2014 WL 2216129 (Del.Ch.) (Trial Motion, Memorandum and Affidavit)
Chancery Court of Delaware.

In the Matter of: THE ESTATE OF ALDON S. HALL.

No. 8122-MA.
May 23, 2014.

Respondent's Post-Trial Reply Brief

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I. STATEMENT OF FACTS

Respondent incorporates herein by reference thereto the Statement of Facts set forth in Respondent's Opening Post-Trial Brief. In addition, Respondent wishes to supplement and clarify additional facts introduced in Petitioners' Statement of Facts in their Answering Brief.

Petitioners' Answering Brief indicates that Anthony Hall was not a joint member on the Andrews Federal Credit Union account, but rather his name was on the Dover Federal Credit Union account. This is correct and was an inadvertent misstatement in Respondent's Opening Brief. The Andrews Federal Credit Union Account was jointly titled between Aldon S. Hall and Respondent (JX-17). The Dover Federal Credit Union account, which previously named Anthony Hall as a joint member, was retitled to name Aldon S. Hall and Respondent as joint tenants with rights of survivorship (JX-18). It was not necessary to obtain Anthony's permission or signature before modifying the account titling. (JX-18).

Petitioners' Answering Brief elaborates on Aaron Hall's actions taken to prevent access to certain buildings on the property, characterizing these actions as being necessary to "essentially secure the classic automobile" and not efforts to prevent Respondent from accessing the property. *Resp. Ans. Br.* at 2. There is no trial testimony to corroborate this assertion, and appears to be a post-trial attempt to insert mitigating testimony. Nonetheless, there is trial testimony that directly contradicts Petitioners' argument. Aaron admitted that the car belonged to his father solely. (TR-114) Aaron admitted that he was aware Respondent was the administrator of his father's estate. (*Id.*) Aaron admitted that he barricaded the door and admitted that "well, in a sense it was to deny." (*Id.*) Aaron admitted that he did not talk to Respondent or obtain permission before barricading the door which prevented Respondent from accessing the property. (TR-116) Aaron admitted that he knew Respondent needed access to the shed in order to marshal and sell estate property. (TR-119) Aaron admitted that the items in the shed belonged to his father's estate, and did not belong not to him personally. (TR-123) Petitioners' Answering Brief again criticizes Respondent's actions taken to collect rent and to act as a landlord. *Resp. Ans. Br.* at 2. Respondent has admitted that she has collected rent. (TR-302). Respondent has disclosed this rental income to the Petitioners (TR-305). Respondent has taken on the responsibility of collecting the rent because nobody else has taken the initiative to do so. (TR-305).

Petitioners continue to berate Respondent for informally acting as a landlord and collecting rent, but ignore the reality that *somebody* has to take on this responsibility in order to prevent economic waste.

II. ARGUMENT

A. *THE DOCUMENTS UNAMBIGUOUSLY ESTABLISH JOINT BANK ACCOUNTS.*

Petitioners' Answering Brief continues to argue, without the benefit of supporting case law or statute, that there is some generalized burden incumbent upon the Respondent to *prove* that the bank accounts were joint accounts. As will be set forth below, Petitioners rely upon three sources of law for their contention, none of which actually stand for the proposition for which Petitioners offer them. The first source is case law, *In the Matter of the Estate of Rufus Barnes*, 1998 WL 326674 (Del. Ch. June 18, 1998). The second source is a real estate partition statute, 25 *Del. C.* § 701. The third source is a Delaware Rule of Evidence, *D.R.E. 301*. None of these sources evince a meritorious argument that Respondent must affirmatively meet a burden of proof regarding the bank accounts in dispute. The *Barnes* decision does indicate that there is a rebuttable presumption that two individuals do not own *real estate* under a true joint tenancy unless the documents state otherwise. *Barnes* at *4. Petitioners cite this proposition in their briefing as being dispositive proof that an affirmative burden has been placed on Respondent. However, Petitioners leave out the second part of the sentence which arrives after a comma, and the next sentence which lays out the standard in layman's terms. The portion of *Barnes* that Petitioners continually omit is as follows:

> [B]ut when the language of the form is clear, courts have no discretion to inquire further to show whether the language ought to have been different or should be interpreted to mean something other than what it actually says. In other words, the bank form speaks for itself and if it is clear, the Court may not look further to decide what is to be done with the account.

Barnes at *4. The *Barnes* Court simplified the rule even further in the ensuing paragraph: "This case must be decided on the basis of the form that created the bank account, and in the absence of anything to show that it is unclear or that Mr. Barnes was incapable of understanding what he was doing, the matter must rest there." *Id.* at *5.

The standard to apply becomes more clear when provided within a full context and not just contrived from one-half of a sentence as Petitioners have attempted. The standard is that if a bank document unambiguously creates a joint tenancy, then "the matter must rest there". *Id.* The only conceivable burden that could be discerned to fall on Respondent from this case precedent is that Respondent has the burden to introduce the bank documents as an exhibit, and then let the exhibits speak for themselves. Other than that, there is no affirmative burden upon Respondent to testify regarding her intentions, to elicit testimony regarding the decedent's intentions, to elicit testimony from bank employees, or other affirmative acts. One additional burden placed on

Petitioners, as mentioned in Respondent's Answering Brief, is the presumption in Delaware that when a husband, supplying the funds, titles property in his wife's name, he intends that property as a gift. *Hudak v. Procek*, 727 A.2d 841, 843 (Del. 1999). Petitioners failed to introduce any evidence that would rebut the presumption that the funds in the joint accounts were a gift from Aldon S. Hall, the husband, to Catherine Hall, his wife.

Petitioners appear to concede that the bank documents are unambiguous. Petitioners offer no argument, testimony, or evidence that any of the bank documents are ambiguous, other than criticizing one document for appearing to be a "generic document". *Resp. Ans. Br.* at 4. Instead of proffering an affirmative argument, Petitioners simply fall back on a tenuous "we don't have to prove anything" position. Petitioners repeatedly insist that it is Respondent's duty to prove the documents are not ambiguous, and that there must be a presumption that the documents are ambiguous until proven otherwise. There is no such presumption. In fact, case precedent appears to weigh in the opposite direction. The *Barnes* Court, looking back at the notable *Walsh v. Bailey*[1] decision, noted: "The court held that there was insufficient proof of such intent to override the clear language of the bank form." *Barnes* at *4. Indeed, it is the Petitioners who must submit proof to override the clear language of the bank forms. They cannot simply sit back and ask the Court to assume that all bank documents are ambiguous.

In the present case, the exhibits speak for themselves and are not ambiguous. Even under the Petitioners' self-imposed and self-serving requirement that 'magic language' be present in each document to establish a joint tenancy[2] , all of the bank accounts in this matter contain such language. Petitioners have conceded that Exhibit 13, the Citizens Bank accounts, were unambiguous joint tenancy accounts with the right of survivorship. *Resp. Ans. Br.* at 5. The PNC Bank accounts, Exhibits 14 and 15, must be read in conjunction in order to understand the nature of the accounts. Exhibit 14 indicates: "I agree to be bound by the terms and conditions of PNC Bank's Account Agreement for Checking Accounts and Savings Accounts, PNC Bank's Account Agreement for Certificates of Deposit..." (JX-14). Exhibit 15 contains PNC's Account Agreement, which is expressly referenced by the documents in Exhibit 14. Page 9 of Exhibit 15 states: "If your Account is a joint Account, then you own your Account as joint tenants with the right of survivorship and not as tenants in common." (JX-15). It further explains that a joint Account is one with joint depositor(s), and that: "To be considered a joint depositor, you must have signed the signature card for the Account." *Id.* In Exhibit 14, all of the PNC Bank accounts have the signatures of both Aldon and Catherine.[3] According to PNC Bank's rules and standards, these were all joint tenants with right of survivorship accounts. Petitioners' Answering Brief now claims that this Exhibit might not be genuine and might not be governing. *Pet. Ans. Br.* at 4. If that was the case, Petitioners should have objected to its introduction at trial.

Exhibit 16, the Bank of Delmarva accounts, indicates that the box marked "Joint with Survivorship (not as tenants in common)" is checked. (JX-16). Exhibit 17, the Andrews Federal Credit Union account, indicates the box marked "Joint Owner" is checked. (JX-17) Under that, the form indicates: "If these accounts are jointly held, the beneficiar (ies) are to receive the funds only in the event of the death of all account holders." *Id.* This language unambiguously demonstrates that the account is a joint tenancy with right of survivorship, and that a beneficiary only takes after all account holders have passed away. Exhibit 18, the Dover Federal Credit Union account, has the box for "Joint Account with Rights of Survivorship" checked. (JX- 18). The box for "Joint Account without Rights of Survivorship" is *not* checked. *Id.* Exhibit 19, the Infinex Financial account, contains the term "JTWROS" right in the name of the account. (JX-19). This abbreviation refers to only one type of account, a joint tenancy with right of survivorship.

It is unclear why or how Petitioners allege that all but one of these accounts do not contain necessary language to form a joint tenancy bank account. The majority of Petitioners' arguments rely on extraneous guesses and speculation, such as asserting that an account agreement is 'generic'[4] (*Pet. Ans. Br.* at 4) and incredulously claiming that the phrase "joint with survivorship (not as tenants in common)" is not sufficient language to create a JTWROS account. *Pet. Op. Br.* at 9. Petitioners repeatedly point to *Walsh v. Bailey* as being the 'holy grail' for what language is required to create a joint account, but refuse to tell Respondent or tell the Court what that language might be. Delaware case law has made it clear that there is no exact magic phrase that creates a perfect JTWROS property, as long as the documents reflect an intent to create a joint tenancy:

In order to create a joint tenancy with survivorship, language specifically showing an intent to create such relationship must have been used. A transaction will not be given the effect of a joint tenancy with right of survivorship unless clear and definite language is used from which the conclusion is without reasonable dispute that such relationship was intended.

Bothe v. Dennie, 324 A.2d 784, 788 (Del. Super. 1974) (internal citations omitted). As to Petitioners' contention that 25 *Del. C.* § 701, a statute regarding real estate partition, prevents these documents from being construed as joint accounts, the Court has previously opined regarding strict compliance with 25 *Del. C.* § 701, holding: "It may be safer to use the words of the statute, but that is not absolutely essential if the grantor's intent to create a joint tenancy clearly appears from the language used." *Short v. Milby*, 64 A.2d 36, 36 (Del. Ch. 1949). Thus, the mere fact that a document does not contain the phrase "and not as tenants in common" is insufficient to require the document to be interpreted as tenants in common. The language "as joint tenants with right of survivorship" is sufficient to establish a joint tenancy with right of survivorship between the parties.

Based on the foregoing, all of the bank accounts at issue in this matter are unambiguous and clear on their face that they create joint tenants with rights of survivorship. As the *Barnes* decision succinctly described, "The bank form speaks for itself and if it is clear, the Court may not look further to decide what is to be done with the account." *Barnes* at *4. Further, there is no dispute that all of the banks involved treated these accounts as being JTWROS accounts. Respondent was not denied access to any accounts and none of the banks refused to deliver the funds to Respondent after the other joint owner passed away. This Court has recently found that a bank's subjective treatment of an account is an important consideration in determining the titling of the account:

> The record shows that the DNB checking account was a survivorship account, and both Bank of America and DNB paid the funds in all the accounts to Ms. Bennett, rather than to the Decedent's estate. It is reasonable to presume that the bank personnel verified the status of those accounts before paying over any funds.

Minieri v. Bennett, 2013 WL 6113911 at *17 (Del. Ch. Nov. 13, 2013). Ultimately, if the Court does determine that the bank account exhibits are ambiguous regarding the creation of a joint tenancy with the right of survivorship, Respondent is willing to subpoena and supply additional information at the Court's request.

B. *PETITIONERS FAILED TO MEET THEIR BURDEN OF ESTABLISHING UNDUE INFLUENCE*

Petitioners correctly recite the elements of undue influence but their attempts to prove the existence of these elements are speculative, self-serving, and lack basic evidentiary foundation. Petitioners appear to have abandoned their argument that Aldon S. Hall was mentally incompetent, perhaps in large part due to *their* medical witness Dr. Peet testifying to precisely the opposite during trial. Now, in Petitioners' Answering Brief, they are no longer asserting a lack of competency, instead arguing that Mr. Hall was competent but nonetheless susceptible. *Pet. Ans. Br.* at 6. This change in direction does not alleviate the issue that the undue influence argument is nothing more than speculation and guess-work that is summarily refuted by their own trial testimony.

Petitioners' assertion that Aldon S. Hall was 'susceptible' for purposes of undue influence involves nothing more than vague, unsubstantiated assumptions outside of the transcript. Petitioners present conclusory, self-serving arguments such as "She is plainly trying to hide from the fact that Aldon Hall's physical condition was deteriorating rapidly, making him even more susceptible to her influence." *Pet. Ans. Br.* at 6, 7. Petitioners provide no citation to any exhibits or any testimony for this proposition, asking the Court to just take their word that it's true. The unsubstantiated speculation worsens as the argument concludes: "Given his physical condition and isolation from anyone other than the Respondent, it is ludicrous to suggest that Aldon Hall was not susceptible to influence." *Pet. Ans. Br.* at 7. Again, Petitioners are asking the Court to simply assume that this argument is true without any proper citation or evidentiary foundation. Petitioners present no evidence of isolation. In fact, the trial testimony defeats the isolation argument. Petitioners' trial testimony demonstrates that they were never denied

access to or communication with their father. There was no testimony that Mr. Hall was sheltered or isolated. Dr. Peet testified that Mr. Hall possessed the ability to protest or contest an action if he disagreed with that action. Petitioners have refused to cite any portion of the transcript to support their susceptibility argument because there simply is no part of the transcript that provides such support.

Petitioners next implicitly concede that the transcript does not support their argument, but attempt to mitigate this fact by providing excuses: "But, two of the Petitioners live in Baltimore, limiting the frequency of contact ..." *Pet. Ans. Br.* at 7. It is unclear how two of the Petitioners living in Baltimore leads to an assumption that their father was unduly influenced, and how any of this is at all attributable to Respondent. Petitioners next attempt to twist the testimony to their favor, asserting that Respondent "cut off the land line to the Powell Farm Road Property, moved Aldon Hall to her personal residence, and discontinued his cell phone, among other things." *Pet. Ans. Br.* at 7, 8. These assertions are simply clever manipulations of the well-known facts that were testified to at trial and ignore the detailed explanations that Respondent provided for these actions. Perhaps the most telling concession during Petitioners' undue influence argument comes in the portion where they admit that there was no testimony and no witnesses to an incident, but insist that it is nonetheless true because it fits into their argument:

> But there was no witness, for example, who observed Respondent browbeating her husband into driving to a bank to execute a new signature card. Frankly, it would be unlikely to find such a person since influence is typically more subtle, and actual evidence of such overt conduct would likely have resulted in charges of **elder abuse**.

Pet. Ans. Br. at 8. This quote is indicative of the general attitude Petitioners have taken in this litigation. There is no testimony on point, there are no witnesses to the event, but the event probably happened because Petitioners think it sounds like something an evil step-mother would do. Petitioners are determined not to let the actual facts of the case get in the way of their arguments.

The remainder of Petitioners' undue influence argument devolves into speculation and guesswork, none of which is supported by any record. Petitioners make broad assertions including "Had that been something the Respondent thought the Petitioners would embrace, she would presumably have told them", and "Unable to accomplish that, she found another way to gain control of Aldon Hall's assets. In other words, she helped herself!" *Pet. Ans. Br.* at 9. It is evident that the Petitioners are not happy with what exists in the trial transcript and the exhibit book, so they have taken to mere speculation and name-calling as a last resort. It does not appear that Petitioners have even made a legitimate attempt at establishing the elements of undue influence in their Answering Brief, as there is not much more than broad conclusions and airing of grievances. There was no testimony of Mr. Hall being a sheltered individual. There was no testimony that Respondent isolated him from his family. There was no testimony that Petitioners were refused access to their father. There is no testimony that Petitioners were unable to reach their father by telephone any time they called. There's no denial that Petitioners visited their father multiple times, even attending his medical appointments without controversy. Simply put, Petitioners have entirely failed to meet their burden of establishing undue influence by the Respondent.

C. *PETITIONERS HAVE FAILED TO PRESENT ANY EVIDENCE THAT RESPONDENT MISUSED THE POWER OF ATTORNEY.*

The argument presented in Petitioners' Answering Brief regarding potential misuse of the power of attorney is simple: Petitioners are not happy with the testimony presented at trial, so they allege that Respondent must have been lying, and this leads to an implication that she must have improperly utilized the power of attorney. Unfortunately, this argument rings hollow because there is no case law, no statute, no evidence, and no testimony to support it. Petitioners' argument is simply that they are suspicious, they have a hunch, and the Court should reward their unfounded suspicions by turning over to them bank accounts in which they previously had no interest.

Petitioners have also failed to present the Court with any power of attorney statute, 12 *Del. C.* §§ 49A *et seq.*, which has been allegedly violated. Petitioners generally allude to a requirement that the fiduciary's actions be either in the best interest of the principal or undertaken with the principal's consent. *Pet. Op. Br.* at 22. Petitioners also allude that when a confidential relationship exists, a self-dealing transaction must be ratified by the principal. *Id.* After presenting these standards, however, Petitioners fail to point to any testimony or evidence to establish a breach of these standards. The only testimony on the record is that Aldon expressly directed Respondent to travel to Andrews to re-title the account. (TR-261) Aldon was entirely aware that Respondent would be re-titling the account. (*Id.*). Aldon wanted Respondent's name added to the account which would conform with his previous actions where he added Respondent to multiple other accounts. (*Id.*). That is all that Respondent needs to meet her burden of proof. As Petitioners themselves conceded, actions taken under a power of attorney must *either* be in the best interest of the principal *or* be done with the consent of the principal. *Pet. Op. Br.* at 22. Respondent has credibly testified that these actions were taken with the full consent of the principal, and she only took these actions upon the behest of the principal. Petitioners have failed to introduce any evidence or testimony otherwise, instead merely contending that Respondent must be lying because they don't trust her. *Pet. Ans. Br.* at 10.

It is clear that the actions taken with the Andrews account fall perfectly in line with the actions that Aldon took on nearly all of his other bank accounts - adding his wife as a joint owner. This does not raise any suspicion and does not represent a marked departure from Aldon's standard routine. As discussed in Respondent's Answering Brief, the case of *In Re Estate of Gardner*[5] is distinguishable from the present case. There is no evidence of self-dealing and there is nothing that strongly suggests overreaching by a fiduciary. There is undisputed trial testimony that Aldon received impartial advice from a competent Delaware attorney, Stephen Parsons. (TR-135, TR-214, TR-251). In sum, Petitioners' argument regarding the utilization of the power of attorney lacks any evidentiary foundation and is nothing more than a veritable witch hunt fueled by distrust and suspicion.

D. *RESPONDENT DID NOT IMPROPERLY SEIZE OR DISPOSE OF ESTATE ASSETS*

The Last Will and Testament of Aldon S. Hall authorizes the executor, in his or her absolute discretion, to sell, exchange, convey, transfer, assign, mortgage, pledge, invest or reinvest any part of Aldon's real or personal estate. (JX-23) The car at issue was was personal property that belonged to Aldon's estate. Petitioners presented no evidence or testimony to dispute that the estate had no liquid assets. The First and Final Account indicates that the estate expenses were in excess of $16,000. (JX 4) Due to the deficit in the estate, it was necessary for Respondent to marshal and sell estate assets to balance out the debts.[6] Respondent, in her capacity as Administrator of the estate, acted properly in marshalling and selling the car to pay for estate debts. *See In re Estate of Sexton*, 2007 WL 2303915 (Del. Ch. Aug. 8, 2007) (finding that the executrix "acted within her authority in converting the automobiles into cash to be applied toward the payment of the estate's debts.")

The remainder of Petitioners' Answering Brief appears to devolve into nothing more than bad-mouthing and mud-slinging. The first contention is that Respondent purposefully and vindictively sold the automobile because it was a "car that she knew had special meaning to Aaron." *Pet. Ans. Br.* at 11. The argument here appears to be that Respondent should have shirked her fiduciary duties as Administrator of the Estate because she should have known that a piece of personal property had a special meaning to one of the beneficiaries. Respondent was not willing to breach her fiduciary duties and allow the estate to remain in debt, so she sold the estate personal property regardless of any special meaning that any parties had placed on that personal property. Undoubtedly, if Respondent had not sold the car, Petitioners would then allege that she breached her fiduciary duties by failing to marshal estate property. As previously stated, Respondent is "darned if she does, darned if she doesn't."

The next contention is that Respondent minimized and destroyed Aaron Hall's ability to derive income, and this excuses Aaron from a duty not to misappropriate and mishandle estate property. *Pet. Ans. Br.* at 11. In what has become a recurring theme in this briefing, Petitioners' argument is again entirely inappropriate, not substantiated by any evidence or testimony, and reflects nothing more than an attempt to paint Respondent in a bad light.

The final, last ditch effort by Petitioners to slander Respondent appears on the last page of Petitioners' Answering Brief, where they cite an employment dispute involving Respondent from 15 years ago as proof that "Respondent was no stranger to such overbearing and retaliatory activity." *Pet. Ans. Br.* at 12. As a preliminary matter, it is notable that Petitioners failed to ask Respondent any questions about this case during her deposition[7], failed to cite to this case in the pre-trial stipulation or at any other time prior to trial, made no mention of it during the trial itself, and did not even refer to it in their opening brief. Presumably Respondents understood that Petitioner's counsel would have objected to the introduction of this case as irrelevant and overly prejudicial, and that the Court would have sustained such an objection. Petitioners' strategy in saving their reference to this case for their Post-Trial Reply brief does not make it any less objectionable, and Respondent stands ready to file a motion to strike if the Court requests additional argument on this issue. In any event, Petitioners' transparent and improper attempt to sully Respondent's reputation serves as notice that Petitioners recognize that a careful review of the testimony and evidence adduced at trial will demonstrate that their arguments are simply not persuasive on their own merit, and must fail.

III. CONCLUSION

For the foregoing reasons, the Respondent respectfully requests that the Court DENY the relief sought in the Petition in this action, and GRANT the Respondent the relief she seeks and such other relief as the Court deems just and proper.

Date: May 23, 2014

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Footnotes

1 *Walsh v. Bailey*, 197 A.2d 331 (Del. 1964).

2 Petitioners' Opening Brief alleges that there is ample case law requiring 'magic language' to be present in order to establish a joint bank account, but Petitioners do not cite any case law in support. *Walsh v. Bailey* itself does not appear to require any 'magic language', instead only considering whether or not "[t]he complete tenor of the instruments connotes a joint tenancy ..." *Walsh* at 423.

3 One page does not have Aldon S. Hall's signature on it. However, this is the same account #XXXXXXXXXX, that contains Aldon S. Hall's signature on the preceding page in the exhibit book. Thus, all PNC Bank accounts have both signatures.

4 All account agreements from a national bank are generic; the bank does not type up a unique form for each and every account opening.

5 *In Re Estate of Gardner*, 2012 WL 5287948 (Del. Ch. Oct. 24, 2012).

6 Petitioners' Answering Brief contends that Respondent admitted that there were sufficient funds available in the estate to pay the debts, and thus the sale of the car was not necessary. *Pet. Ans. Br.* at 11. In support for this contention, Petitioners cite to page 60 of the transcript. This page contains a portion of the cross-examination of Anthony S. Hall that does not mention anything about whether or not estate funds were available.

7 If the Petitioners had inquired about this matter, the Respondent would have explained the difficulties and frustration she endured in going through such contentious ligiation and Aldon, her biggest supporter, assisted her greatly during this time period, as she would for him if he faced diffult circumstances.

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