

IN THE COURT OF APPEALS, STATE OF MISSISSIPPI

ANITA WILLIAMS AVERY, APPELLANT

NO. 2006-CA-00670

ESTATE OF ROBERT J. WILLIAMS, II, and  
DEBORAH W. AVERY, ADMINISTRATRIX

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CERTIFICATE OF INTERESTED PERSONS

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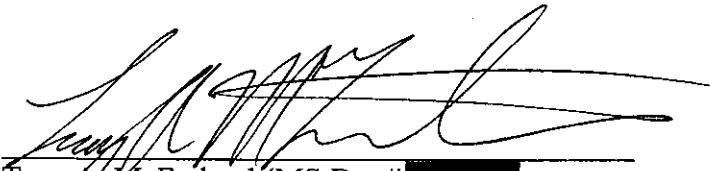
The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

Anita Williams Simpson

Debora Williams Avery

Jeffrey Dean Williams

Robert Joshua Williams, III



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Troy A. McFarland (MS Bar # [REDACTED])  
Attorney of record for Anita Williams Simpson

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## STATEMENT OF ISSUES

- I. Whether the lower court erred in not determining whether the funds in J.R. Williams, II, account at First National Bank of Picayune belonged to Anita Williams or the Estate of J.R. Williams, II, prior to the four known heirs signing the bank's debit slip on September 4, 1996.
- II. Whether the lower Court erred by not determining the owner of the account after R.J. Williams death and then determining that after September 4, 1996 the monies in the account belonged to the Estate.

## STATEMENT OF THE CASE

This case centers on the ownership of a certain checking account owned by the decedent, Robert Joshua Williams, II, at the First National Bank of Picayune (account no. 50-888-8). The account was opened on August 31, 1992 by Robert Joshua Williams, II and closed October 29, 1996. The signature card clearly reflects that it is a checking account and that it was an individual account. Anita Williams is listed on a line designated for “beneficiary”.

On September 4, 1996 the heirs of Robert J. Williams, II, met at the office of M.D. Tate, Esq., to discuss the estate. There is differing testimony on what was said at this meeting, however the end result was that the four heirs signed a “Release Agreement” dated September 4, 1996. The four heirs then signed a debit slip (or withdrawal slip) at the First National Bank of Picayune debiting the account of \$63,714.61 on September 5, 1996. (The account was not debited until the next day due to the banks cut-off time on September 4). Last, Exhibit 11 admitted into evidence shows that the Estate of R.J. Williams received \$63,714.61 by an official bank check on September 5, 1996.

Anita Williams timely filed a Petition, pro se, claiming she was told that she had to turn over the money to the estate and requesting the Court return the money to her from the Estate. The Court allowed the pro se petition to be amended after Anita secured council in the matter. The Amended Petition included claiming Deborah Williams Avery, Administratrix of the Estate, had a fiduciary duty to Anita to inform her of the status of the funds in Robert J. Williams Account.

The Case was tried, along with a claim against the Estate by John Eisler, Sr., on November 13 and 14, 2001. A ruling was made on Mr. Eisler’s claim and some of the pleadings

and testimony are included in this record. A “Opinion” was filed on June 27, 2002. A  
“Judgment on Amended Petition of Anita Williams Simpson” was filed on March 20, 2006.

## SUMMARY OF ARGUMENT

Both issues raised by Appellant, Anita Williams Simpson, revolve around the lower Court's finding in the Judgment that "This Court makes no finding as to whether the money in said account was the property of the Estate or Anita Williams Simpson prior to September 4, 1996, but finds that after the signing of the Release Agreement on that date, the money in the account was owned by the Estate of R.J. Williams, II." Anita takes the position that Miss. Code Ann. (1972) § 81-5-62 applies to the account in question and by statute she was the title holder to the account. A determination on whether or not the money is a threshold issue because if the money in the account was Anita's by statute, to reach the conclusion that the money belonged to the Estate requires a determination that the money was never Anita's because she was not the beneficiary of the account; or, if a gift was made by Anita to the Estate. The lower Courts judgment skips the logical progression from the title of the money in the account prior to September 4, 1996 to the finding that the money is the Estates.

## ARGUMENT

“Whether the lower court erred in not determining whether the funds in J.R. Williams, II, account at First National Bank of Picayune belonged to Anita Williams or the Estate of J.R. Williams, II, prior to the four known heirs signing the bank’s debit slip on September 4, 1996.”

The lower Courts Judgment begins that Anita Williams Simpson brought the case to trial “Seeking adjudication by this Court regarding whether or not she is entitled to proceeds in the account owned by the Decedent at the time of his death at First National Bank of Picayune.” (paragraph one of the Judgment on Amended Petition of Anita Williams Simpson). The lower Court succinctly and accurately states the reason and pivotal issue of the parties before the court, but the Court did not resolve the issue, stating in numbered paragraph 3 of the Judgment “This Court makes no finding as to whether the money in said account was the property of the Estate or Anita Williams Simpson prior to September 4, 1996, but finds that after the signing of the Release Agreement on that date, the money in the account was owned by the Estate of R.J. Williams, II.”

The lower Courts finding that after September 4, 1996 is contrary to Miss. Code Ann. (1972) § 81-5-62 and the evidence and testimony presented at trial.

The opinion states in it’s finding of facts the following: That the decedent Robert Joshua Williams, II was the owner of all funds filled in an account at First National Bank of Picayune no. 50-888-8 (Judgment, numbered paragraph 1); and the balance of the account was \$63,714.61 (Judgment, numbered paragraph 2).

The last sentence of numbered paragraph 3 states “This Court makes no finding as to whether the money in said account was the property of the Estate of Anita Williams Simpson prior to September 4, 1996, but finds that after the signing of the Release Agreement on that



date, the money in the account was owned by the Estate of R.J. Williams, II. This finding is contrary to Miss. Code Ann. (1972) § 81-5-62 and is the threshold issue presented by Anita Williams Simpson in her complaint before the Court.

Miss Code Ann. (1972) § 81-5-62 (a) provides that any person may open an account with a bank with directions to make such an account payable on death of the person to a named beneficiary. When the Decedent, R.J. Williams, II, opened account number 50-888-8 with the First Bank of Picayune, the signature card has two lines titled "Beneficiary's", the first has the name "Anita Williams" filled in. The second line has line has marks (see trial exhibit 1).

Miss. Code Ann. (1972) §§ 81-5-62 (b) states that "if the named beneficiary ... survive the death of the person opening the account, the bank shall pay the monies.... to the named beneficiary." Miss. Code Ann. (1972) §§ 81-5-62 (f) states when a person opens an account, names a beneficiary as stated in paragraph (a) of the statute, and makes payments to the account, "it shall be conclusively presumed" that such person intended "to vest in the named beneficiary" a present beneficial interest in the payment made. Paragraph (f) then states that if the named beneficiary survives that person opening the account, "all right and title of the person or persons opening such an account in and to the moneys to the credit of the account ....., shall, at such death, best solely and indefeasibly in the named beneficiary."

At trial, Donald Max Huey, President of the First National Bank of Picayune, (page 40, lines 24 and 25), testified that he wrote a letter to Anita's attorneys, entered as exhibit 12 to the trial, stating the "bank will treat the subject account with a named beneficiary as an account shown on the reverse side of the signature card as a trust, and paid on death account, or end upon the death to maker account, the named beneficiary acquires a right to withdraw from the account." (Page 42, lines 19 to 28). Mr. Huey was then asked if the administrator of the Estate

was the named beneficiary, and he stated “I’ll state it again, the named beneficiary acquires the right to withdraw from the account” (page 42, line 29 to page 43, line 5) When asked “Could anyone else have come in and withdrawn it [the account] after his death?”, Mr. Huey answers “No. Sir” (page 43 line 28 to Page 44, line 1; see page 43 lines 20 to 27 to ascertain the meaning of “it” in the questioning). Then to leave no doubt about who is beneficiary, Mr. Huey is asked “All right. And Who is the named beneficiary on that?” and he answers “The beneficiary on the signature card is Anita Williams.” (Page 44, Lines 5 and 6). In cross examination, the Estate does not attack Mr. Huey’s testimony that Anita Williams is the named beneficiary (Page 44 line 12 to Page 45 line 22)

Although it seems clear from the account’s signature card, the record indicates the Estate disputed whether or not Anita was the named beneficiary. In the Estates “Answer to Petition of Anita Williams Simpson”, numbered paragraph 1, the “Respondent specifically denies that the Petitioner [Anita] was ‘the beneficiary’ to said account. In response to Anita’s Interrogatory No. 7, the Administratrix responded “Administratrix does not agree with the implication in this interrogatory that Anita Williams Simpson had beneficiary rights to this account.” (See Response of Administratrix to Request for Admission, Interrogatories and Request for Production of Documents Propounded by Anita Williams Simpson, Answer to Interrogatory 7.) In response to Request for Admission, number 2, which asks that the estate admit that Anita is listed as beneficiary, the estate Responds “Admitted. However, this admission does not include any admission as to the meaning of legal significance of having Anita Williams listed on the signature card as beneficiary” (See Request for Admission, number two; and Response to Requests for Admissions No.2)

Despite the denials by the Estate and the Administratrix, it is clear the testimony of Mr. Huey and from the accounts signature card that Anita Williams is the named beneficiary on the account had the right to withdraw from the account the monies in the account after R.J. Williams, II, death. The Court erred by not finding that the monies in the account belonged to Anita Williams prior to September 4, 1996.

II. Whether the lower Court erred by not determining the owner of the account after R.J. Williams death and then determining that after September 4, 1996 the monies in the account belonged to the Estate.

By not determining the threshold issue as to who whether the Estate or Anita Williams held the funds in the account, the lower Court does not make a logical progression to finding that the funds belonged to the Estate.

The lower Courts Opinion entered of record, on the page numbered “74”, states “While she [Anita] released funds which were most likely legally hers, and the transaction is somewhat puzzling, to the Court, the proof shows that her acts and actions were voluntary with no violation of the law by anyone.”

In *Collier v. Guaranty Bank & Trust Co.*, 381 So.2d 1338 (Miss. 1980), the Supreme Court state that “Our cases hold that the following requirements are necessary to constitute a gift inter vivos:

There must be a donor competent to make a gift, a voluntary act on the part of the donor with intention to make a gift, the gift must be complete with nothing left to be done, the property must be delivered by the donor and accepted by the donee, and the gift must be irrevocable. *Thomas v. Eubanks*, 358 So.2d 709 (Miss. 1978); *Longtin v. Witcher*, 352 So.2d 808 (Miss.1977); *Jenkins v. Jenkins*, 278 So.2d 446 (Miss.1973); *McLean v. Green*, 258 So.2d 247 (Miss.1972), and cases cited therein. *Id. at 1340*.

The Estate and Debora Avery denies that Anita made a gift to the Estate of the money in R.J. William's account (numbered paragraph 3, Answer to Petition of Anita Williams Simpson). The lower Courts Judgment and opinion does not address this issue. In Collier, the burden is put on the party claiming a gift, the Court stated "when it is shown that property belongs to a person and another claims the property by virtue of a gift from the owner, such a claim is an affirmative defense, and the burden of proof is on the one who claims by gift" Collier v. Guaranty Bank & Trust Co., 381 So.2d 1338 (Miss. 1980) at 1341.

The lower Courts judgment does not deal with whether or not there was a gift made, which would be a necessary finding to transfer the money to the Estate after applying Miss. Code Ann. (1972) § 81-5-62,

## CONCLUSION

Because the lower Court erred in not determining whether Anita or the Estate had ownership of the money in Robert Joshua Williams account, this Court should apply Miss. Code Ann. 81-5-62 and find that Anita Williams Simpson was the beneficiary on the account and direct that the money in that account be returned to Anita.