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FILED

SID J. WHITE

AUG 12 1991

CLERK SUPREME COURT
By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

IN RE: Estate of
LETTIE V. COMBEE,
Deceased.

LINDA RAE FARMER and
RAYMOND GROOVER COMBEE, JR.,
a minor, by and through his
mother and next friend,
LINDA COMBEE MIRANDA,

CASE NO. 78-348
~~78-357~~

Petitioners,

vs.

IRMA A. WALKER and
DOROTHY I. COLLINS,

Respondents.

RESPONDENTS' JURISDICTIONAL BRIEF

ON REVIEW FROM THE DISTRICT COURT
OF APPEAL, SECOND DISTRICT
STATE OF FLORIDA

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STATEMENT OF THE CASE AND FACTS

Lettie V. Combee and the Respondents were signatories on two bank accounts established and maintained as joint accounts with right of survivorship. Upon the death of Mrs. Combee on August 21, 1988, the funds in the accounts became the property of the Respondents by the express contract set forth on the bank signature cards as to each account. The will of Mrs. Combee named the Respondents, her adult nieces, as co-personal representatives of her estate and co-trustees of a testamentary trust established under her will. The Petitioners are the sole beneficiaries of the testamentary trust.

Petitioners filed a petition in the probate proceedings to determine estate assets as to the two joint accounts with right of survivorship. A nonjury trial was held. The trial court determined that §658.56, Fla. Stat. (1987), was applicable, found that there was clear and convincing proof of a contrary intent to establish joint accounts with right of survivorship, and ruled that the two bank accounts were assets of the estate.

The Respondents filed an appeal to the Second District Court of Appeal for review of the order of the trial court. The Second District Court of Appeal reversed the order of the trial court. The Second District Court of Appeal held that the presumptive intent under §658.56(1), Fla. Stat. (1987), was to vest all rights in the surviving account holders at the moment of death. It further held that there was no evidence to establish a contrary intent to rebut the statutory presumption.

Petitioners' notice to invoke the discretionary jurisdiction of this court was timely filed.

SUMMARY OF THE ARGUMENT

The two District Courts of Appeal viewed the statutory presumption of intent under §658.56, Fla. Stat. (1987), and the proof sufficient to rebut that presumption from different perspectives and applied separate theories of law. Although the decisions may not be in harmony, the discord does not warrant discretionary review.

JURISDICTIONAL STATEMENT

The Florida Supreme Court may review any decision of a District Court of Appeal that expressly and directly conflicts with a decision of another District Court of Appeal or of the Supreme Court on the same question of law. Art. V §3(b)(3), Fla. Const. (1980).

ARGUMENT

THE DECISION OF THE SECOND DISTRICT COURT OF APPEAL IN THIS CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL IN *IN RE: ESTATE OF ALMA S. GAINER*, 16 F.L.W. D838 (FLA. 1ST DCA MAR. 29, 1991).

The Second District Court of Appeal determined that the legislative intent in the enactment of §658.56, Fla. Stat. (1987), was to establish a presumption of intent to vest ownership of a bank account in the surviving account holder at the moment of death and that to rebut the presumption required proof by clear and convincing evidence that the depositor did not intend for the bank accounts to vest in the surviving account holders at the moment of death.

The First District Court of Appeal in *In Re: Estate of Alma S. Gainer*, 16 F.L.W. D838 (Fla. 1st DCA Mar. 29, 1991), held that the lack of any of the elements requisite for a common law inter vivos gift were relevant in rebutting the statutory presumption and a finding that survivorship accounts were not created.

The Second District Court of Appeal disagreed and suggested that the decision in this case may be in conflict with *In Re: Estate of Alma S. Gainer, id.*

These two decisions approach the statutory presumption from different perspectives and, consequently, apply different legal theories. The First District Court of Appeal approaches the presumption from the standpoint of the intent of the depositor at the time that the account is created and applies the gift theory, whereas, the Second District Court of Appeal approaches the problem

from the presumptive intent of the depositor at the time of death of the depositor and applies the contract theory.

This court has previously noted that the courts of this state have utilized both of these theories together with the tenancy theory in addressing the question of entitlement to assets in joint accounts with right of survivorship. *In Re: Estate of Holly Gainer*, 466 So.2d 1055 (Fla. 1985).

Even if it is determined that there is a decisional conflict sufficient to invoke the discretionary jurisdiction of this court, review should be withheld unless this court determines that the conflict is of such magnitude and that the question of law involved is of such importance that clarification by this court is necessary.

It is the contention of the Respondents that review should not be granted.

CONCLUSION

Even if this court has discretionary jurisdiction to review the decision of the court below, such jurisdiction should not be exercised.

Respectfully submitted,

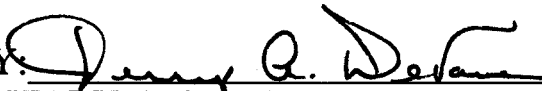
DeVANE, MUNSON, ALLEN & YANCEY

BY: 
JERRY A. DeVANE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to Angela T. Miller, 230 N.E. 25th Avenue, Ocala, Florida 32670, Attorney for Petitioners, by U.S. Mail, this 31st day of July, 1991.

DeVANE, MUNSON, ALLEN & YANCEY

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