

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

ESTATE OF
ANN R. ROTHAN

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CASE NO. 963983

ENTRY REGARDING
EXCEPTIONS TO INVENTORY

This matter came before Judge Wayne F. Wilke on February 13, 1997, concerning Thomas Stacey's exceptions to the inventory filed by the Executrix of the Estate of Ann R. Rothan. Present were J. Stephen Cox for Exceptor Thomas Stacey and J. Michael Laumann for Executrix Wendy Cappel. The parties were given one week in which to file written closing arguments.

FINDINGS OF FACT

The decedent herein, Ann Ruth Rothan, died testate on August 20, 1996. Her will was admitted to probate on September 5, 1996, the same day that Wendy Cappel was appointed Executrix of Ann R. Rothan's estate. On October 31, 1996, the Executrix filed an inventory and appraisal which indicated the Estate contained assets totaling \$100,074,86. Included in the inventory were five separate Certificates of Deposit with the Cheviot Building & Loan.

Thomas Stacey, who is the decedent's nephew and who is not to take as a beneficiary under the decedent's will, filed exceptions to the inventory on November 18, 1996. The Exceptor alleged that the proceeds of Money Market Account No. 25-2861 should be listed as an asset of the Estate of Wilda Stacey and not the Estate of Ann R. Rothan. This account was closed by the decedent on August 4, 1995 when she withdrew \$382.75 in cash.

Mr. Stacey's exceptions also alleged that the following two assets should not be included in the inventory of Ann R. Rothan's Estate:

1. Cheviot Building & Loan Account No. 01-21-2027 with a date of death value of \$10,385.49, titled jointly in the names of Ann R. Rothan and Alvera R. Ross; and

2. Cheviot Building & Loan Account No. 01-21-2020 with a date of death value of \$34,970.73, titled jointly in the names of Ann R. Rothan and Alvera R. Ross. Alvera R. Ross, who survived the decedent, has disclaimed any interest in these accounts so that the Executrix listed them on her inventory.

Last, Mr. Stacey's exceptions allege that "several items" identified as "miscellaneous household goods and furnishings with an appraised value of \$6,725.00" rightfully belong to Betty Kerber or, alternatively, are part of the Estate of Wilda Stacey.

CONCLUSIONS OF LAW

Revised Code §2115.16 provides for the filing of exceptions to an inventory. The purpose of a hearing on those exceptions is to determine whether those charged with the responsibility therefore have included in a decedent's estate more or less than the decedent owned at the date of death. *In re Gottwald* (1956), 164 Ohio St. 405.

With regard to Mr. Stacey's exception that the proceeds of Money Market Account No. 25-2861 should be listed as an asset of the Estate of Wilda Stacey and not the Estate of Ann R. Rothan, the Court overrules this exception.

Similarly, Mr. Stacey's exceptions that Cheviot Building & Loan Account No. 01-21-2027 and Cheviot Building & Loan Account No. 01-21-2020 belonged to persons other than the Estate of Ann R. Rothan are hereby overruled.

The Ohio Supreme Court has determined that opening an account in joint and survivorship form shall, in the absence of fraud, duress, undue influence or lack of mental capacity on the part of the depositor, be conclusive evidence of the depositor's intention to transfer to the survivor the balance remaining in the account at the depositor's death. *Wright v. Bloom* (1994), 69 Ohio St.3d 596, 607. Conversely, during the lifetime of the parties, joint and survivorship accounts belong to the parties in proportion to the net contributions by each to the sums on deposit. *In re Estate of Thompson* (1981), 66 Ohio St.2d 433.

With respect to Money Market Account No. 25-2861, Ann Rothan and Wilda Stacey were joint tenants with rights of survivorship. Ann Rothan closed that account one month before the joint tenant's death. Therefore, the \$382.75 in that account belongs to the decedent and to Wilda Stacey in proportion to the contributions made by each to that account. There was, however, no evidence presented by the Exceptor as to the amount contributed, if any, by Wilda Stacey. Without such evidence, the Court cannot blindly surmise the extent of Wilda Stacey's ownership right to this account.

While the Exceptor was able to demonstrate from where the two other accounts in question originated, the fact that they were titled as joint and survivorship accounts in the names of the decedent or Alvera Ross at the time of the decedent's death requires the exceptions to be overruled as a matter of law. Alvera Ross disclaimed any interest in those funds and once Ann R. Rothan died, the *Wright* doctrine controls. The Court need not examine the source of those funds, only how those funds were titled. The two Certificates of Deposit are properly assets of the Estate of Ann R. Rothan.

The Exceptor also alleges that "several items" identified as "miscellaneous household goods and furnishings with an appraised value of \$6,725.00" rightfully belong to Betty Kerber or, are part of the Estate of Wilda Stacey. The only item that Betty Kerber could

identify as belonging to her is a curio cabinet. There was no evidence that any other items belonged to the Estate of Wilda Stacey. Mr. Stacey's exceptions to this portion of the inventory are sustained only to the extent that the aforementioned curio cabinet shall be excluded from the inventory and surrendered to Betty Kerber.

THEREFORE, as described above, Thomas Stacey's exceptions to the inventory are hereby overruled in part, and sustained in part.

SO ORDERED.

WAYNE F. WILKE, JUDGE

cc: J. Michael Laumann
J. Stephen Cox