2012 WL 8680969 (Minn.App.) (Appellate Brief)
Court of Appeals of Minnesota.

In re the Estate of Ronald Earl JONES, Deceased.
Ronald H. JONES and Jessica A. Warren, Appellants,
v.
Charlotte L. LARSON, Respondent.

No. A12-0828.
July 16, 2012.

Appellants' Brief and Appendix

Peterson Law Office, LLC, William G. Peterson (#86435), 3601 Minnesota Drive, Suite 835, Bloomington, MN 55435, (952) 921-5818, Attorney for Appellants.

Erhart Legal, L.L.C., William A. Erhart (#27066), 316 East Main Street, Suite 110, Anoka, MN 55303, (763) 427-7800, Attorney for Respondent.

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1. When a noncontributing party to a joint bank account takes possession of the funds prior to the death of the sole-contributing account holder, do the funds belong to the decedent's estate pursuant to Minn. Stat § 524.6-203 (a)?

District Court held: In the negative

Relevant authorities: Minn. Stat. § 524.6-203 (a); **Hefner v. Estate of Ingvoldson** 346 N.W.2d 204 (Minn. App. 1984), **Vaughn v. Bernhardt,** 345 S.C. 196, 547 S.E. 2d 869 (2011) [applying Uniform Multiparty Accounts Act]

2. Does the donee of an alleged *inter vivos* gift bear the burden of proving the legal entitlement to the gift by "clear and convincing evidence" pursuant to Minn. Stat. § 524.6-203 (a)?

District Court held: In the negative

Relevant authorities: **Estate of LeBrun,** 458 N.W.2d 139, 143 (Minn. App. 1990); **Oehler v. Falstrom,** 273 Minn. 453, 456, 142 N.W.2d 581, 585 (1966)

***vii PROCEDURAL HISTORY**

Ronald Earl Jones executed a Last Will and Testament on April 15, 1999 (A.1). Mr. Jones died on April 5, 2010.

On December 1, 2010, that Will was admitted to probate and Charlotte L. Larson, one of the daughters of decedent, was appointed personal representative in Formal Proceedings (A.8).

An Inventory was filed and on July 26, 2011, a proposed Final Account (A.23) and Proposal for Distribution (A.26) were filed. Objections were filed that, among other things, "the Inventory and Final Account fail to include assets of the decedent" on September 26, 2011 by decedent's son, Ronald H. Jones (A.28) and a similar objection on October 7, 2011 by decedent's daughter, Jessica A. Warren (A.30).

The case was called on October 10, 2011 and, due to the objections, was continued for trial on November 2, 2011, before Honorable Sean C. Gibbs.

Trial was held on that date and the court issued its Findings of Fact, Conclusions of Law and Order on March 8, 2012 (A.52) and served on March 17, 2012. An Order discharging the personal representative was issued ex parte on April 17, 2012 (A.59) pursuant to Minn. Stat. § 525.71, an appeal of these orders was taken by Ronald H. Jones and Jessica A. Warren (A.60).

***viii STATEMENT OF FACTS**

Ronald Earl Jones was born on XX/XX/1919 (Exhibit 11). In the course of his 91 years he was married twice, once to Carol by whom he had three children Ronald Henry Jones, Linda Mae Jones n/k/a Jessica A. Warren, and Diane Lynn Jones. He later married Doris, with whom he had two children, Charlotte L. Larson and Gale Ann Bristlin. He divorced Carol and Doris died while Ronald was alive (Transcript [T] 7-8).

As he became **elderly**, he continued to live in his home in Coon Rapids but he was dependent on his daughter Charlotte L. Larson who provided care for him and handled his **financial** affairs (T.14). Charlotte L. Larson testified that her father had confidence in her and trusted her (T.17]. Ronald maintained six certificates of deposit jointly in his name with his daughter Charlotte L. Larson (T.21). They were as follows:

a. Certificate #1: Account established on 9/27/1987 and which had a value on November 30, 2009 of $1701.56 (hereafter Certificate No. 1).

b. Certificate #2: Account established on 12/3/2001 and which had a value on November 30, 2009 of $53,955.40 (hereafter Certificate No. 2).

c. Certificate #3: Account established on 2/3/2005 and which had a value on November 30, 2009 of $13,794.63 (hereafter Certificate No. 3).

***ix** d. Certificate #4: Accountestablished on 7/9/2004 and which had a value on November 30, 2009 of $31,439.25 (hereafter Certificate No. 4).

e. Certificate #5: Account - established on 7/9/2004 which had a value on November 30, 2009 of $6,530.91 (hereafter Certificate No. 5).

f. Certificate #6: Account _ established on 5/24/1995 and which had a value on November 30, 2009 of $2,103.14 (hereafter Certificate No. 6).

See the Summary of Certificates of Deposit.

At trial, Charlotte L. Larson testified that of the above certificates, #1, #3, #4, #5 and #6 were all from funds solely contributed by her father Ronald (T.21, 40). She stated that account #2 was exclusively from a gift from Ronald in 1997 (T.40). Ronald had given the homestead to Charlotte in 1996 (T.39).

Charlotte Larson testified that on Friday, December 18, 2009, she cashed out Certificate No. 4 at Wells Fargo Bank in Coon Rapids for a sum in excess of $31,000 and placed the money in her own account (T.18).

Ronald Jones had serious dementia during the last years of his life so that he could not take care of his own affairs (Transcript, pp. 13-14)

Charlotte L. Larson testified that on Thursday, January 14, 2010, she cashed out Certificates No. 1, 2, 3, 5 and 6 at Wells Fargo Bank in Coon Rapids in ***x** the amounts shown on the bank statements (Exhibits 14 through 17) and placed the money in her own account (T.23).

The bank statement from November 30, 2009 (Trial Exhibit No. 13), indicates that the interest rate per annum on Certificate #1 was 0.3%, on Certificate #2 was 4.15%, on Certificate #3 was 0.3%, on Certificate #4 was 2%, on Certificate #5 was 2% and on Certificate #6 interest was 3.11%.

Charlotte L. Larson acknowledged that the bank statements she had provided to Petitioner (Certificate of Deposit No. - Exhibit 15 - page 388) was established in the name of Charlotte L. Larson for $8,558.22 on January 14, 2010. She testified that she could not recall setting it up or having it (T.27).

Ronald Earl Jones died on April 5, 2010 at the age of 91 years. The causes of death for Ronald Earl Jones were complications of immobility arising from a left leg fracture combined with prior right leg fracture, hypertension, dementia, and arteriosclerosis heart disease (Exhibit 11).

The only testimony of Charlotte L. Larson regarding the five certificates of deposit (#1, #3, #4, #5 and #6) was that Ronald Earl Jones was the sole contributor for them and there was no other interest of ownership indicated pursuant to Minn. Stat. § 524.6-203 (a) (T.37).

The case was tried before Judge Sean C. Gibbs on November 21, 2011 and he issued his order in the matter on March 17, 2012, Judge Gibbs issued an order ***xi** discharging the personal representative and it is from those orders that this appeal was taken.

***xii Summary of Certificates of Deposit of Ronald Earl Jones (DOD 4-5-2010)**

Ref.	#CD Number	Issue Date	Maturity Date	Value on 11-30-2009	Date Withdrawn by Charlotte Larson
1		9/29/87	3-29-2010	$1,701.56	1-14-2010
2		12/3/01	10/3/11	$53,955.40	1-14-2010
3		2/3/05	5/3/10	$13,794.63	1-14-2010
4		7/9/04	8/9/10	$31,439.25	12-18-2009

5	7/9/04	8/9/10	$6,530.91	1-14-2010
6	5/25/95	12/24/09	$2,103.14	1-14-2010 [a]
		TOTAL	$109,524.89	

***xiii STANDARD OF REVIEW**

Stripped to the essentials, there is no real dispute of the facts. Charlotte L. Larson took possession of five of Ronald Earl Jones' bank accounts to which he alone had contributed while Ronald was alive. She withdrew the money and put it in her personal bank account because she could.

She made no excuse or pretense about it other than that her name was on the joint accounts and the bank let her do it.

Accordingly, the issue before this court is the application of a statute, namely Minn. Stat. § 524.6-203 (a), to undisputed facts. **A.J. Chromy Const. Co. v. Commercial Mechanical Services Inc.** 260 N.W.2d 579 (Minn. 1977). Hence the review by this court is *de novo.*

Likewise, which party bears the burden of proof by "clear and convincing evidence" to overcome the statutory presumption of Minn. Stat. § 524.6-203 (a) is an issue of fact that this court reviews *de novo. Savig v. First National Bank of Omaha,* 781 N.W.2d 335 (Minn. 2010).

***1 ARGUMENT**

I. DISTRICT COURT ERRED WHEN IT CONCLUDED THAT THE FIVE BANK ACCOUNTS (OF WHICH RESPONDENT TOOK POSSESSION) BELONGED TO HER AND NOT THE ESTATE

The Minnesota Multi-Party Accounts Act [MPAA] enacted Article 6 of the Uniform Probate Code in 1973 (Minn. Laws 1973 ch. 619, § 4). Minn. Stat. §524.6-203 (a) provides as follows:
[OWNERSHIP DURING LIFETIME.] (a) A joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions by each to the sums on deposit, unless there is clear and convincing evidence of a different intent.

This is taken verbatim from the Uniform Probate Code [A.37]. The same provision appears in the statutes of many other states.

The most important Minnesota case dealing with this statute is *Hefner v. Estate of Ingvoldson,* 346 N.W.2d 204 (Minn. App. 1984). Myrtle Ingvoldson received an inheritance from her deceased husband which she invested in certificates of deposit and bonds. She listed herself and her daughter, LaVerne Hefner, as joint account holders. LaVerne had not contributed money to the purchase of the investments. Myrtle appointed Stanford Lenhart under a power of attorney and Lenhart cashed the bonds and certificates of deposit and placed all the proceeds in the name of Myrtle who died shortly thereafter. LaVerne Hefner sued the Estate arguing that, through its agents, she had been wrongfully deprived of her joint interest in the certificates and bonds. The district court dismissed her lawsuit on the basis that it failed to state a claim upon which relief ***2** could be granted under Minn. Stat. § 528.04(a) [the previous coding of Minn. Stat. § 524-6.203 (a)]. The appellate court affirmed, holding that the non-contributing account holder has no legal interest to possess the certificates or bonds while the contributing account holder was alive. The court ruled:
The certificates and bonds remained the sole property of decedent during her lifetime and were available to her to be disposed of as she wished.

Hefner contributed nothing toward the purchase of the bonds or certificates of deposit, and had no right of possession to them nor to the proceeds prior to decedent's death. She had only an inchoate interest which would have matured into ownership had decedent predeceased her without cashing the bonds and certificates.

Since decedent received the proceeds from the bonds and certificates, Hefner suffered no injury other than the loss of an expectancy of an inheritance. That is not an actionable loss.

346 N.W.2d at 207. [Emphasis added.]

Certainly while Myrtle was alive, if Laverne Hefner had outraced Stanford Lenhart to the bank and had drawn out all the joint assets, the court would not have awarded the assets to LaVerne. The clear inference of the Hefner case is that a racing Hefner would not have had rightful possession of the certificates and bonds. Likewise when Charlotte L. Larson cashed out Ronald's certificates during his lifetime, neither did she have a right of possession to them.

In **Enright v. Lehmann,** 735 N.W.2d 326, 332 (Minn. 2007), the Supreme Court reversed the Court of Appeals and held that a joint account to which a debtor did not contribute money belonged to the account owner whose money was in the account. Accordingly the high court applied ***3** Minn. Stat. § 524.6-203 (a) and vacated a garnishment against the non-contributing joint account holder.

In the present case, Charlotte L. Larson testified that the sources of funds for Certificates of Deposit #1, #3, #4, #5 and #6 were all solely from the assets of Ronald Earl Jones. These accounts were all cashed out by Ms. Larson as a person named on the joint account in December of 2009 and January of 2010, respectively, four and three months before the death of Ronald Earl Jones. Ms. Larson submitted no evidence that these accounts were intended to be owned in a manner different from the provisions of Minn. Stat. § 524.6-203 (a) and the Will of Ronald Earl Jones. These accounts were estate assets and should be returned to the estate for probating and appropriate division among the devisees.

Charlotte L. Larson took the money because she could. Just because the bank allowed her to take it as a joint tenant did not entitle her to possession of it. (See Transcript, p. 38.)

It is rather dubious whether Charlotte L. Larson may have been truly entitled to the $53,955.40 in Certificate #2 that Ms. Larson claimed was entirely from her own assets. Regardless of Certificate #2, the Estate is clearly entitled to the $55,569.49 that Charlotte L. Larson testified was in the Certificates #1, #3, #4, #5 and #6, all of which was solely contributed from the assets of Ronald Earl Jones. In any event, there is no hardship on Ms. Larson immediately replacing the proceeds of the five certificates with her one certificate (#2) which proceeds ***4** are approximately equivalent in dollar values to the total of the other five certificates.

What result should occur when a noncontributing joint owner takes it upon himself or herself to withdraw the contributing account owner's assets during that person's lifetime?

The Uniform Probate Code has been adopted by a number of states with the specified purpose of creating uniformity among state probate codes. As the Supreme Court said in *Enright v. Lehmann,* 735 N.W.2d 326, 332 (Minn. 2007) :
One of the purposes of the Uniform Probate Code is to “make uniform the law among the various jurisdictions.” Minn. Stat. § 524.1-102(4)(2006). “Laws uniform with those of other states shall be interpreted and construed to effect their general purpose to make uniform the laws of those states which enact them.” Minn. Stat. § 645.22 (2006). While Minnesota's MPAA was not initially enacted as part of the probate code, the legislature's decision to move it to the probate code indicates the legislature's desire that Minnesota courts interpret the MPAA consistently with those of other states.

Appellants submit that the Uniform Probate Code requires that it is to be returned to the contributing account holder or his estate. The situation has arisen under the Uniform Probate Code in South Carolina, Indiana and Nebraska. In the pursuit of what Mr. Justice Anderson identified as "the legislature's desire that Minnesota courts interpret the MPAA consistently with those of other states." *Enright v. Lehmann,* 735 N.W.2d 326, 332 (Minn. 2007), we submit ***5** that those states' interpretations of the Uniform Probate Code are applicable in Minnesota.

In Vaughn v. Bernhardt, 345 S.C. 196, 547 S.E.2d 869 (2001) [See Appendix, A.39] Mary Bernhardt, an 82 year-old woman, using entirely her own money, as here, created several accounts with her nephew John Bernardt as joint account holder with the right of survivorship. On June 7, 1995, Mary Bernhardt was admitted to St. Francis Hospital and a week later John Bernhardt went to the bank, cashed out the joint accounts amounting to $52,884.86 and placed the proceeds in his name. On June 22, 1995, Mary Bernhardt died. After appointment, the personal representative demanded that John Bernhardt return the proceeds from the joint accounts. John Bernhardt refused, citing his joint ownership rights and his survivorship rights under South Carolina's enactment of the Uniform Probate Code. (South Carolina Code Annotated, § 62-6-104 (a) which is virtually the same as Minn. Stat. § 524-6.204.) The probate court denied his claimed entitlement and ordered him to repay the amount withdrawn less his payment of funeral expenses. John Bernardt took an appeal to the Circuit Court which affirmed and then to the Court of Appeals which also affirmed the probate court decision. Next he petitioned for certiorari from the Supreme Court which granted his writ.

The supreme court began its analysis by reciting the Uniform Probate Code provision contained in S.C. Code Ann. § 62-6-103 (a) which matches word-for-word Minnesota's law: "A joint account belongs, during the lifetime of all parties, ***6** to the parties in proportion to the net contributions by each to the sums on deposit, unless there is clear and convincing evidence of a different intent" 345 S.C. at 198. The court noted:

According to the stipulated facts, Bernhardt did not contribute any money to the Joint Accounts. Thus, under the provisions of section 62-6-103(a), all the funds from the Joint Accounts belonged to the Decedent during her lifetime because she was the sole contributor. Seven days prior to the Decedent's death, Bernhardt transferred the funds from the Joint Accounts into an account titled solely in his name. When the Decedent died, there were no sums on deposit in the Joint Accounts because Bernhardt had removed the funds. Therefore, Bernhardt cannot claim ownership of the funds based on section 62-6-104(a), the right of survivorship provision.

Bernhardt argues the ownership provision, section 62-6-103(a), does not apply to this case because it only applied during the lifetime of the parties, and the Decedent is now dead. We disagree. Section 62-6-103(a) is not rendered inapplicable just because the Decedent died. Section 62-6-103(a) certainly applied seven days prior to the Decedent's death when Bernhardt transferred the funds from the Joint Accounts into a personal account, because those funds belonged to the Decedent. Because both parties to the Joint Accounts were still living at the time of the transfer, section 62-6-103(a) dictates the funds removed by Bernhardt belonged to the Decedent at that time.

The court cited the **Shourek** decision and concluded its decision affirming the probate court and the intermediate courts by acknowledging the public policy considerations for application of the MPAA:

> The effect of our decision today may be to frustrate the Decedent's intent, but to hold otherwise would be to ignore the plain meaning of the statute. Furthermore, accounts with right of survivorship provisions are often set up to allow caretakers to assist **elderly** people with the management of their **finances**. Their **financial** protection can best be honored by adhering to the statutory presumption.

***7** 345 S.C. at 200. The Minnesota Supreme Court agrees about the clarity of MPAA (Minn. Stat. § 524.6-203 to 524.6-205). "The language of the MPAA is unambiguous." *Enright v. Lehmann,* 735 N.W.2d at 331.

In *Shourek v. Stirling,* 621 N.E.2d 1107 (Ind. 1993), [A.42], Lillian Jonas, an **elderly** woman, added the name of her deceased husband's niece, Suzanne Stirling, on four certificates of deposit and her checking account with the right of survivorship. Ms.

Stirling did not contribute to the accounts. On February 28, 1991, Ms. Jonas was found unconscious and transported to a nearby hospital. On March 2, 1991, Stirling and her husband, Jack, withdrew $65,000 from the joint accounts. Lillian Jonas died four hours later. Jonas' nephew, Frank Shourek, was later appointed personal representative of her estate and he demanded return of the $65,000 which the Stirlings refused to do. Shourek sued and the Stirlings moved for summary judgment. The trial court granted summary judgment because it concluded that was the intent of Ms. Jonas after her death. The Court of Appeals affirmed. The Supreme Court reversed. It cited the familiar language from the Uniform Probate Code as incorporated into Indiana Code Annotated, § 32-4-1.5-3(a): "A joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions by each to the sums on deposit, unless there is clear and convincing evidence of a different intent." Accordingly, summary judgment was not proper. In the present case, unlike **Shourek,** the claimant to the funds was accorded the ***8** opportunity to prove by clear and convincing evidence that some other ownership was intended which she did not do.

The case of *In Re Overton,* 169 B.R. 196 (D. Neb. 1994), [A.46], construed the Uniform Probate Code provision we have been discussing [UPC § 6-211] which appears as Neb. Rev. Statute § 30-2722 (b) which is the same as Minn. Stat. § 524.6-203 (a). In that Chapter 7 case, Bankruptcy Debtor Brenda Overton had a joint certificate of deposit with her father Donald Betts and her brother Brian Betts. The funds for the certificate had been contributed entirely by her father, Donald. Brenda Overton was named as joint owner to secure loans that Mr. Overton had with a bank. When Brenda Overton filed for bankruptcy, the Bankruptcy Trustee moved the court to declare the joint account as an asset of Brenda Overton, the bankruptcy debtor. The court rejected the claim of the Trustee. The court cited the Uniform Probate Code language: "During the lifetime of all parties, an account belongs to the parties in proportion to the net contribution of each to the sums on deposit, unless there is clear and convincing evidence of a different intent" and ruled that she did not have a possessory interest in the joint account. See also *Morse v. Williams,* 48 Wash. App. 734,740 P.2d 884 (1987) for discussion on this section of Uniform Probate Code.

***9 II. DISTRICT COURT ERRED WHEN IT DETERMINED THAT APPELLANTS RATHER THAN THE DONEE WERE SADDLED WITH THE BURDEN OF PROOF BY "CLEAR AND CONVINCING EVIDENCE" EXCEPTION TO THE STATUTORY PRESUMPTION OF OWNERSHIP OF MINN. STAT. § 524.6-203 (a)**

Minn. Stat. § 524.6-203 (a) provides the rule to be universally applied: "A joint account belongs during the lifetime of all parties to the parties in proportion to the net contributions by each to the sums on deposit..."

Applying that rule establishes a clear mandate that Ronald's **financial** assets wherever located were his alone and belonged to his estate after his death if they were not in a joint account on April 5, 2010 (which they were not).

Indeed if Ronald had an automobile that was parked in Charlotte's garage at the moment of his death, no one would say that it belonged to Charlotte due to that fact. Neither should the proceeds of the certificates belong to Charlotte just because they are parked in her bank.

The district court acknowledged the truth of that mandate when it found "There is no question that the funds in CD's #1, #3, #4, #5, and #6 belonged exclusively to Decedent during his lifetime, as the sources for all those accounts came from his funds."

However, the statute goes on to state a proviso: "unless there is clear and convincing evidence of a different intent."

Under the law, it is important that the provisos not be interpreted to consume the rule itself. Minn. Stat. § 645.19; *State v. Twin City Tel. Co.,* 104 Minn. 270, 116 N.W. 835 (1908).

***10** Which party bears the obligation to prove the proviso or exception to the statutory presumption of lifetime ownership?

Should the heirs Ronald H. Jones and Jessica A. Warren have to disprove the proviso or exception? That hardly seems just or reasonable. Appellants are satisfied that the general rule of Minn. Stat. § 524.6-203 (a) should be applied to vest the five certificates in their father's estate to be divided among all four children as their father's Last Will and Testament directed: "I

devise and bequeath my entire estate in equal shares to my children, RONALD HENRY JONES, JESSICA WARREN f/k/a LINDA MAE JONES, GALE ANN BRISTLIN and CHARLOTTE LEE LARSON." (A.2)

The trial court concluded that the objectors not only had to prove that the five accounts belonged to Ronald (which was done), but the court further concluded that the objectors had to prove that there was not "a different intent" under Minn. Stat. § 524.6-203 (a).

That ruling does not make sense.

The Objectors established the threshold factual basis for the statutory presumption that (1) the funds of Certificates #1, #3, #4, #5 and #6 were in joint accounts (2) for which the testator was the sole contributor and (3) which were diverted to the noncontributing joint account holder (4) prior to the death of the testator. (Transcript, p.21; 39-40)

***11** The assertion that there was a "different intent" under Minn. Stat. §524.6-203 (a) is an exception or negation of the general rule as stated in the body of Minn. Stat. 524.6-203 (a).

Charlotte L. Larson as the beneficiary of such negation and as the person in the best position to prove that exception has the burden of proving that negative. We submit that the Objectors cannot reasonably be placed in the position of having to prove the absence of a negative.

In **Rotzein-Furber Lumber Co. v. Franson,** 123 Minn. 122, 126, 143 N.W. 253, 255 (1913) the Supreme Court ruled:

> [w]hile a negative fact must be proved when it is an essential, it is not necessary that plaintiff negative possible defenses or establish matters which would more properly come from the other side. **Jones v. Ewing,** 22 Minn. 157. If defendants desired to reduce liability in consequence of the exercise of the privilege referred to, they should have pleaded and proved the facts. Necessarily the truth of the matter was peculiarly within their knowledge.

See also *Minnesota Rules of Evidence,* Rule 301 and Commentary.

Instead of establishing "a different intent" by "clear and convincing evidence" at trial as required by statute, Respondent Larson was silent. Accordingly, the general rule of Minn. Stat. § 524.6-203 (a) should apply and the five Certificates of Deposit must be deemed assets of Ronald Earl Jones which descended into his estate.

This imposition of the burden of proof upon Respondent is consistent with long-standing case law.

***12** When a person seeks to keep assets and exclude them from an estate, he bears the burden of proof. In **Estate of LeBrun,** 458 N.W.2d 139 (Minn. App. 1990), James LeBrun claimed that $7500 of cash found in decedent's home after his death really belonged to James and was not part of the estate. This court ruled:
The elements of a gift inter vivos are delivery of the property, "with intent to vest title in the donee, and without reserving any right to reclaim the property." **Oehler v. Falstrom,** 273 Minn. 453, 456, 142 N.W.2d 881, 883 (Minn. App. 1987)). *The alleged donee bears the burden of proving the gift by clear and convincing evidence.* **Oehler,** 273 Minn. at 457, 142 N.W.23 at 585.

458 N.W.2d at 143

In *Russell's Americinn, LLC v. Eagle General Contractors, LLC,* 772 N.W.2d 81 (Minn. App. 2009), Dale Werth, a garnishment debtor, claimed that a joint account to which he contributed for payment of his son's loans were not his funds so they were exempt from garnishment under Minn. Stat. § 524.6-203 (a). The court concluded that Werth "failed to demonstrate by clear

and convincing evidence that the funds in the bank account were intended for his son's use" 772 N.W.2d at 87. The court concluded that Werth was the owner of the joint account and the account was therefore garnishable. This case clearly reinforces the principle that the person who disputes the Minn. Stat. § 524.6-203 (a) statutory presumption of ownership bears the burden of proving a different intent for the account by "clear and convincing evidence".

***13** Proof of the Minn. Stat. § 524.6-203 (a) by "clear and convincing evidence" is a high standard. As the court said in *Gasler v. State*, 787 N.W.2d 575, 583 (Minn. 2010) "In order to prove a claim by clear and convincing evidence, a party's evidence should be unequivocal, intrinsically probable and credible, and free from frailties."

Clearly Respondent did not provide such evidence of "a different intent" by such "clear and convincing evidence" so the Certificates of Deposit should be deemed estate assets.

III. TRIAL COURT'S RELIANCE ON MINN. STAT. §524.6-204 AND ESTATE OF BUTLER, 803 N.W.2d 393 (Minn. 2011) IS MISPLACED BECAUSE THE ACCOUNTS WERE SEIZED AND CLOSED BY RESPONDENT FOUR MONTHS BEFORE TESTATOR'S DEATH

Respondent Charlotte L. Larson has argued that Minn. Stat. § 524. 6-204 applies to give her the funds in the joint accounts. However, as the testimony of Ms. Larson and the Bank Statements [Exhibits 12 through 20] clearly demonstrated, she cashed out Ronald Earl Jones's joint accounts on December 18, 2009, and January 14, 2010. There was no joint account in existence on April 5, 2010, the date of death of Ronald Earl Jones (except the joint checking account which is not at issue here). Minn. Stat. § 524.6-204 provides in part material: "*Sums remaining on deposit at the death* of a party to a joint account belong to the surviving party..." [Emphasis added.]

In the case, due to Respondent Larson's acts, the Accounts did not survive until the death of their creator. It is doubtlessly true under ***14** Minn. Stat. § 524.6-204 and **Estate of Butler,** 803 N.W.2d 393 (Minn. 2011) that joint accounts upon the death almost always become the property of the surviving account holder. Conversely, under Minn. Stat. § 524.6-203 (a), the proceeds of an account that the noncontributing party has liquidated prior to the contributor's death should almost always become the property of the estate of the decedent.

The cases of **Vaughn v. Bernhardt, infra** and **Shourek v. Stirling, infra,** addressed the precise circumstances of Ms. Larson's allegation under the Uniform Probate Code. There is no legal basis to allege the applicability of Minn. Stat. § 524.6-204.

IV. RESPONDENT IN SEIZING THE BANK ACCOUNTS VIOLATED HER FIDICUIATY DUTIES TO HER FATHER AND TO THE HEIRS OF THIS ESTATE

Charlotte L. Larson would have been compelled to return Ronald Earl Jones's Certificates of Deposit even if she had been no more than a casual acquaintance of Ronald's. However, it is disturbing in this case that she was a great deal more than a casual acquaintance when she took the action which she did.

What is particularly troubling about Ms. Larson's action in seizing her father's Certificates of Deposit in December of 2009 and January of 2010 was that he had confidence in her. He was an old and disabled man. He suffered from dementia. She was his caregiver. She handled his **financial** transactions. Ms. Larson could not know when she took his money in December and January whether he would survive four months or four years - or more. He trusted her, ***15** as Ms. Larson stated under oath. She took his money and abandoned him **financially**. She was clearly a fiduciary on his behalf. In **Carlson v. Carlson,** 363 N.W.2d 803 (Minn. App. 1985), the Court set a high standard for children who are handling the assets of a parent:
One acting in a fiduciary capacity must exercise the utmost fidelity toward the principal, **Christensen v. Redman,** 243 Minn. 130,136, 66 N.W.2d 790, 794 (1954), and owes the principal a duty of full disclosure, **Village of Burnsville v. Westwood Co.,** 290 Minn. 159, 166, 189 N.W.2d 392, 397 (1971). An agent cannot profit from the subject of the agency without the

principal's consent, freely given after full disclosure of any facts that might influence the principal's judgment. **Schepers v. Lautenschlager,** 173 Neb. 107, 119, 112 N.W.2d 767, 774 (1962). Furthermore, “Fraud will be presumed when there has been a transaction between persons occupying a fiduciary relationship, whereby one in whom confidence was reposed ***obtained benefits without consideration, or for an inadequate consideration. The onus is on a person obtaining such benefits to show that he acted righteously.” **Village of Burnsville v. Westwood Co.,** 290 Minn. at 166, 189 N.W.2d at 397

363 N.W.2d at 805-806; See also **Estate of Nordorf,** 364 N.W.2d 877 (Minn. App. 1985) and **Estate of Darsow,** 375 N.W.2d 538 (Minn. App. 1985).

Respondent Larson drained all of Ronald Earl Jones' accounts in December of 2009 and January of 2010 and took possession of them at a time when Larson herself admitted that he was incapable of managing his own affairs (Transcript, pp. 13-14). Her acts were self-serving and breaches of her fiduciary duties.

Respondent failed in the fiduciary duty she owed to her father and to her family.

***16** In **Estate of Nordorf,** *supra,* District Judge Melvin Peterson ordered that the contents of a joint bank account that were in the account at the time of death of decedent be distributed not to a joint tenant on the account but to the Estate. In **Estate of Darsow,** District Judge Jack Mitchell ordered Hazel Rech, a niece of the decedent, to return the bank account assets to the Estate. The same result should be ordered in this case.

V. TRIAL COURT'S RATIONALE FOR AWARDING THE PROCEEDS OF THE CERTIFICATES OF DEPOSIT TO RESPONDENT IS NOT SOUND

In reading the trial court's findings from the beginning, the reader is struck by the accelerating sense that the court has adopted the key findings that Charlotte L. Larson took possession of her father's Certificates of Deposit, that the source of the five accounts was entirely Ronald Earl Jones' resources and that Ms. Larson had no “clear and convincing evidence” of a “different intent” by her father which would justify her appropriation of the accounts.

Thus when one arrives at the end of the court's decision, it is startling that the court's conclusion is to give to Respondent the accounts contrary to the rule of Minn. Stat. § 524.6-203 (a).

It may be beneficial to consider each of the reasons that the court gives at the end of its order.

The first “factor” that the court gives is: ***“Decedent's Last Will and Testament does not refer to the CD‘s.”***

***17** This factor is inexplicable because the Will does not list any other species of property so it is difficult to understand why the omission of one type of property (CD's) should create some inference of “different intent” for the management of assets.

The next “factor” is as follows:
From the evidence received at the hearing, there is no indication that Petitioner was involved in establishing the CD's and listing herself as joint owner. There is also no evidence of fraud, undue influence, or coercion on the part of Petitioner.

There never was any intimation that there was involvement of Respondent in their creation nor fraud, undue influence or coercion. The factor is irrelevant to the present case. The only wrongful acts were Respondent taking possession of her father's Certificates of Deposit in December of 2009 and January 2010. From those acts, Appellants submit that they became assets of the estate as a matter of law.

The next "factor" that the district court lists is:
Decedent gave $30,000 gifts to Petitioner, Ronald H. Jones, and Gale Bristlin, independent of CD's he jointly held with Petitioner.

It may be true that in 1997 to 2001, Ronald Earl Jones may have given $30,000 gifts to all four of his children (Transcript, p.35) however a gifting over a decade ago has no probative significance. The subjects are the five Certificates of Deposit which were clearly in joint accounts in the name of Ronald Earl Jones and Charlotte L. Larson until four months before Ronald's death.

***18** The court then indicates the next "factor."
Petitioner was Decedent's primary caretaker during the final years of his life. She transported him to medical appointments, made sure his bills were paid and taxes were prepared, and kept track of his medications. Petitioner testified that Decedent trusted her and placed his confidence in her. Decedent instructed Petitioner to take money from CD #4 to fix up his home so he could preserve it from condemnation, and Petitioner did this.

The court obviously feels that Respondent's care of testator in his declining physical and mental health entitles her to an extra portion of his assets. This "factor" is in patent contradiction and amounts to a rewriting of his will which stated:
"I devise and bequeath my entire estate in equal shares to my children, RONALD HENRY JONES, JESSICA WARREN f/k/a LINDA MAE JONES, GALE ANN BRISTLIN and CHARLOTTE LEE LARSON."

(Appendix, A.2)

What the Respondent has done by personally appropriating the Certificates of Deposit totaling at least $55,569.49 (A.36) is depleting the estate by over half -down to $41,941.13 (A.10). While the district court may feel it benevolent to provide compensation to Charlotte for Ronal's care, that is not consistent with the express provision of his Will dividing Ronal's Estate into four equal shares. As the Supreme Court said in **In Re Convey's Estate,** 177 Minn. 266, 269, 225 N.W. 17, 18 (1929):

> The court cannot give effect to an unexpressed intention of the testator, nor add a term to the will, or modify the language used in ***19** order to make what seems a more proper or reasonable devise, where there is no ambiguity in the language used.

The district court judge in this case has taken a considerable liberty in crafting a result for the Jones family that the court apparently felt is fair-minded and just. It is true that at one time the law of multiparty joint accounts was very flexible to considerations of the law of equity and was subject to family members' testimony of what the decedent probably would have wanted. See **Rutchick v. Salute,** 288 Minn. 258, 179 N.W.2d 607 (1970) and **Brennan v. Carroll,** 260 Minn. 521, 111 N.W.2d 229 (1961).

All that changed dramatically in 1973 when the legislature enacted the Multiparty Accounts Act (which is part of the Uniform Probate Code) Minn. Laws 1973, chapter 619. Part of the legislative intent was apparently to remove the "uncertainty in the law of joint accounts." **Enright v. Lehmann,** 735 N.W.2d 326, 332 (Minn. 2007).

By reasserting certainty in the law of joint accounts, the flexibility and discretion present in the law prior to 1973 was extinguished. "The language of the MPAA is unambiguous." **Enright v. Lehmann,** 735 N.W.2d at 331. Accordingly, the district court judge's exercise of discretion in determining winning and losing heirs for joint accounts would perhaps have been acceptable law before 1973. It is not good law today. The Multiparty Accounts Act requires that the joint accounts terminated before the death of the sole contributor ***20** become assets of his or her estate, as occurred in **Hefner v. Estate of Ingvoldson, supra.**

The court indicates its final "factor" as follows:

Objectors provided no evidence that Decedent had a different intent with regard to the distribution of the funds in the CD's to Petitioner upon his death. If the funds were ordered returned to the estate, Objectors and Gale Bristlin would be enriched against the established intent of the Decedent in the jointly-held CD's.

The first sentence thrusts upon the Appellants the burden of proving "different intent" that should rest with Respondent Charlotte L. Larson as donee (as discussed in Section II of this Brief).

The second sentence claims that Objectors will be somehow "enriched" against the "established intent of the Decedent in the jointly held CD's." That makes no sense. Respondent consciously took possession of Ronal's joint accounts four months before he died when he was helpless to conduct his own affairs. She should not be treated as an aggrieved party. Nor should the proceeds be treated fictionally as though the Certificates of Deposit were there on April 5, 2010. Minn. Stat. § 524.6-204 should not be distorted into applying in this case.

The elusive "established intent" was never established by Respondent Larson. Indeed by intercepting the Certificates of Deposit of Ronald four months before his death deprived him and his heirs of possible use of those funds and the choices Ronald could have had.

***21** The premature seizure of the five accounts should by operation of law, namely Minn. Stat. § 524.6-203 (a), make those assets part of the Estate of Ronald Earl Jones.

CONCLUSION

Based on the foregoing, Appellants Ronald Henry Jones and Jessica A. Warren request that the Order of the District Court be reversed and remanded with directions that Respondent Charlotte L. Larson restore the value of the Certificates of Deposit to the Estate and modify the Final Accounting accordingly.

Footnotes

a Charlotte L. Larson testified that this certificate was paid with her personal funds but that the other five certificates were all paid solely from the assets of Ronald Earl Jones.

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