# FAWLEY ESTATE

*Entireties assets retitled*

Funds removed by husband from entireties bank account and placed in account titled in husband's sole name four months prior to his death ruled to belong to husband and passed under his will and did not pass as entireties property. (Hunter – Gifts 15 (c), Husband and Wife 6(a)).

In the Orphans' Court Division of the Court of Common Pleas of Chester County.Estate of Robert T. Fawley, Sr., deceased. Claim by decedent's wife. No. 1512-0586.

*Glen H. Ridenour II*, for decedent's son.

*John Thomas Dooley*, for decedent's widow.

ADJUDICATION BY HALL, J., MARCH 19, 2013:

## *Procedural Background*

Pending before this court is a February 14, 2013 Motion for Summary Judgment ("Motion") on the claim of Donna M. Fawley ("Ms. Fawley"), wife of decedent Robert T. Fawley ("Decedent"). Following the February 19, 2013 Response to the Motion by the Decedent's and Ms. Fawley's only child, Robert T. Fawley, Jr. ("Robert"), the parties agreed to present all relevant facts during the February 20, 2013 hearing and allow this court to address the underlying issue of Ms. Fawley's October 15, 2012 claim.[1] Decedent died intestate on February 24, 2012. Ms. Fawley's claim is to the $330,000 which had been removed by decedent from an entireties account and placed into an account titled in decedent's sole name approximately four months prior to his death. The issue is whether the $330,000 should be deemed entireties property, which then would pass to Ms. Fawley by right of survivorship, or Decedent's individual property and therefore subject to distribution to his estate beneficiaries, i.e. Ms. Fawley and Robert, pursuant to 20 Pa. C.S.A. §2101 et seq.

## *Findings of Fact*[2]

1. Decedent and Ms. Fawley were married on June 27, 1981.
2. During the course of their marriage, decedent and Ms. Fawley maintained a joint account into which their income was deposited and expenses were paid. For that

[1] Thus, the procedural posture of this case is not merely the pending Motion and Response. The parties, in an effort to avoid unnecessary fees and costs, have requested the court to make a decision on the merits of Ms. Fawley's claim. Consequently, this decision is more in the nature of a declaratory judgment. The parties' attorneys have represented that decision on the claim will also resolve most, if not all, of Robert's January 29, 2013 Objections to Ms. Fawley's First and Final Account. The attorneys' work to efficiently frame the essence of this controversy indicate the professional excellence which both counsel have exhibited throughout these proceedings.

[2]These are the facts presented by stipulation of the parties or which the court finds credible and material following an evaluation of witness credibility.

purpose, in 2005 decedent and Ms. Fawley opened a joint checking account designated as, "Joint Tenant with Entireties" account at Bryn Mawr Trust Co. ("DMT"), account number 763150513 ("entireties account"). This entireties account was in existence until decedent died and was stipulated by the parties to be a tenants by the entireties account.

3. Decedent had been the sole owner of an automobile repair business known as Always Fawley's Tire & Automotive Center, Incorporated, and the land on which the business was located at 1601 Baltimore Pike, Chadds Ford, Pennsylvania. Decedent leased the business with an option to buy in 2002 and finally sold it and the land for $454,837.04 on January 29, 2008.

4. Shortly after the sale of the business and land, the decedent deposited a portion of the sale proceeds into a money market account at BMT, account number 2520447 and a portion in a money market account at Citizens Bank ("CB"), account number 6223184690. Both of those accounts were titled in the decedent's individual name only. Ms. Fawley was never aware of the amount of the sale proceeds or the existence of those accounts during decedent's lifetime.

5. For many years Ms. Fawley has been an employee for Aramark corporation. Around 2003 she began working in Virginia for Aramark, commuting weekly from the Chester County family home she owned with decedent to live during the work week in Virginia. She regularly returned to the family home on the weekends through 2010.

6. By June 2011, decedent and Ms. Fawley were having serious marital problems. In July, 2011, it appeared to Robert that Ms. Fawley had undergone cosmetic surgery. When Robert discussed that with her, Ms. Fawley revealed that she wanted to divorce decedent. By August, 2011 Ms. Fawley had told decedent that she wanted a divorce.

7. Alter August 2011, Ms. Fawley and decedent lived apart from each other. Ms. Fawley lived in her Virginia residence full time while decedent remained in the family home. When Mrs. Fawley came to Pennsylvania in September 2011, she stayed with Robert and visited family home only to retrieve belongings.

8. In August or September 2011, decedent shared with his neighbor Jeremy Bushweller ("Mr. Bushweller") that Ms. Fawley was having an affair and had left him. From August 2011 through December 2011, decedent spoke to Mr. Bushweller on multiple occasions about his intention to leave the money from the sale of his business to his son, Robert.

9. Until September 2011, Ms. Fawley's Aramark income was directly deposited into the entireties account. In September 2011, decedent and Ms. Fawley agreed that Ms. Fawley would maintain a separate Virginia bank account to pay her expenses and help her establish her own identity and credit. They further agreed that she would send decedent a monthly check in the amount of $2,500 for deposit in the entireties account that decedent would use to help pay for the mortgage payments due on the real estate they jointly owned and pay for the rent on Ms. Fawley's Virginia residence.

10. On September 23, 2011, decedent closed his BMT and CB money market accounts receiving a $207,535.97 check for the BMT account and a $139,393.72 check for the CB account.

11. On October 18, 2011, Ms. Fawley wrote a check from her newly established individual checking account to decedent in the agreed amount of $2,500. The decedent deposited this check into the entireties account on October 21, 2011.

12. On October 24, 2011, decedent deposited the BMT account and CB account checks into the entireties account, less $5,000, for a total deposit of $341,929.68.

13. Three days later, on October 27, 2011, decedent withdrew $330,000 from the entireties account and deposited it into a separate BMT account, account number 2552401, titled in decedent's individual name. The decedent left $11,929.68 in the entireties account.

14. Because decedent principally maintained the couple's finances and banking, Ms. Fawley did not know about the $341,929.68 deposit or the $330,000 withdrawal during decedent's lifetime. Decedent never said or other wise indicated to Ms. Fawley that he intended to give her the $330,000 in October, 2011 or at any other time.

15. In approximately late October or early November, 2011, Ms. Fawley asked Robert if he could refer her to a local divorce lawyer.

16. Decedent died intestate on February 24, 2012.

17. Decedent and Ms. Fawley were still married to each other at decedent's death; neither party had filed for divorce.

18. On April 9, 2012, Ms. Fawley, as administratrix of decedent's estate, closed decedent's BMT account and transferred the account balance of $330,654.92 into an estate account.[3]

## *Discussions*[4]

At issue in this matter is the applicability of the Multiple-Party Account Act ("MPAA"), 20 Pa. C.S.A. §6301 et seq. to the entireties account and the $330,000 removed therefrom by decedent. Ms. Fawley argues that the brief deposit of those funds in the entireties account is clear and convincing evidence of her estranged husband's intent to gift those monies to her and thus necessitates a conclusion that they remained entireties property even after their removal. Robert argues that Ms. Fawley has not carried her burden of proof under the MPAA and therefore the decedent was able to retain the removed funds because he is the one who contributed them to the account 20 Pa. C.S.A. §6303(a).

The MPAA provides:

20 Pa. C.S.A. §6303.Ownership during lifetime.

(a) Joint Account. – A joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions by each to the sum on deposit, unless there is a clear and convincing evidence of a different intent.

The Comment to the MPAA states in pertinent part:

"This section reflects the assumption that a person who deposits funds in a multiple-party

[3] Counsel for Robert objected to the testimony of Ms. Fawley on the basis of the Dead Man's Act, 42 Pa.C.S.A. §5930. The court deferred a ruling on the objection and allowed the testimony subject to its potential later exclusion. The court finds that the *devisavitvelnon* exception to the Dead Man's Act applies and therefore Robert's objection is overruled and his motion in *limine* pertaining to that objection denied. If this matter is appealed, this court will discuss further its reasons for overruling this objection. Even if the court is in error, the facts deemed credible from Ms. Fawley's testimony favor Robert. Consequently any error would be harmless. The court further notes that even without Ms. Fawley's testimony, there is sufficient credible evidence to support the conclusions reached by the court herein.

[4] Any explicit or implied facts described within this Discussion are incorporated by reference into the above Findings of Fact section.

> account normally does not intend to make an irrevocable gift of all or any part of the funds represented by the deposit. Rather, he usually intends no present change of beneficial ownership. The assumption may be disproved by proof than [that] a gift was intended…"

Notably, the MPAA does not exclude or separately define tenants by the entireties accounts within the Act's application. Further, there is no evidence of legislative intent to exclude such entireties accounts from the MPAA, see *Geertson v. McCrea*, 37 Pa.D&C 3d 583, 586 (1983); 15 *Summ.Pa.Jur.2d Family Law* §3:5 (2d ed.). Indeed, the Superior Court has applied the MPAA to such accounts;*In re: Estate of Cambest*, 756 A.2d 45 (Pa. Super. 2000).

In this case, both parties rely on *In re: Estate of Cambest*. After applying the MPAA to the facts pertaining to a disputed joint account, the court in *Cambest* concluded that the presumption of articulated within the MPAA had been rebutted, stating "that the husband's act of structuring bank accounts as joint accounts in the name of husband and wife constitutes such clear and convincing evidence of a different intent; the intent to create estates by the entireties, which arises as a presumption of law:" *Id*. At 53. The court recited case law which equated proof of an intention different than that presumed with the MPAA with proof of a gift to the other account holder: *Id*. As described in *In re: Estate of Holmes*, 414 Pa. 403, 200 A.2d 746 (1964), where an account is placed in the names of a husband and wife, a gift and the creation of an entireties estate is presumed. This presumption may be overcome by clear and convincing evidence: *Id*. 414 Pa. at 406, 200 A.2d at 747. The *Cambest* court did not, however, hold that the act of depositing funds into an entireties account creates an unrebuttable presumption of law. Furthermore, unlike the facts *sub justice*, the disputed monies in *Cambest* were in the husband's account when the joint account with wife was created, and not temporarily deposited in the account years later.

The interplay between the MPAA and tenants by the entireties law has been concisely described as follows: "While the knowing and understanding creation of an entireties account may be considered evidence of the parties' intent as to the ownership interest of each party in the accounts, it is not conclusive on that issue as a matter of law so as to proide the clear and convincing evidence of a different intent that is required to defeat the presumption [of the MPAA]", 15 *Summ.Pa.Jur.2d Family Law*, §3:5 (2d ed.), citing *Geertson*. "The intent of the parties is a question of fact:" *Geertson* at 586.

Thus, it appears there are dueling presumptions; one derived from the MPAA, the other derived from the case law pertaining to tenants by the entireties accounts. Both of these presumptions may be overcome by clear and convincing evidence. Ms. Fawley argues the MPAA presumption that the joint account belongs to the parties in proportion to the net contributions by each is overcome by decedent's placement of the money within the entireties account. This argument is unpersuasive. The material evidence pertaining to decedent's intent extends well beyond the mere deposit of the $330,000 into the entireties account.

The credible testimony establishes that the decedent and Ms. Fawley were not living as a married couple, but were living separate and apart by August of 2011. By that time, Ms. Fawley had told Robert and decedent that she wanted to divorce decedent. Decedent publically discussed this situation with his neighbor and planned to provide his business sales monies to his son, not to his wife. In September, Ms. Fawley separated her finances from the decedent, opened her own account in Virginia, stopped the direct deposit of her paycheck into the entireties account, and began to establish her own credit

in Virginia. It is within this context that decedent took his long segregated business sale proceeds and fleetingly placed them into the entireties account on the way to placing $330,000 of those proceeds into another segregated account.

While it is unclear why decedent briefly deposited the business sale proceeds into the entireties account, it is abundantly clear that the soon to be withdrawn money was in transition, and that decedent had no intention of gifting $330,000 to a woman who gave every appearance of soon divorcing him and moving on with her life. At the time of decedent's deposit, decedent planned to give his business sale proceeds to Robert and understood that Ms. Fawley was only providing money to the entireties account which paid for her rent and part of the mortgage payments on the couples' jointly held real estate. Per haps decedent made the initial deposit of the sale proceeds into the entireties account to share the remaining sale proceeds amount of $11,929.68 with Ms. Fawley and keep $5,000 for immediate use. He clearly accomplished these purposes by the subject deposit and withdrawal. The court, however, need not reach a conclusion as to every thought and action of the decedent. It need only determine decedent's intention as to the $330,000 he retained.

The court, as trier of fact, is free to believe all, part, or none of the evidence that is presented and to resolve any conflict in the evidence: *Stokes v. Gary Barbera Enterprises, Inc*., 783 A.2d 296, 297 (Pa. Super. 2001), *appeal denied*, 568 Pa.23, 797 A.2d 915 (2002). The weight to be assigned witnesses' testimony, as well as credibility determinations, are within the court's province: *Id*. The court may make reasonable inferences from the evidence: *Com. V. One 2001 Toyota Camry*, 894 A.2d 207, 212 Pa.Cmwlth. 2006). The court concludes from the credible evidence that Ms. Fawley has failed to prove by clear and convincing evidence that the presumption described within the MPAA has been overcome and that the subject $330,000 did not belong to the decedent as the sole contributor of those monies to the entireties account. She did not prove decedent had a different intention than that described within the MPAA. The court further concluded from the credible evidence that Robert has proved by clear and convincing evidence that the intention of decedent when he placed the $330,000 in the entireties account was not to gift that money to Ms. Fawley as entireties property but to retain it for himself individually, as he shortly did after deposit.[5]

*Decree*

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[5]What can be more precious than the relationship of a parent and a child? The court posits – nothing. It is hoped that the rancor of this dispute quickly will fade now that a decision has been rendered. Although none will acquire more, and one will acquire less, neither mother nor son will truly win unless their mutual affection is restored.

"Who ran to help me when I fell,
And would some pretty story tell,
Or kiss the place to make it well?
My mother."
*Original Poems for Infant Minds, My Mother*, by Ann Taylor, st. 6, (1804).
"What is the price of a thousand horses against a son where there is one son only?"
*Riders to the Sea*
By John Millington Synge, (1904).

And Now, this 25th day of March, 20, 2013, upon consideration of the October 15, 2012 claim ("Claim") by Donna M. Fawley ("Ms. Fawley"), Ms. Fawley's February 14, 2013 Motion for Summary Judgment ("Motion"), the February 19, 2013 Response thereto by Robert T. Fawley, Jr., the evidence presented during the February 20, 2013 hearing, and the memoranda of law submitted by the parties' counsel, it is hereby Ordered and Decreed that the Motion and Claim are Denied. Consequently, the subject $330,000, plus any accumulated interest thereon, shall be used and distributed as an asset of the Estate of Robert T. Fawley, Sr.