

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
July 17, 2006 Session

**THE ESTATE OF DISA TRUE, PAUL JUSTICE, ADMINISTRATOR v.
WILLIAM BRYANT PADGETT, ET AL.**

**Appeal from the Chancery Court for Loudon County
No. 10406 Frank V. Williams, III, Chancellor**

Filed October 3, 2006

No. E2005-01584-COA-R3-CV

The Estate of Disa True, Paul Justice, Administrator (“the Estate”) sued William Bryant Padgett and Wende Padgett seeking, in part, the return to the Estate of monies the Padgetts obtained from Disa True’s SunTrust checking account (“the Account”). After a trial, the Trial Court entered an order dismissing the case based, primarily, upon its finding that the Account was owned by Ms. True, Mr. Padgett, and Ms. Padgett as joint owners with right of survivorship. The Estate appeals claiming that the Trial Court erred in holding that the Account was a joint account with right of survivorship and also that the Trial Court erred in excluding testimony under Tenn. Code Ann. § 24-1-203, the Dead man’s statute. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed;
Case Remanded**

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and CHARLES D. SUSANO, JR., J., joined.

Mary Katherine Longworth, Loudon, Tennessee for the Appellant, The Estate of Disa True, Paul Justice, Administrator.

A. Wayne Henry, Loudon, Tennessee, for the Appellees, William Bryant Padgett and Wende Padgett.

OPINION

Background

The Estate sued the Padgetts seeking, primarily, the return of approximately \$91,000, which the Padgetts obtained from the Account. Ms. True, who died in June of 2003, had added the Padgetts' names to the Account in February of 2003, less than six months before she died. Prior to her death, Ms. True had written a check for approximately \$5,000, which Mr. Padgett used to purchase a truck for himself. The remaining \$86,000, at issue was withdrawn by the Padgetts from the Account after Ms. True's death.

This case was tried without a jury in April of 2005. At trial, Mr. Padgett testified that he met Ms. True in 1997, at the church they both attended. Mr. Padgett testified that several years later, he assumed an appointed position at that church as an associate pastor. Mr. Padgett described the relationship he and his wife had with Ms. True stating:

She was a friend. She called us quite frequently and if she needed me to do something for her I done it for her. We took her out to eat with us at times. She just, you know, I mean, we had a lot of friends like that but that was - - it was just a friendship that grew over the years."

Mr. Padgett testified that Ms. True broke her hip in late 2002, or early 2003, and went first to the hospital and then to a nursing home. Ms. True was in the nursing home for approximately two months and then returned to her home. Mr. Padgett testified that he and his wife visited Ms. True while Ms. True was in the nursing home, kept her personal belongings for her, and brought her mail to her. Mr. Padgett testified that Ms. True told him while she was in the nursing home that she wanted to add his and his wife's names to one of her accounts. Mr. Padgett testified he never asked Ms. True why she wanted to put their names on the Account.

Mr. Padgett testified that he went to the bank and obtained the necessary documents to add their names to Ms. True's account and took them to Ms. True at the nursing home. Mr. Padgett testified that he, his wife, and Ms. True signed the signature card for the Account at the nursing home, had it witnessed, and that he took the executed signature card back to the bank.

The signature card for the Account executed by Ms. True, Mr. Padgett, and Ms. Padgett provides, in pertinent part:

It is agreed that all transactions between the Bank and the above signed shall be governed by the rules and regulations for this account and the above signed hereby acknowledge(s) receipt of such rules and regulations and the funds availability policy.

In pertinent part, the SunTrust Rules and Regulations for Deposit Accounts (“Rules and Regs”) provides:

All Accounts are subject to the signature card contract, any additional agreements executed by the Depositor and the Bank and these rules and regulations....

* * *

“Joint Account”, also referred to as “Joint Account with Survivorship”, is an Account which is owned by two or more individuals as joint tenants with right of survivorship and **not** as “tenants in common” or “tenants by the entirety.” Upon the death of one of the joint owners, the Account will belong to the surviving joint owner or joint owners....

* * *

We are not bound by any attempt by you to change the account ownership to anything other than a “joint tenants with right of survivorship,” including “tenants by the entirety” or “tenants in common.” We will treat all Joint Accounts as “joint tenants with right of survivorship” for all purposes, including, but not limited to writs, levies, setoffs, and determination of ownership upon death.

“Joint Account - No Survivorship”, which applies only to Accounts established in Virginia, Maryland and District of Columbia,

Mr. Padgett testified that he never received a copy of the Rules and Regs and never was told that the Account was a joint account with right of survivorship. Ms. Padgett also testified at trial that she never received a copy of the Rules and Regs and that she never took a copy of them to Ms. True.

Mr. Padgett testified that he did not know at the time he signed the signature card how much money Ms. True had in the Account. Mr. Padgett testified that either the day their names were added to the Account, or the day after, he inquired at the bank and learned that the Account contained approximately \$91,000.

Mr. Padgett testified that after his name was added to the Account, he asked Ms. True to loan him money to purchase a truck. He testified:

I told [Ms. True] that I could give her part of the money back now. I had another vehicle I was going to sell and when I sold it I would give her the rest of the money. I tried to give her what money I had and she would not take it. She told me that I did not owe her anything.

When asked, Mr. Padgett testified that he took this to mean that Ms. True was giving him a gift of the \$5,200, for the truck.

Mr. Padgett testified that after Ms. True's death, he wrote a check to pay what remained of Ms. True's mostly pre-paid funeral expenses, a check for a van that was given to the church, and a check to pay off the mortgage on the Padgetts' house.

When he was asked why he thought he had the right to use the money in the Account, Mr. Padgett stated:

As I was talking to my mother me and her were discussing some things and she said that once - - she had brought it to my attention that once we had been put on an account that, you know, we become part owner - - or we become owner of the account also and that's how I came to that knowledge.

Paul Justice, Ms. True's nephew and the Administrator of the Estate testified at trial. Mr. Justice admitted that he observed Ms. True's relationship with the Padgetts and never observed anything that made him feel the Padgetts were manipulating Ms. True.

Carolyn Hill, Ms. True's great-niece, also testified at trial. Ms. Hill testified that Ms. True had only about a fourth grade education and stated: "Well, she could understand anything you sit and talked to her about, you know, but if you used big words or things, she couldn't understand some of the meanings of these words and you would have to sit and explain to her, you know, exactly what they meant."

An objection was raised during Ms. Hill's testimony under Tenn. Code Ann. § 24-1-203, the Dead man's statute, as Ms. Hill was a potential heir of the Estate. The Trial Court sustained the objection and an offer of proof was made. The offer of proof was Ms. Hill's testimony regarding conversations she had with Ms. True offered to show that Ms. True did not intend for the Padgetts to get the money in the Account after her death.

Cynthia Garren, Vice President and Branch Manager of Suntrust Bank in Loudon testified that she knew Ms. True through church and also because Ms. True was a bank customer. Ms. Garren testified that she had a conversation with Ms. True before Ms. True broke her hip and entered the nursing home and that during that conversation, Ms. True sought Ms. Garren's advice regarding adding Mr. and Ms. Padgett to the Account. Ms. Garren testified: "at that time I advised her that, you know, of her rights regarding her account and according to the rules and regs of Suntrust Bank."

Ms. Garren testified: "Joint ownership. Whoever is on the account owns the account, all inclusive." When asked if she discussed this with Ms. True, Ms. Garren testified:

Most definitely. As a matter of fact, I asked her as a specific and pulled out the rules and regs and asked her, I said, now we have such an account called an

account in trust for. In other words, if you die that account would become theirs. We also have another one that we can call it payable on death, that only that person would be eligible to get the funds upon your death. And then we had single accounts which was what her account was at the time, and joint accounts. I explained that joint account meant joint ownership. I restated it to her, I said, to be honest with you, I said, now [Ms. True,] are you sure you want to add names on here that they would have equal ownership of this account, and she said, yes, I do, because they helped me.

Ms. Garren testified that Ms. True did not make the changes to the Account at that time. Instead, Ms. True called Ms. Garren later from the nursing home regarding making the change. When asked if she understood that Ms. True wanted the Padgetts to have the Account upon her death, Ms. Garren replied: "Yes, ma'am, I did." Ms. Garren testified she "made that specifically clear to Ms. True" that either of the Padgetts could have gone to the bank and withdrawn money from the Account.

The Trial Court entered an Order of Dismissal on June 1, 2005, dismissing the Estate's Petition to Recover Funds and incorporating by reference the Trial Court's Memorandum Opinion. In its Memorandum Opinion, the Trial Court found and held, *inter alia*:

Although I accept the testimony of Ms. Garren that she discussed all of these options with Ms. True I don't believe that that's necessarily controlling since the signature card specifically states that the owners saw or understood the rules and regulations of the bank contained in Exhibit Number 3. And so, when a person signs a contract they're bound to know the terms of the contract and they're bounded (sic) by the terms of the contract even if they didn't, in fact, see the rules and regulations. They would nevertheless be bound by them because they signed the signature card saying that they were in agreement to have the rules and regulations incorporated by reference into the agreement.

* * *

And if there's any doubt to that the testimony of Ms. Garren, which I accept as true, is in accordance with the actual terms of the rules and regulations for deposit accounts, Exhibit Number 3, which specifically says that joint tenants in this case, that joint tenancy carries with it the right of survivorship. In other words, at her death the surviving parties, Wende Padgett and William Bryant Padgett, succeed to her interest. Whatever interest she may have had in that account passes to them by the contract, not by the will, not by operation of law or part of her estate, but by the contract she entered into with the bank. So, the property, all the assets, the funds belong to the Padgetts, the defendants. It's theirs. None of the money passes into the estate. It would not be distributed to any of the heirs of Disa True.

The Estate appeals to this Court.

Discussion

Although not stated exactly as such, the Estate raises two issues: 1) whether the Trial Court erred in holding that the Account was joint with a right of survivorship; and, 2) whether the Trial Court erred in excluding testimony under Tenn. Code Ann. § 24-1-203, the Dead man's Statute.

Our review is *de novo* upon the record, accompanied by a presumption of correctness of the findings of fact of the trial court, unless the preponderance of the evidence is otherwise. Tenn. R. App. P. 13(d); *Bogan v. Bogan*, 60 S.W.3d 721, 727 (Tenn. 2001). A trial court's conclusions of law are subject to a *de novo* review with no presumption of correctness. *S. Constructors, Inc. v. Loudon County Bd. of Educ.*, 58 S.W.3d 706, 710 (Tenn. 2001).

We first address whether the Trial Court erred in holding that the Account was joint with a right of survivorship. In pertinent part, Tenn. Code Ann. § 45-2-703 provides:

(c) As used in subsections (c)-(f), "multiple-party deposit account" means a deposit account (including a certificate of deposit) established in the names of, payable to, or in form subject to withdrawal by two (2) or more natural persons or any of them, including, but not limited to, an account of the type described in subsection (a).

(d)(1) When opening a multiple-party deposit account, or amending an existing deposit account so as to create a multiple-party deposit account, each bank shall utilize account documents which enable the depositor to designate ownership interest therein in terms substantially similar to the following:

(A) Joint tenants with right of survivorship;

(B) Additional authorized signatory; and

(C) Such other deposit designation as may be acceptable to the bank.

(2) Account documents which enable the depositor to indicate the depositor's intent of the ownership interest in any multiple-party deposit account may include any of the following:

(A) The signature card;

(B) The deposit agreement;

(C) A certificate of deposit;

(D) A document confirming purchase of a certificate of deposit; or

(E) Such other document provided by the bank or deposit institution which indicates the intent of the depositor.

(e) Accounts described in subsection (c) shall establish the following interests:

(1) A designation of "joint tenants with right of survivorship," or substantially similar language, shall be conclusive evidence in any action or proceeding of the intentions of all named that title vests in the survivor;

(2) The designation of a person as "additional authorized signatory," or substantially similar language, shall be conclusive evidence in any action or proceeding that the person so designated has power of attorney with respect to such account and is not an owner of such account;

- (3) Other designations acceptable to the bank shall establish interests in accordance with their respective provisions; and
- (4) In the absence of any specific designation in accordance with subsection (d), property held under the title, tenancy by the entireties, carries a right of survivorship; property held under the title, joint tenancy, carries no right of survivorship unless a contrary intention is expressly stated. Any other person to whose order the accounts or certificate of deposit is subject shall be presumed to have power of attorney with respect thereto and not to be an owner thereof. Such presumptions may be rebutted by clear and convincing evidence presented in the course of legal or equitable proceedings. Final judicial determinations contrary to such presumptions shall not affect a bank's earlier payment in accordance therewith, or the limitations on liability conferred by the provisions of subsections (a) and (b) or § 45-2-707.

Tenn. Code Ann. § 45-2-703 (2000).

In its brief on appeal, the Estate argues, in part, that there is no “expressed contract in this case” because “the signature card does not specify at all what kind of account it is” and “[t]he rules and regulations do not in any way specify the type of account was (sic) created by Mrs. True and the Padgetts.” (emphasis deleted). Respectfully, the Estate is mistaken.

Ms. True and the Padgetts executed a signature card for the Account that clearly and unambiguously states that “all transactions between the Bank and the above signed shall be governed by the rules and regulations for this account and the above signed hereby acknowledge(s) receipt of such rules and regulations....” The Rules and Regs clearly and unambiguously provide that SunTrust Bank “will treat all Joint Accounts as ‘joint tenants with right of survivorship’ for all purposes, including, but not limited to writs, levies, setoffs, and determination of ownership upon death.” Further, the Rules and Regs clearly and unambiguously provide that SunTrust Bank will “not [be] bound by an attempt by you to change the account ownership to anything other than a ‘joint tenants with right of survivorship,’ including ‘tenants by the entirety’ or ‘tenants in common.’”

The provisions of the contract created by the signature card and the Rules and Regs are clear and unambiguous, and we must give effect to the parties' intent. It is not the role of this Court “to make a different contract than that executed by the parties.” *Posner v. Posner*, No. 02A01-9710-CV-00249, 1997 Tenn. App. LEXIS 930, at *6 (Tenn. Ct. App. Dec. 30, 1997), *no appl. perm. appeal filed*. See also, e.g., *Central Drug Store v. Adams*, 201 S.W.2d 682 (Tenn. 1947). “In the absence of fraud or mistake, a contract must be interpreted and enforced as written even though it contains terms which may be thought to be harsh or unjust.” *Tenpenny v. Tenpenny*, No. 01-A-01- 9406-CV-00296, 1995 Tenn. App. LEXIS 105, at *15 (Tenn. Ct. App. Feb. 22, 1995), *appl. perm. appeal denied July 3, 1995*. The record on appeal reveals no fraud or mistake and, therefore, we must interpret and enforce the contract as written.

SunTrust Bank complied with Tenn. Code Ann. § 45-2-703 by providing a signature card and a deposit agreement, the Rules and Regs, that enabled the depositor, Ms. True, to designate ownership interest in the Account when Ms. True changed the Account from an

individual account to a multiple-party deposit account, a joint account. Under Tenn. Code Ann. § 45-2-703 (e)(1) the designation of the Account as joint tenants with right of survivorship “shall be conclusive evidence in any action or proceeding of the intentions of all named that title vests in the survivor.” Tenn. Code Ann. § 45-2-703 (e)(1) (2000). We note that our holding is supported by the uncontradicted testimony of Ms. Garren that Ms. Garren “pulled out the rules and regs...” when explaining to Ms. True that if Ms. True added the Padgetts’ names, that “they would have equal ownership of this account....” Given this, we hold that the Trial Court correctly held that the Account was owned by Ms. True, William Bryant Padgett, and Wende Padgett as joint tenants with right of survivorship.

Our resolution of the Estate’s first issue pretermits the necessity of considering its second issue as the Estate was attempting to use the excluded evidence to prove that Ms. True did not have the intent to create a joint account with right of survivorship. As discussed fully above, the conclusive evidence establishes that Ms. True intended to create and did so create an account as joint tenants with right of survivorship.

Conclusion

The judgment of the Trial Court is affirmed, and this cause is remanded to the Trial Court for collection of the costs below. The costs on appeal are assessed against the Appellant, the Estate of Disa True, Paul Justice, Administrator, and its surety.

D. MICHAEL SWINEY, JUDGE