Buffalo Law Review

Volume 6 | Number 2 Article 38

1-1-1957

Decedent's Estate—Joint Savings Accounts

Richard G. Birmingham

these services were received by decedent; as to that item completed after his death, the Court found a valid basis in the fact context for an implied contract between appellant and the benefited representatives of the decedent.

Each case of this nature must be decided on its own merits and no single factor is necessarily determinative. Rather, the entire pattern must be evaluated to discover whether the weight of the evidence justifies a finding that the relationship of attorney-client existed.

Joint Savings Accounts

When a deposit in the specified form is made in a joint savings bank account, a conclusive presumption arises upon the decease of one of the parties thereto that the intention was to vest title in the survivor, absent a showing of fraud or undue influence.[25] As a matter of substantive law, mere compliance with the statutory requirements makes the evidence of intent irrefutable[26] and no burden of proof falls upon the survivor to substantiate it,[27] nor is any proof of actual intent material.[28] Despite this clear language, there remains an issue as to the actual volition of the person in signing the joint deposit form—*i.e.*, when the act of making the deposit itself was voluntary, there is a conclusive presumption of intent to vest the monies in the survivor but where the act of depositing originally was not knowingly, consciously and freely made, the entire transaction may be seen as a nullity and no presumption may follow. The effect of involuntary transfers therefore may be distinguished from the results which flow from a voluntary establishment of a joint account.[29]

This critical distinction formed the basis for the majority opinion in *In re Creekmore's Estate.*[30] The decedent while in her final illness had expressed a desire to execute powers-of-attorney to her daughter to enable the daughter to utilize four bank accounts for the payment of bills. This desire was communicated to her attorney who contacted the banks. One of the banks was willing to accept a power-of-attorney but two others recommended the creation of joint accounts. The attorney took the proferred forms to the decedent and, after a ten-minute private conference, the decedent executed all the forms. The daughter claimed the proceeds of the latter two accounts which represented three-fifths of the decedent's assets. A beneficiary of these accounts under decedent's will contested.

25. N. Y. BANKING LAW §239-3.
26. *In re Porianda's Estate,* 256 N. Y. 423, 176 N. E. 826 (1931); *Walsh v. Keenan,* 293 N. Y. 573, 59 N. E. 2d 409 (1944).
27. *In re Fenelon's Estate,* 262 N. Y. 308, 186 N. E. 794 (1933).
28. *Inda v. Inda,* 288 N. Y. 315, 43 N. E. 2d 59 (1942).
29. *In re Buchanan's Estate,* 184 App, Div. 237, 171 N. Y. Supp. 708 (3d Dep't 1918); *In re Fenelon's Estate,* 262 N. Y. 57, 186 N. E. 201 (1933).
30. 1 N. Y. 2d 284, 135 N. E. 2d 193 (1956).

The Surrogate held in favor of the beneficiary on the basis that the daughter had not shown a knowing and conscious creation and sanction of the accounts by decedent.[31] On appeal, this finding of facts was affirmed but the holding was reversed strictly on the grounds of the conclusive evidence of the execution in the proper form.[32]

In reinstating the Surrogate's holding, the Court first acknowledged the presumption created by Section 239-3 where the executed intention to make the requisite deposit was present. But, it then indicated that the signature itself was merely evidence of the intent to make the deposit in this form, subject to the usual burden on the proponent to establish the competency of the decedent where, in the Court's opinion, the circumstances are such that additional proof is necessary to supplement the fact of formal execution.[33] These circumstances here included the drastic change which would be effected in decedent's testamentary plan, the request for mere powers-of-attorney, the general weakened condition of decedent and the natural confidence which she had in both her attorney and her banks. The failure of the daughter to carry the burden of proof as to the knowing and conscious execution as established in the lower courts therefore demanded a holding for the beneficiary.

In a powerful opinion, the dissent noted that there had been no evidence of incompetency, fraud or undue influence presented and that no inference of incapacity could be inferred from the fact that decedent was old and ailing.[34] The language used in setting forth the presumption as a substantive rule of law in Section 239-3 was clear and unambiguous and was intended to provide a rule of certainty for both banks and depositors.[35] It therefore deserved a strict interpretation of the type it had received in earlier cases.[36] There was no need to show the actual intent in executing but only its accomplishment, and evidence as to any other factors was immaterial. The *Yauch*[37] case which greatly aided the majority in reaching its opinion was decided on a lack of proper formal execution and therefore was not in point here.

In evaluating the merits of the two divergent opinions, the search for certainty in banking routine which led to the enactment of Section 239-3 must be given great weight as a legislative judgment for the general public good.[38]

31. —— Misc. ——, 139 N. Y. S. 2d 434 (Surr. Ct. 1954).
32. 286 App. Div. 857, 141 N. Y. S. 2d 556 (2d Dep't 1955).
33. *In re Reilly's Will,* 139 Misc. 732, 249 N. Y. Supp. 152 (Surr. Ct. 1931); *In re Mullin's Will,* 143 Misc. 256, 256 N. Y. Supp. 519 (Surr. Ct. 1932).
34. *Horn v. Pullman,* 72 N. Y. 269 (1878); *In re Wolf's Will,* 196 App. Div. 722, 188 N. Y. Supp. 438 (4th Dep't 1921).
35. *Moskowitz v. Marrow,* 251 N. Y. 380, 167 N. E. 506 (1929).
36. See note 28, *supra.*
37. *In re Yauch's Will,* 296 N. Y. 585, 68 N. E. 2d 875 (1946).
38. *McGuire v. Auburn Sav. Bank,* 78 App. Div. 22, 79 N. Y. Supp, 91 (4th Dep't 1902); *Gifford v. Oneida Sav. Bank,* 99 App. Div. 25, 90 N. Y. Supp. 693 (3d Dep't 1904); *Back v. Bowery Sav. Bank,* 162 Misc. 403, 294 N. Y. Supp. 818 (Mun. Ct. 1937).

To require a showing of knowing and conscious execution as required in will contests would seem to defeat the policy rationale and place banking institutions in a position of not knowing to whom funds in a joint account are payable. While, as the dissent indicates, the application of Section 239-3 in the exceptional case may cause an inequitable result, this is essentially a legislative question, not a judicial one.

DOMESTIC RELATIONS

Survival of Right to Alimony

Section 1170-b of the New York Civil Practice Act,[1] which allows a wife to bring an action for support and maintenance after an *ex parte* divorce decree has been obtained against her, was construed for the first time by the Court of Appeals in *Vanderbilt v. Vanderbilt.*[2] In the face of a vigorous dissent, the Court held, affirming the Appellate Division,[3] that the application of section 1170-b to a situation of this sort was not a denal of full faith and credit to the foreign judgment.[4]

Williams v. North Carolina[5] has made it incumbent upon a state to give recognition to foreign *ex parte* divorce decrees where one of the parties has become a domiciliary in that foreign jurisdiction. Whether or not an *ex parte* decree which purports to deny alimony[6] to the party not personally served is entitled to full faith and credit depends upon the nature of the right to support which the wife enjoys. If this right to support is completely and inseparably annexed to the marital status in the sense that it is destroyed upon dissolution of the status, then a valid divorce decree, even though *ex parte,* would be a bar to

1. N. Y. CIV. PRAC. ACT §1170-b. In an action for divorce, separation or annulment, or for a declaration of nullity of a void marriage, where the court refuses to grant such relief by reason of a finding by the court that a divorce, annulment or judgment declaring the marriage a nullity had previously been granted to the husband in an action in which jurisdiction over the person of the wife was not obtained, the court may, nevertheless, render in the same action such judgment as justice may require for the maintenance of the wife. . . .

2. 1 N. Y. 2d 342, 135 N. E. 2d 553 (1956), *cert. granted,* 352 U. S. 820 (1956).

3. 1 A. D. 2d 3, 147 N. Y. S. 2d 125 (1st Dep't 1955).

4. U. S. CONST. art. IV, §1.

5. 317 U. S. 287 (1942). The plaintiff in the instant case also attacked the jurisdiction of Nevada over the marriage status on the grounds that defendant had not satisfied domiciliary requirements; judgment was against her upon this issue. See *Williams v. North Carolina,* 325 U. S. 226 (1945).

6. *Sweeney v. Sweeney,* 42 Nev. 431, 179 P. 638 (1919). Nevada does not have a statute preserving the right to support. Decisional law in Nevada has been to the effect that a divorce decree which does not grant alimony and does not leave the question open thereby denies it.