

SUPREME COURT OF ARKANSAS

Cloud v. Brandt, 370 Ark. 323

259 S.W.3d 439 (2007) · No. No. 06-1102 · Decided June 21, 2007

SUMMARY

The Arkansas Supreme Court held that a spouse could unilaterally withdraw funds from a jointly held account and thereby reduce or destroy the tenancy by the entirety in those funds, rejecting the circuit court's reliance on Lofton v. Lofton. The court reversed and remanded the direct appeal concerning certificates of deposit, affirmed the ruling that other personal property was not shown to be jointly owned, and affirmed denial of a \$20,000 claim against the estate as an undelivered inter vivos gift.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Annabelle Clinton Imber
JURISDICTION	Arkansas
DECIDED	June 21, 2007
DOCKET	No. 06-1102
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Virginia Cloud appealed the Lonoke County Circuit Court's ruling that certain certificates of deposit purchased by Marion Isbell with funds withdrawn from a joint account were owned by Marion and Marie Isbell as tenants by the entirety and passed to Marie by operation of law. Amber Brandt and William Holden filed cross appeals concerning other personal property and Holden's \$20,000 claim against Marion's estate.
STANDARD OF REVIEW	Probate decisions are reviewed de novo on the record, but the circuit court's decision will not be reversed unless clearly erroneous.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion; precedential.
PARTIES	Virginia Cloud, Executrix of the Estate of Marion Isbell, Deceased v. Amber Brandt, Executrix of the Estate of Marie Isbell, Deceased, William Holden

TOPICS

probate procedure

probate

estate administration

creditor claims

PRACTICE AREAS

probate

estate administration

estate planning

creditor claims

QUESTIONS PRESENTED

1. Whether the Supreme Court could consider Cloud's argument that Marie's declaratory-judgment action was barred by the Arkansas Probate Code's nonclaim statute when the argument was not raised below.
2. Whether one spouse must obtain the other spouse's consent before unilaterally destroying a tenancy by the entirety in funds held in a joint bank account.
3. Whether all personal property in Marion's estate was held by Marion and Marie as tenants by the entirety merely because it was allegedly purchased with marital funds.
4. Whether Holden established an enforceable \$20,000 claim against Marion's estate for work performed on the family farm.

HOLDINGS

1. The court declined to consider Cloud's argument that Marie's declaratory-judgment action was barred by the nonclaim statute because the argument was not raised in the circuit court.
2. One spouse is not required to obtain the other spouse's consent before reducing or destroying a tenancy by the entirety in funds held in a joint account. Funds withdrawn and reduced to one spouse's separate possession cease to be part of the tenancy by the entirety, while the entirety estate continues in the remaining joint-account balance.
3. The circuit court did not clearly err in refusing to characterize all of the estate's personal property as entirety property because there was no evidence that the property was held in both spouses' names or originated from property held in both names.
4. Holden did not establish that the \$20,000 was payment owed for his work rather than an inter vivos gift that was never delivered; the circuit court therefore properly denied his claim.

KEY QUOTATIONS

"An estate by the entireties in a bank account differs in one significant aspect from such an estate in real property in that the estate exists in the account only until one of the tenants withdraws such funds or dies leaving a balance in the account." (at 443)

"Because we have never required one spouse to obtain the other spouse's consent in order to reduce a tenancy by the entirety in joint funds, Marion was not precluded from unilaterally destroying the tenancy by the entirety in the joint checking account without Marie's consent." (at 444)

FACTUAL BACKGROUND

Marion and Marie Isbell were married and held a joint checking account into which proceeds from the sale of their farmland were deposited. Marion later withdrew funds from that account, placed them in an account in his

name alone, and purchased certificates of deposit totaling more than \$200,000. After Marion's death, Marie claimed the CDs as surviving tenant by the entirety, while Holden claimed \$20,000 allegedly promised for his work building a reservoir on the family property.

PROCEDURAL HISTORY

After Marion Isbell died, his will was offered for probate. Marie Isbell elected to take her statutory surviving-spouse share and later sought a declaratory judgment concerning ownership of certificates of deposit purchased by Marion from funds originating in the spouses' joint account. The circuit court ruled that Marie owned the traceable CDs, declined to characterize other personal property as entirety property, and denied Holden's \$20,000 claim as an undelivered inter vivos gift. The Supreme Court of Arkansas reversed and remanded on the direct appeal and affirmed on both cross appeals.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The direct appeal was reversed and remanded for further proceedings consistent with the ruling that Marion could unilaterally destroy the entirety interest in the withdrawn funds and that Marie was entitled only to the balance remaining in the joint account at Marion's death. The cross appeals were affirmed.

CASES CITED

- *McLane Southern, Inc. v. Davis*, 366 Ark. 164, 233 S.W.3d 674 (2006)
- *Lofton v. Lofton*, 23 Ark. App. 203, 745 S.W.2d 635 (1988)
- *Ramsey v. Ramsey*, 259 Ark. 16, 531 S.W.2d 28 (1975)
- *Union & Mercantile Trust Co. v. Hudson*, 147 Ark. 7, 227 S.W. 1 (1921)
- *Dickson v. Jonesboro Trust Co.*, 154 Ark. 155, 242 S.W. 57 (1922)
- *Black v. Black*, 199 Ark. 609, 135 S.W.2d 837 (1940)
- *McEntire v. Estate of McEntire*, 267 Ark. 169, 590 S.W.2d 241 (1979)
- *McGuire v. Benton State Bank*, 232 Ark. 1008, 342 S.W.2d 77 (1961)
- *Ellis v. Ellis*, 315 Ark. 475, 868 S.W.2d 83 (1994)
- *Bullock v. Barnes*, 366 Ark. 444, 236 S.W.3d 498 (2006)