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SUPREME COURT OF KENTUCKY
2008-SC-000196-DG
(2007-CA-000277-MR)

ESTATE OF CHARLES SPENCER

MOVANT/APPELLANT

V.

APPEAL FROM
McCRACKEN CIRCUIT COURT
Civil Action No. 06-CI-00396

LILA FAYE SPENCER

RESPONDENT/APPELLEE

BRIEF OF RESPONDENT/APPELLEE LILA FAYE SPENCER

BOEHL STOPHER & GRAVES, LLP

Richard L. Walter /SSM

Richard L. Walter
410 Broadway
Paducah, KY 42001
(270) 442-4369 Telephone
(270) 442-4689 Facsimile

ATTORNEYS FOR RESPONDENT/
APPELLEE, LILA FAYE SPENCER

CERTIFICATE OF SERVICE

This is to certify that the original and ten copies of the within Brief for Respondent/Appellee were this day sent, via Registered Mail, to Ms. Susan Stokely Clary, Clerk, Kentucky Supreme Court, 209 Capitol Building, 700 Capital Avenue, Frankfort, KY 40601-3488, and a true copy of the same was served by mail on Mr. Samuel P. Givens, Jr., Clerk, Kentucky Court of Appeals, 360 Democrat Drive, Frankfort, KY 40601; on Hon. R. Jeffrey Hines, Trial Judge, McCracken Circuit Court, 301 S. 6th Street, Paducah, KY 42003; on Ms. Glenda Ransom, Clerk, McCracken Circuit Court, P.O. Box 1455, Paducah, KY 42002-1455; and on Hon. Mark L. Ashburn, P.O. Box 268, Paducah, KY, 42002-0268; on this 22nd day of May, 2009. I further certify that the record on appeal has not been removed from the office of the Clerk of the Trial Court.

Richard L. Walter /SSM
Richard L. Walter

I. STATEMENT CONCERNING ORAL ARGUMENT

Appellee respectfully requests the opportunity to be heard and believes oral argument would be helpful to assist the Court in determining the issues raised by the Appellant.

II. COUNTERSTATEMENT OF POINTS AND AUTHORITIES

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III. COUNTERSTATEMENT OF THE CASE

The Appellee, Lila Faye Spencer, in not accepting the Statement of the Case as presented by Appellant, the Estate of Charles Spencer, states as follows:

1. Decedent Charles Spencer and Appellee Ms. Spencer signed an antenuptial agreement (hereinafter the "Agreement") on October 23, 1995.
2. There is nothing in the Agreement that prevented the parties from making gifts or transferring property to one another.
3. Decedent executed a letter of authorization to change registration of his assets with Edward Jones on October 24, 2005.
4. The letter of authorization changed Decedent's account, numbered 424-03427-1-9, from an individual account to a joint account with right of survivorship with Ms. Spencer, and numbered 424-08695-1-3 (the "Account"), effectuating a gift from Decedent to Ms. Spencer.
5. Every monthly statement that Decedent and Ms. Spencer received from the time the Account was opened until Decedent's death clearly indicated the Account was one of "joint tenants with right of survivorship."
6. Decedent's family filed a Complaint in McCracken Circuit Court on April 17, 2006. Both Appellant and Ms. Spencer filed Motions for Summary Judgment on December 21, 2006.
7. Subsequently, the Appellant filed a Motion to Alter, Amend, or Vacate on December 27, 2006. A hearing on this Motion was held on January 9, 2007.
8. At that hearing, the Circuit Court affirmed its decision to grant summary judgment in favor of Ms. Spencer. In particular, the Circuit Court adopted Findings of

Fact and Conclusions of Law that stated, in part, that Decedent effectuated a gift to Ms. Spencer when he transferred assets into the Account, and that Ms. Spencer became the owner of the Account with right of survivorship upon Decedent's death.

9. The Appellant appealed the decision of the Circuit Court to the Kentucky Court of Appeals, presenting a number of issues.

10. The Court of Appeals agreed that the transfer of assets was indeed a gift, perfected without violating the Agreement.

11. The Court of Appeals concluded that the Account was a tenancy in common, not a joint tenancy with right of survivorship.

12. The Court of Appeals determined that the Uniform Transfer of Death Security Registration Act (hereinafter "TOD") precludes the application of the multiple party account statute to brokerage accounts.

13. The Court of Appeals concluded that any multiple party brokerage account created with the conjunctive "and" is a tenancy in common and any such account created with the conjunctive "or" is a joint tenancy with right of survivorship.

14. The Court of Appeals concluded that the trial court's grant of summary judgment as to the remaining matters was appropriate.

15. On March 14, 2008, Appellant filed a Petition for Discretionary Review as to issues ten (10) and fourteen (14) above.

16. On February 11, 2009, this Court granted Appellant's Petition (2008-SC-000196-DG).

17. A companion matter is before the Court as well—that being 2008-SC-000191-DG. In that matter, the parties are reversed—Ms. Spencer is the Appellant and

the Estate is the Appellee. Ms. Spencer has already filed her Appellant Brief in that matter and awaits a Reply by the Estate.

IV. ARGUMENT

The Appellant complains that the Court of Appeals erred in part. The Estate cites several different reasons for this assertion. First, it argues that Mr. Spencer's transfer of assets from an individual account to a joint account with right of survivorship did not constitute a valid gift to Ms. Spencer, because the requirement of the Agreement was not satisfied. Second, it contends that there were questions of fact for a jury to decide. Last, Appellant argues that the Court of Appeals was incorrect in affirming the trial court's grant of summary judgment as to the entire matter. Ms. Spencer addresses each of these issues below.

A. THE COURT OF APPEALS CORRECTLY RULED WHEN IT DETERMINED THAT DECEDENT EFFECTUATED A GIFT OF THE ASSETS TO APPELLEE IN ACCORDANCE WITH THE AGREEMENT.

Appellant argues that *Saylor v. Saylor*, 389 S.W.2d 904 (Ky. 1965), from which the Court of Appeals quotes, was incorrectly applied. Appellant further argues that Decedent did not meet the requirements of the Agreement when he effectuated the gift of assets to Ms. Spencer, *i.e.*, by not attaching a memorandum executed by both Decedent and Ms. Spencer to the Agreement. In discussing *Saylor*, the Court of Appeals stated, "[w]hen a person confers an interest in his intangible property and thereby creates the equivalent of a tenancy in common or a tenancy by the entirety, it is not necessary to establish the elements of a 'gift'." *Estate of Spencer v. Spencer*, No. 2007-CA-000277-MR, 2008 Ky. App. LEXIS 37 at * 4 (Ky. Ct. App. 2008).

Despite the Appellant's assertion, the Court of Appeals does not rely upon *Saylor* to ignore the requirements of the Agreement. Rather, the Court of Appeals notes that the requirement of the Agreement was met, though not in the exact manner as contemplated by the Agreement. The Court of Appeals states, "[w]e hold that the letter of authorization satisfies the gift clause of the agreement in that it clearly expressed his [Mr. Spencer's] desire to give Faye [Ms. Spencer] an interest in the brokerage account." *Estate of Spencer* at * 6. The letter of authorization did not just give Ms. Spence an interest in the account as Appellant argues, it served as the requisite memorandum under the Agreement necessary to effectuate a gift.

Indeed, there is no question that Mr. Spencer's transfer of assets from an individual account to a joint account with right of survivorship constitutes a valid gift to Ms. Spencer. The language of the Agreement clearly allowed the parties to make gifts to one another. Support for this assertion is contained in the Agreement itself (See attached Exhibit "A"). Paragraph 12 states:

Any and all gifts received by the parties jointly during the marriage shall be owned by them in equal shares. **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.

(Emphasis added)

Paragraph 4 states:

If Spencer dies while he is lawfully married to Hughes, then **Hughes shall not ask or claim any part of the Estate of Spencer, over and above any portion Spencer should voluntarily elect to bequeath or devise to her** by his last will and testament.

(Emphasis added)

As detailed above, the language of the Agreement contemplates the possibility that the parties may give gifts to one another. There is absolutely nothing in the Agreement that prevented Mr. Spencer from electing to provide by gift for Ms. Spencer, his wife of ten years. Also, as noted above, the letter of authorization Decedent executed on August 24, 2005, constitutes a memorandum of gift as contemplated by the Agreement. Kentucky courts have long applied the substantial performance doctrine, *Meador v. Robinson*, 263 S.W.2d 118 (Ky. Ct. App. 1953), and are expansive in their interpretation of antenuptial agreements. In *Collins v. Bauman*, 102 S.W. 815, 816 (Ky. Ct. App. 1907), the Kentucky Court of Appeals 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 this purpose 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. This Rule of construction is supported by a long line of authorities.

From all indications, it appears that courts are more interested in the intention of the parties than the strict application of technicalities. It is clear that the Court of Appeals properly focused on the intent of Mr. Spencer when effectuating the gift of the assets. The letter of authorization executed by Decedent on August 24, 2005, undoubtedly expresses his desire to provide for Ms. Spencer. It transferred a large portion of the assets in his individual account, numbered 424-03427-1-9, to a new joint account. The new account, numbered 424-08695-1-3, was opened as a joint account in the names of both Charles F. Spencer and L. Faye Spencer. Even though these documents were not attached to the Agreement, they indicate Decedent's desire and intention to transfer

assets to his wife and, in accordance with Kentucky law, substantially comply with the language of the Agreement.

The Appellant is also incorrect in its assertion that there are questions of fact for a jury to decide as relate to the method of Decedent's gift and whether it meets the requirement of the Agreement. The Court of Appeals did not directly address this argument, but clearly found no merit to it when it determined the gift properly executed according to the terms of the Agreement. A trial judge is responsible for deciding questions regarding contract interpretation. In *Equitania Insurance Company v. Slone & Garrett*, 191 S.W. 3d 552, 556 (KY. 2006), the Kentucky Supreme Court stated:

It is well settled that the interpretation of contracts is an issue of law for the court to decide. *Morganfield National Bank v. Damien Elder & Sons*, 836 S.W.2d 893 (Ky. 1992). The intention of the parties to a written instrument must be gathered from the four corners of that instrument. *Hoheimer v. Hoheimer*, 30 S.W.3d 176 (Ky. 2000).

Because the Agreement executed by Decedent and Ms. Spencer is a simple contract, the trial court acted well within its authority when it reviewed that document and determined that Decedent was able to make a gift to Ms. Spencer. The Court of Appeals, in determining that a gift was properly effectuated, correctly found no merit in this argument.

B. THE COURT OF APPEALS CORRECTLY RULED WHEN IT DETERMINED THAT THE TRIAL COURT'S GRANT OF SUMMARY JUDGMENT AS TO ALL ISSUES WAS CORRECT, INCLUDING, BUT NOT LIMITED TO, THE GRANT OF SUMMARY JUDGMENT PERTAINING TO ASSETS APPELLANT ARGUES APPELLEE RETAINED IMPROPERLY.

Appellant argues that the Court of Appeals "obviously" erred when it dismissed the entire matter. Appellant asserts that counsel for Ms. Spencer, counsel for Appellant, and the Circuit Court Judge, all agreed during oral arguments held on January 12, 2007,

that the entire case should not have been dismissed and that other issues remained for further litigation. Counsel for Ms. Spencer submits that Appellant's recitation of events during the January 12, 2007, oral argument is incorrect. The Court of Appeals did not address this assertion by Appellant—rightfully so, as it did not occur.

Appellant argues further that material facts remain in dispute regarding certain assets listed in the Agreement that Ms. Spencer should return to the Estate. But no list of assets is available in the Agreement. The Court of Appeals stated, “[n]otably absent from the allegations in the complaint and in subsequent pleadings are the assets that the state believes Faye wrongfully retained.” *Estate of Spencer* at * 12. Indeed, the Court of Appeals found that “[a]lthough Faye was deposed, there is no evidence that she has possession of property acquired during the marriage to which the estate is entitled and no further motions for discovery were filed by the estate.” *Id.*

The Court of Appeals further stated, “The estate has failed to present any legally sound argument or evidence that Faye has possession of any property to which the estate is entitled.” There is no reason to disturb this finding of the Court of Appeals. The Appellant has failed to enumerate any property supposedly kept by Ms. Spencer to which the Estate is entitled. Appellant's citing of Ms. Spencer's deposition as it relates to an addition to the house and a car does not prove the items to be Decedent's nor does it prove that Ms. Spencer has wrongfully retained them. This ruling should be affirmed.

V. CONCLUSION

The decision of the Court of Appeals should be affirmed as to the two issues discussed above (*i.e.*, Items 10 and 14 noted in the Statement of the Case), and the decision of the McCracken Circuit Court should be reinstated with full force and effect.

BOEHL STOPHER & GRAVES LLP

Richard L. Walter /SSM

Richard L. Walter
410 Broadway
Paducah, KY 42001
(270) 442-4369 Telephone
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