

**COURT OF COMMON PLEAS  
PROBATE DIVISION  
HAMILTON COUNTY, OHIO**

MARY L. REARDON	:	CASE NO. CI-992058
Executor of the Estate of	:	
Maurice S. Reardon, Deceased	:	
	:	
Plaintiff	:	<u>ENTRY DENYING</u>
	:	<u>MOTIONS FOR SUMMARY</u>
	:	<u>JUDGMENT</u>
-vs-	:	
	:	
DOROTHY JEAN RENNER	:	
	:	
Defendant	:	
	:	

This matter came before Judge Wayne F. Wilke on August 19, 1999 regarding cross-motions for summary judgment. Present were Timothy A. Tepe on behalf of the Executor, and Stephen J. Schuh on behalf of the Defendant, Dorothy Jean Renner. Following oral arguments, the Court allowed each party time to file proposed entries granting their respective motion.

FACTS

The facts of this case may be summarized briefly. The decedent, Maurice S. Reardon, died testate on September 30, 1998. The decedent's Last Will and Testament was admitted to probate on October 23, 1998, the same day that Plaintiff Mary L. Reardon was appointed executor of this estate.

The decedent and Defendant Dorothy Jean Renner became friends sometime in the mid to late 1980's. On or about August 19, 1994, the decedent created a joint account at PNC Bank, Account No. 4013823004, titled in his name along with Dorothy Jean

Renner. The decedent initially funded the joint account with a \$30,000.00 deposit and he made all of the subsequent deposits. Those additional deposits amounted to \$57,000.00 and were made over a three year period. With the payment of interest over several years, the account balance totaled \$92,379.32 at the time it was closed in June of 1998.

On or about June 16, 1998, Dorothy Renner withdrew all of the funds on deposit in the joint account. According to Defendant's affidavit and deposition, she took this action at the behest of the decedent. Ms. Renner also contends she gave the decedent the cashier's check representing the withdrawn funds and that the decedent gifted the check to her a week later. Both the Plaintiff and Defendant have asked the Court to render summary judgment in their favor.

#### CONCLUSIONS OF LAW

Civil Rule 56(C) allows for summary judgment to be granted when the pleadings, affidavits, depositions and other documents show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Before summary judgment may be granted, however, it must be determined that (1) no genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to summary judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing the evidence most strongly in favor of the non-moving party, that conclusion is adverse to the non-moving party. *State ex rel. Leigh v. State Emp. Relations Bd.* (1996), 76 Ohio St.3d 143, 144. The Ohio Supreme Court has admonished trial courts to resolve doubts and construe evidence in favor of the nonmoving party and to award summary judgment with caution.

*Welco Industries, Inc. v. Applies Cos.*, (1993), 67 Ohio St.3d 344, 346 citing *Murphy v. Reynoldsburg* (1992), 65 Ohio St.3d 356. In this case summary judgment may not be granted in favor of either the Plaintiff or Defendant.

The Ohio Supreme Court has decided that a joint and survivorship account belongs, during the lifetime of all the parties, to the parties in proportion to the net contributions by each to the sums on deposit, unless there is clear and convincing evidence of a different intent. *In re Estate of Thompson* (1981), 66 Ohio St.2d 433, paragraph one of the syllabus. Defendant may be able to establish that the account was initially funded for her benefit or alternatively, that after she withdrew the funds, the decedent gifted to her those funds. In light of the possibility that Defendant may prevail under either scenario, summary judgment is inappropriate. Accordingly, the Court denies each party's motion for summary judgment and orders this matter to proceed to trial consistent with the Court's Scheduling Order.

SO ORDERED.

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WAYNE F. WILKE, JUDGE

cc: Timothy Tepe / 39324  
Stephen J. Schuh / 7106