COURT OF COMMON PLEAS OF PHILADELPHIA
ORPHANS' COURT DIVISION

 # 3 Dec 97

No. 1305 of 1997

Estate of ISAAC JOHNSON, Deceased

Sur account entitled First and Final Account of Sylvester Vaughn, Executor

efore PAWELEC, J.

This account was called for audit December 1, 1997

Counsel appeared as follows:

LAWRENCE SINGER, ESQ. - for the Accountant

ELINORE O'NEILL KOLODNER, ESQ. - for Swandella Scott, Objectant

Isaac Johnson died on July 7, 1995, leaving a will dated April 16, 1984, which was duly probated. He was unmarried at the time of his death and was survived by his sons, Isaac Johnson, Jr., and Sylvester Vaughn.

Letters Testamentary were granted to the accountant on August 1, 1995; proof of publication of the grant of same was submitted and is annexed hereto.

Payment of transfer inheritance tax, $319.02 on September 28, 1995, was duly vouched.

A copy of the will is annexed.

By Item SECOND of his will, the testator gave premises 2227 W. Thompson Street, Philadelphia, to Isaac Johnson, Jr., Alice Jefferson and Sylvester Vaughn, "....in equal shares as tenants in common with right of Survivorship." Premises 2227 W. Thompson Street does not appear in the inventory, but, a note on page 4 of the account indicates that said premises passed to Swandella Scott, "By operation of Law, not under Paragraph Second of Will."

By Item THIRD of his will, the testator gave premises 2105 Seybert Street, Philadelphia, and the furniture therein, to his wife, Helen Johnson, on the condition that she survive him. If Helen Johnson should die in the lifetime of the testator, said premises and furniture are given to Swandella Scott. Premises 2105 Seybert Street does not appear in the inventory, but, a note on page 4 of the account indicates that said premises passed to Sylvester Vaughn, "By operation of Law, not under Paragraph Third of Will."

It is stated that Helen Johnson, wife of the testator and beneficiary under Item THIRD of his will, died on March 25, 1985.

Swandella Scott, alternate beneficiary under Item THIRD, has filed Objections to the account. Said Objections read as follows, in pertinent part,

> **" 3. The premises at 2105 Seybert Street, Philadelphia, Pennsylvania held by decedent as a tenant in common with the Executor, is not accounted for because the Executor interpreted the deed as stating that the property is held as joint tenant with right of survivorship, so that he takes the real estate by operation of law. The account fails to properly award decedent's one-half interest as a tenant in common in such property to Swandella Scott under Paragraph THIRD of decedent's Will. A copy of the deed for the premises is attached hereto as Exhibit A."**

Exhibit "A" is a copy of a deed, dated June 2, 1982 and recorded June 7, 1982, whereby Isaac Johnson and Helen B. Johnson, his wife, conveyed premises 2105 West Seybert Street to Isaac Johnson and Sylvester Vaughn. The granting clause of said deed contains the following pre-printed language:

> **" WITNESSETH, That the said Grantors ....grant, bargain, sell, alien, enfeoff, release and confirm unto the said Grantees <u>and the survivor of them, and the heirs and assigns of such survivor</u>, ...". (Emphasis supplied)**

The habendum clause of said deed contains the following pre-printed language,

" TO HAVE AND TO HOLD ....unto the said Grantees <u>and the survivor of them, and the heirs and assigns of such survivor</u>, to and for the only proper use and behoof of the said Grantees <u>and the survivor of them and the heirs and assigns of such survivor</u> forever.". (Emphasis supplied)

The warranty clause in said deed contains the following pre-printed language,

"....do by these presents, covenant, grant and agree, to and with the said Grantees <u>and the survivor of them and the heirs and assigns of such survivor</u>, ..., unto the said Grantees <u>and the survivor of them, and the heirs and assigns of such survivor</u>, ..." (Emphasis supplied)

By Item FOURTH of his will, the testator gave his interest in certain trucks, equipment, and a contracting business known as "Johnson Brothers", to Kenneth Barksdale and Louis Johnson. Said trucks, equipment and business do not appear in the inventory, and, it is stated that the decedent closed said business and liquidated the trucks and equipment in his lifetime. It is further stated that Kenneth Barksdale, a nephew of the testator, died on February 3, 1990. It is further stated that Louis Johnson, a brother of the testator, died on April 3, 1988.

By Item FIFTH of his will, the testator gave his interest in premises

2144-46 W. Stewart Street, Philadelphia, to Louis Johnson and Kenneth Barksdale, "....equally, share and share alike." Premises 2144-46 W. Stewart Street is carried in the account at a value of $00.00. As previously noted, Louis Johnson died on April 3, 1988, and, Kenneth Barksdale died on February 3, 1990.

By Item SEVENTH of his will, the testator gave his interest in premises 1322 N. 17th Street, Philadelphia, to Alice Jefferson and Isaac Johnson, Jr., "....as tenants in Common with right of Survivorship." Premises 1322 N. 17th Street is carried in the account at a value of $3,000.00.

By Item "NINETH" of his will, the testator gave his interest in certain lots in Lumberg County, Virginia, "....equally to Alice Jefferson, Isaac Johnson, Jr. and Sylvester Vaughn as tenants in common with right of Survivorship." Said Virginia lots do not appear in the inventory or account.

By Item TENTH of his will, the testator gave the residue of his estate to his sons, Isaac Johnson, Jr. and Sylvester Vaughn, "....in equal shares or to their survivor."

By Item EIGHTH of his will, the testator appointed his son, Sylvester Vaughn, to serve as executor of his estate.

It is stated that notice of the audit has been given to all parties having a possible interest in the estate.

In her Objection No. 3, Swandella Scott contends that the testator held a one-half interest, as a tenant in common, in premises 2105 West Seybert Street, and, that his said interest should pass to her under Paragraph THIRD of his Will. Said contentions are based upon the following language of Section 1 of the Act of March 31, 1812, P.L. 259, 5 Sm.L. 395, formerly 20 P.S. §121 and now 68 P.S. §110, to wit,

> **" If partition be not made between joint tenants, whether they be such as might have been compelled to make partition or not, or of whatever kind the estates or thing holden or possessed be, the parts of those who die first shall not accrue to the survivors, but shall descend or pass by devise, and shall be subject to debts, charges, curtesy or dower, or transmissible to executors or administrators, and be considered to every other intent and purpose in the same manner as if such deceased joint tenants had been tenants in common: Provided always, That nothing in this act shall be taken to affect any trust estate."**

The results of Section 1 are discussed in the following passages from the opinion of our Supreme Court in <u>Michael Estate</u>, 421 Pa. 210 (1966), at pages 210 through 212.

> **" At common law, joint tenancies were favored, and the doctrine of survivorship was a recognized incident to a joint estate. The courts of the United States have generally been opposed to the creation of such estates, the presumption being that all tenants hold jointly as tenants in common, unless a clear intention to the contrary is shown. ......**
>
> **In Pennsylvania, by the Act of 1812, the incident of survivorship in joint tenancies was eliminated unless the instrument creating the estate expressly provided that such incident**

should exit. The Act of 1812 has been repeatedly held to be a statute of construction; it does not *forbid* creation of a joint tenancy if the language creating it *clearly* expresses that intent. ...... Whereas before the Act, a conveyance or devise to two or more persons (not husband and wife or trustees) was presumed to create a joint tenancy with the right of survivorship unless otherwise clearly stated, the presumption is reversed by the Act, with the result that now such a conveyance or devise carries with it no right of survivorship unless clearly expressed, and in effect it creates, not a joint tenancy, but a tenancy in common. ......

Since passage of the Act of 1812, the question of survivorship has become a matter of intent ......and, in order to engraft the right of survivorship on a co-tenancy which might otherwise be a tenancy in common, the intent to do so must be expressed with sufficient clarity to overcome the statutory presumption that survivorship is not intended: ...... Whether or not survivorship was intended is to be gathered from the instrument and its language (......), but no particular form of words is required to manifest such intention. ...... The incident of survivorship may be expressly provided for in a deed or a will or it may arise by necessary implication. ......" (Citations omitted)

The applicable law is aptly summarized in the following language of our Supreme Court in <u>Teacher et al. v. Kijurina</u>, 365 Pa. 480 (1950), at page 488,

" It is perhaps a confusion of terms and an inaccuracy to say that a joint tenancy in real estate may still be created; it is more accurate to say that the *right of survivorship may be engrafted* on a dual estate which might otherwise be a tenancy in common. But to do so that intent must clearly appear in order to overcome the presumption arising from the statute that survivorship is not intended. In the *Redemptorist Fathers* case (supra) that intent was found from the words conveying to the grantees 'as joint

> **tenants and not as tenants in common.' In *Leach's Estate*, 282 Pa. 545 128 A. 497 (1925), and *Montgomery v. Keystone S. & L. Ass'n.*, 150 Pa. Superior Ct. 577, 29 A. 2d 203 (1942), it was found from the use of the word 'survivor.' In *Mardis v. Steen*, 293 Pa. 13, 141 A. 629 (1928); *Lowry's Estate*, 314 Pa. 518, 171 A. 878 (1934); *American Oil Co. V. Falconer*, 136 Pa. Superior Ct. 598, 8 A. 2d 418 (1939), from the use of the words 'with the right of survivorship.' Authorities may be multiplied but in each case it will be found there was a reasonably clear expression of intent that the estate created was to have the *attribute of survivorship*." (Emphasis supplied)**

The parties have agreed that there should be no hearing to develop facts outside of the four corners of the deed in question.

In his brief, counsel for the Objectant argues: that pre-printed language in a deed is insufficient to overcome the statutory presumption against survivorship which is embodied in Section 1 of the Act of March 31, 1812, P.L. 259, 5 Sm.L. 395, formerly 20 P.S. §121 and now 68 P.S. §110; and, that only specific language, such as "joint tenants" or "tenants by the entireties", can overcome said statutory presumption. Having reviewed all of the cases which have been cited by counsel for both parties, this Court has found none which holds that pre-printed language is insufficient to overcome the aforementioned statutory presumption, and, none which holds that only specific language can overcome said presumption. Instead, this Court holds that pre-printed language is an expression of intent which should not be ignored. No particular form of words is required to manifest an intention to

engraft a right of survivorship onto a dual estate. See Michael Estate, supra, and Redemptorist Fathers, 205 Pa. 24 (1903).

Having reviewed the deed in question, this Court holds that the repetition of the phrase, "......and the survivor of them, and the heirs and assigns of such survivor, ...", in the granting clause, the habendum clause and the warranty clause, clearly manifests an intention to engraft a right of survivorship onto the dual estate which is conveyed to the grantees.

Also in his brief, counsel for the Objectant argues: that this Court should not look beyond the four corners of the deed in determining whether or not the statutory presumption has been overcome; and, that the attempt to devise premises 2105 West Seybert Street, after it had been previously conveyed by deed, shows that the testator never intended that his son, Sylvester Vaughn, should own the entire fee in said premises as a surviving joint tenant with right of survivorship. These arguments are self-contradictory. The deed in question was executed by two grantors. This Court will not allow the clear language of the deed to be changed or varied by language in a subsequent Will of one of the two grantors.

In accordance with the foregoing discussion, Objection No. 3 is dismissed.

In her Objection No. 2, Swandella Scott contends that furniture and furnishings from 2105 West Seybert Street should be in the account, and, should pass to her under Paragraph THIRD of the Will. Said Objection has been withdrawn.

The remaining Objections are dismissed because they relate to matters in which Swandella Scott has no interest. Ms. Scott has no standing to raise said Objections.

The devise of premises 1322 North 17th Street to Alice Jefferson and Isaac Johnson, Jr., "......as tenants in Common with right of Survivorship", will be treated as a devise to said beneficiaries as joint tenants with right of survivorship and not as tenants in common. See Zomisky v. Zamiska, 449 Pa. 239 (1972)

All Objections having been addressed, the account shows a balance of principal, personal property, and a balance of income, before distributions,

of

$ 0,000.00,

and, there can be no awards of personal property or income to any beneficiary.

The account shows unconverted real estate appraised

at

$ 0,000.00

being premises 2144-46 West Stewart Street, Philadelphia, Pennsylvania, which is awarded to Isaac Johnson, Jr., and Sylvester Vaughn, as tenants in common.

The account shows unconverted real estate appraised at

$ 3,000.00

being premises 1322 North 17th Street, Philadelphia, Pennsylvania, which is awarded to Alice Jefferson and Isaac Johnson, Jr., as join tenants with right of survivorship and not as tenants in common.

A schedule of distribution, to contain only a recital of the awards of real property, described as provided and containing all certifications required by Rule *72, shall be filed with the clerk within ninety (90) days of absolute confirmation of the account.

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

AND NOW, , unless exceptions are filed to this adjudication within twenty (20) days, the account is confirmed absolutely.

J.