[Cite as *In re Estate of Schoeneman*, 2010-Ohio-3858.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN RE: ESTATE OF EARL E. SCHOENEMAN, DECEASED, LOUIS W. SCHOENEMAN, EXECUTOR	:	JUDGES: Hon. William B. Hoffman, P.J. Hon. Sheila G. Farmer, J. Hon. Patricia A. Delaney, J.
Appellee	:	
-vs-	:	Case No. 2009CA00250
ROBIN A. MINOR	:	
Appellant	:	O P I N I O N

CHARACTER OF PROCEEDING: Appeal from the Court of Common Pleas, Probate Division, Case No. 204531

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: August 16, 2010

APPEARANCES:

For Appellee

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For Appellant

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Farmer, J.

{¶1} On July 10, 2008, Earl Schoeneman died. On November 3, 2008, the Court of Common Pleas of Stark County, Ohio, Probate Division, assumed jurisdiction over his last will and testament. Louis Schoeneman was named executor.

{¶2} A schedule of assets was filed on May 6, 2009. On May 8, 2009, appellant, Robin Minor, the decedent's daughter, filed exceptions to the inventory regarding in part two bank accounts, a 2003 Ford F-150 truck, and several firearms.

{¶3} Hearings were held on January 14, and August 12, 2009. By judgment entry filed September 11, 2009, the trial court found the bank accounts and the firearms belonged to the estate, and appellant's one-half value in the truck was $2,325.00. The trial court also ordered the sale of the one-half interest in the truck owned by Charles Schoeneman to appellant.

{¶4} Appellant filed an appeal and this matter is now before this court for consideration. Assignments of error are as follows:

I

{¶5} "THE PROBATE COURT ERRED AS MATTER OF LAW WHEN IT FOUND EXCEPTOR ROBIN MINOR WAS NOT ENTITLED TO FUNDS HELD IN HER NAME IN A JOINT BANK ACCOUNT WITH THE RIGHT OF SURVIVORSHIP."

II

{¶6} "THE PROBATE COURT ERRED WHEN IT ORDERED EXCEPTOR TO BOTH SURRENDER TITLE OF A MOTOR VEHICLE AND ALSO PURCHASE A ONE-HALF INTEREST IN THE MOTOR VEHICLE."

III

{¶7} "THE PROBATE COURT ERRED WHEN IT FOUND THAT EXCEPTOR HAD NO RIGHT TO POSSESS DISPUTED FIREARMS THAT SHE ACQUIRED THROUGH A VALID INTER VIVOS GIFT."

I, II, III

{¶8} Under her three assignments of error, appellant claims the trial court's factual determinations on three items, to wit, the two bank accounts, the Ford F-150, and the firearms, were error. The standard of review is sufficiency of the evidence.

{¶9} A judgment supported by some competent, credible evidence will not be reversed by a reviewing court as against the manifest weight of the evidence. *C.E. Morris Co. v. Foley Construction Co.* (1978), 54 Ohio St.2d 279. A reviewing court must not substitute its judgment for that of the trial court where there exists some competent and credible evidence supporting the judgment rendered by the trial court. *Myers v. Garson,* 66 Ohio St.3d 610, 1993-Ohio-9.

BANK ACCOUNTS

{¶10} Appellant claims the trial court erred in finding the two bank accounts were not joint-survivorship accounts. We disagree.

{¶11} In its judgment entry filed September 11, 2009, the trial court found the following:

{¶12} "Item 32 includes Chase Bank checking and savings accounts. The checking account was originally opened at Bank One, nka JP Morgan Chase Bank, N.A., in 1987. Exceptor's Exhibit 'B-4' is a Replacement Consumer Signature Card signed on February 3, 2000, by Decedent and Exceptor showing the type of ownership

as 'Joint.' The savings account was originally opened in 1984. Exceptor's Exhibit 'B-5' is a Replacement Consumer Signature Card signed on October 4, 2000, by Decedent, Arlene F. Schoeneman, and Exceptor showing the type of ownership as joint. Exceptor's Exhibit 'B-6' is a Chase Personal Signature Card signed on September 10, 2008, two months after Decedent's death, by Exceptor. Exceptor signed both her own name and that of Decedent.

{¶13} "***

{¶14} "The Court finds that Exceptor's argument is not well taken. On its face, each signature card entered into evidence designates the account as 'joint.' No evidence was presented showing that according to bank policy, as of February 3, 2000 and October 4, 2000, a 'joint' type account meant 'joint and survivorship.' No evidence was presented that Decedent was informed that the account type 'joint' mean anything other than its plain meaning. Applying the Ohio Supreme Court's holding in *Wright v. Bloom, ssupra (sic),* the Court finds that the funds in the Chase Bank checking and savings accounts are assets of the estate."

{¶15} Appellant argues the testimony from a Chase Bank employee, Kristen Knepper, established that under Chase's rules and regulations, the accounts are joint-survivorship accounts:

{¶16} "A. Okay, right here it says 'forms of accounts of ownership'. It says where two or more individuals are designated or appear on a signature card as a (sic) owners of such account, then as between them we will treat the owners as joint tenants with right of survivorship. With any account where a joint owner has died we reserve the right not to release funds in the account until the legal documents are delivered to

us. You agree to notify us of the death of any joint ownership and to reimburse us for any tax we may be required to pay by reason of our payment or release of funds in the account to you.

{¶17} "***

{¶18} "Q. And Kristen, can you testify today as far as the ownership of these two accounts?

{¶19} "A. They are joint with right to survivorship." August 12, 2009 T. at 5 and 8, respectively.

{¶20} The signature card on the savings account is dated October 4, 2000 when the bank was not Chase but Bank One. Id. at 9, 11-12. Ms. Knepper admitted she had no knowledge of the decedent's intent when the account was opened. Id. at 12. When asked if "in 2000 Chase interpreted joint accounts in 2000 as the same as they did in 2008," appellant responded in the affirmative. Id. at 17. The decedent had not made any changes to the account from 2000 to 2008. Id. at 20. However, Ms. Knepper admitted that when the account was opened in 1984 as a joint account, she had no opinion as to whether it was a joint-survivorship account in 1984. Id. at 22.

{¶21} As Defendant's Exhibit B-5 indicates, the savings account was titled "Earl E. Schoeneman or Arlene F. Schoeneman or Robin A. Minor" and the type of ownership was designated as "Joint." The checking account was titled "Earl E. Schoeneman or Robin A. Minor" and the type of ownership was listed as "Joint." Defendant's Exhibit B-4.

{¶22} In *Wright v. Bloom* (1994), 69 Ohio St.3d 596, 1994-Ohio-153, paragraphs two and three of the syllabus, the Supreme Court of Ohio set aside the use of extrinsic

evidence to defeat joint-survivorship accounts, and declared the creation of joint-survivorship accounts to be conclusive of a decedent's wishes. Joint accounts without joint-survivorship language cannot be bootstrapped to survivorship accounts by extrinsic evidence:

{¶23} "The opening of a joint and survivorship account in the absence of fraud, duress, undue influence or lack of capacity on the part of the decedent is conclusive evidence of his or her intention to transfer to the surviving party or parties a survivorship interest in the balance remaining in the account at his or her death. (*In re Estate of Thompson* [1981], 66 Ohio St.2d 433, 20 O.O.3d 371, 423 N.E.2d 90, paragraph two of the syllabus, overruled.)

{¶24} "The opening of a joint or alternative account without a provision for survivorship shall be conclusive evidence, in the absence of fraud or mistake, of the depositor's intention not to transfer a survivorship interest to the joint or alternative party or parties in the balance of funds contributed by such depositor remaining in the account at his or her death. Such funds shall belong in such case exclusively to the depositor's estate, subject only to claims arising under other rules of law. (*Bauman v. Walter* [1953], 160 Ohio St. 273, 52 O.O. 172, 116 N.E.2d 435, overruled in part)."

{¶25} The facts in this case fall within the parameters of paragraph three of the syllabus. The language used in the instruments sub judice was joint or "in the alternative" and therefore no survivorship interest passed to appellant.

{¶26} Assignment of Error I is denied.

2003 FORD F-150

{¶27} Appellant claims the trial court erred in essentially ordering her to pay for the one-half interest of the truck owned by Charles Schoeneman and to produce the title to the truck. We disagree.

{¶28} At the time of the decedent's death, appellant owned a one-half interest in the truck. Appellant appears to argue that the trial court overvalued the truck at $4,650.00. However, in her own testimony, appellant stated the appraised value of the truck was $4,500.00 and the Kelley Blue Book value was $4,495.00. August 12, 2009 T. at 32; Defendant's Exhibit D-1 and D-2. Appellant attempted to testify to a reappraised value due to damages which occurred after the decedent's death, but the trial court correctly denied this evidence. Id. at 32-33.

{¶29} Appellant admitted that her name and the decedent's name are listed on the title, and the estate owns one-half of the truck. Id. at 31-32; January 14, 2009 T. at 12, 32-33. The trial court accepted $2,325.00 as the value of the one-half interest in the truck, and ordered "the sale of the one-half interest in the truck now owned by Charles Schoenenman to Exceptor [appellant]." The trial court also ordered appellant to produce the title. However, the trial court did not order appellant to produce the truck. Clearly, the title as it stands now is incorrect. See, Petitioner's Exhibit 6. The estate had sold its one-half interest to Charles Schoeneman. The trial court's order was not an abuse of discretion in order to alleviate any title and licensing issues.

{¶30} Assignment of Error II is denied.

III

{¶31} Appellant claims the trial court erred in finding several firearms were not gifts to her from the decedent. We disagree.

{¶32} Appellant argues the subject firearms were gifted to her and the decedent by Mary Alexander in 1987. August 12, 2009 T. at 24-25. Appellant admitted she never had possession or control of the firearms, and they remained in the decedent's home until his death. Id. at 37. Appellant testified Ms. Alexander "gifted" the firearms to her and her father under a power of attorney, two years prior to her death. Id. at 24-26; Petitioner's Exhibit 8.

{¶33} In Ms. Alexander's last will, appellant and decedent were equal beneficiaries. Id. However, the evidence established that decedent had exclusive control of the firearms prior to and after Ms. Alexander's death.

{¶34} The essential elements to prove an inter vivos gift are: (1) intent of the donor to make a gift; (2) delivery of the property to the donee; and (3) acceptance of the gift by the donee. *Bolles v. Toledo Trust* (1936), 132 Ohio St. 21.

{¶35} The trial court found that there was no clear and convincing evidence of a transfer of the firearms to appellant:

{¶36} "The Court finds that Exceptor has not established by clear and convincing evidence that Items 16 through 23 and Item 28 were gifts to her and therefore are not assets of the estate. The guns listed as Items 16 through 23 were in Decedent's sole possession during his lifetime and were in his residence when he died. Decedent exercised dominion and control over the guns while he was alive. Exceptor did not present evidence as to Ms. Alexander's intent, delivery of any of the disputed guns

directly to Exceptor, or an indication that Exceptor exercised dominion and control over the disputed guns. Similarly, Item 28 hung in the residence and remained there after the death of Arlene Schoeneman. No evidence was presented indicating that it was ever in Exceptor's possession."

{¶37} We find the trial court's conclusion is supported by the record.

{¶38} Assignment of Error III is denied.

{¶39} The judgment of the Court of Common Pleas of Stark County, Ohio, Probate Division is hereby affirmed.

By Farmer, J.

Hoffman, P.J. and

Delaney, J. concur.

_s/ Sheila G. Farmer_____

_s/ William B. Hoffman_____

_s/ Patricia A. Delaney_____

JUDGES

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IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO

FIFTH APPELLATE DISTRICT

IN RE: ESTATE OF EARL E. SCHOENEMAN, DECEASED, LOUIS W. SCHOENEMAN, EXECUTOR	:	
Appellee	:	
-vs-	:	JUDGMENT ENTRY
ROBIN A. MINOR	:	
Appellant	:	CASE NO. 2009CA00250

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Stark County, Ohio, Probate Division is affirmed. Costs to appellant.

_s/ Sheila G. Farmer_____

_s/ William B. Hoffman_____

_s/ Patricia A. Delaney_____

JUDGES