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MEMBER



Special needs require special lawyers.

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CONFIDENTIAL RELATIONSHIPS AND JOINT ACCOUNTS

A recent Supreme Court of Virginia case highlights the meaning of “confidential relationship” as it pertains to joint ownership of bank accounts.

In *Estate of Audrey Jane Parfitt v. Parfitt* (Record No. 081100, February 27, 2009), the decedent (“Jane”) executed a will leaving her estate to her children and stepchildren in equal shares. During Jane’s final illness, she required extensive assistance, and received help from paid caregivers as well as from her son (“Jeff”) and his wife (“Boyka”). Jeff was added as a joint owner on Jane’s bank account so that he could pay Jane’s bills; this was done with the full knowledge and consent of Jeff’s brother. Jane, Jeff, and Jeff’s brother agreed that Jeff would quit his job to care for Jane, and that Jeff would pay himself \$500 from the joint account.

During the period that Jeff was providing care for Jane, Jeff liquidated several of Jane’s assets and obtained loans, and deposited the funds into the joint account. The assets included a \$106,000 annuity, \$14,000 and \$12,811 CDs, a \$50,000 home equity loan, and a \$155,000 reverse mortgage. The total value of the deposited assets was at least \$338,580.12. Jeff then transferred \$305,591 from the joint account to an account he shared with his wife. He also wrote checks totaling \$67,500 to himself from the joint account and he wrote checks totaling \$9,013.37 to other payees for his and Boyka’s benefit.

After Jane’s death on March 7, 2006, Jane’s estate filed a complaint against Jeff, alleging breach of fiduciary duty, conversion, unjust enrichment, and a claim in detinue. Boyka was later added as a defendant on the same claims. The trial court entered an order holding that “(i) the estate had failed to establish the existence of undue influence; (ii) the evidence had not established a confidential relationship between Jeff and Jane; and, (iii) the estate had failed to prove a claim in detinue, for conversion, or for unjust enrichment.” The Supreme Court of Virginia awarded an appeal to the estate on assignments of error including that the trial court made errors of law in

determining that the estate did not demonstrate a confidential relationship existed between Jeff and Jane, and in determining that the estate did not demonstrate a prima facie case of undue influence, thereby shifting the burden of proof to Jeff and Jane.

The Supreme Court of Virginia first reviewed the law of undue influence in Virginia and reiterated that, “[T]he presumption of undue influence arises and the burden of going forward with the evidence shifts when weakness of mind and grossly inadequate consideration or suspicious circumstances are shown or when a confidential relationship is established.” (Citing *Friendly Ice Cream Corp. v. Becker* 268 Va. 23 (Va. 2004).) The Court stated that in this case, it did not have to decide the issue of Jane’s state of mind, “because a confidential relationship was established as a matter of law by Jeff’s joint ownership of the bank account through which all the assets at issue flowed.” The Court said that Jeff and Boyka received “considerable benefit” by virtue of their actions regarding Jane’s property. This benefit is a necessary precondition to shift the burden when a transaction is challenged on the basis that it was procured by undue influence in a confidential relationship. The Court said that one class of confidential relationships that may give rise to a presumption of undue influence was present in this case, that being when one person is an agent for another. The Court cited Virginia Code § 6.1-125.15:1, which provides that “[p]arties to a joint account in a financial institution occupy the relation of principal and agent to each other, with each standing as a principal in regard to his ownership interest in the joint account and as agent in regard to the ownership interest of the other party.” The transfers that were challenged resulted in assets passing through an account that Jeff and Jane held as joint owners with the right of survivorship, and all of the funds belonged to Jane. Because the funds in the joint account were Jane’s, and Jeff had no funds of his own in the account, pursuant to the statute, Jeff was an agent with regard to the entire account. By the same statute, fiduciary duty was created because of the establishment of a confidential relationship. “The confidential relationship created a presumption that the self-dealing transactions were ‘unduly obtained.’” The Court therefore held that the trial court erred in holding that there was no confidential relationship, and also erred in failing to shift the burden of production to Jeff and Boyka to rebut the presumption of undue influence with respect to the challenged transactions. The Court reversed the judgment of the trial court, and remanded the case for a new trial.

The attorneys at Oast & Hook can assist clients with their estate, financial, insurance, long-term care and special needs planning issues.

Ask Allie

O&H: Allie, last week you gave our readers some tips on renting a pet-friendly apartment. Do you have some tips for moving day and for settling into the new home?

Allie: Yes, I do, and I hope my friends at Oast & Hook are paying attention for our upcoming move! Moving day can be stressful for everyone, as well as dangerous for your pets. You should keep your pets, along with their bed, food, toys and litter box, in a separate and secure room. You should put a sign on the door so it is not opened inadvertently. When you move into your new home or office, keep

your pet in a quiet room that has the pet's basic needs, and gradually let your pet explore the rest of the house. It's important to keep your pet on its same routine as much as possible. For cats, keep its old litter box, scratching post, toys and bed, and don't change litter or food brands abruptly. A tall cat tree or window seat will help a cat survey its new territory. Make sure to use safety precautions after a move; your cat or dog should wear proper identification, and include your cell phone number if you do not yet have a new home number. Make sure all window screens are secure and make sure that cords on curtains or blinds will not present a choking hazard. Look for wires and cords that might tempt your pet. Plan for your pet's health by finding a veterinarian, including the emergency vet, and drive there so you know how to get there in case of an emergency. Bring a copy of your pet's record to the new veterinarian, and see if there are any additional vaccinations that your pet will need in the new area. Last, but not least, take some time off for you and your pet to enjoy your new home or office. When I move, I will miss the children walking by my home in Oast & Hook's Portsmouth office to go to the Children's Museum, but I hope there will be lots of new things to see in my new office!



Please feel free to e-mail your pet- and animal-related questions to Allie at: allie@oasthook.com.

Announcement

Save the date for some spring cleaning. From 10:00 a.m. to 1:00 p.m., Saturday, May 9th, Stealth Shredding will have a truck at Oast & Hook's Portsmouth office so Oast & Hook's clients and friends can bring their papers to be shredded at no cost. (Stealth Shredding recycles the shredded material.)



Distribution of This Newsletter

Oast & Hook encourages you to share this newsletter with anyone who is interested in issues pertaining to the elderly, the disabled and their advocates. The information in this newsletter may be copied and distributed, without charge and without permission, but with appropriate citation to Oast & Hook, P.C. If you are interested in a free subscription to the *Oast & Hook News*, then please e-mail us at mail@oasthook.com, telephone us at 757-399-7506, or fax us at 757-397-1267.

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