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IN THE SUPREME COURT FOR THE STATE OF FLORIDA

Case No. SC2024-1256

LINDA LOUMPOS,

Appellant,

v.

BANK ONE; NCO FINANCIAL SYSTEMS INC.;
RAYMOND JAMES & ASSOCIATES,

Appellees.

ON APPEAL FROM THE SECOND
DISTRICT COURT OF APPEALS
CASE NO.: 2D22-3908

APPELLANT'S INITIAL BRIEF

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STATEMENT OF THE CASE AND FACTS

The underlying lawsuit was a small claims case initiated in County Court in Pinellas County, Florida on March 24, 2003 by NCO Financial as an assignee of Bank One (NCO or Plaintiff) against Linda Loumpos, who subsequently married and is now known as Linda Maragoudakis (Ms. Maragoudakis or Defendant) (R. 4-5, R. 128)[1]. Defendant did not respond to the Complaint, a clerk's default was entered, and on October 20, 2003 a default judgment was entered in favor of NCO and against Defendant in the principal amount of $1,419.10, court costs of $121.50, interest of $1,687.99, and $500 in attorney's fees, for a total amount of $3,728.59 (R. 11). In 2017 the judgment was assigned to Dove Investment Corp. (Dove) (R. 1-15).

Peter E. Maragoudakis (Mr. Maragoudakis) opened an account at Raymond James Financial called a "Freedom Account" in February 2017 (R. 101, R. 128). In October 2017 new signature cards were signed by Peter Maragoudakis and his wife, garnishee Linda Maragoudakis, formerly known as Linda Loumpos (R. 106, R. 128). The account was titled "Peter Maragoudakis & Linda Maragoudakis,

[1] Citations to the record on appeal are "R" followed by the page number in the Record on Appeal prepared by the Pinellas Clerk of Court.

Ten by Enty"; they also checked the box on the signature card under "Registration" stating "Joint Tenants by Entirety" (R. 106, R. 128). Every account statement issued by Raymond James after this change to the Freedom Account was sent to "PETER E MARAGOUDAKIS & LINDA L MARAGOUDAKIS TEN/BY/ENT" (see e.g., R. 132, R. 140, R. 158, R. 168, R. 178, R. 190, R. 200, R. 208, R. 220, R. 230, R. 240, R. 254). All the deposits to the Freedom Account were the wages of Mr. Maragoudakis (R. 128). There were no deposits to the account (wages or otherwise) in the twelve (12) months prior to the writ of garnishment (R. 128).

On November 5, 2021, at the request of Plaintiff, a writ of garnishment was issued in this case in an attempt to collect the judgment directed toward garnishee, Raymond James & Associates, Inc. (Raymond James) (R. 79-80). The requested amount of the writ of garnishment, which included post-judgment interest, was $7,766.49. Raymond James responded to the writ of garnishment identifying two accounts which contained the name of Ms. Maragoudakis (R. 87-88). One account was an annuity account, and the other account was the Freedom Account (R. 128).

Non-party Mr. Maragoudakis and Defendant Ms. Maragoudakis filed a claim of exemption as to both accounts (R. 89-91). The annuity account consisted of an annuity in the name of Ms. Maragoudakis and protected from creditors pursuant to Fla. Stat. §222.13. For the Freedom Account two claims of exemption were asserted. First, the Freedom Account was protected from creditors because it is held joint tenancy by entirety because the account is titled ""Peter Maragoudakis & Linda Maragoudakis, Ten by Enty" and the box is checked on the signature card under "Registration" stating "Joint Tenants by Entirety" (R. 106, R. 128). Second, the account was claimed as exempt because 100% of all the money deposited into the account are wages of non-party Mr. Maragoudakis (R. 128).

Plaintiff objected to the claims of exemption (R. 96-97) and the County Court held an evidentiary hearing on February 4, 2022 (R. 111) and a non-evidentiary hearing on February 16, 2022 (R. 127). On March 7, 2022, the Court entered an order (the Order) on the claim of exemption with the following rulings:

1. Granting the claim of exemption as to the annuity account, pursuant to Fla. Stat. §222.13.

2. Denying the claim of exemption for the "Freedom Account" based on the following factual finding and legal conclusions:

   (a) "The Freedom Account was opened in February 2017 in the name of Peter Maragoudakis only.

   (b) "In October 2017 new signature cards were signed by Peter Maragoudakis and his wife, garnishee Linda Maragoudakis, formerly known as Linda Loumpos. The account was titled "Peter Maragoudakis & Linda Maragoudakis, Ten by Enty"; they also checked the box on the signature card under "Registration" stating "Joint Tenants by Entirety."

   (c) "Since Peter Maragoudakis and Linda Maragoudakis were not both on the Freedom Account when it was opened in February 2017 the account does not possess the unity time or

unity of title and therefore is not a tenancy by entirety account.

(d) "The testimony and evidence establish there weren't any deposits of wages within twelve months preceding the instant garnishment action. The evidence established that all of the deposits to the account were the wages of Peter Maragoudakis."

(R. 127-128).

Plaintiff filed a motion for reconsideration of the Order on March 21, 2022, objecting to the Court's finding that all deposits to the account were wages of Peter Maragoudakis (R. 129-131). On November 2, 2022, Plaintiff filed a Motion for Final Judgment of Garnishment (R. 316-17). On November 14, 2022, the County Court entered a Final Judgment in Garnishment (Final Judgment) directing Raymond James to pay out of the Freedom Account the amount of $9,217.63 (R. 318-19). On November 30, 2022, Defendant timely filed a Notice of Appeal of the Order and the Final Judgment (R. 320-21) to the Florida Second District Court of Appeals.

On August 2, 2024, the Second District entered an opinion affirming the County Court's final judgment and decision that the Freedom Account is not a tenancy by entireties account. *Loumpos v. Bank One; NCO Fin. Sys.*, 392 So.3d 841 (Fla. 2nd DCA 2024), certifying a conflict with the Fourth District's opinion in *Versace v. Uruven, LLC*, 348 So.3d 610 (Fla. 4th DCA 2022). Defendant timely sought review of the Second District's opinion in this Court and on December 3, 2024 this Court entered an order accepting jurisdiction and setting a briefing schedule.

SUMMARY OF ARGUMENT

The Second District erred in finding that the Freedom Account is not a tenancy by entirety account. The basis of the Second District's opinion is that the account does not possess the unity of time and unity of title and therefore cannot constitute a tenancy by entirety account. Section 655.79(1), Florida Statutes, is clear and unambiguous, providing in relevant part: "Any deposit or account made in the name of two persons who are husband and wife shall be considered a tenancy by the entirety unless otherwise specified in writing." Regarding deposits or accounts, section 655.79(1) abolished the

common law requirements that to have a tenancy by entirety account there must be unity of time and unity of title.

The Fourth District in *Beal Bank, SSB v. Almand and Associates*, 780 So.2d 45 (Fla. 2001) (decided before the change in section 655.79(1), Florida Statutes) and *Versace v. Uruven, LLC*, 348 So.3d 610 (Fla. 4th DCA 2022) (decided after the change in section 655.79(1), Florida Statutes) both held that an express designation of "tenancy by entirety" on an account "ends the inquiry" and the account is held tenancy by entirety, not subject to further challenge. Since the Freedom Account has an express designation of tenancy by entirety in two places on the account, the account is held tenancy by entirety and is not subject to garnishment. Further, the *Versace* court correctly points out, after the amendment of section 655.79(1), Florida Statues, "unless otherwise specified in writing" an account made in the name of a husband and wife is a tenancy by entirety account. For these reasons, the Second District erred in finding the Freedom Account was not a tenancy by entirety account because it lacks unity of time and unity of title.

ARGUMENT

I. Standard of Review

The issue of whether an account designated on the signature card as "tenancy by entirety" is a tenancy by entirety account is a question of law and the review on appeal is de novo. *Versace v. Uruven*, 348 So.3d at 612; *see Kane v. Stewart Tilghman Fox & Bianchi, P.A.*, 197 So.3d 137, 141 (Fla. 4th DCA 2016) ("The classification of monies sought in a garnishment proceeding is a question of statutory interpretation that is reviewed de novo." (citation and internal quotation marks omitted)); *Arnold, Matheny & Eagan, P.A. v. First Am. Holdings, Inc.*, 982 So.2d 628, 632 (Fla. 2008) (applying de novo standard of review where the issue on appeal required interpretation of statutory provisions of Florida garnishment law).

II. The Lack of a Transcript Does Not Prevent Appellate Review

There was no court reporter at the evidentiary hearing on February 4, 2022 and therefore there is no transcript of that hearing. The absence of a transcript does not, however, prevent review, when a legal error plainly appears on the face of the record. See *Ferry v. E-Z Cashing*, LLC, No. 2D22-1201, p. 4 (Fla. 2d DCA April 5, 2023); *Reyes v. Home Loans Servicing L.P.*, 226 So.3d 354, 356 (Fla. 2d DCA

2017) ("Although BAC urges this court to affirm in light of the lack of a transcript, we are not constrained to do so if there is error apparent on the face of the record."); *MTGLQ Invs., L.P. v. Merrill*, 312 So.3d 986, 993 (Fla. 1st DCA 2021). In this case, as set forth below, there is legal error on the face of the record because the trial court found that the account is designated in two places on the signature card as a tenancy by entirety account and, contrary to the explicit language of Florida Statute section 655.79(1), ruled the account is not a tenancy by entirety account.

III. Property Held Tenancy by Entirety Cannot be Garnished by a Creditor of Only One Spouse

Property held "tenancy by the entirety" belongs to neither party, rather "each spouse is seized of the whole" and cannot be garnished by a creditor of only one spouse. *Beal Bank, SSB v. Almand and Associates*, 780 So.2d at 53. As such, because the Freedom Account is held tenancy by entirety it is not subject to garnishment by Plaintiff, who only has a judgment against Ms. Maragoudakis.

IV. When a Signature Card Expressly Designates an Account as Tenancy by Entirety the Account is held Tenancy by Entirety and Cannot be Further Challenged

Fla. Stat. §655.79(1) provides, in relevant part:

> Any deposit or account made in the name of two persons **who are husband and wife shall** be considered a tenancy by the entirety unless otherwise specified in writing.

(Emphasis added).

The "plain meaning" of §655.79(1) is that when the account is in the name of a husband and wife it is a tenancy by entireties account, "unless otherwise specified in writing". In the instant case, Mr. and Mrs. Maragoudakis are husband and wife. Further, not only do the account documents not state otherwise, the account documents specifically state in two places that the account is a tenancy by entireties account.

Appellee argues, and the Second District reasoned, that the Florida Legislature meant to include the six unities required by common law because it did not expressly abolish them in the statute. *Loumpos v. Bank One,* 392 So.3d at 846. However, even when the court is convinced the Legislature meant and intended something not expressed in the statute, this Court has declared "it will not deem itself authorized to depart from the plain meaning of the [statutory] language which is free from ambiguity." *State v. Ruiz*, 863 So.2d 1205, 1209 (Fla. 2003).

As is the case here, where the language is unambiguous, this Court prohibits resort to canons of statutory construction, *Knowles v. Beverly Enterprises-Florida,* 898 So.2d 1 (Fla. 2004) ("When the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning."); *Maddox v. State*, 923 So.2d 442, 445-46 (Fla. 2006) (quoting *Forsythe v. Longboat Key Beach Erosion Control Dist.*, 604 So.2d 452, 454 (Fla. 1992)).

Likewise, legislative history cannot be considered. *Knowles*, 898 So.2d at 10. "This is so because the Legislature is assumed to know the meaning of the words used in the statute and to have expressed its intent through the use of the words." *Wyche v. State*, 232 So.3d 1117, 1120 (Fla. 1st DCA 2017) (citing *Dadeland Depot, Inc. v. St. Paul Fire & Marine Ins. Co.*, 945 So.2d 1216, 1225 (Fla. 2006)).

The Second District opinion below quotes this Court's decision in *Peoples Gas Sys. v. Posen Constr., Inc.,* 322 So.3d 604, 611 (Fla. 2021) for the proposition that "[a] basic rule of textual interpretation is that 'statutes will not be interpreted as changing the common law unless they effect the change with clarity.'" *Loumpos v. Bank One*,

392 So.3d at 847. Yet, the plain language of §655.79(1), Fla. Stat., does clearly and unambiguously change the common law by providing that an account or a deposit "in the name of two persons who are husband and wife shall be considered a tenancy by the entirety unless otherwise specified in writing." By only requiring the unity of marriage in §655.79(1) to create a tenancy by entirety account, the Florida Legislature clearly and unequivocally removed the other common law "unities" for a tenancy by entirety account.

In this case, the trial court found that Mr. and Mrs. Maragoudakis' bank account was titled in the name of "Peter Maragoudakis & Linda Maragoudakis, Ten by Enty" and they also checked the box on the signature card under "Registration" stating "Joint Tenants by Entirety" (R. 106, R. 128). As such, not only was it not "otherwise specified in writing", but there are also two places where it is specified in writing as tenancy by entirety. Based on the plain language of §655.79(1), the Second District erred in finding that the account was not a tenancy by entirety account.

The Fourth District in *Versace*, in construing section 655.79(1), held that *"*an express designation of an account as a tenancy by the entireties would create a tenancy by the entireties as a matter of

statutory law, regardless of the presence or absence of the common law requirements of unities." *Versace*, 348 So.3d at 613. *Versace* is directly on point where, as in this case, a non-debtor spouse opened an account in his name only and later added his wife to the account and expressly designated the account as tenancy by entirety. The Fourth District held that based on the express language of section 655.79(1), as well as this Court's ruling in *Beal Bank, SSB v. Almand and Associates*, 780 So.2d 45 (Fla. 2001), the account is a tenacy by entirety account.

Although *Beal Bank* was decided by this Court prior to the amendment of section 655.79(1), the Court still held that where a bank signature card expressly designates the account as held tenants by the entireties between husband and wife, this "ends the inquiry as to the form of ownership." 780 So.2d at 60; *see Versace v. Uruven*, 348 So.3d at 614 ("The express designation of a tenancy by the entireties on a signature card of a bank account establishes the account as such, and no further inquiry should be made."). Specifically, in *Beal Bank* the Court stated:

> Although we recede from *Hector Supply Co.*, we agree with the statement in *Hector Supply Co.* that **an express designation on the signature card that the account is held as a tenancy by the entireties ends the inquiry as**

> **to the form of ownership.** *Hector Supply Co.*, 254 So.2d at 781. Following *Hector Supply Co.*, other courts have excluded extrinsic evidence where the account documents clearly indicated the legal form of ownership. *See Morse v. Kohl, Metzger, Spotts, P.A.*, 725 So.2d 436, 437 (Fla. 4th DCA 1999) (holding that **extrinsic evidence is inappropriate when both husband and wife signed the signature card, which specifically and clearly designated the account as one held as tenants by the entireties**); *Sheeler v. United States Bank of Seminole*, 283 So.2d 566, 566 (Fla. 4th DCA 1973) (holding no further inquiry necessary where clear from the terms of the bank signature card that an estate by the entireties was expressly created).

Beal Bank, 780 So.2d at 60 (emphasis supplied).

The reason for the bright line rule in *Beal Bank* that an account designated as "tenancy by entirety" is a tenancy by entirety account and cannot be further challenged is "to bring greater predictability and uniformity to the common law governing accounts held at financial institutions and to eliminate the confusion that has arisen from our prior decisions in this area[.]" *Id.* at 62.

It was after this Court in *Beal Bank* suggested the Florida Legislature clarify tenancy by entirety in accounts held in the name of two spouses, 780 So.2d at 62 n.24, that the Legislature amended section 655.79(1), Florida Statute to add this language: "Any deposit or account made in the name of two persons who are husband and

wife shall be considered a tenancy by the entirety unless otherwise specified in writing."

The Fourth District in *Versace* stated that as a result of Fla. Stat. §655.79(1) "consistent with *Beal Bank*, an express designation of an account as a tenancy by the entireties would create a tenancy by the entireties as a matter of statutory law, regardless of the presence or absence of the common law requirements of unities." *Versace v. Uruven*, 348 So.3d at 613; see *Storey Mountain, LLC v. George,* 357 So.3d 709, 713 (Fla. 4th DCA 2023); *See also*, Anne Buzby-Walt, *Are Florida Laws on Tenancy by the Entireties in Personalty as Clear as We Think?,* 85 Fla. Bar J. 52 (Sept./Oct. 2011) 15 ("Presumably [according to Section 655.79(1] there is no longer a requirement to establish the unities in the case of bank accounts."). As a result, the Second District erred in finding the Freedom Account is not a tenancy by entirety account.

V. The Freedom Account is Designated on the Signature Card as Tenancy by Entirety and Therefore is a Tenancy by Entirety Account

Defendant, Ms. Maragoudakis and her husband, non-party Mr. Maragoudakis' Freedom Account is titled "Peter Maragoudakis & Linda Maragoudakis, Ten by Enty"; they also checked the box on the

signature card under “Registration” stating “Joint Tenants by Entirety” (R. 106, R. 128). Since the Freedom Account is expressly designated as “Joint Tenants by Entirety” that designation “ends the inquiry as to the form of ownership” and the account is not subject to garnishment, even though Ms. Maragoudakis was added to the account seven months after the account was first created. *Beal Bank*, 780 So.2d at 60. *Versace v. Uruven*, 348 So.3d at 613-14. Since the trial court found that the signature card expressly states that it is a tenancy by entirety account, the trial court erred in finding the account is not a tenancy by entirety account and denying the claim of exemption on the grounds that the account failed to possess the unity of time and unity of title.

As the *Versace* court stated “an express designation of an account as a tenancy by the entireties would create a tenancy by the entireties as a matter of statutory law, regardless of the presence or absence of the common law requirements of unities.” *Versace v. Uruven*, 348 So.3d at 613. The Second District erred in affirming the denial of Ms. Maragoudakis’ claim of exemption for the Freedom Account by finding that the account could only be a tenancy by entirety account if there is unity of time and unity of title.

VI. Even if it is Appropriate to Consider Rules of Statutory Construction and Legislative History, all such Rules Favor a Finding of Tenancy by Entireties

Even if it is appropriate to consider rules of statutory construction, all such rules favor a finding that the Freedom Account is a tenancy by entirety account. The Second District ignored one of the principal rules of statutory construction in its opinion below by not considering the language contained in the same statutory subsection. Fla. Stat. §655.79(1) reads in full:

> Unless otherwise expressly provided in a contract, agreement, or signature card executed in connection with the opening or maintenance of an account, including a certificate of deposit, a deposit account in the names of two or more persons shall be presumed to have been intended by such persons to provide that, upon the death of any one of them, all rights, title, interest, and claim in, to, and in respect of such deposit account, less all proper setoffs and charges in favor of the institution, vest in the surviving person or persons. Any deposit or account made in the name of two persons who are husband and wife shall be considered a tenancy by the entirety unless otherwise specified in writing.

The first sentence uses the phrase "in connection with the opening and maintenance of an account" in providing for rights of survivorship for account holders, showing that the legislature knows how to use the word "opening" of an account. In contrast, the last sentence regarding tenancy by entirety accounts uses the phrase any

"deposit or account made in the name of two persons who are husband and wife". If the Florida Legislature wanted to limit tenancy by entirety accounts to only the status of the account when it was opened it could have said "in connection with the opening of an account". Further, the statute reads any "deposit or account made in the name of two persons . . . ". A "deposit" is not only made when an account is opened but is made throughout the history of the account. If the legislature intended to limit tenancy by entirety accounts to the status of the account when it was first opened, it would not have also used the word "deposit".

Likewise, legislative history does not support the Second District's construction of §655.79(1). First, there is no meaningful legislative history for the 2008 amendments to §655.79(1). *See e.g.*, www.flsenate.gov/Session/Bill/2008/343/Analyses/20080343HFI_h0343a.FI.pdf ("Amends s. 655.79, F.S., in conformance to the Florida Supreme Court's recommendation that the section be clarified.").

In its' Second District briefing the Appellee points to a 2019 legislative bill, which did not become law, and the related staff analysis, in an attempt to support its' argument that the last sentence of §655.79(1), which became law in 2008, does not mean what the statute clearly states. The 2019 bill, however, applied to all "personal

property", not only bank accounts. In other words, the proposed bill attempted to apply the rule in §655.79(1) that deposits and accounts in the name of a husband and wife are held tenancy by entireties unless stated otherwise in writing, to all personal property. Specifically, the staff analysis for the proposed 2019 law provides:

> The holding of the 2001 Supreme Court case regarding bank accounts [referring to *Beal* Bank] was codified in s. 655.79(1), F.S., which provides that "any deposit or account made in the name of two persons who are husband and wife shall be considered a tenancy by the entirety unless otherwise specified in writing."
>
> www.flsenate.gov/Session/Bill/2019/1154/Analyses/2019s01154.pre.ju.PDF, p. 4.

As such, the staff analysis for the proposed 2019 law supports Appellant's position. Specifically, the staff analysis shows that the purpose of the proposed 2019 law was to apply the bank account standard for tenancy by entireties in §655.79(1) (i.e., that property in the name of a husband and wife is tenancy by entirety property unless stated otherwise) to all personal property. The staff analysis for the proposed 2019 law cited by Appellee applied to other personal property, not the bank accounts involved in this case, and sought to apply §655.79(1) abolishing the requirement of unities (other than

marriage) in bank accounts to all personal property. *See* Fla. S. Comm. on Jud., SB 1154 (2019) Staff Analysis (A-2, at p. 3).

In summary, even if statutory construction or the staff analysis of a proposed law considered by the legislature eleven years after §655.79(1) was enacted is considered, both statutory construction and the staff analysis support the finding that the six common law unities, other than marriage, are no longer required to create a tenancy by entirety account.

VII. The Second District's Decision Leads to Impractical and Unfair Results to Both Banks and Customers

The Second District's opinion leads to impractical and unfair results to both banks and customers. Specifically, based on the Second District's opinion, if an individual desires to put his or her spouse on an existing bank account and to create a tenancy by entirety account, the account holder is required to close the account and open a new account, likely at a different financial institution so the new account would not be considered a mere continuation of the original account. The purpose of adding the last sentence of Section 655.79(1) in 2008, which was passed at the behest of this Court to clarify and simplify tenancy by entirety law, was intended to abolish this formality. See Beal Bank, 780 So.2d at 62 n.24 (pointing to the need for a bright

line rule “to bring greater predictability and uniformity to the common law governing accounts held at financial institutions and to eliminate the confusion that has arisen from our prior decisions in this area[.]”).

The requirement to close an existing account and open a new account to create a tenancy by entirety account is precisely the type of form over substance the Florida Legislature intended to abolish by adding the last sentence to §655.79(1). The Second District’s decision should be reversed.

CONCLUSION

There is legal error on the face of the record. Specifically, the trial court found that the Freedom Account is designated in two places on the signature card as a tenancy by entirety account and contrary to Fla. Stat. §655.79(1), Beal Bank, *Verace*, and *Storey Mountain*. ruled the account is not a tenancy by entirety account. This Court should reverse the Second District affirmance of the Order and Final Judgment and remand the case to enter an order finding that the Freedom Account is a tenancy by entirety account, exempt from Plaintiff's writ of garnishment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **Appellant's Initial Brief** was electronically filed on January 7, 2025 with the Clerk of Court by using the Florida Courts E-filing Portal System, which will send a notice of electronic filing and copy to the parties and counsel of record. I also certify that the foregoing document was served this day via email on: Hugh B. Shafritz, Esq. pleadings@collectionslawfirm.com, Shafritz & Associates, P.A., 601 N. Congress Ave., Suite 424, Delray Beach, FL 33445; India B. Ingram, Esq., india.ingram@raymondjames.com, Raymond James & Associates Inc., 880 Carillon Pkwy., St. Petersburg, FL 33716; and Bruce W. Barnes, Esq., bwbarnes@tampabay.rr.com, Bruce W. Barnes, P.A., 100 Main Street, Suite 204, Safety Harbor, FL 34695.

s/ John D. Goldsmith
Attorney

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Brief was prepared using Arial 14-point font and contains 4,321 words, which is in compliance with the word count requirements of Florida Rule of Appellate Procedure 9.210.

s/ John D. Goldsmith
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