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SUPREME COURT OF FLORIDA

IN RE: ESTATE OF LETTIE V.
COMBEE, deceased.

LINDA RAE FARMER, et al.,

Petitioners,

vs.

IRMA A. WALKER, et al.,

Respondents.

**ANSWER BRIEF
OF RESPONDENTS**

CASE NO. 78,348

**DISTRICT COURT OF APPEAL
SECOND DISTRICT
NO. 90-02971**

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STATEMENT OF THE FACTS

Respondents, Irma A. Walker and Dorothy I. Collins, do not agree with the Statement of Facts submitted by the petitioners, Linda Rae Farmer and Raymond Groover Combee, Jr., and submit the following statement of facts.

Lettie V. Combee was a widow (T 54). Her son died in approximately 1982 (T 9, T 17).

On December 4, 1984, Lettie V. Combee established account number 01054104 (R 76), a joint with right of survivorship money market account, with Jerry Reynolds, her nephew (T 19), and Dollie Smith, her sister (T 33).

Also, on December 4, 1984, Lettie V. Combee changed her checking account number 927-562 to a joint with right of survivorship account with Jerry Reynolds and Dollie Smith (R 80).

Also, on December 4, 1984, Lettie V. Combee changed her savings account at Peoples Bank to a joint with right of survivorship account with Jerry Reynolds and Dollie Smith (T 6).

On December 5, 1984, Lettie V. Combee executed a last will and testament (R 81-87) naming Dollie Smith and Jerry Reynolds as co-personal representatives of her estate and as co-trustees of the testamentary trust thereunder.

On December 13, 1984, Jerry Reynolds and Dollie Smith were deleted from the joint with right of survivorship money market account number 01054104 (R 76), from the joint with right of survivorship checking account number 927-526 (R 79; R 80), and from the joint with right of survivorship savings account (T 6).

On January 20, 1987, Lettie V. Combee changed her checking account number 927-562, authorizing Irma A. Walker and Dorothy I. Collins, her nieces (T 57; T 28), to endorse and withdraw from the account, such authority to cease upon the death of Lettie V. Combee (R 79).

On February 2, 1987, Lettie V. Combee executed a last will and testament (R 3-9) naming Irma A. Walker and Dorothy I. Collins, her nieces (T 57; T 28), as co-personal representatives of her estate and as co-trustees of the testamentary trust thereunder (R 3-9). On February 9, 1987 and on April 11, 1988, Lettie V. Combee executed codicils (R 10-12; R 13-15) making substantial changes to her last will and testament (R 81-87).

On February 9, 1987 (R 77), Lettie V. Combee opened with Peoples Bank of Lakeland a money market account number 01075772 (T 5) with Irma A. Walker and Dorothy I. Collins as a joint account with survivorship (R 77). Also, on February 9, 1987, Lettie V. Combee opened with Peoples Bank of Lakeland a savings account with Irma A. Walker and Dorothy I. Collins as a joint account with right of survivorship (T 6).

The signature cards at Peoples Bank of Lakeland as to money market account number 01075772 (R 77) and the savings account (T 6) each had an "X" inserted in the block on the face thereof as to "joint account - with survivorship" (R 77; T 6). The reverse of the signature card (R 77; T 6) set forth the following provisions:

"AGREEMENT - The following printed terms will govern the operation of this account, unless clearly varied in writing or typing on this form or in a separate written agreement. 'We,' 'our,' or 'us' means the depository institution and 'you' means the account holder(s). ...

WITHDRAWALS - Any one of you who signs on the reverse side may withdraw or transfer all or any part of the account balance at any time on forms approved by us (subject to the limits in the next paragraph). Each of you (until we receive actual notice of your death, incapacity, or notice in writing to change this account) authorizes each other person signing this form to endorse any item payable to you or your order for deposit to this account or any other transaction with us. ...

OWNERSHIP OF ACCOUNT - The following provisions explain the rules applicable to this account depending on the form of ownership specified on the reverse side. Only the portion corresponding to the form of ownership specified will apply. ...

Joint Account - With Survivorship - Such an account is issued in the name of two or more persons. Each of you intend that upon your death the balance in the account (subject to any previous pledge to which we have consented) will belong to the survivor(s). If two or more of you survive, you will own the balance in the account as joint tenants with survivorship. ..."

The signature cards, as to all of the accounts, were signed at the same time (T 66); however, it is not clear whether Lettie V. Combee signed the authorization as to the convenience checking account (R 79) at a different time.

Neither Irma A. Walker (T 67) nor Dorothy I. Collins (T 35) placed any of their own funds in any of the accounts nor were any funds withdrawn for their personal use (T 35).

Lettie V. Combee was described as very willful (T 18), very alert up to her death (T 54), competent (T 68), a strong willed business person (T 101) with a very good mental condition (T 116) who had transacted business for herself with Peoples Bank as well as other banks for years (T 54-55), who knew

what she had and what she was doing with it (T 55), counted every penny (T 55), and knew exactly where every penny was (T 55).

Lettie V. Combee put Irma A. Walker and Dorothy I. Collins on her accounts to pay her bills (T 68), to write checks in case she couldn't (T 34), to take care of her business (T 34), to have her personal needs taken care of (T 37), and to see that she got what she needed in life (T 68), referred to the joint with right of survivorship accounts as "our money" (T 71) and advised Irma A. Walker to pay her bills out of the joint accounts and what is left is yours (T 72).

Prior to May 27, 1988, Irma A. Walker would write out checks for Lettie V. Combee and Lettie V. Combee would sign such checks (T 69).

On May 27, 1988, Lettie V. Combee was diagnosed as having a brain tumor (T 60). After that, Irma A. Walker signed all of the checks (T 69).

The business activities of Lettie V. Combee were centered around approximately 100 acres of land which she owned in Polk County (T 97), a portion of which was leased (T 60), portions were in orange groves (T 60), and portions in rental houses (T 98-99).

On August 21, 1988, Lettie V. Combee died (T 60-61).

At the time of the death of Lettie V. Combee there was about \$42,000 in the joint with right of survivorship money market account (T 72) and about \$3,000 in the joint with right of survivorship savings account (T 77). A portion of the funeral bill for the funeral of Lettie V. Combee was paid out of the money market account (T 75-76).

Letters of administration for the estate of Lettie V. Combee, deceased,

were issued to Irma A. Walker and Dorothy I. Collins as co-personal representatives (R 18).

The funds in the joint with right of survivorship money market account (R 77) and in the joint with right of survivorship savings account (T 6) were not listed as assets of Lettie V. Combee on the inventory of the estate assets (R 98-99) by Irma A. Walker and Dorothy I. Collins as co-personal representatives.

The money market account number 01075772 was closed and the funds put in another account under the social security number of Irma A. Walker (T 77). The savings account certificate was cashed in by Irma A. Walker and Dorothy I. Collins and the funds divided between them (T 77).

SUMMARY OF THE ARGUMENT

The use of the inter vivos gift theory of law utilized by the First District Court of Appeal in determining the ownership of funds in an account in the names of two or more persons upon the death of one of the account holders was rejected by the legislature in the enactment of §658.56, Fla. Stat. The Second District Court of Appeal correctly construed the legislative intent under that statute and correctly applied the law to the evidence in this case.

In Re: Estate of Alma S. Gainer, 579 So.2d 739 (Fla. 1st DCA 1991) should be reversed and *In Re: Estate of Combee*, 583 So.2d 708 (Fla. 2d DCA 1991) should be affirmed.

ARGUMENT

POINT I

THE SECOND DISTRICT COURT OF APPEAL ERRED IN APPLYING A CONTRACT THEORY OF LAW AS OPPOSED TO AN INTER VIVOS GIFT THEORY OF LAW IN DETERMINING WHETHER THE STATUTORY PRESUMPTION OF JOINT ACCOUNTS ESTABLISHED BY DECEDENTS IS REBUTTED BY CLEAR AND CONVINCING EVIDENCE.

This court has exercised its jurisdiction under Art. V, §3(b)(3), Fla. Const. (1980), to review the conflicting decisions *In Re: Estate of Alma S. Gainer*, 579 So.2d 739 (Fla. 1st DCA 1991), and *In Re: Estate of Lettie V. Combee*, 583 So.2d 708 (Fla. 2d DCA 1991).

Each of the cases under review involved the application of §658.56, Fla. Stat., in determining the ownership of funds in accounts in commercial banks held in the name of two or more persons upon the death of one of the account holders.

Section 658.56, Fla. Stat., provides:

"Deposits and accounts in two or more names; presumption as to vesting on death.

(1) Unless otherwise expressly provided in the signature contract card or other similar instrument delivered to and accepted by a bank in connection with the opening or maintenance of an account, including a certificate of deposit, in the names of two or more persons, whether minor or adult, payable to or on the order of one or more of them or the surviving account holder or holders, all such persons and each person depositing funds in any such account shall be presumed to have intended that upon the death of any such person all rights, title, interest, and claim in, to, and in respect of such deposits and account and the additions

thereto, and the obligation of the bank created thereby, less all proper setoffs and charges in favor of the bank, shall vest in the surviving account holder or holders.

(2) The presumption herein created may be overcome only by proof of fraud or undue influence or clear and convincing proof of a contrary intent. In the absence of such proof, all rights, title, interest, and claims in, to, and in respect of such deposits and account and the additions thereto, and the obligation of the bank created thereby, less all proper setoffs and charges in favor of the bank against any one or more of such persons, shall, upon the death of any such person, vest in the surviving account holder or holders, notwithstanding the absence of proof of any donative intent or delivery, possession, dominion, control, or acceptance on the part of any person and notwithstanding that the provisions hereof may constitute or cause a vesting or disposition of property or rights or interests therein, testamentary in nature, which, except for the provisions of this section, would or might otherwise be void or voidable.

(3) Nothing herein contained shall abridge, impair, or affect the validity, effectiveness, or operation of any of the provisions of ss. 658.55 and 674.405 or the rights of banks to make payments as therein provided".

The enactment of the statute by the legislature was part of an incremental reform of this area of the law which was greatly unsettled due to the use of various common law theories, including the inter vivos gift theory and the contract theory. *In Re: Estate of Holly E. Gainer*, 466 So.2d 1055 (Fla. 1985). For a discussion of the events preceding the enactment of the statute, see *King v. Estate of King*, 554 So.2d 600 (Fla. 1st DCA 1989) (*dissent of J. Ervin*), *review denied*, 564 So.2d 487 (Fla. 1990).

By enacting the statute, the legislature rejected the use of the inter vivos gift theory advanced in *Spark v. Canny*, 88 So.2d 307 (Fla. 1956), and which

had been expanded in *Chase Federal Savings & Loan Association v. Sullivan*, 127 So.2d 112 (Fla. 1960).

In *Alma S. Gainer, supra*, the court found from the testimony of a surviving account holder that the surviving account holders had neither deposited nor withdrawn any funds from the accounts, prior to the death of the deceased account holder; that the only monies deposited to the accounts were those of the deceased; that all disbursements had been solely for the benefit of the deceased; and, that the surviving account holders considered the money the funds of the deceased, so long as she was alive. The court applied the inter vivos gift theory, holding that there was no completed inter vivos gift and that there was no acceptance of the inter vivos gifts. In a footnote, the court specifically held that the lack of proof of any of the common law elements of an inter vivos gift are relevant in rebutting the presumption under §658.56, Fla. Stat. This position is in direct conflict with the statute. The statute provides that, in the absence of proof of fraud or undue influence or clear and convincing proof of a contrary intent, ownership will vest in the surviving account holders *"notwithstanding the absence of proof of any donative intent or delivery, possession, dominion, control, or acceptance on the part of any person and notwithstanding that the provisions hereof may constitute or cause a vesting or disposition of property or rights or interest therein, testamentary in nature, which, except for the provisions of this section, would or might or otherwise be void or voidable"* (emphasis supplied). Section 658.56(2), Fla. Stat.

In *Combee, supra*, the court determined the statute, §658.56, Fla. Stat., creates a presumption that the written bank signature card contracts establishing

joint account with right of survivorship expresses the true intent of the co-owners of an account; that the legislature intended that the contract theory be applied as opposed to the gift theory; that parol evidence was allowed by the statute; and, that the statutory presumed intent is the intent to vest ownership of the funds in the surviving account holders at the moment of death, and not a presumed intent to make an inter vivos gift.

As between the two decisions, *Combee, supra*, follows the statutory directive and *Alma Gainer, supra*, does not. *Combee, supra*, should prevail.

POINT II

THE SECOND DISTRICT COURT OF APPEAL ERRED IN REVERSING THE TRIAL COURT'S DETERMINATION THE APPELLANTS HAD OVERCOME THE REBUTTABLE PRESUMPTION BY SUFFICIENT CLEAR AND CONVINCING EVIDENCE THAT THE TWO JOINT ACCOUNTS WERE THE PROPERTY OF THE APPELLEES UNDER §658.56(1), FLA. STAT. (1987).

It is respectfully submitted that it was unnecessary to invoke and rely upon the statutory presumption under §658.56(1), Fla. Stat., there being valid uncontroverted, unambiguous written bank signature card contracts signed by the account holders which expressly set forth the intent of the holders of the account. In this case, the bank signature card contracts (R 77-78; T 6; A 2) signed by Lettie V. Combee, Irma A. Walker, and Dorothy I. Collins, expressly set forth an agreement among them that "each of you intend that upon your death the balance in the account ... will belong to the survivor(s)." (R 77-78; T 6; A 2.

Under the parol evidence rule, extrinsic or parol evidence is inadmissible to contradict, subtract from, add to or vary a valid written instrument. *Knabb v. Reconstruction Finance Corp.*, 197 So. 707 (Fla. 1940). Parol evidence, elicited at trial, was inadmissible to contradict the uncontroverted, unambiguous provisions of the bank signature card contracts. *King v. Estate of King, supra*, (dissent of J. Ervin).

Even if the parol evidence introduced at trial was admissible, the evidence taken in its entirety fails to show any intent of Lettie V. Combee which could be considered contrary to the express intent set forth in the bank signature card

contracts that she intended, upon her death, that the balance in the accounts would belong to the survivors, or contrary to the presumptive intent of the statute that, upon her death, all rights to the funds in the accounts would vest in the surviving account holders, Irma A. Walker and Dorothy I. Collins. In reviewing the evidence, it is significant that on January 20, 1987, contemporaneously with the establishment of the joint with right of survivorship money market account and the joint with right of survivorship savings account with Irma A. Walker and Dorothy I. Collins, Lettie V. Combee changed her checking account from an individual personal account to a convenience account, pursuant to §658.57, Fla. Stat., (T 28; T 57; R 79; A 3). The convenience account only authorized Irma A. Walker and Dorothy I. Collins to endorse any paper payable to Lettie V. Combee for payment into the account and to make withdrawals from the account, such authorization to terminate upon the death of Lettie V. Combee (R 79; A 3). It is certainly not unreasonable to assume that Lettie V. Combee knew the difference between the convenience account and a joint account with right of survivorship. She put her knowledge and intent into practice by establishing the accounts which she established.

Petitioners, Linda Rae Farmer and Raymond Groover Combee, Jr., strongly contend in their statement of the facts and in argument that Jerry Reynolds and Dollie Smith were not deleted from the accounts of Lettie V. Combee (R 76; R 79; R 80; A 1; A 3; A 4) on December 13, 1984, but remained on such accounts until late January or early February, 1987. The applicable bank account signature cards (R 76; R 79; R 80; A 1; A 3; A 4) each have notations on the face thereof setting forth the date that Jerry Reynolds

and Dollie Smith were deleted from such account. Such notations have been highlighted on the copies of the signature cards contained in the appendix (A 1; A 3; A 4) to emphasize such notations.

There is no better evidence of the intent of Lettie V. Combee than the written bank signature card contracts signed by her during her lifetime which are unambiguous, unassailed, and which expressly set forth her intent. As found by the court, there is no clear and convincing evidence that Lettie V. Combee had any intent contrary to the intent expressly set forth in the bank signature card contracts, or contrary to the presumed intent under the statute that Lettie V. Combee intended that the ownership of the accounts would belong to or vest in Irma A. Walker and Dorothy I. Collins, upon the death of Lettie V. Combee.

CONCLUSION

The decision of the First District Court of Appeal, *In Re: Alma S. Gainer, supra*, should be reversed and the decision of the Second District Court of Appeal, *In Re: Estate of Combee, supra*, should be affirmed.


Respectfully submitted,
DeVANE, MUNSON, ALLEN & YANCEY

BY: 
JERRY A. DeVANE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to Susan E. Dean, 230 N.E. 25th Avenue, Ocala, Florida 32670, Attorney for Petitioners, by U.S. Mail, this 24th day of December, 1991.

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