

1980

Valley Bank & Trust Company v. Helen Chlepa : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT
OF THE STATE OF UTAH

VALLEY BANK & TRUST COMPANY,)
the Personal Representative)
with Will Annexed of the)
Estate of Penelope Kopoulos,)
Plaintiff-Appellant,)
vs.)
HELEN CHLEPAS,)
Defendant-Respondent.)

Case No. 16787

BRIEF OF APPELLANT

APPEAL FROM THE JUDGMENT OF
THE THIRD JUDICIAL DISTRICT COURT FOR SALT LAKE COUNTY
HONORABLE DEAN E. CONDER, JUDGE

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Clerk, Supreme Court, Utah

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TABLE OF CONTENTS

	<u>Page</u>
STATEMENT OF THE CASE	1
DISPOSITION IN THE LOWER COURT.	1
RELIEF SOUGHT ON APPEAL	2
STATEMENT OF FACTS.	2
ARGUMENT.	9
POINT I: THE TRIAL COURT FAILED TO PROPERLY APPLY THE DECISIONS OF THIS COURT THAT ARE APPLICABLE TO THE FACTS OF THIS CASE.	9
POINT II: THE FINDINGS OF FACT ENTERED BY THE TRIAL JUDGE ARE CONTRARY TO THE WEIGHT OF THE EVIDENCE AND THE REASONABLE IN- FERENCES TO BE DRAWN THEREFROM.	11
CONCLUSION.	16
CASES CITED	
<u>McCullough v. Wasserback</u> , 518 P.2d 691, 30 U.2d 398.	9, 10, 14, 15
STATUTES CITED	
§75-6-105(1), Utah Code Annotated, 1953, as amended	9

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BRIEF OF APPELLANT

STATEMENT OF THE CASE

Plaintiff, as the Personal Representative with Will annexed of the Estate of Penelope Kopoulos, brings this action to determine the ownership of two certificates of deposit issued in the name of the deceased, Penelope Kopoulos, and defendant, Helen Chelpas, as joint tenants with full rights of survivorship.

DISPOSITION IN THE LOWER COURT

The District Judge, Honorable Dean E. Conder, sitting without a jury, found the issues in favor of the defendant and against the plaintiff. The Trial Court entered Findings of Fact and Conclusions of Law, and based thereon, entered a Judgment awarding defendant the certificates of deposit free and clear of any claim by the estate.

RELIEF SOUGHT ON APPEAL

The plaintiff seeks a reversal of that Judgment and entry of a Judgment by this Court directing that the estate is entitled to ownership of the certificates of deposit free and clear of any claim of ownership by defendant.

STATEMENT OF FACTS

Penelope Kopoulos was 78 years old when she died on February 24, 1977. She was born in Greece and immigrated to the United States prior to 1934. She had an eighth grade education and could neither speak nor read the English language. (Tr. 66-68) She was married to George Kopoulos, also a Greek immigrant, who died on August 21, 1973. Mr. Kopoulos had been a Salt Lake City businessman and was educated in the English language. During his lifetime Mr. Kopoulos handled the family affairs. The parties had accumulated some savings accounts and owned and resided in the home located at 446 Denver Street, Salt Lake City, Utah. Title to the home was in joint tenancy.

Mr. Alke T. Diamant, a Salt Lake City lawyer, fluent in the Greek language, had represented the Kopouloses since 1934. In 1966 he prepared joint Wills. After the death of her husband, Mr. Diamant continued his representation of Mrs. Kopoulos. This included handling the estate matters. In view of her illiteracy with the English language, Mr. Diamant found it necessary for him to converse with Mrs. Kopoulos in Greek language. When he prepared the joint Will and terminated the estate of her husband, he would translate the documents from English into Greek. Also, he would

then explain in the Greek language the legal ramifications of what she was signing.

Approximately a year after her husband's death, Mrs. Kopoulos decided to sell the family home and reside in a rest home. Mr. Diamant represented the deceased by negotiating the sales price for the property and reviewing and preparing the necessary documents needed to complete the sale. In this transaction, all of the papers were written in English. However, Mr. Diamant followed his customary procedure by explaining to Mrs. Kopoulos in the Greek language the meaning of the documents and their legal effect. The sale of the property was completed on November 14, 1974. On that date a meeting with Mrs. Kopoulos and defendant was held in Mr. Diamant's office. During the meeting the results of the sale of the property was discussed, and Mr. Diamant delivered to Mrs. Kopoulos two checks totaling the amount of \$60,942.14. (Exhibit 8) During this meeting, Mr. Diamant continued his role of being lawyer and adviser for Mrs. Kopoulos by recommending that she protect these funds by purchasing long-term savings account certificates. The Kopouloses had other joint savings accounts, including a small account at the American Savings & Loan Association. Mr. Diamant also recommended that the other savings account, together with a small amount of the proceeds of the sale of the home, be placed in a joint checking account with Mrs. Chelpas. The purpose of the joint account was for the convenience of the deceased in having Mrs. Chelpas write the necessary checks needed for payment of her living expenses. It was the plan

that her Social Security benefits, together with the interest from the old and new savings certificates, would be deposited in this account for the living expenses of the deceased. Mrs. Kopoulos followed his advice and invested the greater portion of the funds received from the sale of her home by purchasing two certificates of deposit from the American Savings & Loan Association in the face value of \$50,000.00 and \$10,000.00, respectively. Each certificate was issued in the names of Penelope Kopoulos and Helen Chelpas, as joint tenants with full rights of survivorship. (Exhibits 6, 7) Further, a joint checking account was opened at Valley Bank & Trust Company, Broadway office.

Mrs. Kopoulos, complying with the advice and counsel of Mr. Diamant, made arrangements with the American Savings & Loan Association for the quarterly payment of the interest on the respective certificates. She received these payments until the date of her death.

Mrs. Kopoulos spent the remainder of her life residing in four local rest homes. During this period of time, Mrs. Kopoulos would converse with Mr. Diamant by telephone on the average of at least once a month. These calls were initiated by Mrs. Kopoulos, and while they discussed personal matters, the main reason for the calls was for an appointment with Mr. Diamant for the purpose of preparing a Will. (Tr. 78) Such a meeting finally occurred on February 13, 1977 while the deceased was residing at the Meadowbrook Rest Home, Murray, Utah. Mrs. Kopoulos initially advised Mr. Diamant she had instructed the defendant to destroy the prior

Will be prepared for her, and the names of the devisees and the amount of each bequest are reflected in the notes of Mr. Diamant. (Exhibit 9) The total of the intended bequests exceeded the sum of \$76,000.00. (Tr. 81-84)

Plaintiff submits this meeting was very critical and supports our position that Mrs. Kopoulos never considered Mrs. Chlepas to be a joint owner of the two savings certificates. The important portion of the testimony which reflects such conclusion is contained on Pages 82 and 88 of the transcript. The pertinent portions of the transcript commence on Page 82 and are as follows: (Tr. 82)

"Q. Was there any talk about that other will?

A. Definitely.

Q. What did she say?

A. I asked her again, I said, "You sure that--" "Yes." Said, "I gave it to Helen. I told her to tear it up." So help me God! That's what she said.

Q. And now, what were the further conversations?

A. Further conversation is I want to draw the will. And I said, "Now, are you sure you have all this money?" I said, "You know how much money you gave me." And I said, "Now, has Helen showed you any books?" "No." "Has Helen drawn any money?" Says, "My Social Security and the interest has been enough up to now to pay for my keep."

Q. Now, does that exhibit that you have there in your hand, Mr. Diamant, reflect a note that you made at the time?

A. This is the information and in the Greek language. And I was asking her, I was putting these notes that nobody can read but myself I guess." (The notes were later admitted into evidence as Exhibit 9)

And at Tr. 84:

"* * * And I said, "Oh, wait a minute." I added these up and they were over \$76,000.00.. I said, "Now, you sure all of that money is in there?" Said, "You know how much money you gave me, and how much money I had from George." And then she said, "I want you to be the executor of my estate." I said, "I would feel better, so people wouldn't think I will take advantage of you." I said, "Helen is a good lady. She's your Godchild. Why don't you make her jointly with me." And says, "All right. You and Helen act as the co-executors of my estate." Then I asked her, I said, "Penelope, are you sure you have all of this money?" Said, "Well, Helen has not used any money except the interest." I said, "Has she shown you any records?" "No." "Do you have any books?" "No." I said, "Before I go ahead and draw the will, you better contact Helen Chlepas and have her bring the books." Says, I will do it Monday, and I will call you." I didn't hear anything Monday."

Mr. Diamant then testified: (Tr. 84)

"Tuesday she called me up and said, "Helen came and brought me one book." And I says, "Did you ask her about the books?" "Yeah." "What did she tell you?" "I don't know." And I said, "You talked to her and if she didn't bring you the books", I says, "I will get into the matter." And that was the last con-

said, and that was I think the 24th, I wouldn't swear. It's either that day and said, "Penelope died." And I said, "My God! When I saw her on the 13th she was so happy and was satisfied, and contented. And she felt because she was a cripple, she felt so well." I said, "What happened?" Says, "I don't know. She died."

In response to further questioning, the witness testified:

(Tr. 85)

"Q. (By Mr. Dibblee) Any conversation between you and Mrs. Kapoulis about joint tenancy with Helen?

A. There was no joint tenancy. The conversation--

MR. HINTZE: Objection. That's nonresponsive, your Honor.

THE COURT: Sustained.

Q. (By Mr. Dibblee) Was there any conversation?

A. Yes. There was a conversation.

Q. What was that?

A. The conversation is, this money in your name? Says, "Absolutely. You gave it to me." Says, "All Helen is getting is the interest and pays the bills." And I said, "Have you paid her anything?" Says, "Not up to now." But says, "I will. I will be very happy to."

And at Tr. 105, 106:

"Q. (By Mr. Dibblee) You had some conversations with her about how the money was being held, is that correct?

A. Right.

MR. HINTZE: Your Honor, I object to it as immaterial and improper redirect examination.

THE COURT: Well, may be, but you will ask leave to reopen and we'll get back to the same place. Objection overruled.

Q. (By Mr. Dibblee) Now, in your conversations in discussing bank accounts and other matters, was the word joint tenancy ever used?

A. NO. * * *

After her death, probate proceedings were initiated in the Third Judicial District Court in and for Salt Lake County, State of Utah, Probate No. 64059. The Court, upon Motion of counsel for defendant, marked the file as Exhibit 3D and took judicial notice of the contents of the file. That file will reflect that decedent's sister, a resident of Greece, requested a local resident to file a Petition for appointment as Personal Representative of the deceased. After such appointment, the named Executor of the 1967 Will executed by the deceased, filed the Will for Probate and petitioned for his appointment as Executor. After a hearing, the Will was admitted to Probate. However, the named Executor was the brother of the defendant, and the Court thereupon disqualified him as Executor of the estate and subsequently appointed the Valley Bank & Trust Company as the Personal Representative of the estate with Will annexed.

Thereafter, the defendant, as the surviving joint tenant, claimed title to the savings certificates. Plaintiff, as the

Personal Representative then initiated this action to have the Court enter a Judgment that the two certificates were not a true joint account and were assets of the estate. The Trial Court entered Judgment in favor of defendant, and it is the entry of that Judgment which is the subject of this appeal.

ARGUMENT

POINT .I: THE TRIAL COURT FAILED TO PROPERLY APPLY THE DECISIONS OF THIS COURT THAT ARE APPLICABLE TO THE FACTS OF THIS CASE.

At the outset, plaintiff acknowledges that §75-6-105(1), Utah Code Annotated, 1953, as amended, is applicable to this case. The appropriate portion of the aforementioned statute states:

"Sums remaining on deposit at the death of a party to a joint account belong to the surviving party or parties as against the estate of the decedent unless there is a clear and convincing evidence of a different intention at the time the account is created."

Plaintiff contends the Trial Court erred in determining whether plaintiff had met the burden set forth in the above statute. Plaintiff submits the Trial Judge, in analyzing the evidence, failed to follow the dictates of this Court as stated in McCullough v. Wasserback, 518 P.2d 691, 30 U.2d 398. In that case, the Trial Court found in favor of the estate and against the surviving joint tenant. While this Court reversed that ruling and entered a Judgment in favor of the surviving joint tenant, in so doing, this Court ruled that evidence in these types of cases generally falls within two specific categories. These categories were defined as follows:

"The principal difficulty in writing any simple and definitive rule which will fit all cases is that the complexities of human life and personalities are such that no two fact situations are exactly alike. But they usually can be found as tending to fall into one of two general but contrasting patterns.

An elderly person, call him A, is increasingly in need of attention and care. Someone, call him X, (usually a family member) is sensitive of his needs and assumes some responsibility of filling them. As part of the total circumstances, and perhaps for a syndrome of reasons, including gratitude, love and convenience, A creates a joint bank account with the actual desire and intent of endowing X with co-ownership and right of survivorship in the funds. After the demise of A, and the problem of care and attention no longer exists, others come forward to make their claims. In situations tending to fit into this general pattern it is obvious that a trial court's sense of fairness and human decency does and should impel him to tend to favor the caring person X, and to reject attacks upon his surviving ownership in the joint account.

It must be realized that there are other contrasting situations where one's sense of justice is affected differently. Elderly person B is also in need of attention and care. Yet there may be no genuinely caring person to whom B actually desires to give joint ownership of his bank account. In any event, for his own reasons, and perhaps for a combination of them, his true desire is to retain ownership himself. But solely because of necessity and/or convenience in handling his money and affairs, and with that definite understanding, he creates a joint account with someone else (usually a family member) Y; and it also quite often appears in such a situation that there is some indication of avarice of varying hues in the survivor Y. In cases which tend to fit into this latter pattern it is but natural and proper that the same sense of justice and human decency both does and should impel the court to be more inclined to grant equitable relief from enforcement of the contract."

The Findings of Fact entered by the Trial Judge clearly indicate the Court neglected to analyze the evidence in accordance with the above decision. Therefore, requests

this Court to re-examine the record to insure that an equitable and just Judgment was entered in the case.

POINT II: THE FINDINGS OF FACT ENTERED BY THE TRIAL JUDGE ARE CONTRARY TO THE WEIGHT OF THE EVIDENCE AND THE REASONABLE INFERENCES TO BE DRAWN THEREFROM.

Plaintiff respectfully submits the record before this Court established, by clear and convincing evidence, that the deceased, Penelope Kopoulos, never intended to create a joint account with the defendant in the two savings certificates. Plaintiff urged before the Trial Court that due to the deceased's infirmity regarding the language problem, when coupled with the subsequent acts and conduct of the deceased, established the deceased was never fully apprised of the contents of the documents which created the joint account and could not have appreciated what she was doing. Further, that under these circumstances, placing her signature on the joint account was done under a mistake as to its legal effect.

The Trial Court properly found from the evidence in Finding of Fact No. 3 (Tr. 37):

"During her lifetime, the decedent did not write or speak the English language."

However, contrary to the evidence, the following statement was included:

"But it was her practice to conduct business utilizing the English language by having the written documents read and explained to her."

Plaintiff contends that this last statement is supported by the evidence but was not applicable to the facts involved in this case.

The only evidence bearing on this language issue and the business practice of the deceased, is contained in the testimony of Mr. Diamant. The witness testified his understanding of the Greek language enabled him to converse with the deceased in her unique Greek dialect. The witness noted the dialect was difficult at times, and often he had trouble reading her Greek letters.

The witness testified that during the time he represented the Kopouloses, he principally dealt with Mr. Kopoulos who was familiar with the English language. Mr. Diamant did translate the Will executed by the deceased. After the death of Mr. Kopoulos, Mr. Diamant continued his representation of Mrs. Kopoulos. This representation consisted of handling her husband's estate and negotiating the sale of her home and finalizing all of the documents necessary to complete that sale. While all of his activities involved the preparation of documents in the English language, he would always translate the documents and explain the legal implications of these documents in the Greek language.

There is nothing in the record that indicates the identify of any other person who ever performed similar tasks for the deceased. Further, there is no testimony which would establish that prior to the purchase of the two savings certificates that Mrs. Kopoulos engaged in any business transaction not supervised and controlled by Mr. Diamant.

The defendant was disqualified as a witness under the provisions of §78-24-2(3), Utah State Dead Man Statute. However, there is no disclosure in the record that defendant was so conversant with deceased in her native language that he was able

to properly translate the meaning of the words contained in the joint account contract. (Exhibits 3, 4) Also, there is no testimony to the effect that defendant was so versed in the legal aspect of joint tenancy with full rights of survivorship which would have enabled her to adequately explain in the Greek language the meaning of the terms and the subsequent legal implications involved in establishing a joint tenancy relationship with full rights of survivorship.

Additionally, there is no testimony in the record that a qualified Greek linguist from the American Savings & Loan Association explained to the deceased the nature and legal effect of the documents that she was signing.

Plaintiff respectfully submits that based upon the foregoing testimony and state of the record, there was no justification for the Trial Court to imply the transaction between the deceased and the American Savings & Loan Association was fully and adequately explained to the deceased in her native language. We submit that the Court was not warranted in assuming that by virtue of her relationship with her attorney and personal friend, Mr. Diamant, that in this isolated transaction, she was afforded identical treatment. The logical conclusion from the testimony and record before this Court is that unless Mr. Diamant handled the business transactions, no one else explained to the deceased the reason or legal implications of her actions.

Plaintiff requests this Court to reject that portion of Finding of Fact No. 3 and rule the deceased did not read or speak the English language and the contents of the joint account and the

legal ramifications of the meaning of joint tenancy with full rights of survivorship were never fully explained to the deceased prior to the creation of the account.

Plaintiff further objected to the Findings of Fact entered by the Trial Court, and in particular, Finding of Fact No. 4 which analyzed the effect of the meeting between the deceased and Mr. Diamant on February 13, 1977, approximately 13 days before her death. The Court in Finding of Fact No. 4 (Tr. 37) acknowledges the existence of the meeting, and then stated the testimony only "infers a different intent than manifest on the joint tenancy certificates." The Court should have found that the substance of the meeting established, by clear and convincing evidence, the deceased did not understand what she was signing and, therefore, never intended the creation of a joint tenancy account.

This Court, in McCullough, supra, specifically admonished the Trial Court in determining whether or not the contestant had met its burden, to consider the "whole evidence" in the case. Plaintiff respectfully submits the Trial Court failed to consider and appreciate the effect of the statements made by the deceased to Mr. Diamant. As previously noted, the deceased, at all times, exercised full custody and control over these certificates by having the company mail to her the quarterly interest payment. (Exhibits 1, 2) In view of this fact, it is clear she never would have executed a document which would have permitted the defendant to not only withdraw the principal amount from the

account or be considered having authority to retain interest payments.

When the Court considers this fact, coupled with the strong language she used with Mr. Diamant in asserting true and complete ownership of the funds, this established, without question, her true intent at the time of the creation of the joint account.

Plaintiff respectfully submits that this case is unique from other cases presented to this Court for review. Those prior decisions cited in the McCullough case, supra, normally involve a situation where the elderly person has all of the normal faculties and understanding of the English language to enter into the joint account. A Court, under those circumstances, properly concludes that the person read and understood the contents of the joint account. Unless there were other extenuating circumstances evidencing a different intent, the prior decisions normally affirm the creation of the account. However, in the case at bar, due to the decedent's infirmity, i.e., illiteracy in the English language, the sanctity of the contract is questioned. Therefore, the finder of fact should not base the entire decision on the contract, but should consider other facts in determining if there is clear and convincing evidence of a contrary intent.

This Court, in McCullough, supra, stated as follows:

"In considering whether that standard of proof has been met we keep in mind that this is a case in equity in which this court may review the facts, yet do not lose sight of the prerogatives indulged the trial court; that even in equity cases his findings and judgment will not be disturbed unless the evidence clearly preponderates against them and a manifest injustice or inequity is wrought. But if

these are seen to exist, this court may make its own findings and judgment to supersede those of the trial court."

Plaintiff respectfully submits that this case falls squarely within the above language. Plaintiff contends that if this Court allows defendant the right to retain ownership of the two certificates of deposit, this would constitute an injustice and frustrate the decedent's true desire. The Judgment entered by the Trial Court must be reversed.

CONCLUSION

Plaintiff respectfully submits that the Judgment entered by the Trial Court is not supported by the evidence. At the time of the creation of the purported joint tenancy in the certificates, the evidence clearly shows that the decedent executed the documents under a full and complete mistake as to their legal effect. The decedent in this case did not intend to create a joint tenancy with the right of survivorship, nor did she desire or endow defendant with co-ownership and right of survivorship in the funds. On the contrary, the decedent placed the name of defendant on the certificates for her own convenience, and from the date of purchase up to and including the date of her death, it was her belief that she had retained ownership of these certificates.

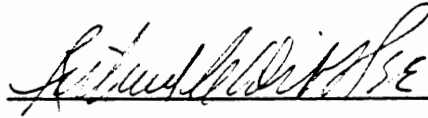
Based upon the foregoing, the plaintiff requests this Court to reverse the Judgment and enter Judgment in favor of the plaintiff and against the defendant.

Respectfully submitted,

RICHARD C. DIBBLEE, of
Roberts, Black & Dibblee

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I mailed two copies of the foregoing BRIEF OF APPELLANT to Mr. Harold A. Hintze, Attorney for defendant-respondent, 2000 Beneficial Life Tower, Salt Lake City, Utah 84111, this 21st day of February, 1980.

_____