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SUPREME COURT

SUPREME COURT OF KENTUCKY
CASE NO. 2008-SC-000196-DG
(2007-CA-000277-MR)

ESTATE OF CHARLES SPENCER

MOVAANT/APPELLANT

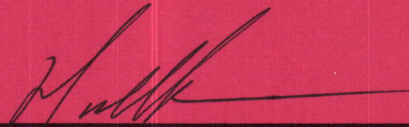
VS.

APPELLANT'S ~~REPLY~~ BRIEF

LILA FAYE SPENCER

RESPONDENT/APPELLEE

Appeal from McCracken Circuit Court
Division No. I
Civil Action NO. 06-CI-00396



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CERTIFICATE

I hereby certify that I have served copies of this Brief in accordance with CR 76.13, by mailing copies thereof to: Hon. Judge Jeffrey Hines, McCracken County Courthouse, Paducah, KY 42003; and to Hon. Rick Walter, 410 Broadway, Paducah, KY 42001: on this the 30th day of March, 2009.

I further certify that I did not remove the record from the McCracken Circuit Court Clerk's Office.



MARK L. ASHBURN

INTRODUCTION

This an appeal from the McCracken Circuit Court, Division I. The case before the Court is in the nature of enforcement of a Ante-Nuptial agreement and an ancillary issue of whether a brokerage account is covered by KRS 391.310. The Court of Appeals decided the case, and rejected the claim that the Ante-Nuptial Agreement prevented a transfer to Faye Spencer, which did not comply with the requirements of said agreement. Which the Estate of Charles Spencer has asked for Discretionary Review. The Court of Appeals additionally found that Brokerage Accounts are not covered by KRS 391.310, and the common law interpretation of "and" created a tenancy in common. Which the Faye Spencer has sought Discretionary Reveiw.

STATEMENT CONCERNING ORAL ARGUMENTS

The Appellant does believe oral arguments would assist the Court in understanding this matter.

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STATEMENT OF THE CASE

Charles Spencer and Lila Faye Hughes were married on October 30, 1995. It was a second marriage for him and a third marriage for her. Prior to the marriage and after a full disclosure of assets the two of them entered into a Ante-nuptial Agreement on October 29, 1995. This agreement is in evidence. The bulk of Mr. Spencer's assets were inherited from his first wife, Jesse Bracken Spencer, and the mother of his children and beneficiaries of his estate. Included in this was a brokerage account, that consisted of stocks, bonds and money market funds. In said Agreement, Faye specifically agreed to waive any interest in these assets and of more import to this litigation, before anything could be claimed to be gift a written memorandum would be executed and attached to the Agreement.

On August 24, 2006, Mr. Spencer changed brokerage firms to "Edward Jones" and he prepared a standardized form which listed under "Name" was "Charles F. Spencer & L. Faye Spencer". Attached to the form, was a list of the assets of the Fund which included stocks, bonds, and money market funds (all of which were part of the Ante-Nuptial Agreement listing). Charles Spencer died on February 10, 2006. The Estate demanded that the assets listed in the ante-nuptial agreement be turned over to the Estate, and for a statement of the assets which the parties

acquired together during the marriage. Faye denied this request. Subsequently, the Estate filed suit requesting the return of assets listed in the Ante-nuptial Agreement including but not limited to the Edward Jones Account and for a declaratory judgment, which defined the assets acquired during the marriage. The Estate took the deposition of Faye Spencer, in which she admitted that she had signed the Ante-nuptial Agreement and understood its provisions. She acknowledged the Edward Jones Account was specifically derived from funds listed in the ante-nuptial agreement and that the provisions for the account to be considered a gift, in accordance with the Ante-Nuptial Agreement, were not met. The Estate filed a motion for partial summary judgment concerning the issue of Edward Jones Account. Faye countered with a motion for summary judgment.

The Court entered an Order granting the motion for Summary Judgment in favor of the Faye on December 21, 2006. Said Order contained no finding and no conclusions of law. The Appellant filed a motion to alter, amend, or vacate said Order, and the Court held a brief hearing on January 12, 2007. During his Dicta in the hearing, the Circuit Court acknowledged that other issues should have been litigated and advised Faye's attorney to prepare an Order with only a partial summary judgment on the Edward Jones account only. The Order that the Circuit Judge signed on January 12, 2007, however, continued to be a complete

summary judgment. Said Order had limited finding: the Ante-Nuptial Agreement did not prohibit gifts or transfers of property, and since the money was a survivorship account it belonged to Fay, based upon KRS 391.315 and KRS 391.320. From this Order, the Estate appealed.

The Court of Appeals found that the changing of the brokerage account into their joint names was sufficient to prove a gift to meet the requirements of the ante-nuptial agreement but brokerage accounts were not subject to KRS 391.315 and that a common-law tenancy in common was created without survivorship. From this ruling both the Estate and Faye requested review by this Court.

ARGUMENT

ARGUMENT I: THE LOWER COURTS ERRED IN DETERMINING OWNERSHIP INTEREST IN BROKERAGE ACCOUNT AS A MATTER OF LAW OR FACT

The Lower Court has ruled that the placing of Faye's name on the brokerage account automatically confers an ownership interest in the account. The case of Saylor v. Saylor, 389 S. W. 2d 904 (Ky. 1965), certainly agrees in general that the placing of someone's name on an account confers ownership. The Estate does not argue this point, but the Estate does contend that the existence of the Ante-nuptial Agreement, a contract, can modify a general rule of law.

For example, the general rule of law, is that a person, upon marriage, obtains a dower interest in their spouse's property. Our law has been modified to allow parties to part from the general rule of law, to be allowed to contract their rights to dower away through an Ante-nuptial Agreement.

The Saylor case states that a "gift" intention need not be proven to confer ownership. The Estate contends that this is not the case when the parties have entered into a contract whereby a specific requirement that the gift intention be stated in writing to effectuate such a gift. Numerical paragraph 12 of the ante-nuptial agreement states "Any gifts made by the parties to each other during the marriage shall be subjects of memoranda executed by the parties in duplicate and attached to the duplicate originals of this Agreement."

If a person established a trust, and then transferred account items into the name of the trustee, John Doe, but failed to list, John Doe, Trustee, in accordance with the strict interpretation of Saylor, the property would be the personal property of the Trustee. That would be another example of a prior contract modifying the General Rule of Law.

The Lower Court after arguing that the ante-nuptial agreement did not need to be adhered to when Faye's name was placed on the account, modified their reasoning, stating "We hold the letter of authorization satisfies the gift clause of

the agreement in that it clearly expresses his desire to give Faye an interest in the brokerage account." Firstly, the Estate takes unctio to this finding as the brokerage agreement meets the written requirement as spelled out in the ante-nuptial agreement. Secondly, the Court makes a finding of fact, that Charles' intention to give Faye an interest in the account is clearly shown, the document nowhere states that Charles intended to grant Faye a gift. The Estate contends that these are a decisions of fact and therefore should be decided by a jury unless, taking the facts in the light most favorable to the non-moving party, no genuine issues of material facts exist. Steelvest, Inc. vs. Scansteel Service Center, Inc., 807 S.W.2d 476 (Ky. 1993) and Scifres v. Kraft, 916 S.W.2d 779 (Ky.App 1996), Amos v. Clubb, 268 S.W.3d 378 (Ky. 2008)

The brokerage agreement does not meet the requirements to confer a gift as set out by the ante-nuptial agreement. It does not acknowledge the Faye's agreement not to claim the pre-martial asset, nor does it express the intention on the part of Charles to bestow a gift. It therefore does not, as a matter of law, negate the ante-nuptial agreement. It then falls on Faye to prove as a matter of fact, that Charles bestowed a gift. Factual issues are to be determined by a jury.

Faye quote's the case of Collins v. Bauman, 102 S.W. 815, (KY. Ct. App. 1907) which stated:

Antenuptial contracts are to be liberally construed to carry into effect the intention of the parties, without regard to the strictly technical meaning of the words used. **For the purposes the whole instrument should be considered, and evidence, also, of the situation of the parties, the surrounding circumstances, and all other means that will throw light on the intention of the parties, will be received.**

Which indicates that the Court should have allowed evidence to be introduced and a jury to decide the intentions of the parties.

ARGUMENT II: THE CIRCUIT COURT ERRED IN GRANTING A SUMMARY JUDGMENT ON THE ENTIRE CASE

The Circuit Court obviously erred in dismissing the entire claim, when the motion brought by the Estate was for a partial summary judgment. Faye's counsel, the Estate's counsel, and the Circuit Court Judge, all conceded in the oral arguments at the hearing held on January 12, 2007, that the entire case should not have been dismissed and other issues remained for further litigation. Unfortunately, when the Order was entered it was again listed as a total dismissal of the claim.

The other issues presented by the Complaint were a request for the return of assets listed in the Ante-nuptial Agreement including but not limited to the Edward Jones Account and for a declaratory judgment which defined the assets acquired during the marriage. Only the Edward Jones Account was addressed by

the Court, and the material facts remained in dispute regarding the other issues. This issues should not be summarily dismissed in accordance with Steelvest, Inc. vs. Scansteel Service Center, Inc., 807 S.W.2d 476 (KY 1991).

The Court of Appeals stated, "Confronted with the lack of sufficient pleadings to decide the basis for the estate's claim, or even an indicia of evidence indicating that Faye retained property to which the estate was entitled.", and agreed with the lower court's dismissal of the entire claim. The Parties had not completed discovery on the other issues, however sufficient issues were identified. Two were specifically mentioned in the Lila Faye Spencer deposition page 13-14,

Q. Were there substantial improvements made to the home that you live in?

A. Well, we made an addition to our home.

Q. Okay, And where did those funds come from?

A. They were mostly from Charlie. I contributed some of it.

and

Q. Have you prepared a list of the items that the two of you acquired after the marriage?

A. No.

Q. Okay. You understand you have an obligation under the agreement that furnishing and things be split equally between your children?

A. We didn't acquire any furniture.

Q Okay. Were there -- I'm going to ask you take a look at some lists here. Did you acquire a car together.

A. Did we acquire what?

Q. A car together.


A. Yes.

The car and the addition to the house, as well as the other items acquired by the parties which Faye refused to list were subject to a claim by the estate. Clearly the entire claim should not have been dismissed without litigating these issues.

CONCLUSION

The Estate of Charles Spencer respectfully submits that the Circuit Court and the Court of Appeals erred in granting a summary judgment on all issues and further erred in declaring that the Lila Faye Spencer obtained an ownership interest in the brokerage account contrary to the Ante-Nuptial Agreement.

RESPECTFULLY SUBMITTED!



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