

INDIANA SUPREME COURT

In re Estate of Rickert

934 N.E.2d 726 (Ind. 2010) · No. No. 18S04-1002-CV-118 · Decided September 9, 2010

SUMMARY

The Indiana Supreme Court held that an attorney-in-fact’s use of a power of attorney to establish joint accounts benefiting herself is presumed invalid as self-dealing. The Non-Probate Transfer Act’s survivorship presumption does not eliminate the fiduciary’s burden to prove that such accounts were validly established with the principal’s participation. The court also held that filing an adverse party’s deposition without using it for an evidentiary purpose does not waive an objection under Indiana’s Dead Man’s Statute, and it remanded for restoration of the affected accounts to the estate.

CASE DETAILS

COURT	Indiana Supreme Court
WRITING FOR THE COURT	Boehm, Justice; Shepard, Chief Justice; Dickson, Justice; Sullivan, Justice; Rucker, Justice
JURISDICTION	Indiana
DECIDED	September 9, 2010
DOCKET	No. 18S04-1002-CV-118
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Estate appealed the Delaware Circuit Court's judgment awarding disputed non-probate account funds to Taylor. The Indiana Court of Appeals reversed and remanded, and the Indiana Supreme Court granted transfer.
STANDARD OF REVIEW	De novo review applies because both issues present questions of law.
PRECEDENTIAL VALUE	Published Indiana Supreme Court opinion; precedential.
PARTIES	Carole Baker, Personal Representative of the Estate of Harry L. Rickert, Deceased v. Keta Taylor

TOPICS

- probate procedure
- estate administration
- evidence
- undue influence
- statutory interpretation

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the Non-Probate Transfer Act overrides the common-law and statutory presumptions invalidating self-dealing transactions by an attorney-in-fact.
2. Whether filing an adverse claimant's deposition with the trial court, without offering or citing it for an evidentiary purpose, waives the Estate's objection under the Dead Man's Statute.

HOLDINGS

1. The Non-Probate Transfer Act's presumption that funds in a joint account pass to the surviving account holder does not eliminate the fiduciary's duty to prove that an account was validly established when the attorney-in-fact used the power of attorney to benefit herself. Taylor therefore had to prove by clear and convincing evidence that her use of Rickert's power of attorney to create survivorship interests was voluntary and fair.
2. An estate waives its objection to an adverse claimant's competency under the Dead Man's Statute only by using the claimant's deposition for an evidentiary purpose, such as offering it into evidence or citing it in support of or opposition to a motion. Merely filing the deposition does not constitute waiver.

KEY QUOTATIONS

"A holder of a power of attorney is a fiduciary and therefore any transaction in which the holder uses a power of attorney to transfer assets to the holder is presumed invalid." (at 1)

"We hold that the Act's presumption of intent to transfer does not overcome the fiduciary's duty to prove that the account was properly established as a joint account." (at 1)

"In order to waive objection to the competence of a witness under the Dead Man's Statute by taking advantage of a deposition of a person who is adverse to a decedent's estate, the estate must use the deposition by offering it into evidence at trial or pretrial hearing, or citing it to the court as, for example, by designating it in support of or opposition to a summary judgment motion." (at 8)

FACTUAL BACKGROUND

Harry Rickert, who had no children, employed Keta Taylor to care for him and granted her a general power of attorney in 1997. Between 2001 and 2005, Taylor used that power of attorney to establish or acquire numerous joint accounts and certificates of deposit naming herself as joint owner or pay-on-death beneficiary, using Rickert's funds; the account-opening documents for the disputed accounts were signed only by Taylor for Rickert. Rickert's health had substantially declined, and by 2005 he could no longer make decisions for himself. After Rickert's death, the Estate sought recovery of assets benefiting Taylor, but the trial court applied the Non-Probate Transfer Act's survivorship presumption and awarded the account funds to the presumptive owners.

PROCEDURAL HISTORY

The trial court accepted a special representative's recommendation concerning vehicles but ordered funds in disputed bank accounts and certificates of deposit released to the presumptive owners under the Non-Probate Transfer Act. The Court of Appeals reversed and remanded for application of the common-law presumption of undue influence to Taylor's transactions as attorney-in-fact, while holding that Taylor's testimony was properly excluded under the Dead Man's Statute. The Supreme Court granted transfer, reversed the trial court, and remanded with directions to restore specified accounts to the Estate.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court was directed to order restoration to the Estate of Harry Rickert of bank accounts of record owned by Rickert and Keta Taylor that were created through Taylor's use of Rickert's power of attorney and lacked supporting documentation indicating Rickert's participation.

CASES CITED

- Smith v. Champion Trucking Co., 925 N.E.2d 362, 364 (Ind. 2010)
- Nichols v. Estate of Tyler, 910 N.E.2d 221, 229 (Ind. Ct. App. 2009)
- In re Estate of Wade, 768 N.E.2d 957, 963 (Ind. Ct. App. 2002)
- In re Estate of Rickert, 912 N.E.2d 831, 838-39 (Ind. Ct. App. 2009)
- Meyer v. Wright, 854 N.E.2d 57, 62-64 (Ind. Ct. App. 2006)
- Villanella v. Godbey, 632 N.E.2d 786, 791 (Ind. Ct. App. 1994)
- Outlaw v. Danks, 832 N.E.2d 1108, 1111-12 (Ind. Ct. App. 2005)
- In re Estate of Banko, 622 N.E.2d 476, 477-80 (Ind. 1993)
- In re Estate of Neu, 588 N.E.2d 567, 569 (Ind. Ct. App. 1992)
- Taylor v. Taylor, 643 N.E.2d 893, 895 (Ind. 1994)
- Carlson v. Warren, 878 N.E.2d 844, 849 (Ind. Ct. App. 2007)
- J.M. Corp. v. Roberson, 749 N.E.2d 567, 571 (Ind. Ct. App. 2001)