IN THE SUPREME COURT OF IOWA
SUPREME COURT NO. 22-1801

IN THE ESTATE OF JOHN EUGENE JOHNSTON, PEGGY JOHNSTON, Appellant	)	WAPELLO COUNTY NO. ESPR007828

APPEAL FROM THE DISTRICT COURT
IN AND FOR WAPELLO COUNTY
THE HONORABLE GREGORY MILANI DISTRICT COURT JUDGE

Randall C. Stravers ATT0007666
Stravers Law Firm
110 North Market Street
Oskaloosa, IA 52577
Telephone: 641-673-9451
Fax: 641-673-3502
E-Mail: stravers@pcsia.net
Attorney for Appellee

Greg Life ATT0004766
216 South First Street
Oskaloosa, IA 52577
Telephone: 641-673-8336
Fax: 641-673-9750
Attorney for Appellee

APPELLEE'S BRIEF

CERTIFICATE OF SERVICE

On this 17th day of March, 2023, I the undersigned, did file electronically this Appellee's Proof Brief with the Clerk of the Iowa Supreme Court, pursuant to Iowa R. App. P. 6.701.

PROOF OF SERVICE

On this 17th of March, 2023, I the undersigned, did serve this Appellee's Proof Brief on the attorneys for the Appellants listed below via electronic service of the Electronic Document Management System. Upon information and belief, the attorneys for the Appellant are registered filers pursuant to Iowa R. Civ. P. 16.201.

Richard J. Gaumer
111 W. Second Street
Ottumwa, IA 52501
Telephone: 641-682-7579
Fax: 641-682-6982
Attorney for Appellants

Randall C. Stravers ATT0007666
Stravers Law Firm
110 North Market Street
Oskaloosa, IA 52577
Telephone: 641-673-9451
Fax: 641-673-3502
E-mail: stravers@pcsia.net
Attorney for Appellee

TABLE OF CONTENTS

TABLE OF AUTHORITIES

COURT RULES

STATEMENTS OF ISSUES PRESENTED FOR REVIEW

I. THE DISTRICT COURT CORRECTLY FOUND THAT THE JOINT TENANT, JOHN E. JOHNSTON, COULD TRANSFER FUNDS OUT OF HIS JOINT ACCOUNT WITHOUT THE SECOND JOINT TENANT, PEGGY JOHNSTON, CLAIMING ANY FURTHER OWNERSHIP OF THE TRANSFERRED FUNDS WHEN SUFFICIENT EVIDENCE WAS PRODUCED TO REBUT THE PRESUMPETION THAT ONE-HALF OF THE TRANSFERRED FUNDS IN THE JOINT ACCOUNT BELONGED TO EACH JOINT OWNER OF THE ACCOUNT AT THE TIME OF THE TRANSFER.

Authorities

Anderson v. Iowa Department of Human Services, 368 N.W.2d 104, 109 (Iowa 1985)

Brown v. Vonnahme, 343 N.W.2d 445, 451 (Iowa 1984)

Keokuk Savings Bank & Trust Co. v. Desvaux, 259 Iowa 387, 393, 143 N.W.2d 296, 300 (1966)

48A C.J.S. Joint Tenancy §23 (1981)

Jennings v. McKeen, 245 Iowa 1206, 1214, 65 N.W.2d 207, 211 (1954)

Kettler v. Security National Bank of Sioux City, 805 N.W.2d 817, 825 (Iowa 2011)

II. THE TRIAL COURT CORRECTLY FOUND THAT THE CLAIMANT WAS NOT ENTITLED TO RECOVER A PORTION OR SHARE OF THE AMOUNT DRAWN OUT OF THE JOINT ACCOUNT BY THE DECEDENT TO PURCHASE CERTIFICATES OF DEPOSITS.

Authorities

Kettler v. Security National Bank of Sioux City, 805 N.W.2d 817 (Iowa 2011)

Anderson v. Iowa Department of Human Services, 368 N.W.2d 104 (Iowa 1985)

III. THE TRIAL COURT DID NOT COMMIT ANY

REVERSIBLE ERROR BY STATING THAT A REASON TO SUSTAIN THE MOTION FOR DIRECTED VERDICT WAS THE TRANSFER OF FUNDS FROM THE JOINT ACCOUNT WAS PART OF JOHN'S ESTATE PLAN.

Authorities

In the Matter of the Estate of Bearbower, 426 N.W.2d 392, 394 (Iowa 1988)

IV. THE TRIAL COURT DID NOT COMMIT REVERSIBLE ERROR BY DETERMINING THAT PEGGY HAD FAILED TO PROVE THAT SHE HAD A GREATER INTEREST IN THE PROPERTY.

Authorities

In the Matter of the Estate of Bearbower, 426 N.W.2d 392, 394 (Iowa 1988)

Kettler v. Security National Bank of Sioux City, 805 N.W.2d 817, 825 (Iowa 2011)

Anderson v. Iowa Department of Human Services, 368 N.W.2d 104, 109 (Iowa 1985)

V. THE TRIAL COURT DID NOT ERR IN SUSTAINING THE MOTION FOR DIRECTED VERDICT.

Authorities

O'Bryan v. Henry Carlson, 828 N.W.2d 326 (Iowa Ct. App. 2013)

ROUTING STATEMENT

The Executors, Rebecca Askland and Brenda Todd, believe that this Appeal can be considered by the Iowa Court of Appeals since the issues raised can be determined by the application of existing legal principles. Iowa R. App. P. 6.1101(3)(a).

STATEMENT OF THE CASE

This claim is part of the Estate of John E. Johnston who died March 11, 2018. The Claimant is Peggy Johnston who is the surviving spouse of the decedent. It was not a first marriage for either one of them.

On August 16, 2018 Peggy Johnston filed a claim in the Estate for the amount of $94,500.00 based on "one-half of the joint accounts held by John Johnston and Peggy Johnston which were transferred to Rebecca Askland. There was a Certificate of Deposit of $70,000.00, a Certificate of Deposit of $40,000.00 and a joint checking account of $79,000.00 (all values are estimated)". (App. P. 20-24). The Executors of the Estate denied the Claim and the Claim was tried in the Wapello County District Court on October 15, 2022.

Prior to the hearing in District Court, the Claimant

filed a Trial Brief in which she indicated she was then seeking one-half of the $40,000.00 CD purchased by the decedent in 2015 and one-half of the $70,000.00 CD and one-half of the Boot used to buy a new truck. The total was $63,341.25.

The District Court heard evidence on the Claim. At the conclusion of the Claimant's evidence, the Court considered a Motion for Directed Verdict made by the Executors and sustained the Motion dismissing the Claim. A Notice of Appeal was filed in a timely manner.

STATEMENT OF THE FACTS

At the hearing the Claimant, Peggy Johnston, testified that she and the decedent had accounts in both names. She testified that she and the decedent both deposited money into the accounts. She testified that both she and the decedent wrote checks out of the accounts. (App. P. 58). Peggy Johnston testified that there was no attempt to distinguish what was hers and what was his in the joint accounts. (App. P. 74). Money was also transferred from one joint account to the other joint account. (Transcript page 32, App. P. 52).

Peggy Johnston testified that the decedent bought property at a Sheriff's Sale which property was turned into

a trailer park (App. P. 63-64). She further testified that the source of the $70,000.00 used to buy the $70,000.00 Certificate of Deposit came from the sale of that trailer park. (App. P. 73, 76). She acknowledged that the trailer park was just in John's name. (App. P. 76). A letter from the Bank explaining the source of funds for the CDs stated that the money came from the Money Market Account which was a joint account they had. (App. P. 53). In her testimony Peggy Johnston admitted that the two Deeds for the property on which the trailer park was located were always in John's name, that it was his sole property and that the sale proceeds were used to buy the $70,000.00 CD. (App. P. 75-76).

The CD in the amount of $40,000.00 came from another CD. That other CD was in the name of the decedent only. It only had John Johnston's name on it. The Claimant acknowledged that the funds used to purchase the $40,000.00 CD came from that other CD which had been in John Johnston's name. (App. P. 77).

ARGUMENT SECTION

ISSUE I.

THE DISTRICT COURT CORRECTLY FOUND THAT THE JOINT TENANT, JOHN E. JOHNSTON, COULD TRANFER FUNDS OUT OF HIS JOINT ACCOUNT WITHOUT THE SECOND JOINT TENANT, PEGGY JOHNSTON,

CLAIMING ANY FURTHER OWNERSHIP OF THE TRANSFERRED FUNDS WHEN SUFFICIENT EVIDENCE WAS PRODUCED TO REBUT THE PRESUMPTION THAT ONE-HALF OF THE TRANSFERRED FUNDS IN THE JOINT ACCOUNT BELONGED TO EACH JOINT OWNER OF THE ACCOUNT AT THE TIME OF THE TRANSFER.

A. PRESERVATION OF ERROR.

Appellees, Rebecca Askland and Brenda Todd, agree that error was preserved by the filing of a timely Notice of Appeal.

B. SCOPE OF REVIEW.

Appellees, Rebecca Askland and Brenda Todd, agree that the scope of review for a Trial Court's grant of a Directed Verdict is for a correction of errors at law.

C. ARGUMENT.

The Executors, Rebecca Askland and Brenda Todd, will address the issues as outlined in the Appellant's Brief but the real issue on this Appeal is the ability of the decedent, John Johnston, to transfer funds out of the joint account that he had with the Claimant, Peggy Johnston. This Appeal does not deal with funds in accounts that were in existence at the time of the decedent's death. The claim is for a portion of CD's not in claimant's name as a sole or joint owner. The CDs were purchased with funds of the decedent, John Johnson, a year or more prior to the date of decedent's death.

Peggy Johnston testified that they had accounts between the two of them. There were two joint checking accounts and a savings account. She and the decedent were the joint owners of all three accounts. The savings account was also referred to as a Money Market Account. As to the joint checking accounts it was her testimony that she and the decedent, John Johnston, deposited money into both accounts. She also testified that they both wrote checks out of both accounts. So both of them used the accounts. She also specifically testified that as to both accounts there was no attempt to distinguish what was hers and what was his. (App. P. 74). They both used the accounts and they did not try to distinguish how much money in the accounts belonged to him or belonged to her.

At the hearing she also specifically testified as to the source of funds for the CDs. John Johnson purchased a $70,000.00 CD and a $40,000.00 CD. She said the $70,000.00 for that CD came out of the joint account 359. The source of the $70,000.00, according to her, was the sale of the trailer court. The $70,000.00 came from the sale of the trailer court which was in John's name. She acknowledged that the trailer court was just in his name and it was his sole property. Therefore it is the undisputed testimony of

the Claimant that the $70,000.00 CD came from money that was proceeds from the sale of the decedent John Johnston's real estate owned solely by him.

She also testified regarding the source of funds for the $40,000.00 CD. She said the $40,000.00 used for the $40,000.00 CD came from another CD that had been just in John's name. That was also substantiated by a letter from the Bank which held the CD and the accounts. The letter was Exhibit 9 which is a letter written by Jennifer Sinnott from First Iowa State Bank which states that the source of the funds for the $40,000.00 CD purchased in 2005 (CD 970) was from a CD that was closed and that John was the only owner of the CD that was closed. (App. P. 53).

The case hinges on the rights of joint tenants to access funds in a joint account. There is a presumption that each party is entitled to just one-half of the funds although this may be rebutted. The Iowa Supreme Court noted in Anderson v. Iowa Department of Human Services, 368 N.W.2d 104, 109 (Iowa 1985) the following as to the rights of joint tenants:

> The right of a joint tenant is generally described as "an undivided interest in the entire estate to which is attached the right of survivorship". Brown v. Vonnahme, 343 N.W.2d 445, 451 (Iowa 1984). The precise extent or share of the undivided interest

> attributable to an individual joint tenant may be determined, however. The rights of the individual joint tenants must be determined from their agreement. Keokuk Savings Bank & Trust Co. v. Desvaux, 259 Iowa 387, 393, 143 N.W.2d 296, 300 (1966). Generally, the respective rights of the parties to a joint bank account are determined by the rules of contract law, and the intent of the parties with respect to the joint savings account is controlling. 48A C.J.S. Joint Tenancy §23 (1981); see Jennings v. McKeen, 245 Iowa 1206, 1214, 65 N.W.2d 207, 211 (1954). Each joint tenant is presumed to own an equal share in the joint bank account; however, this presumption is rebuttable. 48A C.J.S. Joint Tenancy §23.

Id.

The above language from the Anderson case indicates that there is a presumption that each party has an interest in one-half of the funds in a joint tenants account. However, this may be rebutted. Id.; Kettler v. Security National Bank of Sioux City, 805 N.W.2d 817, 825 (Iowa 2011).

Assuming the presumption that the money in the joint account would otherwise belong one-half to Peggy Johnston and one-half to John Johnston, that presumption was clearly overcome. The Claimant herself testified that both she and John Johnston deposited money into the accounts and wrote checks to take money out of the accounts to pay bills. They both used both accounts and there was no attempt to distinguish what funds in the accounts were hers and what

funds in the accounts were his. The accounts were set up as joint accounts for convenience so that they could both use the accounts.

Funds were transferred from one account to another. The Claimant acknowledged and Exhibit 13 shows that funds were transferred from the Account ending in 359 to the Account ending in 101 from December 2013 to November 2016 in the amount of $67,500.00. (Transcript page 32, App. P. 52). There was no attempt to use one account as his account and the other account as her account. Nor was there any attempt to ever identify and retain one-half of the funds in the accounts as his and one-half of the funds in the accounts as hers.

In addition to the Claimant's testimony rebutting the presumption of joint continued ownership, the undisputed testimony of the Claimant proves the source of the funds used to purchase the CD's were funds belonging to John Johnston. Her testimony was that the $70,000.00 CD was purchased from the proceeds of the sale of the real estate which was a trailer park. When they purchased the property that became the trailer park the Deeds were put in the name of John Johnston only. She acknowledged that he was in sole possession of the trailer park and that the money from

his trailer park was used by him to purchase the $70,000.00 CD.

Likewise the money for the $40,000.00 CD was also his and only his. She testified that the $40,000.00 CD was purchased with money that came from another CD that had been in John's name only. The source of the funds for that $40,000.00 CD came from John. This was substantiated by the letter from the Bank which states that the source of the funds for that CD were a prior CD in his name only.

In response to the Executors' Motion for Directed Verdict the counsel for the Claimant noted that a withdrawal from an account by a joint tenant could be a conversion. (App. P. 79 lines 15-22). He also went on to say that absent any showing of a percentage ownership, it is a 50/50 account and that it didn't matter what the source of the funds was. He even acknowledged that the $40,000.00 came from an account which was clearly John's. (App. P. 79 line 23 - P. 80 line 5).

In arguing that the source of the money doesn't matter, counsel for Claimant indicates that it is basic law that if money is put into a joint account it can in fact even be a gift into a joint account. (App. P. 80 lines 6 - 12). The argument is that John's deposit of his funds into

the joint account could be a gift by John. But the facts could, and do, establish there was no such intent.

In this case there definitely has been a showing of a percentage ownership other than 50/50. The ownership clearly shows that there was no attempt to distinguish whose funds were whose in those accounts. They were joint accounts but each party clearly used funds as necessary. Money was transferred from one account to the other. No attempt was made to distinguish the funds as hers or his.

As for the source of the funds, if it is in fact basic law that money put into a joint account can in fact even be a gift it should also be basic law that it may not be a gift. The evidence clearly shows an intent on behalf of the decedent to keep control of the $70,000.00. The real estate in his name and owned by him was sold and generated proceeds of $70,000.00. $70,000.00 went through the joint checking account but was paid out to purchase a CD which was no longer jointly owned with the Claimant. The intent not to generate a gift to Claimant was clearly shown by the evidence in this case.

ISSUE II.

THE TRIAL COURT CORRECTLY FOUND THAT THE CLAIMANT WAS NOT

ENTITLED TO RECOVER A PORTION OR SHARE OF THE AMOUNT DRAWN OUT OF THE JOINT ACCOUNT BY THE DECEDENT TO PURCHASE CERTIFICATES OF DEPOSIT.

A. PRESERVATION OF ERROR.

Appellees, Rebecca Askland and Brenda Todd, agree that error was preserved by the filing of a timely Notice of Appeal.

B. SCOPE OF REVIEW.

The Executors agree with the Claimant that the scope of review is for a correction of errors at law.

C. ARGUMENT.

The Claimant argues that the Trial Court committed error by failing to rule that when the decedent removed more than his share of the account that the Claimant was entitled to recover a proportionate share of the account. The Statement of the Issue is not accurate as the evidence clearly showed that the decedent did not remove more than his share of the account.

It is noted in the previous section under Issue I there was ample evidence from the Claimant herself and Exhibits that the parties did not consider the account to be a 50/50 share or basically any percentage of ownership specific to each other. As to the joint accounts, they each freely used the accounts. They both made deposits

into the accounts, they both wrote checks out of the accounts and money was transferred from one account to the other. Although there may be a presumption of one-half ownership to each of the two joint tenants, that presumption may be rebutted by the facts of the particular case. Kettler v. Security National Bank of Sioux City, 805 N.W.2d 817 (Iowa 2011); Anderson v. Iowa Department of Human Services, 368 N.W.2d 104 (Iowa 1985).

Claimant's Brief, on page 10 after the citation to the Anderson case that the presumption is rebuttable, states "in this case there is no evidence that ownership was other than equal." (Appellant's Brief, page 10). That is absolutely incorrect. There was ample evidence from the Claimant herself that there were no distinctive shares of ownership of the joint accounts. There was no attempt to distinguish his share from her share. There was no attempt to keep track of the amount of his share or her share. The funds in the accounts were jointly owned with access to the funds by both.

The evidence indicates that the decedent clearly did divert a disproportionate share of the amount of money in one of the accounts. And in fact, his transfer of $70,000.00 to purchase the $70,000.00 Certificate of

Deposit was a transfer of funds that were his that he had received from the sale of his real estate. There is clearly no conversion of any funds that Claimant may argue are hers in that transaction.

ISSUE III.

THE TRIAL COURT DID NOT COMMIT ANY REVERSIBLE ERROR BY STATING THAT A REASON TO SUSTAIN THE MOTION FOR DIRECTED VERDICT WAS THE TRANSFER OF FUNDS FROM THE JOINT ACCOUNT WAS PART OF JOHN'S ESTATE PLAN.

A. PRESERVATION OF ERROR.

Appellees, Rebecca Askland and Brenda Todd, agree that error was preserved by the filing of a timely Notice of Appeal.

B. SCOPE OF REVIEW.

Appellees, Rebecca Askland and Brenda Todd, agree that the scope of review for a Trial Court's granting of a Directed Verdict is for a correction of errors at law.

C. ARGUMENT.

Claimant argues that the Court made its decision to grant the Directed Verdict and that the Ruling was based on the statement that there was no evidence to prove that the transfer was anything other than Estate planning done by the decedent. That is clearly not the Ruling by the Court.

The Court indicated that the evidence had been

considered in the light most favorable to the Claimant. The Court evaluated the case on the basis of a conversion. The Court found that there was no evidence to establish a possessory right in the Claim greater than that of the decedent. The Court also held that there was no dominion or control over the funds by the decedent that was inconsistent with or in derogation of the Claimant's possessory rights. The claimant failed to establish the elements of conversion that the claimant had a greater possessory right in the funds used to buy the CD's than the rights of the decedent. In the Matter of the Estate of Bearbower, 426 N.W.2d 392, 394 (Iowa 1988)

The decision of the Court on the basis of conversion is supported by the evidence in the record. The funds used to purchase the CDs came from joint accounts but the Claimant and the decedent never made any attempt to divide in the account what was his and what was hers. They both used funds out of the accounts and they both made deposits into the accounts. They both exercised dominion and control over the accounts.

The transfer of funds out of the account by the decedent to purchase CDs was clearly not inconsistent with any of the Claimant's rights to the funds. The funds for

the purchase of the $40,000.00 CD came from another $40,000.00 CD which was in the decedent's name only. The Claimant had no possessory right to those funds.

The funds used to purchase the $70,000.00 CD came out of the joint account but the funds were actually from the sale of real estate which was in the decedent's name only. The funds were the proceeds from the sale of his property and the transfer of those funds was not inconsistent with any possessory right that the Claimant could make to those funds.

The Court did note then that there was no evidence to prove this was anything other than Estate planning done by the decedent. That would be a logical conclusion from the evidence. But it was not the basis for the decision of the Court.

ISSUE IV.

THE TRIAL COURT DID NOT COMMIT REVERSIBLE ERROR BY DETERMINING THAT PEGGY HAD FAILED TO PROVE THAT SHE HAD A GREATER INTEREST IN THE PROPERTY.

A. PRESERVATION OF ERROR.

Appellees, Rebecca Askland and Brenda Todd, agree that error was preserved by the filing of a timely Notice of Appeal.

B. SCOPE OF REVIEW.

Appellees, Rebecca Askland and Brenda Todd, agree that the scope of review for a Trial Court's grant of a Directed Verdict is for a correction of errors at law.

C. ARGUMENT.

Plaintiff acknowledges that the standards necessary to prove a tortious conversion include proof of dominion or control by defendant which is inconsistent with that of the plaintiff. The elements of conversion are:

1. Ownership by the plaintiff of a possessory right in the plaintiff greater than that of the defendant;

2. Exercise of dominion or control over property by the defendant inconsistent with, and in derogation of, plaintiff's possessory rights thereto; and

3. Damage to plaintiff.

In The Matter of the Estate of Bearbower, 426 N.W.2d 392, 394 (Iowa 1988). The Claimant argues that the problem with the Court's reliance on that law is that conversion was the wrong theory urged by Peggy. She identified her theory according to the Brief as the recovery of diversion of funds from a joint bank account.

However, Claimant does refer to the claim being a conversion. The last sentence in the Claimant's Trial Brief indicates that she is seeking recovery of the removal

of excess funds from the joint tenancy account, plus interest from the date of conversion. (Claimant's Trial Brief filed March 22, 2022, page 2).

The Executors believe that the cause of action described by the Claimant in her Brief as "diversion of funds from a joint bank account . . ." (Appellant's Brief page 18) is the same as a conversion. The Claimant should have to prove the elements of conversion when trying to recover based on a diversion of funds from a joint account. The law regarding the joint accounts as set out in Kettler and Anderson requires that. The cases hold that a joint account gives rise to a presumption of a 50/50 ownership when there are two joint tenants. Kettler v. Security National Bank of Sioux City, 805 N.W.2d at 825; Anderson v. Iowa Department of Human Services, 368 N.W.2d at 109. That presumption would give rise to a possessory right.

However, the law also in Kettler and Anderson states that the presumption may be rebutted. Id. The evidence in this case shows that the presumption surely was rebutted. Any possessory right to the funds generated by a presumption of a joint tenant was rebutted by the Claimant's own testimony and exhibits in which it was clearly established that the accounts were used by both the

Claimant and decedent and no attempt was made to define and keep track of what was his and what was hers in those accounts and they both made deposits into those accounts and they both withdrew funds from the accounts.

The Claimant's testimony then clearly established that John Johnston did not exercise control over property inconsistent with the rights of the claimant. As she testified, there was never, in 40 years, an attempt by the two of them to keep track or separate out two separate accounts or amounts for the two of them in the joint checking accounts. They both made deposits and withdrawals from both accounts regardless of the amounts. They transferred money from one account to the other. And even more importantly, Claimant testified that the specific dollar amounts used to buy the $70,000.00 and $40,000.00 CDs came from funds belonging to John Johnston. His use of those dollars to purchase CDs in which Claimant had no interest was not inconsistent with her rights and did not constitute or create damage for her.

ISSUE V.

THE TRIAL COURT DID NOT ERR IN SUSTAINING THE MOTION FOR DIRECTED VERDICT.

A. PRESERVATION OF ERROR.

Executors have listed this as an Issue since it shows up as an issue in the Brief filed by the Claimant. The Executors dispute that this is a separate issue. It does not state a legal issue and therefore no error was preserved for this. The argument that the Court erred in sustaining the Motion is addressed by the other issues presented by the Claimant.

B. SCOPE OF REVIEW.

If there is a separate issue presented for review here the scope of review would be for correction of errors at law.

C. ARGUMENT.

The Trial Court in this case sustained a Motion for Directed Verdict at the close of Claimant's evidence. As noted by the Claimant, it is improper in all but the most obvious cases to grant a directed verdict at the close of plaintiff's case. O'Bryan v. Henry Carlson, 828 N.W.2d 326 (Iowa Ct. App. 2013). This was a case in which it was obvious that the Claimant had not sustained her burden of proof.

As noted in the Claimant's Brief, Claimant presented evidence that she and the decedent had joint tenancy bank accounts and they were equal owners. However, they both

deposited money from labor and sale of real estate and other investments into the accounts. This occurred for over a period of forty years. It is also undisputed that they did not try to keep track of what was his and what was hers. They did not keep track of what shares each had in the jointly owned bank accounts.

There was substantial evidence presented to show that John in fact removed his funds from the account when he purchased the CDs. The $40,000.00 for the purchase of the $40,000.00 CD came from a CD that he had cashed in. The $70,000.00 that he used to purchase the $70,000.00 CD at issue in this case came from the sale of his real estate. The Claimant in her testimony acknowledged that the $40,000.00 used to purchase the $40,000.00 CD came from another CD that was in John's name which he had cashed in. She acknowledged in her testimony that the $70,000.00 CD was purchased with $70,000.00 of funds which were proceeds from the sale of real estate in John's name. There was substantial evidence presented that he purchased the CDs with his funds.

CONCLUSION

No reversible error has been shown and the Ruling by the District Court directing verdict for the Executors of

the Estate should be affirmed.

REQUEST FOR ORAL ARGUMENT

The Appellee respectfully requests that this appeal be heard in oral argument.

CERTIFICATION OF COST

I, the undersigned, do hereby certify that the actual cost of printing the Appellee's Proof Brief herein was zero dollars, because this appeal has been converted to electronic filing per the Iowa Supreme Court.

CERTIFICATE OF COMPLIANCE

This Brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because this Brief contains 5,316 words of text, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

This Brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a monospaced typeface using Microsoft Office 2013 in font size 12 of Courier.

Submitted this 17th day of March, 2023.

Randall C. Stravers ATT0007666
Stravers Law Firm
110 North Market Street
Oskaloosa, IA 52577
Telephone: 641-673-9451
Fax: 641-673-3502
E-mail: stravers@pcsia.net
Attorney for Appellee

Greg Life ATT0004766
216 South First Street
Oskaloosa, IA 52577
Telephone: 641-673-8336
Fax: 641-673-9750
Attorney for Appellee