

**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**

APPELLANTS' BRIEF

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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 Appellants;

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

Josie Smith, Appellee;

Benny Bohannon, Appellee; and

Duncan Lee Lott, Esq., Attorney for Appellee.

RESPECTFULLY SUBMITTED, this the 22nd day of October, 2010.



JASON D. HERRING, MSB #: [REDACTED]
Attorney for Appellant

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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

The parties are the children of Audrey Bohannon and William Delbert Bohannon, who departed this life on October 12, 2002, and March 3, 2006, respectively. Josie Smith and Benny Bohannon filed a complaint on June 7, 2006, in the Circuit Court of Prentiss County, Mississippi, against Marie Stevens and William Edward Bohannon seeking a judgment for a sum which represented a one-half interest in a certificate of deposit and savings account at Farmer & Merchants Bank and a savings account at First American National Bank. (Record Excerpts, pp. 5-6) Marie Stevens and William Edward Bohannon filed their Answer, Rule 12(b) Defense and Affirmative Defenses asserting the following affirmative defense: "The accounts were joint accounts, and [Marie Stevens and William Edward Bohannon] had lawful authority to make any withdrawal(s)." (Record Excerpts, pp. 9-12)

Depositions were taken of the parties and the trial court ordered the parties to mediation on November 9, 2007. (Record Excerpts, pp. 14-17, 20-23 and 26) Marie Stevens and William Edward Bohannon filed a Motion for Summary Judgment and Memorandum in Support of Motion for Summary Judgment on July 11, 2008. (Record Excerpts, pp. 28-75) Josie Smith and Benny Bohannon filed their response to Marie Stevens' and William Edward Bohannon's Motion for Summary Judgment and a Counter-Motion for Summary Judgment on August 12, 2008. (Record Excerpts, pp. 77-91) Marie Stevens and William Edward Bohannon filed a rebuttal memorandum in support of their Motion for Summary Judgment on August 22, 2008. (Record Excerpts, pp. 93-95)

The parties' motions were set for hearing on February 12, 2010, by an Order of Setting filed on February 1, 2010. (Record Excerpts, p. 96) The trial court entered an Order on April 22, 2010, denying Marie Stevens' and William Edward Bohannon's Motion for Summary

Judgment and granting Josie Smith's and Benny Bohannon's Counter-Motion for Summary Judgment finding that Marie Stevens and William Edward Bohannon had deprived Josie Smith and Benny Bohannon of their ownership interests in the subject funds by committing a wrongful conversion. (Record Excerpts, pp. 98-99) Marie Stevens and William Edward Bohannon timely filed a Notice of Appeal on May 21, 2010. (Record Excerpts, pp. 100-101)

This appeal presents two issues for the Court's consideration. This Court may reverse and render a judgment in this matter upon a finding in favor of Marie Stevens and William Edward Bohannon on issue I. This Court should reverse and remand this matter for additional discovery and/or further proceedings upon a finding in favor of Marie Stevens and William Edward Bohannon on issue II.

STATEMENT OF FACTS

The parties are the children from the marriage of William Delbert Bohannon, Deceased, and Audrey Bohannon, Deceased. Mrs. Audrey Bohannon departed this life on October 12, 2002, and Mr. William Delbert Bohannon departed this life on March 3, 2006. An estate has not been opened pertaining to the death of William Delbert Bohannon or Audrey Bohannon. (Record Excerpts, p. 32)

On or about February 24, 2006, Marie Stevens and William Edward Bohannon withdrew \$18,230.87 from a certificate of deposit (Certificate No. 23366) at Farmers & Merchants Bank in the name of Marie Stevens, William Edward Bohannon, Josie Smith, and Benny Bohannon. (Record Excerpts, pp. 32 and 46)

At the approximate time of the withdrawal from the certificate of deposit at Farmers & Merchants Bank, Marie Stevens and William Edward Bohannon withdrew \$4,881.01 from a savings account (account number 4508122) at Farmers & Merch ants Bank in the name of William Edward Bohannon, Marie Stevens, Josie Smith, and Benny Bohannon. (Record Excerpts, pp. 32 and 47)

On or about March 2, 2006, William Edward Bohannon and Marie Stevens withdrew \$8,664.14 from the savings account (account number 76929) at First American National Bank in the name of Marie Stevens, William Edward Bohannon, Josie Smith, and Benny Bohannon. (Record Excerpts, pp. 33 and 55)

Depositions of the parties were all held on August 15, 2007. The order of the depositions was as follows: William Edward Bohannon, Marie Stevens, Josie Smith, and Benny Bohannon.

William Edward Bohannon

William Edward Bohannon verified his signature on the signature card for the savings account at Farmers & Merchants Bank in the name of Marie Stevens, William Edward Bohannon, Josie Smith, and Benny Bohannon. (Record Excerpts, pp. 33 and 49 – Deposition of William Edward Bohannon at 6:19-7:14)

William Edward Bohannon did not have any involvement with the establishment of the certificate of deposit at Farmers & Merchants Bank in the name of William Edward Bohannon, Marie Stevens, Josie Smith, and Benny Bohannon. (Record Excerpts, pp. 33 and 49 – Deposition of William Edward Bohannon at 8:1-15)

William Edward Bohannon was involved in the establishment of the savings account at First American National Bank in the name of Marie Stevens, William Edward Bohannon, Josie Smith, and Benny Bohannon. (Record Excerpts, pp. 33-34 and 50 – Deposition of William Edward Bohannon at 11:3-10) William Edward Bohannon verified his signature and the signature of his sister, Josie Smith, on the account card for the savings account opened at First American National Bank and dated November 27, 1998. (Record Excerpts, pp. 34 and 50-51 – Deposition of William Edward Bohannon at 12:15-13:16)

William Edward Bohannon stated at pages 17 through 19 of his deposition (Record Excerpts, p. 52) that the parties all have an interest in their parents' house that needs repairs in order to garner a sale price close to its potential value. William Edward Bohannon stated that he proposed fixing up their parents' house for it to be sold prior to Josie Smith and Benny Bohannon's lawsuit. William Edward Bohannon also stated that certain parties may deserve more than their one-fourth share in proceeds from the sale of their parents' house as

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compensation for their contribution to the efforts to repair the house and maintain its value.
Record Excerpts, p. 52 – Deposition of William Edward Bohannon at 19:7-8)

Marie Stevens

Marie Stevens did not have any involvement with the establishment of the savings account at Farmers & Merchants Bank, the savings account at First American National Bank, or the certificate of deposit at Farmers & Merchants. (Record Excerpts, pp. 34 and 57-58 – Deposition of Marie Stevens at 6:10-16; 7:21-25; and 9:19-10:1)

Marie Stevens stated at pages 13 through 16 of her deposition (Record Excerpts, p. 59) that Josie Smith and Benny Bohannon deleted her name from a separate joint account not the subject of this lawsuit and withheld from her the proceeds of said joint account. Thereafter, according to Stevens, the funds in the certificate of deposit and savings accounts *sub judice* were put in a “safe place.” Record Excerpts, p. 59 – Deposition of Marie Stevens at 15:7-11)

Josie Smith

Josie Smith verified her signature on the account card for the savings account at Farmers & Merchants Bank. She further stated that such account was jointly owned by her and her siblings with rights of survivorship and that the signature of two account holders was required for a withdrawal. (Record Excerpts, pp. 34 and 65 – Deposition of Josie Smith at 13:19-16:10)

Josie Smith stated that she was involved in the establishment of the savings account at First American National Bank. She further stated that such account was jointly owned by her and her siblings with rights of survivorship and that the signature of two account holders was required for a withdrawal. (Record Excerpts, pp. 34 and 65-66 – Deposition of Josie Smith at 16:11-17:20)

Josie Smith stated that she was involved in the establishment of the certificate of deposit at Farmers & Merchants Bank. She further stated that the certificate of deposit was jointly owned by her and her siblings with rights of survivorship and that the signature of two account holders was required for a withdrawal. (Record Excerpts, pp. 35 and 66 – Deposition of Josie Smith at 18:14-19:13)

Josie Smith admitted that she converted funds from a checking account in the name of her parents and Marie Stevens for her own personal use. (Record Excerpts, pp. 68 – Deposition of Josie Smith at 26:8-21 and 28:P10-25)

Bennie Bohannon

Bennie Bohannon stated that the savings account at Farmers & Merchants Bank, the savings account at First American National Bank, and the certificate of deposit at Farmers & Merchants were jointly owned by him and his siblings with rights of survivorship and that the signature of two account holders was required for a withdrawal. (Record Excerpts, pp. 35 and 74 – Deposition of Bennie Bohannon at 13:17-14:25)

Benny Bohannon confirmed that his sister, Josie Smith, had written checks for her own personal use out of their father's personal checking account. (Record Excerpts, p. 74 – Deposition of Bennie Bohannon at 16:5-12) Benny Bohannon also confirmed that his father regularly gave him cash payments and that checks were written from his father's checking account for Benny Bohannon's wife to clean the elderly Bohannon's home. (Record Excerpts, p. 75 – Deposition of Bennie Bohannon at 18:24-19:15)

SUMMARY OF ARGUMENT

Well-settled law in Mississippi provides joint account holders absolute authority over all account funds regardless of exact percentage of ownership between joint account holders. Marie Stevens and William Edward Bohannon exercised their lawful right to withdraw funds from the certificate of deposit and savings accounts and the trial court should 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. This Court should reverse and render a judgment in favor of Marie Stevens and William Edward Bohannon.

If this Court does not find that Marie Stevens and William Edward Bohannon were allowed to treat the parties' joint property as their own, summary judgment is not appropriate for either party as the trial court should have examined the intention of the parties in establishing and maintaining the certificate of deposit and savings accounts in question. In such a case, the parties' relationship and apparent understandings regarding the whole of their parents' estate must be taken into consideration for the trial court to resolve the issue of conversion raised by Josie Smith and Benny Bohannon. Accordingly, this Court should reverse and remand this matter for a hearing to examine the intent of the parties in establishing and maintaining the subject accounts and the trial court should balance the equities between the parties.

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 SHOULD HAVE UPHELD MARIE STEVENS AND WILLIAM EDWARD BOHANNON'S RIGHT AND AUTHORITY TO DISPOSE OF THE ENTIRE BALANCE OF THE SUBJECT ACCOUNTS

Well-settled law in Mississippi provides joint account holders absolute authority over all account funds regardless of exact percentage of ownership between joint account holders. See Triplett v. Union Planters Bank Ackerman et al, 812 So.2d 1061, ¶9 (Miss. Ct. App.2001) and Deposit Guar. Natl. Bank v. Pete, 583 So.2d 180, 184 (Miss. 1991) (concurrence with majority by Robertson, J.; joined by Lee, C.J.; and Banks, J.)

In Oliver v. Oliver, 812 So.2d 1128 (Miss. Ct. App. 2002), 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:

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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 ¶19.

In DeJean v. DeJean, 982 So.2d 443 (Miss Ct. App. 2007), a brother and sister jointly owned a certificate of deposit, which the sister instructed the bank to redeem and reissue in her name, her brother's name (joint owner), and the other relatives. After the sister ordered issuance of the new certificate of deposit, but before the new certificate of deposit was issued, the sister died. Upon a hearing the brother's petition for declaratory judgment, the lower court ruled in favor of the sister's relatives that were sought to be added to the new certificate of deposit. The brother sought an appeal on numerous grounds pertaining to the method that his sister used to instruct the bank and the actions of the bank responsive to the sister's instructions. In affirming the lower court decision, the Court of Appeals stated, as follows:

When an account is held jointly in the name of one depositor or another, "each depositor is allowed to treat joint property as if it were entirely his own." Drummonds v. Drummonds, 248 Miss. 25, 31, 156 So.2d 819, 821 (1963). We find that equitable division of the funds from the CD is not warranted, as the redemption of the original CD was properly executed by one of the lawful joint owners.

DeJean, 982 So.2d at ¶14.

The three joint accounts *sub judice* were owned by the parties pursuant to their own actions or actions taken on their behalf. The funds in the joint accounts were to be withdrawn upon the signature of two of the four account holders, and such signatures were furnished by Marie Stevens and William Edward Bohannon. Mississippi law does not provide for an equitable division of funds held in the three joint accounts. Furthermore, Josie Smith and Benny Bohannon's claim for conversion is not warranted.

II. THE TRIAL COURT SHOULD HAVE EXAMINED THE INTENTION OF THE PARTIES IN ESTABLISHING AND MAINTAINING THE CERTIFICATE OF DEPOSIT AND SAVINGS ACCOUNTS

If this Court does not find that Marie Stevens and William Edward Bohannon were allowed to treat the funds in the subject certificate of deposit and savings accounts as their own, Marie Stevens and William Edward Bohannon would respectfully submit that summary judgment is not appropriate for either party as the trial court would have to examine the intention of the parties in establishing and maintaining the certificate of deposit and savings accounts in question to determine percentage of ownership. In such a case, the parties' relationship and apparent understandings regarding the whole of their parents' estate must be taken into consideration for the trial court to resolve the issue of conversion raised by Josie Smith and Benny Bohannon.

In Drummonds v. Drummonds, 156 So.2d 819 (Miss. 1963), the Mississippi Supreme Court cited favorably Section 374, 10 Am. Jur. 2d 388, to wit:

'The peculiar features of a joint and several bank account make it difficult, if not impossible, in most cases, to determine what portion of the account belongs to each depositor. A long series of

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deposits which cannot be traced to their source, and a similar series of withdrawals which cannot be traced to their destination, are normally involved. This defect is inherent in the severalty feature of such bank accounts wherein each depositor is allowed to treat joint property as if it were entirely his own. A joint bank account of this kind is generally a creature of contract between parties avowedly indifferent to the exact percentage of ownership between themselves. It is said that the law should take them at their word and give effect to their contract without making detailed evidentiary inquiries to establish factual ownership. *The 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 in the absence of evidence to the contrary, 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.'*

(Emphasis added). Drummonds, 156 So.2d at 821.

If this Court is going to examine the intent of the parties in establishing and maintaining the certificate of deposit and savings accounts in question, the total picture of the parties' dealings should be taken into account and the court should seek to balance the equities between the parties. The record clearly shows that Josie Smith and Benny Bohannon had their hands in their father's other funds not at issue in this litigation and there is controversy as to the ownership of the funds *sub judice* and the "true situation" pertaining to the parties' use of the funds given to the parties by their parents. See supra pp. 9-11.

CONCLUSION

It is uncontradicted that the parties had joint interests in the certificate of deposit with Farmers & Merchants Bank and the respective saving accounts with First American National Bank and Farmers & Merchants Bank. Therefore, since there is no genuine issue as to any material fact as related to the parties' interests in the accounts and Marie Stevens and William Edward Bohannon's right to withdraw funds therefrom, Marie Stevens and William Edward Bohannon are entitled to a judgment as a matter of law with respect to the allegations of conversion claimed by Josie Smith and Benny Bohannon. Marie Stevens and William Edward Bohannon would respectively ask this Court to reverse the trial court's Order and render a judgment in favor of Marie Stevens and William Edward Bohannon as to allegations of conversion and dismiss Josie Smith and Benny Bohannon's Complaint, as no other causes of action are alleged therein.

If this Court does not find that Marie Stevens and William Edward Bohannon were allowed to treat the parties' joint property as their own, this Court should reverse and remand this matter for a hearing to examine the intent of the parties in establishing and maintaining the subject accounts and the trial court should balance the equities between the parties.

RESPECTFULLY SUBMITTED, this the 22nd day of October, 2010.



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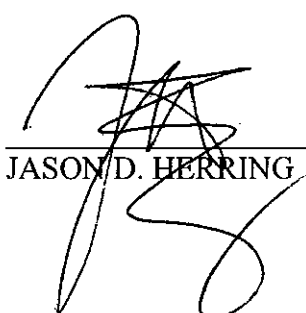
CERTIFICATE OF SERVICE

I, Jason D. Herring, do hereby certify that I have this day deposited in the United States Mail, postage prepaid, a true and correct copy of the above and foregoing Appellant's Brief to the following:

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Hon. Paul S. Funderburk
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Circuit Court Judge

Dated this the 22nd day of October, 2010.



JASON D. HERRING