

**IN THE COURT OF COMMON PLEAS  
PROBATE DIVISION  
CLARK COUNTY, OHIO**

Kathleen A. Maddux, Executor : CASE NO. 20140069A  
Of the estate of Edna L. Ross

Plaintiff

-vs-

Robert F. Ross  
Defendants

**FILED**  
CLARK COUNTY PROBATE COURT

MAR 17 2015

RICHARD P. CAREY  
PROBATE JUDGE

JUDGE RICHARD P. CAREY

**ENTRY ON DEFENDANT'S  
MOTION FOR SUMMARY  
JUDGMENT**

This matter is before this Court to consider the Motion for Summary Judgment filed by Defendant Robert Ross in light of the Response thereto filed by the Plaintiff. The background facts as advanced by the Defendant in his Motion are uncontroverted and accepted by the Plaintiff.

Edna Ross, the decedent herein, died on October 19, 2013. A determination of incompetence and the establishment of a guardianship were ordered of recorded by this Court on May 16, 2013. Approximately eight years prior to the filing of the application for guardianship, that is on April 13, 2005, a Certificate of Deposit (hereinafter "the CD") issued by International Harvester Credit Union was issued in the name of the decedent as the sole owner with the designation that the defendant, Robert F. Ross, be the payable on death beneficiary. On the date of the decedent's death, the balance in the CD was approximately \$94,413.81.

A second account, to-wit: a joint checking account at Security National Bank owned by the decedent and the plaintiff, Kathleen Maddux, was opened on May 13, 2014. On the date of the decedent's death, the balance in the Security National Bank account was approximately \$21,851.50.

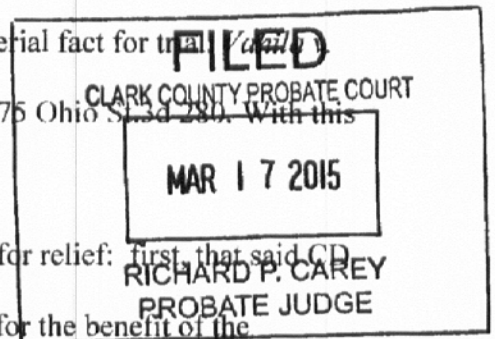
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In her Complaint, the plaintiff set forth several grounds in support of her request to this Court to direct the defendant to return the funds from said CD to the estate and to characterize the same as an estate asset. The defendant resists this request and has filed the instant motion for summary judgment.

Rule 56(C) of the Ohio Rules of Civil Procedure provides that Summary Judgment may be granted when, after reviewing the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations: (i) there is no genuine issue of material fact, (ii) the moving party is entitled to judgment as a matter of law, and (iii) reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the nonmoving, that conclusion is adverse to the nonmoving party.

The party seeking summary judgment bears the initial burden of informing the trial court of the basis for its motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact. The moving party may not make a conclusory assertion that the non-moving party has no evidence to prove its case. The moving party must specifically point to some evidence that demonstrates the non-moving party cannot support its claim. If the moving party satisfies this requirement, the burden shifts to the non-moving party to set forth specific facts demonstrating there is a genuine issue of material fact for trial. *Hull* (1997), 77 Ohio St.3d 421, 429, citing *Dresher v. Burt* (1996), 75 Ohio St.3d 280. With this in mind, the Court proceeds.

The plaintiff's original complaint herein set forth six claims for relief: first, that said CD was not intended by the decedent as a transfer on death designation for the benefit of the defendant; second, that defendant had practiced undue influence upon the person of the decedent to designate him as the beneficiary of said CD; third, that the funds within said CD should be



20140069

deemed to be part of a constructive trust for the benefit of the decedent's estate; fourth, that the designation of the transfer on death beneficiary was forged; fifth, that the defendant received the funds of said CD unlawfully and should account to this Court for the same; and sixth, that the defendant, by improperly using a power of attorney, had concealed, embezzled and/or converted away monies or other property that was in the possession of the decedent and that the same should be returned to the decedent's estate.

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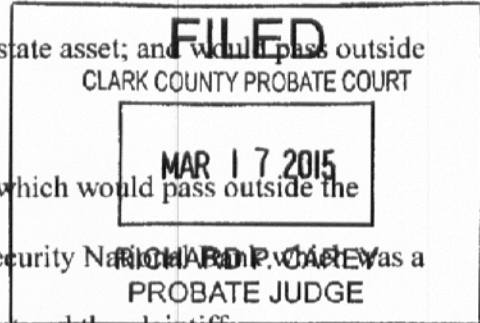
After completing discovery, and as gleaned by this Court upon review of the pleadings herein, the sole grounds upon which the plaintiff wishes to proceed is that concerning the theory of a constructive trust having been created herein. This is approximate now as the Court finds no evidence that would support a successful pursuit based on any of the other five claims for relief. That is to say, specifically, that the Court has not been presented any evidence suggesting that the decedent did not in fact intend to transfer the CD to the defendant upon her death; or that there was undue influence, forgery, or improper use of a power of attorney document for the benefit of the defendant.

A review of the share certificate herein clearly demonstrates that the decedent invested in a certificate of deposit in her name and directed the same to be payable upon her death to the person of Robert Ross. The designation as to who the beneficiary would be is clear by virtue of it being written and also typed upon the document. There is no indication of the establishment or execution of this document under the authority of any power of attorney. There is also nothing to indicate that the decedent executed this certificate of deposit with any intention other than it be delivered to Robert Ross upon her death. There is nothing to contradict a conclusion that this act constituted part of the decedent's estate planning. As such, of course, any funds remaining in the

20140069

certificate of deposit normally would not be considered an estate asset; and would pass outside the estate to Robert Ross, the defendant.

The plaintiff, too, was the beneficiary of an account which would pass outside the decedent's estate. As noted above, this was an account at Security National Bank as a joint and survivorship checking account between the decedent and the plaintiff.



The plaintiff asks this Court to find a legal difference between the joint and survivorship account and the payable on death CD account. She hopes that this distinction would justify a court order directing the defendant to return the funds from the CD to the estate while permitting the plaintiff to keep the funds from the joint and survivorship account. The Court acknowledges that a joint and survivorship account would permit the plaintiff access to the funds therein during the life of the decedent. The defendant --- being a payable on death fiduciary --- would have no claim until the decedent's death. This Court finds this to be a distinction without any legal significance to the action at bar. What, rather, is of significance is that both instruments entitled the defendant and plaintiff respectively to gain immediate access to the funds upon the decedent's death.

Plaintiff nevertheless requests this Court to find that the principals of equity demand that the funds in the CD be turned over to the estate under the theory that a constructive trust had been established for the benefit of the estate. The plaintiff opines that this CD could have been accessed by the guardian of the decedent during her life and for her benefit. Had the guardian chosen to access this CD, rather than any other asset owned by the decedent, then the value of the decedent's estate upon her death would have been greater than it is today.


While this last point may indeed be true, it remains a large jump to find a constructive trust herein for the benefit of the estate. First of all, the Court has not been afforded any

evidence with respect to the nature and number of beneficiaries under the estate of the decedent. The Court has been given no evidence of the nature of any other asset of the decedent which may be joint and survivorship. Plaintiff's argument disregards what commonly and naturally occurs with respect to decedent's estates when a Last Will and Testament specifically grants a tangible item of personal property which, after the execution of the Will and before the death of the decedent, disappears. In other words, inequities are not at all unusual when it comes to the administration of estates. Nor has the plaintiff presented any evidence to this Court that the decedent wanted a result other than what occurred by operation of law herein. To rule otherwise would be to invite this Court to completely throw out the laws concerning joint and survivorship property and transfer on death designations at the whim of the parties. The Court is not inclined to do that.

After due consideration, this Court finds no genuine issue as to any material facts and that the moving party is entitled to judgment as a matter of law. The Court does grant the Defendant's Motion for Summary Judgment, finding in favor of the defendant and against the plaintiff with respect to the plaintiff's complaint herein.

IT IS SO ORDERED.

Costs to Plaintiff – THIS IS A FINAL APPEALABLE ORDER.

  
RICHARD P. CAREY, PROBATE JUDGE

cc: David Brannon, Esq.  
Brian Wiggins, Esq.

