IN THE SUPREME COURT OF
THE STATE OF FLORIDA

CASE NO. 64,874

IN RE: THE ESTATE OF

HOLLY E. GAINER,

Deceased.

_____/

CAROL GAINER, Individually and as Personal Representative of the Estate of HOLLY E. GAINER,

Appellant,

vs.

DOROTHY DORAN and MARY ADAMS,

Appellees.

_____/

ANSWER BRIEF OF APPELLEES

An Appeal Taken From
The District Court of Appeal
Fifth District of Florida

RONALD W. SIKES, ESQUIRE
RONALD W. SIKES, P.A.
150 Taylor Street, Suite B
Titusville, Florida 32780
(305) 269-6639

Attorney for Appellees

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REFERENCES

For purposes of this appeal, the symbol "(R-)" will be used to refer to documents in the Record on Appeal. The symbol "(A-)" indicates reference to the Appendix to Answer Brief of Appellees, filed herewith.

The term "Federal" will refer to the depository of those joint accounts and certificates of deposit established by the Decedent in the First Federal Savings and Loan Association of Titusville, Florida. The joint accounts and certificates of deposit created by the Decedent at the Merritt Square Bank will be referred to as those in the "Bank".

ARGUMENT

IS SECTION 665.063(1)(a) OF FLORIDA STATUTES (1981) UNCONSTITUTIONAL UNDER THE EQUAL PROTECTION CLAUSES OF THE UNITED STATES AND FLORIDA CONSTITUTIONS INSOFAR AS SAID STATUTE PROVIDES THAT THE OPENING OF A JOINT ACCOUNT IN THE STATUTORY FORM SHALL BE CONCLUSIVE EVIDENCE OF OWNERSHIP OF THE ACCOUNT IN AN ACTION AGAINST THE SURVIVING ACCOUNT HOLDER?

This appeal is before the Court for review of the decision of the Fifth District Court of Appeal (A-21) entered January 12, 1984, determining Section 655.063(1)(a), Florida Statutes (1981), (previously Section 655.271), as applied by the trial court, to be violative of the equal protection clauses of the United States and Florida Constitutions. The decision arises out of the application of that statute to joint accounts in the Federal and the application of Section 658.56, Florida Statutes (1981), (previously Section 659.291) to joint accounts in the Bank. In the argument that follows, Appellees will endeavor to demonstrate the appropriateness of the Fifth District's action and to exhibit the solid foundation upon which the decision is based.

This action arose out of a dispute between three (3) sisters as to the proper disposition of approximately $100,000.00 in savings accumulated by their father during his lifetime. The funds were held in joint accounts and certificates of deposit established by their father, Holly E. Gainer, in which he and Appellant were listed as account holders. Appellant asserted that she was entitled to the funds as a surviving joint tenant on

the accounts. Appellees, as residuary beneficiaries under their father's Will, contended that the funds were estate assets, based upon the expressed intent of the Decedent in establishing the joint accounts for convenience to enable Appellant to evenly distribute the funds among his daughters.

Through the adversary proceeding in the trial court, it was factually determined:

> . . .by clear and convincing evidence and, in fact, beyond a reasonable doubt, that the decedent considered himself the sole owner of these accounts, that his intent in establishing those accounts was merely to facilitate their division among his children after his death through Carol A. Gainer, his named Personal Representative, and it was not his intent that Carol A. Gainer receive all of these proceeds to the exclusion of his other children. (Order dated January 19, 1983, paragraph 5 (R-171; A-11).)

That finding of fact is not questioned in this appeal. Yet, the trial judge considered himself constrained by the provisions of Section 665.063(1)(a), Florida Statutes (1981), to allow Appellant to keep the funds in the Federal. Under Section 658.56, Florida Statutes (1981), he determined that the Court was authorized to carry out the intent of the Decedent and ordered the return of the Bank funds to the estate.

The basis upon which the trial judge reached his decision with its inapposite results was his interpretation of the cited statutes as they relate to the means afforded by each to overcome what we will refer to as the "presumption of intended survivorship". The effect of both statutes is that upon the

death of a depositing holder in a joint account in which the funds are payable to the surviving account holder, there arises a presumption of fact that the depositor intended for the funds in the account to be the separate property of the survivor.

Each statute provides for certain means of rebutting or overcoming the effect of the presumption of intended survivorship. The savings and loan statute provides that the presumption arises only "in the absence of fraud or undue influence". The provision applicable to banks allows for rebuttal of the presumption by "proof of fraud or undue influence or clear and convincing proof of a contrary intent". (Emphasis supplied.) It is the different statutory methods of avoiding the presumption which caused the trial judge to reach his disparate ruling finding Appellant entitled to the Federal funds but not the Bank accounts.

Following entry of the trial court's decision (R-171; A-11) applying the statutes in a manner which Appellees considered to be violative of their constitutionally guaranteed rights of due process and equal protection of the law, they raised the constitutional grounds by Motion for Rehearing (R-238; A-16). The trial judge rejected those contentions, holding that the statutes did not violate Appellees' rights as estate beneficiaries since ". . . all depositors in a federal savings and loan association are treated equally . . . and, likewise that all depositors in a state bank are treated equally . . .". (R-

249; A-16).

In reversing the trial court's decision on the constitutional question, the Fifth District Court of Appeal, in Doran v. Gainer, 443 So.2d 473 (Fla. 5th D.C.A. 1984), at page 478 (A-26), stated the following:

> It is here, as we see it, that the trial court's analysis is erroneous. The affected classes are not the depositors but, in this case, the testamentary beneficiaries. These beneficiaries receive variable treatment dependent solely upon the location (bank or savings association) of the testator's assets during his life, a fact irrelevant to the issue of the testator's intent and the proper disposition of those funds upon his death.

Appellant insists in her Initial Brief at pages 5 and 6, however, that the classification and differing treatments of estate beneficiaries based upon the depository selected by their Decedent is constitutionally permissable. She contends, in effect, that "a bank is a bank" and "a savings association is a savings association" and that's difference enough to justify the absolutely opposite disposition of funds of the Decedent in each financial institution.

Cited by Appellant as authority for the permissability of the distinction is the fact that savings and loan associations are allowed to charge higher interest rate than banks. Relying upon this Court's decisions in Cesary v. Second National Bank of North Miami, 369 So.2d 917 (Fla. 1979), and Catogas v. Southern Federal Savings and Loan Association, 369 So.2d 922 (Fla. 1979),

Appellant reasons that allowing the legislature to permit financial institutions to charge different interest rates opens the door to the discriminatory classifications and treatments in the case sub judice. Although quoting from Cesary at page 14 of her Brief, Appellant seems to disregard the equal protection standards set forth therein. At 369 So.2d at page 921, this Court stated, in part, as follows:

> "Classification" is the grouping of things because they agree with one another in certain particulars and differ from other things in the same particulars. Anderson v. Board of Public Instruction, 102 Fla. 695, 136 So. 334 (1931) . . . statutory classifications must be reasonable and must be based upon some difference bearing a reasonable and just relationship to the subject matter regulated . . ..

Where "real differences of conditions affecting the subject matter regulated" exist, this Court recognized that distinct classifications by the legislature were permissable. Conversely, where no such real and relevant differences exist, the classifications and disparate treatment cannot be tolerated. As stated in Anderson v. Board of Public Instruction, 102 Fla. 695, 136 So. 334 (1931):

> But when a classification is made, the question always is whether there is any reasonable ground for it, or whether it is only and simply arbitrary based upon no real distinction and entirely unnatural. Classifications must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis. (Citations omitted.)

Appellees are cognizant of their burden of proving an

absence of any reasonable basis for a classification and its arbitrariness. (Anderson, supra.) We meet this burden by suggesting to the Court that the classification here is so unreasonable, baseless and arbitrary that it speaks for itself. On what basis could the legislature classify the disposition of joint savings accounts in savings and loan associations in any diiferent group from that of joint savings accounts in banks? It is true that savings and loans have been, in certain circumstances, allowed to charge higher interest rates on loans and to pay slightly higher interest rates on savings accounts than banks. It was true that savings and loans associations could only make loans secured by real property whereas banks could lend money unsecured or secured by nearly any specie of property. And it is true that deposits in the Federal are insured by the FSLIC rather than the FDIC which insures national banks. But how do these differences relate in particular to the differing manners of rebutting or overcoming the presumption of intended survivorship. We submit that they do not - in any way.

Directing the Court's attention to the area of testamentary disposition, we agree with Appellant that the legislature has authority to regulate that process. However, such regulation is also subject to the constitutional restraints discussed above. Is there any reasonable basis from this standpoint to require more of estate beneficiaries attempting to rebut the presumption of vesting of the account in a survivor in savings and loan

accounts than in banks? Again, there is no reason for the conflicting requirements. No differences between bank regulations and savings and loan regulations appear to exist which would merit the greater burden on the savings and loan association group. Nothing, such as a Statute of Frauds consideration, operation of the Dead Man's Statute or any other practical or real basis for imposing differing burdens to overcome the presumption of intended survivorship, is present. There simply is no reasonable or just reason to classify the estate beneficiaries differently simply because their Decedent chose to deposit his savings in both types of financial institutions.

As argued below and accepted by the Fifth District, the only reasonable (but not justifiable or constitutionally acceptable) explanation for the distinction created by the statutes is legislative oversight. The sections appear in different chapters of Florida Statutes and were intially adopted during separate legislative sessions - 659.291 in 1971 and 665.271 in 1969. Apparently, neither the legislature nor the courts have been called upon to correct this "irrational distinction" prior to this action. Doran v. Gainer, supra at page 5.

Appellant rather summarily rejects Wiggins v. City of Jacksonville, 311 So.2d 406 (Fla. 1st D.C.A. 1975) and Caldwell v. Mann, 157 Fla. 633, 26 So.2d 788 (1946), cited by the lower

appellate court as authority for its decision in the case sub judice. She declares that Appellants had no vested property interest in the accounts established and held by their father, despite their status as testamentary beneficiaries. Yet, in Estate of Zaloudek, 407 So.2d 317 (Fla. 4th D.C.A. 1981), the Fourth District recognized the right of residuary legatees to question in an adversary proceeding the exclusion of assets which they felt were estate assets. Although we are uncertain as to whether Appellant is questioning Appellees' standing to assert this claim, it would seem apparent that the right of an estate beneficiary to what is or may be declared to be estate property is a right which vests in interest upon the death of the Decedent. There is no distinction here between the vested interest of an estate beneficiary (albeit "possession" of that asset may not be vested) and the vested interest or property right of a master plumber to practice his trade or of a fisherman to continue to fish.

Of all the authorities researched and of those cited by Appellant, we believe that the Wiggins and Caldwell decisions are, in fact, the most closely analogous to this case. In Wiggins, the City of Jacksonville adopted an ordinance providing for the licensing of master plumbers, accepting without further qualification those who had a license in the City of Jacksonville Beach who had a similar license. Other communities in the Duval County area were specifically excluded as qualifying for the

grandfathering-in of their master plumbers, even though their licensing requirements were equal to that of Jacksonville Beach.

In finding the ordinance created an "unreasonable, arbitrary and capricious classification", the ordinance was held unenforceable as being unconstitutional. The following excerpts from the Wiggins decision (311 So.2d at page 408) are equally applicable here:

> . . . A classification, to be upheld, must "have some just relation to, or reasonable basis in, essential differences of conditions and circumstances in reference to the subject regulated, and should not be merely arbitrary; and all similarly situated . . . should be included in one class, at least where there are no practical differences that are sufficient to legally warrant a further or special classification in the interest of the general welfare". (Citation.). . . an ordinance, although nondiscriminatory on its face, may nevertheless be declared unconstitutional where its effect is to discriminate between persons in the same class. (Citation.)

Similarly, this Court in Caldwell v. Mann, supra at page 8, sitting en Banc., declared a statute permitting the marketing of mullet only in certain counties while prohibiting it in others as violative of the equal protection clauses of the state and federal Constitutions. The Court found "no conceivably just basis for the classifications or discriminations" and ruled that the statute could not be enforced in certain counties where its effect would be to impose a burden upon one person which would not be imposed "upon others in a like situation".

Appellees acknowledge Appellant's reliance upon this Court's

decision in Estate of Greenberg, 390 So.2d 40 (Fla. 1980). We agree that it cannot be demonstrated by established precedent that the right of estate beneficiaries to share in the distribution of all of their Decedent's estate is a fundamental right or that estate beneficiaries are a "suspect class". (Although we would assert that the right of an estate beneficiary to receive his or her inheritance is a "fundamental right".) Nevertheless, the consequence of such acknowledgment is to merely invoke the "rational basis or minimum scrutiny tests" argued supra.

Greenberg demonstrates a very appropriate classification by the state legislature based upon a reasonable distinction and a rational means of accomplishing the state objective. There, the provisions of Section 733.302 and 733.304, Florida Statutes (1977), restricting non-resident personal representatives only to relatives of the decedent, were found to be reasonably related to the functions and demands of the office of estate personal representatives. It is factually opposite to the case sub judice, however, due to the total absence here of any reasonable basis for imposing differing burdens upon estate beneficiaries based upon the type of account depository selected by their decedent.

Appellees have carefully reviewed the numerous decisions cited by Appellant not specifically addressed herein. It is our position that none of those cases require reversal of the

decision under review. In fact, those cases demonstrate that the constitutionality of statutory regulation by classifications and differing requirements affecting those classifications is resolved on a case by case basis. Where it is demonstrated, as here, that no reasonable relationship exists between the legislative objective and that the classification is discriminatory, arbitrary and opressive, the offensive statute must not be enforced. United Yacht Brokers, Inc. v. Gillespie, 377 So.2d 68 (Fla. 1979).

At pages 17 through 19 of her Initial Brief, Appellant cites a number of decisions from other jurisdictions in which statutes with conclusive presumptions of intended survivorship were enforced. Of note, however, is that none of those decisions involved a constitutional attack on the statute based upon equal protection considerations. Further, none of those decisions reveals a disparity in treatment between two statutes in effect in the same jurisdiction based solely upon the type of financial institution which the Decedent selected as the depository. Appellant's reliance upon those decisions reflects the basic falacy in her argument and in the reasoning of the trial judge. It is not enough under our Constitutions that one or the other of the statutes, standing alone, providing for uniform treatment of the class affected, might be acceptable. Where there are two statutes imposing different burdens and the imposition of those

different burdens cannot in any way be justified or rationalized, the offensive statute must fall.

Appellant further argues that, assuming the subject statutes were constitutionally offensive, the lower court could have as easily found the bank statute unconstitutional and left the savings and loan association in tact. That reasoning also misses the mark. It is the additional burden imposed by the savings and loan statute and its resulting unduly restrictive conclusive presumption which, when applied with the less restrictive bank statute, causes the disparate results. The application of the statute to the Federal accounts was what was under attack below. It is that statute which was properly held to violate Appellees' rights to due process of law.

The Fifth District Court of Appeal determined below that Section 665.063(1)(a) violated Appellees' rights to equal protection of the law "insofar as it purports to provide that the opening of a joint account payable to a survivor or survivors is conclusive evidence in an action wherein a survivor is a party against third-party claimants or other survivors". In doing so, it effectively struck the constitutionally offensive provision of the conclusive presumption of intended survivorship to make it, as between the survivor and other claimants to the fund, possible to introduce evidence of the depositor's intent. The decision of the Fifth District is the minimum intrusion required to alleviate the constitutional infirmity and to restore the basic fairness

and justice which this case required. The decision of the lower appellate court should be affirmed.

CONCLUSION

> . . . in spite of a manifest injustice thereby created, .. . intent is not material to the question of entitlement to the funds in the First Federal accounts.

Those are the words of the trial judge in paragraph 6 of the Order (R-171; A-11) initially entered below in which Appellant was determined to be entitled to retain the funds in the Federal, while being required to turn over to the Decedent's estate the funds deposited by the Decedent in the Bank. They are indicative of the struggle the trial court encountered in dealing with the disposition of the funds in each of the two financial institutions, as affected by the operation of the disparate statutory provisions relating to survivorship rights in joint accounts.

The Fifth District Court of Appeal resolved that disparity and corrected the "manifest injustice" in its decision (A-21). To accept Appellant's position so as to allow her to keep the funds in the Federal due to the aberrant provisions of Section 665.063(1)(a) would completely thwart the clear intent of the Decedent and result in an unjust windfall to the Appellant. The Fifth District's decision should not be disturbed.

Respectfully submitted,

Ronald W. Sikes

Ronald W. Sikes

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the Answer Brief of Appellees and Appendix to Answer Brief of Appellees has been furnished by hand to JOHN M. STARLING, ESQUIRE, CROFTON, HOLLAND, STARLING, HARRISON, SEVERS, P.A., 509 Palm Avenue, Post office Box 669, Titusville, Florida 32780, this 6th day of April, 1984.

RONALD W. SIKES, ESQUIRE
RONALD W. SIKES, P.A.
150 Taylor Street, Suite B
Titusville, Florida 32780
(305) 269-6639
Attorney for Appellees

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