IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
ORPHANS' COURT DIVISION

ESTATE OF	:	
ERNEST BINDER,	:	**No. 10-9200**
Deceased,	:	

Kim Roberti, Esquire — Counsel for Estate
Kim M. Christie — Counsel for Beverly Serfass

MEMORANDUM OPINION

Matika, J. - December 6, 2012

On September 29, 2011, Allison Adams, Administratrix of the Estate of Ernest A. Binder, filed a "PETITION TO AVOID/STRIKE CLAIM AGAINST THE ESTATE" that was filed by the decedent's ex-girlfriend, Beverly Serfass. On June 29, 2012, a Stipulation of Facts was entered into by the parties, followed by the lodging of briefs supporting the respective positions of the parties. The Court is now being called upon to decide the validity of the claim and in essence the owner of $2,285.48 in question.

I. FACTUAL BACKGROUND[1]

On or around the year 2003, Ernest Binder (hereinafter "Binder") and Beverly Serfass (hereinafter "Serfass") began living together. In doing so, they signed a lease for the

[1] The facts presented are based upon a stipulation of facts filed by the parties.

property located at 402A South Third Street, Lehighton, Pennsylvania. In order to satisfy their obligation to the landlord, Binder and Serfass shared the rental expense with Serfass paying her share to Binder out of her bank account and then Binder paying the landlord directly.

During their relationship, the parties opened a joint checking account at Wachovia Bank, the account number for which ended in 3894. Despite this "joint tenant with right of survivorship" account, the parties still maintained other separate accounts.

In November, 2007, Binder purchased a home, in his name only, located at 226 White Street, Weissport, Pennsylvania. The couple resided together at this new location, with Serfass continuing to pay her share of the rent directly to Binder from her separate account. Sometime prior to June 2010 the parties broke off their relationship, however Serfass continued to reside at Binder's residence.[2] From the Wachovia Joint Account, and during the time period from February 2010 through May 2010, Binder issued the following checks in order to "pre-pay" for various services, in the amounts indicated to the payees identified as follows:

a) Times News (Ck. #779) $ 58.90

[2] Serfass lived with Binder at this address up and until Binder's death.

b)	The Morning Call (Ck. #785)	$	100.00
c)	Blue Ridge Cable (Ck. #802)	$	127.38
d)	Fegley Oil (Ck. #804)	$	1,999.20
	TOTAL	$	2,285.48

These checks were written by Binder for services that both he and Serfass expected to benefit from while living at the Weissport address.

On June 6, 2010, Binder passed away. At the time of his death, there existed the sum of three hundred fifteen dollars and three cents ($315.03) in the Wachovia Joint Account that Serfass received as the surviving owner of the joint account. Serfass was still living in Binder's residence at the time he deceased, however, shortly thereafter she was served with a notice to quit. Serfass subsequently vacated the residence.

After Binder's death, the total sum of two thousand two hundred eighty-five dollars and forty-eight cents ($2,285.48) was refunded to his estate. This total sum represented refunds for the newspaper, cable, and oil bills Binder paid for in advance. In the six (6) months prior to his death, Binder was the only person who deposited any monies into the Wachovia Joint Account, as said monies came from his social security income, pension checks, and transfers from his other accounts.

On January 26, 2011, Serfass filed a Proof of Claim against the estate in the amount of $2,285.48, which represents the total amount of money refunded to Binder's estate for the services paid for in advance. Serfass claims that these monies should belong to her as the surviving owner of the joint account as the money to pay for said services came from the joint account and as the surviving owner of the account, the money should have been refunded back to the account not Binder's estate.

II. LEGAL DISCUSSION

The issue before the Court is quite simple: Does the two thousand, two hundred eighty-five dollars and forty-eight cents ($2,285.48), which represents the refund of monies for services paid in advance by Binder to benefit both him and Serfass, belong to the surviving owner of the "joint tenant with rights of survivorship" account from whence the money came, or does this money belong to the estate of the decedent who deposited those monies into that checking account? The answer, as explained below, is equally simple: It belongs to the estate.

Pursuant to 20 Pa.C.S. § 6303(a), "[a] joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions by each to the sum on deposit, unless there is clear and convincing evidence of a

different intent." 20 Pa.C.S § 6303(a). However, "[a]ny sum remaining on deposit at the death of a party to a joint account belongs to the surviving party or parties as against the estate of the decedent unless there is clear and convincing evidence of a different intent at the time the account is created." 20 Pa.C.S. § 6304(a).[3] Neither statute provides the definitive guidance to address what the Court should do with the two thousand two hundred eighty-five dollars and forty-eight cents ($2,285.48) refund that originated, and was paid from, the joint account in question prior to the decedent passing away.

Serfass argues that she is entitled to the $2,285.48 refund by virtue of the fact that it was money paid from the joint account prior to Binder's death, and therefore, the refund should be returned to the account in accordance with section 6304(a).[4] Serfass relies upon the case of *Klopp Estate*, 9 Pa. D. & C.4th 201 (Com. Pl. 1990), to suggest that this refund belongs to her.

In *Klopp*, the Court held that monies that were paid from a tenant by entireties account prior to the passing of one spouse

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[3] Section 6304(a) does provide, and the parties agree, that Serfass was entitled to the remaining balance of $315.03 in that account upon Binder's death.

[4] It should be noted that there has been no "clear and convincing" evidence to suggest that Binder did not intend Serfass to receive the remaining monies in the joint account at the time of his death, but that is not necessarily dispositive of our situation.

should, after death, be returned to the surviving spouse and not to the estate of the deceased spouse. The facts in *Klopp* are slightly different from those before the Court as in *Klopp* monies were "advanced" from a tenants by entireties account by the spouse for the deceased spouse's medical, nursing, and related care expenses prior to his passing. It was understood that the "advancement" of these monies was to pay the providers and that Blue Cross/Blue Shield would reimburse these monies. Not all reimbursements were received before husband died. The Court found, however, that since it was anticipated that the money would eventually be reimbursed to the account, the surviving spouse should receive said money, especially in light of the fact that the money was from mutual funds owned by husband and wife.

The *Klopp* case, however, is distinguishable from the case before the Court in several respects. In our case, Binder was the only owner of the account to deposit money into the joint account during the six (6) months prior to his death, and during that time frame the monies in question were paid out of this account. In *Klopp*, the monies used to pay for the medical bills came from mutual funds owned by both parties. Secondly, in *Klopp*, there was an anticipation that these monies would be returning to decedent and his surviving spouse, and but for

husband's passing that would have occurred. In the instant case, there was no anticipation that these bills, paid in advance by Binder, would be reimbursed, as they were for ongoing and future services, and but for Binder's passing, would have been provided with the monies paid on account and thus exhausted. Therefore, the Court does not find *Klopp* dispositive, and does not rely upon that case for guidance.

After an exhaustive search, the Court could not find any Pennsylvania case on point with the issue before it, however, the Court does find guidance in *McDivitt v. Pymatuning Mutual Fire Ins. Co.*, 449 A.2d 612 (Pa. Super. 1982). The *McDivitt* case involved a husband and wife who jointly owned a piece of real estate. In 1971 the parties separated with Mrs. McDivitt continuing to reside in the jointly owned property and paying all bills related to the property, including maintenance, expenses, and taxes, without contribution from Mr. McDivitt.

In 1973, Mrs. McDivitt purchased fire insurance for the dwelling and barn, said contract of insurance being entered into between herself and the insurance company and not involving Mr. McDivitt. In April 1975, the dwelling was totally destroyed by a fire. The Court held that the proceeds from the insurance contract were payable to Mrs. McDivitt alone and not Mr. McDivitt as he was not a party to that policy. The Court

reasoned that since the monies paid on the insurance contract were by Mrs. McDivitt only, and the contract was entered into by Mrs. McDivitt and the insurance company, the proceeds from the policy due to the fire belonged to her alone.

Further, the *McDivitt* Court reasoned that the manner in which the real estate was titled had no impact on the proceeds. The Court stated, "the insurance proceeds do not result from any transfer of title, voluntary or involuntary. The land is still owned by the husband and wife in exactly the same manner as before the fire. The disputed funds result solely from the terms of the contract of insurance." *McDivitt,* 449 A.2d at 614. The Court goes on to state that "the mere fact that property is held by the entirety should not, standing alone, automatically entitle an uninsured spouse to benefit from the efforts of the other spouse in indemnifying the homestead against damage and/or destruction." *Id.* at 615.

In contrast, Binder, from his own monies, purchased various "contractual" services which, upon his death ceased, and a credit was issued. Binder, not Serfass, obtained these services; Binder, not Serfass, paid for these services; and Binder, not Serfass, is entitled to the refunds from the credits on account for these services. The fact that the property from which the monies originated was a joint checking account is

irrelevant and of no real significance in light of whose monies they were and the fact it was Binder who purchased the services. Accordingly, the Court enters the following Order:

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ORDER OF COURT

AND NOW, this 6th day of December, 2012, upon consideration of the "PETITION TO AVOID/STRIKE CLAIM AGAINST THE ESTATE" filed by the Administratrix of the Estate of Ernest Binder, and after consideration of the Stipulation of Facts entered into by the parties, and the briefs filed in support thereof and against the petition respectively, it is hereby **ORDERED and DECREED** as follows:

1) The claim, filed by Beverly K. Serfass pursuant to 20 Pa.C.S.A. § 3532(b)(2) against the Estate of Ernest A. Binder is **VOIDED and STRICKEN**; and

2) The refund checks totaling two thousand two hundred eighty-five dollars and forty-eight cents ($2,285.48) shall be the sole and exclusive property of the Estate of Ernest A. Binder.

BY THE COURT:

Joseph J. Matika, Judge