

[Cite as *In re Estate of Brown*, 2016-Ohio-3074.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103867

IN RE: ESTATE OF ALBERT T. BROWN, DECEASED

[Appeal by Ruby Cuyler Stevenson]

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Probate Court Division
Case No. 2013 EST 191893

BEFORE: Jones, A.J., E.A. Gallagher, J., and Laster Mays, J.

RELEASED AND JOURNALIZED: May 19, 2016

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LARRY A. JONES, SR., A.J.:

{¶1} Appellant Ruby Cuyler Stevenson appeals the judgment of the probate court granting appellee Ernestine Hall's exceptions to inventory filed on the estate of Albert Brown. For the reasons that follow, we affirm.

{¶2} Albert Brown died in 2013. Hall was Brown's niece and Stevenson was Brown and his late wife's close friend. Stevenson was appointed executor of Brown's estate. In his will, Brown stated that his estate should be split equally between Hall and Stevenson.

{¶3} Stevenson filed an inventory and appraisal with the probate court in October 2014, which included a checking and savings account at KeyBank. Hall filed exceptions to the inventory objecting to the inclusion of the two KeyBank accounts, claiming that they were non-probate assets because she and Brown had jointly held the accounts.

{¶4} The magistrate held a full hearing during which Hall presented the KeyBank signature cards and deposit agreements. Hall testified that KeyBank paid her the balance of the accounts, \$140,974.94, in September 2013.

{¶5} The magistrate found no credible evidence of the existence of fraud, duress, or undue influence and determined that the exceptions to inventory should be granted. Stevenson objected, but the trial court overruled her objections and adopted the magistrate's decision.

{¶6} In September 2014, Stevenson filed a notice of appeal, but this court

dismissed the appeal for lack of a final appealable order. *See In re: Estate of Albert T. Brown*, 8th Dist. Cuyahoga No. 101937, Motion No. 480955 (Dec. 10, 2014).

{¶7} In November 2014, Stevenson filed a partial account of the estate. Hall filed objections. In December 2014, Stevenson filed a motion for fiduciary fees; Hall filed objections. The court set the matters for a hearing and subsequently ordered the parties to mediation, but the parties were unable to reach a settlement.

{¶8} In May 2015, the trial court denied approval of the inventory and appraisal and ordered Stevenson to submit an amended inventory and appraisal. In August, the court determined that the amended inventory and appraisal were inconsistent and incomplete and ordered Stevenson be removed as the estate's executor. The court held:

The partial account submitted does not relate to any inventory and does not accurately reflect the receipts and expenses of administering the estate. The executor has neglected her duty as fiduciary to provide a truthful and accurate inventory of assets and account. The best interest of the estate will be served by the removal of the fiduciary.

{¶9} The court declined to approve the amended inventory and denied Stevenson's motion for fiduciary fees. Stevenson objected, but the trial court overruled her objections and adopted the magistrate's decision.

{¶10} Stevenson filed a notice of appeal and raises four assignments of error for our review:

I. The court erred by finding that Ernestine Hall is the only beneficiary. The appellant, Ms. Cuyler [Stevenson] and Ernestine Hall are named beneficiaries of the estate, pursuant to decedent's last will and testament admitted to probate by this court on August 28, 2013. The decedent's last will and testament states that his entire estate shall be divided equally which included his accounts. The decedent did not mention the accounts but in

his own words said entire estate, which included his accounts.

II. The court erred by allowing the appellee's attorney to present the documents to the court as evidence from KeyBank but did not allow the appellant to present same documents from KeyBank as fraud to the accounts.

III. The court erred by not allowing the appellant to present any documents at the hearing that the decedent, Albert Brown, did not have Ernestine Hall as a joint and survivorship since 1999 as stated by appellee's attorney.

IV. The court erred by not allowing the appellant to present annual rental statement and transaction receipt of safe deposit box to prove that Ernestine Hall's name was on safe deposit box as well as accounts only for convenience.

{¶11} As an initial matter, Stevenson has not challenged the trial court's decision to remove her as fiduciary or to deny her motion for payment of fiduciary fees. Therefore, she has waived these issues and they will not be considered on appeal.

{¶12} "A hearing of exceptions to an inventory, pursuant to R.C. 2115.16, is a summary proceeding conducted by the probate court to determine whether those charged with the responsibility of filing an inventory have included in the decedent's estate more or less than the decedent owned at the time of his or her death." *In re Estate of Platt*, 148 Ohio App.3d 132, 2002-Ohio-3382, 772 N.E.2d 198, ¶ 13 (11th Dist.), citing *In re Estate of Etzensperger*, 9 Ohio St.3d 19, 21, 457 N.E.2d 1161 (1984).

{¶13} Generally, the party disputing the estate's inventory has the burden of proving the existence of assets he or she claims should have been included on the inventory. *In re Estate of Haas*, 10th Dist. Franklin No. 07AP 512, 2007-Ohio-7011, ¶

43; *Talbott v. Fisk*, 10th Dist. Franklin Nos. 02AP-427 and 02AP-428, 2002-Ohio-6960, ¶

31. In this case, Hall is disputing assets she claimed should have been *excluded* on the inventory, but that is a distinction without a difference and, therefore, she still had the burden to show that the assets should have been excluded.

{¶14} This court's standard of review of this type of hearing is whether the trial court abused its discretion. *Estate of Luoma*, 11th Dist. Lake No. 2011-L-006, 2011-Ohio-4701, ¶ 20. An abuse of discretion is a trial court's "failure to exercise sound, reasonable, and legal decision-making." *Id.*, citing *State v. Beechler*, 2d Dist. Montgomery No. 09-CA-54, 2010-Ohio-1900, ¶ 62.

{¶15} Stevenson argues that the court abused its discretion when it found that Hall was a joint owner of the KeyBank accounts and, therefore, the accounts were not an asset of the estate. According to Stevenson, it was Brown's intention that the bank accounts be considered part of the estate. To support these claims she points to the following evidence. The estate also included a safety deposit box Brown had at KeyBank. Stevenson and Brown possessed the only keys to the safety deposit box even though Hall's name was on the safety deposit box. Other evidence included the fact that Hall never made deposits to or withdrawals from the contested accounts; Hall's name was on the accounts only as a matter of convenience; and Brown's signature on the signature cards was forged.

{¶16} Ohio law establishes that the opening of a joint and survivorship account, in the absence of fraud, duress, undue influence, or lack of capacity, is conclusive evidence

of the intention to transfer to the surviving party the survivorship interest in the remaining balance at the time of co-owner's death. *Kasick v. Kobelak*, 184 Ohio App.3d 433, 2009-Ohio-5239, 921 N.E.2d 297, ¶ 25 (8th Dist.), citing *Wright v. Bloom*, 69 Ohio St.3d 596, 635 N.E.2d 31 (1994), paragraph two of the syllabus.

{¶17} The record shows that, at the time of his death, Brown had two joint accounts at KeyBank: a checking account with a balance of \$109,412.79, and a savings account with a balance of \$31,562.15. In 1993, Brown opened the checking account. In 1999, he added Hall to the account and they both signed the signature card. In 2007, Brown opened the savings account. Hall, who by this time was living in Florida, did not sign the signature card, but her name was listed as the joint owner on the account and signature card.

{¶18} Stevenson contends that Brown's signature on the checking account's signature card was forged, but she has provided no evidence to support her allegation. The magistrate found, and the trial court agreed, that there was no credible evidence of any fraud, duress, or undue influence in the titling of the joint bank accounts. Absent any evidence to the contrary, we agree.

{¶19} Next, Stevenson claims the fact that she, and not Hall, had a key to Brown's safety deposit box at KeyBank meant that Hall's name was on the safety deposit box *and* Brown's bank accounts solely as a matter of convenience. We disagree. This matter came up during the hearing. The magistrate found that the bank allowed Stevenson, as executor of the will, to open and take an accounting of Brown's safety deposit box. The

existence of the safety deposit box and the names on it, however, were not related to the ownership of the bank accounts. In fact, Hall agreed that the safety deposit box was an asset of the estate and should be divided equally between Stevenson and herself.

{¶20} Therefore, the trial court did not err or otherwise abuse its discretion when it granted the exceptions to the inventory.

{¶21} The assignments of error are overruled.

{¶22} Judgment affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Court of Common Pleas Probate Division to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

LARRY A. JONES, SR., ADMINISTRATIVE JUDGE

EILEEN A. GALLAGHER, J., and
ANITA LASTER MAYS, J., CONCUR