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JUL 06 2009

SUPREME COURT CLERK

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

LILA FAYE SPENCER

APPELLANT

V.

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

ESTATE OF CHARLES SPENCER

APPELLEE

REPLY BRIEF OF APPELLANT, LILA FAYE SPENCER

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CERTIFICATE OF SERVICE

This is to certify that the original and ten copies of the within Reply Brief for Movant/Appellant 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 July 1, 2009. I further certify that the record on appeal has not been removed from the office of the Clerk of the Trial Court.

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I. INTRODUCTION

Appellant, Lila Fay Spencer, and the Decedent, Charles Spencer, entered into an antenuptial agreement (hereinafter the "Agreement") prior to their marriage. The Agreement contained a number of provisions dealing with the disposition of property following the death of either. Nothing in the Agreement prevented either party from making gifts to each other. The disagreement between the parties centers around the ownership rights to an Edward Jones brokerage account (hereinafter the "Account"). There is no question that this Account was a joint account, between Appellant and Decedent, with right of survivorship. The trial court properly granted summary judgment, finding that Appellant became owner of the Account at Decedent's death. The Court of Appeals reversed, finding that the Account was a tenancy in common, not a joint tenancy with right of survivorship. The Court of Appeals decision has far reaching and illogical implications and should be reversed.

II. STATEMENT CONCERNING ORAL ARGUMENT

Appellant respectfully requests the opportunity to be heard and believes oral argument would be helpful to the Court.

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IV. STATEMENT OF THE CASE

The decedent, Charles Spencer, and the movant, Lila Faye Spencer, were married on November 4, 1995. Both parties had been previously married, had children, and possessed their own separate property. As a result, the couple signed an antenuptial agreement on October 23, 1995. The antenuptial agreement contained numerous provisions concerning the disposition of property following the death of either party. There is nothing in the document that prevents either party from making gifts or bequests to the other.

On August 24, 2004, Charles Spencer executed a letter of authorization to change registration or transfer assets of his Edward Jones brokerage account. [Appendix Item No. 1]. The letter of authorization transferred a large portion of the assets in Mr. Spencer's 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. [Appendix Item No. 2]. Despite the Court of Appeals' conclusion to the contrary, there is no question that this was a joint account with right of survivorship. This is evidenced by the fact that every monthly statement that Charles and Faye Spencer received from the time the account was opened until Mr. Spencer's death clearly indicated they were "joint tenants with right of survivorship." [Appendix Item No. 3].

Mr. Spencer's family has been openly hostile to his wife of 11 years since his death. The simple fact of the matter is that the family is aggravated that he did not leave everything to them. They resent the fact that Mr. Spencer decided to provide his wife with some money on which to support herself. A decision that he was more than

capable of making. Due to their dissatisfaction, Mr. Spencer's family filed a Complaint in McCracken Circuit Court on April 17, 2006. Both the Estate of Charles Spencer and Faye Spencer filed Motions for Summary Judgment. The McCracken Circuit Court entered an order granting Faye Spencer's Motion for Summary Judgment on December 21, 2006. [Appendix Item No. 4]. The Estate subsequently filed a Motion to Alter, Amend, or Vacate on December 27, 2006. A hearing on that motion was held on January 9, 2007. At that time, the Court affirmed its decision to grant summary judgment in favor of Mrs. Spencer. In particular, the Court adopted Findings of Fact and Conclusions of Law that stated, in part, that Faye Spencer became the owner of a joint account with right of survivorship when her late husband Charles Spencer passed away. [Appendix Item No. 5].

The Appellee, the Estate of Charles Spencer, appealed the decision of the McCracken Circuit Court to the Kentucky Court of Appeals. It presented numerous issues for appeal, the most important of which was: whether the Edward Jones account, which was registered in the names of both Charles and Faye Spencer, was a joint account with right of survivorship. The Court of Appeals incorrectly concluded that it was a tenancy in common, not a joint tenancy with right of survivorship as Charles Spencer intended. [Appendix Item No. 6]. In making its decision, the Court of Appeals made several errors that will have effects far beyond this case. First, it concluded that the statutory provisions concerning Multiple Party Accounts, such as joint accounts with right of survivorship, do not apply to brokerage accounts. This is a question of first impression in the Commonwealth of Kentucky. Second, it decided that the Uniform Transfer on Death Security Registration Act (hereinafter "TOD") precludes the

application of the Multiple Party Account statute to brokerage accounts. The Court cites no authority for this novel proposition. Third, it determined that any Multiple Party brokerage account created with the conjunctive "and" is a tenancy in common; and that, any Multiple Party brokerage account created with the conjunctive "or" is a joint tenancy with right of survivorship. In so doing, the Court chose to ignore substantial evidence to the contrary. More significantly, the Court has unilaterally rewritten the deposit contracts that exist between Edwards Jones and every other brokerage firm in the Commonwealth of Kentucky and any of their clients who maintain "joint accounts." Such a significant impairment of private contract is impermissible under both the United States and Kentucky Constitutions.

V. ARGUMENT

A. **The Appellee is incorrect in its assertion that the Multiple Party Account statute does not apply to brokerage accounts.**

Both the appellee and the Court of Appeals are incorrect in their assertion that a joint brokerage account, such as the one that the Spencers maintained at Edward Jones, is not covered by the Multiple Party Accounts statute. The Court does not need to look any further than the Multiple Party Accounts statute to make this determination. KRS 391.315(a) states,

Sums remaining on deposit at the death of a party to a joint account belong to the surviving party or parties to the account as against the Estate of the decedent unless there is clear and convincing written evidence of a different intention at the time the account is created. (Emphasis added).

In order to determine the exact reach of this statute, it is necessary to examine the definitions of both "account" and "financial institution." KRS 391.300(1) defines "account," as,

[A] contract of deposit of funds between a depositor and a **financial institution**, and includes a checking account, savings account, certificate of deposit, **share account and other like arrangement**. (Emphasis added).

There is no question that the General Assembly intended for "account" to be interpreted broadly. That is because the definition includes a short list of terms for purposes of example and then concludes with the phrase, "and other like arrangement," which is clearly intended to expand its application. This intention is made even more apparent by an examination of the definition of "financial institution." KRS 391.300(3) defines "financial institution" as,

Any organization authorized to do business under state or federal laws relating to financial institutions, including, without limitation, banks and trust companies, savings banks, building and loan associations, savings and loan companies or associations, and credit unions. (Emphasis added).

A review of the above language reveals that the drafters intended for it to be applied expansively. There are several reasons for this assertion. First, the definition states it should apply to "any organization . . . relating to financial institutions." Second, it provides a lengthy list of examples that is modified by the phrase, "including, without limitation," which is clearly designed to include entities other than those specifically mentioned. Even though the exact phrase "brokerage account" is not expressly included, it is difficult to argue that the statute is not broad enough to encompass Edward Jones. After all, it is a financial institution authorized to do business under both state and federal law. Support for this assertion is contained in Black's Law Dictionary 645 (7th Ed. 1999). It defines a financial institution as,

A business, organization, or other entity that manages money, credit, or capital, such as a bank, credit union, savings-and-loan association, **securities broker or dealer**, pawnbroker, or **investment company**.

(Emphasis added).

When read as a whole, it is apparent that the General Assembly intended for the Multiple Party Account statute, contained in KRS 361.300-360, to be interpreted broadly so as to include a wide variety of accounts within its umbrella. In other words, there is no justification for the Court of Appeals' myopic view of this statutory framework.

In addition to its misinterpretation of the relevant statutory provisions, the rationale for the Court of Appeals' opinion in this case is inconsistent and without merit. The Court erroneously concluded that, ". . . there is no contract of deposit of funds between the brokerage firm and the account owner." There is absolutely no support for that assertion at all. First, the letter of authorization to change registration of assets is clearly an agreement between the depositor and the brokerage firm. Second, the statement outlined above contradicts several previous decisions of the Court of Appeals itself. In *Hensley v. Ball*, 380 S.W.2d 279, 283 (Ky. Ct. App. 1964), the Kentucky Court of Appeals stated,

Stock certificates, notes, bonds, and cashier's checks are basically alike in that each is evidence of contract rights held by the owner or payee against the signatory institution or party. When one person causes such a document to be issued by a second person in favor of another, individually or jointly, the latter becomes a third party beneficiary of the transaction, and is vested with the rights evidenced by the instrument, which is no less a contract simply because it may generally and more familiarly be regarded as a title document. *Id.*

A review of the above language makes it clear that the Court of Appeals previously concluded that stock certificates are evidence of the contract that exists between an investor and a brokerage firm.

B. The Appellee is incorrect in its assertion the Uniform TOD Security Registration Act, which is contained in KRS 292.6501 through 6512, precludes the application of other Multiple Accounts statutes to brokerage accounts.

The Supreme Court should make it clear that the language of the Uniform TOD Security Registration Act does not preclude the application of other multiple account statutes to brokerage accounts. The Court of Appeals mistakenly concluded that brokerage accounts are specifically precluded from the Multiple Party Account statute because there is no reference to them in the TOD Security Registration Act. In addition to its misinterpretation of the statute, the Court of Appeals erred when it based its decision on this particular issue because it was not raised by the Estate in its brief; moreover, Lila Faye Spencer was not provided with the opportunity to address this issue or to rebut it prior to the oral argument.

The Kentucky Court of Appeals is incorrect in its assertion that the Uniform Transfer on Death Security Registration precludes the application of the Multiple Party Account statute to brokerage accounts. The Court of Appeals relied on a number of flawed assumptions when it made this decision. First, it concluded that, because there is a definition of "security account" in KRS 292.6501(10)(a), the Uniform Transfer on Death Security Registration Act alone governs joint brokerage accounts. Second, it reasoned that, because there is no reference to the Multiple Party Account statute in the Uniform Transfer on Death Security Registration Act, it is no longer applicable to brokerage accounts, such as the one that the Spencers maintained with Edward Jones.

The Court does not need to look any further than the other provisions of the Uniform TOD Security Registration Act to conclude that the Court of Appeals is wrong. KRS 292.6508(1) states,

A registering entity is not required to offer or to accept a request for security registration in beneficiary form. If a registration in beneficiary form is offered by a registering entity, the owner requesting registration in beneficiary form assents to the protections given to the registering entity by KRS 292.6501 to 292.6512. (Emphasis added).

Based on a review of the above statute, it is apparent that brokerage firms, such as Edward Jones, are not even required to provide investors with security registration in beneficiary form. As that is the case, it is difficult to believe that the Court of Appeals actually intends to prevent investors who desire to own securities as joint tenants with right of survivorship from doing so because of the language of a statute with which brokerage firms are not even obligated to comply. The absurdity of this result is even more apparent after reviewing the language of KRS 292.6512. It states,

Unless displaced by the particular provisions of KRS 292.6501 to 292.6512, the principles of law and equity supplement its provisions.

In other words, the Uniform TOD Security Registration Act itself makes it clear that it is not intended to limit other legal rights that investors enjoy. Quite the contrary, it specifically states that other existing legal principles should serve as a supplement to its provisions. There is no language in the statutory framework of the Uniform Transfer of Death Security Registration Act that prevents the continued application of the Multiple Party Account statute to brokerage accounts as the Court of Appeals contends.

VI. CONCLUSION

The decision of the Court of Appeals should be reversed, and the decision of the McCracken Circuit Court should be reinstated with full force and effect.

Respectfully submitted,

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