SUPREME COURT OF THE STATE OF MISSISSIPPI
COURT OF APPEALS OF THE STATE OF MISSISSIPPI

MARIE STEVENS and
WILLIAM EDWARD BOHANNON — APPELLANTS

VS. — CAUSE NO.: 2010-CA-00886

JOSIE SMITH and BENNY BOHANNON — APPELLEES

APPEAL FROM THE CIRCUIT COURT OF PRENTISS COUNTY, MISSISSIPPI
HONORABLE PAUL S. FUNDERBURK, CIRCUIT JUDGE

APPELLEES' BRIEF

DUNCAN L. LOTT, MSB #[redacted]
LANGSTON & LOTT, P.A.
100 South Main Street
Post Office Box 382
Booneville, MS 38829
Telephone: (662) 728-9733

ORAL ARGUMENT NOT REQUESTED

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CERTIFICATE OF INTERESTED PERSONS

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.

Marie Stevens, Appellant;

William Edward Bohannon, Appellant;

Jason D. Herring, Esq., Attorney for Appellant;

Henderson M. Jones, Esq., Attorney for Appellant;

Josie smith, Appellee;

Benny Bohannon, Appellee;

Duncan Lee Lott, Esq., Attorney for Appellees;

RESPECTFULLY SUBMITTED, this the 28 day of December, 2010.

DUNCAN L. LOTT MSB #[redacted]
Attorney for Appellees

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STATEMENT OF ISSUES

I. Should the trial court have upheld Marie Stevens' and William Edward Bohannon's right and authority to dispose of the entire balance of the certificate of deposit and savings accounts?

II. Should the trial court have examined the intention of the parties in establishing and maintaining the certificate of deposit and savings accounts before finding that Marie Stevens and William Edward Bohannon had converted the certificate of deposit and savings accounts' funds?

STATEMENT OF THE CASE

Plaintiffs brought this action against the Defendants in the Circuit Court of Prentiss County, Mississippi for conversion of their interest in two jointly owned and held accounts and a jointly owned and held certificate of deposit. The accounts in question are identified as follows:

Marie Stevens and Edward Bohannon filed a Motion for Summary Judgment and Memorandum in Support of Motion for Summary Judgment on July 11, 2008. Josie Smith and Benny Bohannon filed their response to this motion along with a Counter-Motion for Summary Judgment on August 12, 2008. Appellants filed a rebuttal memorandum on August 22, 2008.

After setting these motions for hearing on February 12, 2010, the trial court entered an Order on April 22, 2010 granting Josie Smith and Benny Bohannon's Motion for Summary Judgment. The trial court ruled that Marie Stevens and William Edward Bohannon had deprived Josie Smith and Benny Bohannon of their ownership interest in the joint accounts which are the subject of this action. Subsequently, Marie Stevens and William Edward Bohannon timely filed a notice of Appeal on May 21, 2010.

STATEMENT OF FACTS

Before the death, Mr. William Delbert Bohannon and Mrs. Audrey Bohannon, the parties opened three (3) joint accounts for the benefit of their parents, namely:

1. Certificate of Deposit (CD) with Farmers & Merchants Bank, Certificate No. 23366;

2. Savings account with First American National Bank bearing the account number 76929; and

3. Savings account with Farmers & Merchants Bank bearing the account number 4508122.

It was the intent of all involved that once the parties' parents had passed away the remainders of the accounts were to be divided equally amongst the parties. (Deposition of William Edward Bohannon at 22:1-2) There is little, if any, dispute surrounding the facts of this case there forth.

After Mr. William Delbert Bohannon and Mrs. Audrey Bohannon departed this life, on or about February 27, 2006, the Defendants, Marie Stevens and William E. Bohannon, withdrew the sum of $18,230.87 from the Certificate of Deposit and Savings Account at Farmers & Merchants Bank. Further, on or about March 2, 2006, the Defendants, Marie Stevens and William E. Bohannon, withdrew the sum of $8,664.14 from the Savings Account with First American National Bank. The Defendants do not dispute these facts. The Defendants have since held the money from these withdrawals in a separate account in the name of only Marie Stevens and William E. Bohannon. This exercise of dominion over the money from the joint

accounts has had the effect of excluding the Plaintiffs from access to funds in which they have an interest.

SUMMARY OF ARGUMENT

While there is well-settled law in Mississippi providing that joint account holders have the absolute authority to withdraw all funds within a joint account, they do not have the right to deprive other joint holders of their interest in such an account. The courts have had trouble finding that such a deprivation has taken place in instances where it is not clear what percent a joint account holder owns or in cases where the account holders' intentions for the account are not clear. However, such is clearly not the case at hand. It is clear from the depositions of the parties that the four (4) joint account holders on the accounts and certificate of deposit in question intended to maintain said accounts for the benefit of their parents and upon their parent's deaths, divide the remaining funds in the accounts and certificate of deposit equally. Therefore, when Marie Stevens and William Edward Bohannon withdrew the funds from the aforementioned accounts and used the funds for their personal gain, they deprived Marie Stevens and Benny Bohannon of their undisputed ¼ interest in the accounts and certificate of deposit. Thus, this Court should affirm the judgment of the trial court.

The trial court's finding of summary judgment in favor of Marie Stevens and Benny Bohannon is also appropriate regardless of the Appellants' contention that the trial court should have examined the intentions of the parties as to these accounts. The Appellants concede in their Motion for Summary Judgment that there is no material question of fact before the court and it is agreed that the parties intended to equally divide these accounts upon the death of their parents. Thus, there is no question as to the parties' intentions for the trial court to review and no need to "balance equities between the parties" as the two (2) savings accounts and the certificate of deposit are the only subjects of this litigation.

ARGUMENT

This Court applies a de novo standard of review to the trial court's grant or denial of a Motion for Summary Judgment. Moss v. Batesville Casket Co., 935 So.2d 393, 398 (Miss. 2006) (citations omitted). A Motion for Summary Judgment "shall" be granted by a court "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Miss R. Civ. P. 56(c)

I. The trial court correctly held that the certificate of deposit and savings accounts were the joint property of the parties and that Marie Stevens and William Edward Bohannon could not deprive Josie Smith and Benny Bohannon of their interest in said accounts.

In the Appellants' *Answer, Rule 12 (B) Defense and Affirmative Defenses to Complaint* and the Appellants' *Motion for Summary Judgment*, the Defendants' sole defense is: "The accounts were joint accounts, and defendants had lawful authority to make any withdrawal(s)." This is a contention that the Plaintiffs do not dispute. However, the ability for one, or in this case two, joint account holder(s) to withdraw all the funds from a joint account is not the same as owning all funds in a joint account. It is the Plaintiffs contention that while Marie Stevens and William Bohannon had the authority to withdraw all of the funds from the accounts stated above, they had no right to deprive Josie Smith and Benny Bohannon of their ownership interest in the accounts.

Appellants' state established case law to support their position that a mere right to withdrawal establishes the right to ownership of the full amount held in a joint account. The Appellants cite *Oliver v. Oliver*, 812 So.2d 1128 (Miss. Ct. App. 2002), where "the Mississippi Court of Appeals resolved a dispute between joint account holders upon a joint account holder's

claim of conversion. One of the joint account holders contended that he owned an undivided one-half interest in the account, the court disagreed holding as follows:

> "Whether ownership in the account would have passed to Roger Oliver at the time of Helen Oliver's death by the contractually-created right of survivorship existing between them is a question not before us. That question has been rendered moot by (a) Helen Oliver's exercise of her absolute right, as joint tenant, to dispose of the entire balance of the account and (b) **the chancellor's conclusion that Roger Oliver had no equitable claim to compel Helen Oliver to account for any portion of the funds so disbursed.** The presumption of equal ownership mentioned in the *Harrell v. Harrell* decision was, in the chancellor's view, overcome by affirmative evidence demonstrating a contrary intent between the signatories to the account. We do not find that to be manifestly in error and, therefore, we affirm the chancellor on this issue."

Oliver, 812 So.2d at 1134.

What Appellants artfully omit is the reasoning behind the decision. In *Oliver*, "the chancellor's conclusion that Roger Oliver had no equitable claim to compel Helen Oliver to account for any portion of the funds", was based on an examination of the intent of the parties when the account was formed. *Oliver, id.* The Chancellor determined, "that it was not the intent of the parties that Roger Oliver have any ownership interest in the account so long as B.A. Oliver and Helen Oliver remained alive". The opinion goes on to state, "[t]here was no affirmative evidence indicating that Helen Oliver and Roger Oliver reached an understanding that the funds would be treated otherwise after B.A. Oliver's death." *Oliver, id* at 1133, 1134. This determination would be in stark contrast to the undisputed facts of this case. The parties in this case agree that the accounts and CD in question were set up for the benefit of the parties' parents while they were living and thereafter would be "divided fairly" and that each would be "part owners" in the account . (Deposition of William Edward Bohannon at 17:6-21 and Deposition of Cecilia Marie Stevens at 8:17-20). This is in no way relative to the facts in *Oliver* where the

Chancellor determined Roger Oliver was placed on the account as a "mere accommodation to his father and stepmother." *Oliver, id* at 1133. Here the account was constructed for the benefit of William Delbert Bohannon and Audrey Bohannon and upon their death, the account was to be divided amongst their four children, the named account holders. (Deposition of William Edward Bohannon at 22:1-2). This fact is not in dispute and is reaffirmed by the deposition testimony of each and every party.

Appellants also cite *Drummonds v. Drummonds*, 156 So.2d 819, 821(Miss. 1963) to support his position that the accounts at issue were not jointly "owned". In *Drummonds* the court determined that:

> "[t]he funds included in the certificate of deposit were the private funds of Mrs. Drummonds and she retained exclusive control and possession of the time certificate of deposit that could not be cashed without its surrender. Consequently the certificate did not constitute in law a gift of any part thereof to Mr. Drummonds but remained the sole private property of appellant."

These facts are, again, in no way relevant to the facts at hand. In *Drummonds*, the Court determined the CD at issue was the sole property of one of the parties because Mr. Drummonds "failed to meet the burden of proof requiring him to prove to a reasonable certainty the amount he claimed to have contributed to the funds in the certificate." *Drummonds, id.* In the present case the Parties never made any contribution to the account and again both sides agree that the intention upon opening the account was for the benefit of their parents and upon their death to be divided fairly amongst the parties. (Depositions cited, *supra*). This fact has yet to be contested by the Appellants in any of their filings up to this point.

In the case of *Smith v. Smith*, 656 So.2d 1141 (Miss. 1995), the Supreme Court held that although wife, Zena Faye Phillips Smith, had the right or authority to withdraw monies from the

parties' joint savings account, Billy would not be precluded from seeking to establish his interest in the proceeds of the account in a separate proceeding. If the rationale put forward by the Appellants, in this cause were applicable, Billy would have not been able to establish any interest in the joint checking account since the Defendant's theory is once Zena Faye withdrew the money at issue; Billy would be precluded from seeking recovery of his interest in such. This is not the case and is certainly contrary to the Supreme Court's holding in *Smith*.

In *Walker v. Brown*, 501 So.2d 358, 361 (Miss. 1987), the Court stated that "[c]onversion requires an intent to exercise dominion or control over goods which is inconsistent with the true owner's right." While conversion requires an intentional act, this Court has clearly held that the required intent does not have to be the "intent to be a wrongdoer." *Terrell v. Tschirn*, 656 So.2d 1150, 1153 (Miss. 1995). In *Terrell*, the Court emphasized that good faith is not necessarily an excuse. Therefore, Cecilia Marie Stevens' admission in her deposition that the money is being held for repairs to the jointly owned home in a "safe place," is an admission that she and William Bohannon are wrongfully withholding monies to which Plaintiffs are entitled to. This clearly shows an "intent to exercise dominion or control over goods which is inconsistent with" the Plaintiffs' ownership. The Defendants have not put forth any defense to this claim as evidenced by the depositions of all parties involved.

II. **The trial court did not err in not examining the intentions of the parties in establishing and maintaining the certificate of deposit and savings account as there was no dispute that said accounts were to be divided equally amongst the parties.**

Appellants argue that the trial court, upon a finding that Marie Stevens and William Edward Bohannon had deprived Josie Smith and Benny Bohannon of their interest in the subject accounts, should have then inquired into the parties understanding regarding the whole of their parents estate before resolving the issue of conversion. This contention is neither accurate or an

appropriate argument for this or the trial court. As stated in the Appellants' "Statement of Facts", no estate proceedings have been opened for either of the parties' now deceased parents. However, Appellants attempt to argue that the court had a duty to take into account the whole of the deceased estate into account when making a determination on the issue of conversion when the only issue before the court is that of the three (3) joint accounts owned by the parties and not that of their parents entire estate which has yet to even be opened.

Appellants correctly state the decision in Drummonds v. Drummonds, 156 So.2d 819 (Miss. 1063), establishes that,

> "[t]he prevailing view seems to be, however, that while joint accounts are presumed to be vested in the names as given in the deposit as equal contributors and owners... the intention of the parties is the controlling factor, and where a controversy arises as to the ownership thereof evidence is admissible to show the true situation."

Drummonds, 156 So.2d at 821

However, this "evidence... admissible to show the true situation" is allowed to show the true situation surrounding the ownership of the joint account and not to force the court to review every arbitrary outside inkling one owner believes may give rise to some sort of "set off" from another's portion of the account. This language in *Drummonds* was obviously meant to allow a vehicle for one to show the intentions and "true situation" surrounding a joint account.

Likewise, Appellants submitted in their Motion for Summary Judgment that there was no genuine issue of material fact in front of the trial court. Thus, admitting their agreement with the Appellees statement of the facts particularly their contention that it was the intention of all parties involved and their parents that these accounts be divided equally amongst the parties. The interest of ownership and the intent of the parties was no a fact which required determining by the trial court as the Appellants conceded that it was the intention of the parties to equally

divide these accounts. The only issue before the court was whether or not the Appellants, as joint account owners with the Appellees, could withdraw the entirety of these accounts and convert it to their own possession simply because they had the authority to make the withdrawal.

Appellants contend that the trial court should have determined whether or not any party should be reimbursed for moneys put into the repair of the parties' parent's home. However, this is not an issue for the court to decide. It is clear how the accounts were to be divided and by William Edward Bohannon's own deposition he states that any money put into the house would be reimbursed to the contributor through a higher percentage of the funds from the sale of the home. (Deposition of William Edward Bohannon at pages 17 through 19). Thus, any question relating to money put in the home is moot for the purposes of this litigation and the determination of ownership interest in the subject accounts.

CONCLUSION

There is no dispute as to the parties' interest in the certificate of deposit and the joint savings accounts at issue. There is also no dispute as to the fact that Marie Stevens and William Edward Bohannon have deprived Josie Smith and Benny Bohannon of their rightful interest in said accounts. Thus, no genuine issue of material fact exist as to the intent of the parties in respect to the accounts and the trial court's granting of Summary Judgment in favor of Josie Smith and Benny Bohannon was proper and should be upheld.

As there is no issue as to the parties' intent as relates to these accounts, there is no need to remand this matter for a hearing to examine the intent of the parties in establishing and maintaining the subject accounts as the Appellants have conceded that it was the parties intentions to divide the accounts equally. Furthermore, the only issue before this Court or the trial court was that of the joint accounts and certificate of deposit rendering it improper for the court to examine any supposed inequity in the estate of the parties' parents, an estate which has yet to even be opened.

RESPECTFULLY SUBMITTED, this the 28 day of December, 2010.

DUNCAN L. LOTT MSB #[redacted]
Attorneys for Appellees

CERTIFICATE OF SERVICE

This is to certify that I, Duncan Lott, have this day mailed by U.S. mail, postage prepaid, a true and exact copy of the foregoing APPELLEES' BRIEF to the following:

Honorable Paul Funderburk
Circuit Judge
P. O. Box 1100
Tupelo, MS 38802

Honorable Jason D. Herring
Law Office of Jason D. Herring, P.A.
P. O. Box 842
Tupelo, MS 38802

This the 28 day of Dec., 2010.

DUNCAN LOTT