

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

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

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

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APPELLEE'S APPLICATION FOR FUTHER REVIEW ON THE  
DECISION OF THE IOWA COURT OF APPEALS  
FILED NOVEMBER 8, 2023

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QUESTIONS PRESENTED FOR REVIEW

I. In regard to the rebuttal of the presumption of equal ownership in a joint tenancy bank account, may the intent of the co-owners be inferred from their pattern of deposits and withdrawals and the manner of the use of the account over the life of the account as well as from their purpose for creating the account.

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STATEMENT IN SUPPORT OF FURTHER REVIEW

The decedent, John E. Johnston, died in March 2018. His wife, Peggy Johnston, filed a claim against his Estate for one-half of joint accounts held by them. The claim alleged funds from joint accounts of Peggy and John were transferred to John's daughter, Rebecca Askland. (Court of Appeals Opinion page 2).

There is no dispute to testimony from Peggy at trial that John and Peggy held joint checking and savings accounts throughout their marriage. They both used the accounts and deposited money into them, although most of the deposits were from John's retirement benefits and investments. John and Peggy would normally deposit their money into the savings account, which was interest bearing, and then make transfers to their check account to cover "household bills, groceries and other things that came up". Peggy testified that neither she nor John made any attempt to distinguish in the accounts what was hers and what was his. It was all bunched together as a joint account like married people often do. (Court of Appeals Opinion page 2).

The Court of Appeals found that the claim made by

Peggy was a contract claim as shares of a joint bank account were determined by the Rules of Contract Law and the intent of the parties was controlling. Anderson v. Iowa Department of Human Services, 368 N.W.2d 104, 109 (Iowa 1985) (Court of Appeals Decision page 8). The Court of Appeals went on to note that the starting point is a presumption that each joint tenant owns an equal share in the joint account although this presumption is rebuttable. Anderson at 109. The question in this appeal is whether the presumption was overcome.

As noted by the Court of Appeals Rebecca, appellee, contends the presumption of equal ownership was clearly overcome since neither John nor Peggy attempted to distinguish what funds in the accounts were hers and what funds in the accounts were his. (Court of Appeals Decision page 9). However, the Court of Appeals then determines that there was not sufficient evidence to overcome the presumption of equal shares since the rights of the joint tenants were fixed and vested at the time of the creation of the joint tenancy and there was no evidence presented on that question. (Court of Appeals Decision page 10). Further review by the Supreme Court is warranted here since there is a question as to whether the pattern of deposits

and withdrawals and the use of the account and relative contributions by each party to the account after the account was set up are and should be pertinent to the question as to whether there has been a rebuttal of the presumption that the joint tenancy was 50/50 between the parties. The Court of Appeals referenced an unpublished decision that does indicate that the co-owners intent may be inferred from their purpose for creating the account as well as the pattern of deposits and withdrawals suggesting that the parties use of the account can shed light on the intent of the parties in creating it. In Re: Estate of Nickles, No. 15-1317, 2016 W.L. 4384687, at \*2 (Iowa Ct. App. August 17, 2016). (Court of Appeals Decision page 10).

The question of whether the use of the account by the joint owners over the years of the existence of the account is relevant to the rebuttal of the presumption of joint tenancy should ultimately be determined by the Iowa Supreme Court.

BRIEF IN SUPPORT OF APPLICATION FOR FURTHER REVIEW

BY THE SUPREME COURT

The appeal involves two Certificates of Deposit purchased by the decedent, John, before his death. In a

claim filed against the Estate, Peggy contends the funds came from or went through their joint account.

John and Peggy were married in 1980. Rebecca is John's daughter from a prior marriage. John and Peggy held joint checking and savings accounts throughout their marriage. They both used the accounts and deposited money into them, although most of the deposits were from John's retirement benefits and investments. John and Peggy would normally deposit their money into the savings account, which was interest bearing and then make transfers to their checking account to cover "household bills, groceries and any other things that came up". Peggy testified that neither she nor John made an attempt to distinguish what was hers and what was his in the accounts. Everything was bunched together in the account as a joint account like married people often do. (Court of Appeals Decision page 2).

Rebecca's contention is that although the account or accounts from which the funds came to purchase one or both of the Certificates of Deposit were joint tenancy accounts the evidence clearly establishes the fact that the presumption of joint tenancy and 50/50 ownership was clearly rebutted by the testimony of Peggy Johnston, one of



the joint tenants. She acknowledges that there was no attempt by she and the decedent to keep track of what was his and what was hers. They both put money into the accounts, they both transferred money out of the accounts. Most of the deposits came from John's retirement benefits and his investments.

In its Ruling, the Court of Appeals starts with the presumption that each joint tenant owns an equal share of the joint account although the presumption is rebuttable. Anderson v. Iowa Department of Human Services, 368 N.W.2d 104, 109 (Iowa 1985). When the presumption of equal shares fails and one joint tenant makes a valid withdrawal of more than his or her proportional shares then he or she is liable to the other joint tenant for excess. Anderson, 368 N.W.2d at 110. Then the Court notes that the question of whether the presumption is overcome is based on the intent of the parties in creating the joint tenancy, not their use of the accounts over the years. Anderson, 368 N.W.2d at 110) (Court of Appeals Decision page 10).

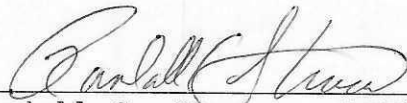
The Court of Appeals then goes on to note that there is an unpublished opinion, Nickels, which does say that the co-owner's intent may be inferred from their purpose of creating the joint account as well as the pattern of

deposits and withdrawals. Obviously that suggests the parties use of the account over the years can shed light on the intent of the parties in creating it. (Court of Appeals Decision page 10).

Rebecca would argue that the intent of the parties in regard to the account could be inferred by what happened at the time of the creation of the account but it is also exhibited in the way the account is used over the years. In this case the intent in having a joint tenancy account was not to maintain a 50/50 division of the monies deposited into the account in this case. That is clear from the testimony Peggy gave . She stated that they both used the accounts and deposited money into them. Most of the deposits came from John's retirement benefits and investments. The money would be used to pay bills. She said there was no attempt to make a determination of what was his and what was hers in the accounts. There was no attempt to distinguish what belonged to her and what belonged to him.

In its Ruling the Court of Appeals determined there was insufficient evidence to overcome the presumption of the joint tenancy and 50/50 ownership. The Court noted that the rights of the joint tenants were fixed and vested

at the time of the creation of the joint tenancy and there was no evidence presented on that question. (Court of Appeals Ruling page 10). Rebecca would submit that there was sufficient evidence presented on the rebuttal of presumption including the purpose the account was established at the time it was established. Testimony from Peggy regarding the manner in which the account was used and handled certainly should be relevant to establish the purpose for the account. Her acknowledgement and maybe even admission, that there was never an attempt to distinguish between what was his and what was hers in that account clearly is relevant to establish the purpose for the establishment of the account by the parties.



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**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 Application complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because this Brief contains 1897 words of text, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

This Application 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 Application has been prepared in a monospaced typeface using Microsoft Office 2013 in font size 12 of Courier.



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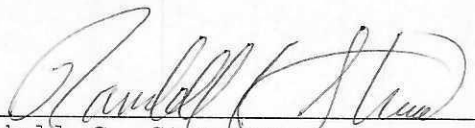
**CERTIFICATE OF SERVICE**

On this 28th day of November, 2023, I the undersigned, did file electronically this Appellee's Application for Further Review with the Clerk of the Iowa Supreme Court, pursuant to Iowa R. App. P. 6.701.

**PROOF OF SERVICE**

On this 28th of November, 2023, I the undersigned, did serve this Appellee's Application for Further Review on the attorney 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.

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