact and arises when one party places confidence in the other with a resulting superiority and influence on the other side.” Yohe v. Yohe, 466 Pa. 405, 412, 353 A.2d 417, 421 (1976). See also Butler v. Butler, 464 Pa. 522, 528, 347 A.2d 477, 480 (1975)(whether a marital relationship is confidential “is a question of fact”).

Even assuming the existence of a confidential relationship as conceded by respondent, which shifts the burden of proof to her, the record was bereft of any evidence that Lorraine Velasco abused her confidential relationship with Joseph or that Joseph lacked the capacity or intent to make a gift. Lorraine admitted that her relationship with her husband was volatile due in large measure to Joseph’s drug addiction. Joseph Velasco nonetheless signed the document establishing the joint account and was present when both the joint account was opened and when it was converted into an in trust for account.<sup>40</sup> Lorraine testified convincingly that the money that was deposited into the joint accounts was used to pay

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<sup>40</sup> See Ex. P-2 (Commerce Bank Account Signature Statement dated 12/3/05); 10/22/09 N.T. at 120-21 (Velasco testifying that Joseph was present when the joint account and in trust accounts were created).

for critical household or entireties needs as well as for Joseph's stays in rehabilitation centers.<sup>41</sup>

Moreover, it is credible that she had to take charge of the finances to keep Joseph from using the funds to feed his addiction and to safeguard the family's economic welfare.

There was no evidence that Joseph lacked the mental clarity to understand the implications of making the deposit into the joint account. His signature appears on the document establishing that account. His sister, Nancy Klinghoffer, and the bank employee, Rhonda Bashir, likewise testified that Joseph Dupoldt was clearheaded within weeks of when the joint account was established.<sup>42</sup> His drug addiction, alone, would not signify lack of capacity to make a gift; instead the proper focus is on his mental status at the time the money was deposited into the account. See generally DeMaio Will, 363 Pa. 559, 70 A.2d 339 (1950)(a decedent's addiction to excessive drinking would not invalidate his will if he was not under the influence of alcohol at the time of its execution); Olshefski Estate, 337 Pa. 420. 11 A.2d 487(1940)(more than habitual drunkenness is necessary to constitute incapacity to execute a will); Paolini Will, 13 Fid. Rep. 2d 185 (Mont. Cty. O.C. 1993).

Finally, a few months before Joseph's death--after he had left the Mission Teens rehabilitation center--Lorraine transferred the remaining money in their joint account, \$16,400, in to an account in her name alone. In her highly credible testimony, she explained that this transfer was based on an agreement with her husband: "we had agreed that if he walked out of that program, that I was to put it in the account by myself so he couldn't have access to it."<sup>43</sup>

For all of these reasons, Leah Dupoldt's claim seeking an imposition of a constructive trust over one-half of her father's workers compensation payment must be denied. It is well established that "the imposition of a constructive trust is an equitable remedy designed to prevent unjust enrichment." Yohe v.

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<sup>41</sup> See generally, 10/22/09 N.T. at 173-77, 183 (Velasco).

<sup>42</sup> See 10/22/09 N.T. at 62 (Klinghoffer) and 95 (Bashir).

<sup>43</sup> 10/22/09 N.T. at 158; see also id. at 185 (Velasco)("So he would manipulate out of every rehab and the agreement was that if he came out and if he left before, he would, I could take whatever money was left in there and put it into my own account, and I didn't do that until he left. That was our agreement and that was how it went and in the meantime I—we could live.")



Yohe, 466 Pa. at 411, 353 A.2d at 420. In using her husband's workers compensation funds to pay for family expenses in their dire financial circumstances, Lorraine Velasco was not unjustly enriched.

Ms. Velasco's counterclaim for the \$4,000, however, must also be denied. The allegation that Leah Dupoldt exerted undue influence to induce her father to change his pensioner's designation of beneficiary form was unsupported by any evidence.

Date: \_\_\_\_\_

BY THE COURT:

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John W. Herron, J.