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Pa. Court's Decisions Burden Surviving Joint Account Holders

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Special to the Legal

Many individuals rely on joint bank accounts as a means of providing funds outright and in a prompt manner for another person after they die. In fact, most people assume that the survivor of the joint account holders will receive the proceeds of the account without any further action on their part. Nevertheless, there are frequently disputes over whether an account is truly joint with right of survivorship and to whom the funds in the account should be paid: the deceased account holder's estate or the surviving account holder. In 1976, the Pennsylvania Legislature passed the Multiple-Party Accounts Act (MPAA), 20 Pa. C.S. Section 6304, in order to recognize the special role of these accounts and to create a specific framework for addressing disputes about joint accounts. Recently, the Superior Court issued two decisions affecting the way in which the MPAA is applied, the burden of proof and the relationship between the decedent's will and the joint account. Attorneys as well as joint account holders should be aware of these cases and their potential implications.

Prior to the MPAA, if someone challenged the surviving account holder's right to the account funds, typically through common law theories of undue influence, lack of capacity or inter vivos gift, the account holder may have had the ultimate burden of proof. Given the common expectation that the funds would pass to the survivor, the Pennsylvania Legislature recognized this situation as unfair, changed the law and decisively shifted the burden back to any person who challenges the designation of an account as joint. The MPAA states, "Any sum remaining on deposit at the death of a party to a joint account belongs to the surviving party or parties as against the estate of the decedent unless there is clear and convincing evidence of a different intent at the time the account was created." The Legislature chose to apply the highest level of proof available in civil matters to these disputes. To further strengthen the position of joint account holders, the MPAA prohibits an account holder from changing a right of survivorship in a joint account by will. There is no exception in the statute to this prohibition for a will executed prior to the creation of a joint account.

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Following the passage of the MPAA, courts struggled to apply the correct standard to contests over joint accounts. In November 2007, the Superior Court, in *In re Novosielski*, discussed how to prove by clear and convincing evidence that at the time that account was created, the decedent did not intend to create a joint account. Affirming the Westmoreland County Orphans' Court decision, the *Novosielski* court found that the challenger presented sufficient evidence to defeat the MPAA presumption of a right of survivorship. The court also suggested for the first time that, to the extent it was inconsistent with the right of survivorship, the decedent's will executed prior to the creation of the joint account, in combination with other facts, could satisfy that burden.

In *Novosielski*, the executor of the decedent's estate, who was also her agent pursuant to a power of attorney, claimed ownership of a joint account containing $500,000. The power of attorney naming the executor as the decedent's agent was signed in August 2000. Less than a month later, the decedent executed a codicil to her will. The codicil left the executor approximately one-tenth of the decedent's estate. Four days after the codicil was executed, a Treasury bill, note, bond tender, prepared by the executor, was signed by the decedent in the presence of the executor-scrivener. The tender created a joint interest in the Treasury account between the executor and the decedent. However, nowhere on the tender was the right of survivorship mentioned.

If the executor was found to be the owner of the joint account, he would receive approximately four-fifths of the decedent's estate. Significantly, the court also found that at the time of these transactions, the decedent was diagnosed as being in an "acute confusional state replete with hallucinations, delusional disorder, and with psychotic depression" which later evolved into full-blown "senile dementia."

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As a result of the decedent's mental state, the timing of the republication of the codicil and the vast difference between what the executor would receive under the codicil and from the joint account, the court found that there was clear and convincing evidence that the decedent did not intend the executor to have the assets in the joint account at her death.

The court's decision rested in part on its theory that to ignore the prior codicil would frustrate the decedent's testamentary intent. Indeed, the court appears to have been concerned about the equities of the case and frustrated by the MPAA's strong presumption in favor of the joint right of survivorship. However, the court made no effort to reconcile its decision with the language of 20 Pa. C.S. 6304(d), which prohibits the use of a will to change a right of joint survivorship.

The *Novosielski* court's reliance on the prior will appeared to have been a product of the unique facts of the case and its application as precedent would have been limited. However, five months later, on April 17, 2008, the Superior Court, in *In re Piet*, again addressed the application of the MPAA and the burden of proof and took the opportunity to significantly expand the application of its holding in *Novosielski*.

In *Piet*, the decedent left a 1978 will dividing her assets equally among her four children. In the late 1980s and 1990s, she created 10 joint savings, checking, investment and certificate of deposit accounts with two of her children. On signature cards for several of the accounts, the box for a right of survivorship was not checked. The funds in the joint accounts represented the majority of the decedent's assets. The decedent was "crippled" with various illnesses and was not skilled at managing her finances. However, there was testimony that the decedent intended to create joint accounts and never discussed the joint accounts with one of the excluded children. The decedent died in 2004. The two children excluded from the joint accounts challenged their siblings' right to the joint account funds. The Allegheny County Orphans' Court found that the challengers carried their burden only as to the checking and savings accounts and that the remaining eight accounts belonged to the surviving account holders. Both sides appealed.

The Superior Court reversed in part and affirmed in part, finding that the challengers met their burden of demonstrating by clear and convincing evidence that the decedent at the time the accounts were created did not intend for any of the accounts to be joint with right of survivorship. The Superior Court placed particular emphasis on the 1978 will. The court, citing *Novosielski*, held that when a valid prior will is not consistent with the effect of the joint account, the will must control the disposition of the assets. The touchstone of trusts and estates law is that the intent of the testator must control. Further, a will may not be altered other than by codicil. The court reasoned that a joint account should not be permitted to alter prior testamentary intent expressed in a still valid will.

Judge Maureen Lally-Green filed a strongly worded dissent and argued that the facts of *Novosielski* were distinguishable by the temporal proximity of the will and the creation of the joint account as well as the *Novosielski* decedent's documented diminished mental state. None of those factors were present in the *Piet* case. In addition, citing the Pennsylvania Supreme Court, the dissent found that the lack of knowledge by the challenger about the accounts (in contrast to the direct testimony about decedent's intent) and the problems with the signature cards did not rise to the level of clear and convincing evidence necessary to defeat the MPAA's presumption. The dissent also argued that the majority's new rule was legally flawed because individuals are always free to give gifts, create joint accounts or otherwise diminish their estates following the execution of a will without altering the stated testamentary scheme. Indeed, the MPAA recognizes and validates those choices and expressly protects joint accounts from being changed by will.

The dissent has good reason to be concerned. The extension of the *Novosielski* opinion in *Piet* undermines the MPAA's language and purpose, places a burden on the surviving account holder, and is likely to result in more lengthy disputes about the disposition of joint accounts. Most people continue to assume that the surviving joint account holder will automatically receive the funds from a joint account. Perhaps because of this belief, most wills do not expressly mention joint accounts, and, as a result, demonstrating the necessary consistency between a will and a joint account may be difficult. It seems likely that the Pennsylvania Supreme Court or the Legislature will have to address this issue in the near future. For now, however, attorneys, financial institutions and joint account holders need to be aware that they may need to change their current practice to carefully document the creation of any joint account as consistent with a prior will or to anticipate the issue when drafting wills and address the issue of after-created joint accounts by expressly stating that such accounts may be created and are not inconsistent with the testator's wishes. •