STATE OF MICHIGAN

COURT OF APPEALS

In re ESTATE OF JULIANNE WAGNER JOHNSON.

STEVEN JOHNSON,

Appellant,

v

HANTZ TRUST, Personal Representative of the ESTATE OF JULIANNE WAGNER JOHNSON, JAMES M. JOHNSON, and SPENCER C. JOHNSON, JR.,

Appellees.

UNPUBLISHED
December 16, 2021

No. 355363
Ingham Probate Court
LC No. 2020-000439-DE

Before: STEPHENS, P.J., and BORRELLO and O'BRIEN, JJ.

PER CURIAM.

In this estate case, Steven Johnson[1] appeals as of right the order that determined, on petition from Hantz Trust as Personal Representative of the Estate of Julianne Wagner Johnson, that the Michigan State University Federal Credit Union (MSUFCU) account was an asset of the estate. For the reasons set forth in this opinion, we affirm.

I. BACKGROUND

On February 26, 2008, Spencer Johnson, Sr., and his wife Julianne Johnson executed a document titled "MEMBERSHIP AND ACCOUNT APPLICATION" (Application) with MSUFCU. It appears that the purpose of the Application was to add Julianne as a joint party to

[1] Because this case involves family members with the same last name, we will generally refer to each person by first name once that person has been introduced in the opinion. For father and son with the same first name, "Sr." and "Jr." are appended for clarification.

an existing account: at the top of the application, the box next to "Add Joint Party" was checked while the other options in that top section ("New Account," "Add or Change Beneficiary," "Name Change," and "Add Checking Account") were blank. In Section A of the Application, which was titled "APPLICANT," Spencer Sr. was listed first and Julianne was listed as the "Joint Party." Spencer Sr. and Julianne both signed Section B of the Application, which was titled "MEMBERSHIP AND ACCOUNT AGREEMENT." In the area above their signatures, Section B of the Application states in relevant part:

> By signing below I hereby make application for membership in, and agree to abide by the bylaws and amendments of the Michigan State University Federal Credit Union. I acknowledge receiving a copy of the terms and conditions applicable to each deposit account or service that I open concurrently with this application and agree to be bound by those terms. I further understand and agree that I shall be bound by the terms and conditions of any other deposit account or service that I may later open. Any account opened in more than one name shall be a joint account with rights of survivorship. For any account on which I/we designate a beneficiary(ies), the account shall be deemed in my/our name(s) as trustee.

The reverse side of the Application contains additional sections, including Section C, which is titled "DESIGNATION OR CHANGE OF BENEFICIARY," and states:

> Upon the death of the owner, or the last surviving owner if there is more than one, the funds owned by this agreement shall become the property of the beneficiary(ies) listed below who are alive at that time. Each beneficiary shall have the power to withdraw their share of the remaining balance. No beneficiary shall have any right under any circumstance to change the terms and conditions of this Agreement.

Section C of the Application was left blank; no beneficiaries were listed.

However, the record also contains a separate purported MSUFCU "Beneficiary Designation" document bearing the same account number and also executed on February 26, 2008.[2] Spencer Sr.'s name is the only name printed at the top of the Beneficiary Designation, and there is a single line for "Member's Signature," which only Spencer Sr. signed. All of the language in the document is singular (I, me, my). The Beneficiary Designation provides, "I revoke all prior beneficiary designation [sic] in respect to this account, and direct that at my death, all amounts in this account shall be paid to the beneficiaries that follow," after which the name "Steven Johnson" and the relationship "son" are printed with "100%" next to it.

Spencer Sr. died on November 8, 2019. Later that month, Julianne executed a variety of estate planning documents, including a will, a trust, a comprehensive transfer document (CTD), and instructions to banks and credit unions (Instructions). Julianne's will was executed November

[2] This document was executed on the same day as the Application. At least one of the interested parties below challenged the authenticity of this document.

21, 2019, and designated Hantz Trust as personal representative. Julianne's will also stated in relevant part:

> I give, devise and bequeath all of the rest, residue and remainder of my estate and property, of whatever kind and wherever situated, owned by me at the time of my death to the trustee(s) of the JULIANNE W. JOHNSON TRUST NO. l, AS AMENDED AND RESTATED ON NOVEMBER 21, 2019, to be added to the assets held in trust and administered by its terms, including any amendments made during my lifetime.

The trust, in turn, contained a plan of distribution of its assets upon Julianne's death. The trust also indicated that Julianne's children were Spencer Johnson, Jr., James Johnson, and Steven. The CTD provided that Julianne declared herself to hold "solely and exclusively for and on behalf of" the trust, "any and all properties of all kinds, whether presently owned or hereafter acquired," including "bank accounts, certificates of deposit, mutual and money market funds of all kinds . . . and any and all other assets wherever located." The Instructions provided: "Please add a transfer on death/payable on death beneficiary to my accounts(s), the transfer on death/payable on death beneficiary is" the trust.

A January 2020 account statement for the MSUFCU account reflects a payment of $477,177.95 from Jackson National Life Insurance, which is believed to be the proceeds of Spencer Sr.'s life insurance policy. The statement is still addressed to both Spencer Sr. and Julianne. Subsequently, Julianne wrote three checks, each for $50,000 and dated February 10 or 11, 2020, with one check payable to each of her three sons. On February 12, 2020, Julianne died.

On May 20, 2020, Hantz Trust filed an application in the probate court for informal probate of the will and informal appointment of the nominated personal representative. Letters of authority were issued to Hantz Trust two days later, appointing it as personal representative of Julianne's estate.

On July 13, 2020, Hantz Trust filed a "Petition for Instructions and/or Petition to Determine Title to Credit Union Account." After describing the relevant events of February 26, 2008 related to the Application creating the joint account and MSUFCU and the beneficiary designation executed by Spencer Sr. the same day, as well as the deposit of the life insurance policy and the checks written by Julianne to her sons, the petition stated:

> The Personal Representative seeks the court's instruction and determination of ownership of the MSUFCU Account due to title of the account and the beneficiary designation.

Hantz Trust argued that because the account was a joint account with rights of survivorship, the account passed to Julianne upon the death of Spencer Sr. free of any debts or obligations of Spencer Sr. Hantz Trust further argued that because the beneficiary designation was signed only by Spencer Sr., who died first, the beneficiary designation had no effect. Hantz Trust maintained that the MSUFSU was therefore an asset of Julianne's estate free of the beneficiary designation executed by Spencer Sr. However, Hantz Trust indicated in the petition that MSUFSU believed

that the beneficiary designation controlled but that Hantz Trust was seeking instructions or a determination from the court.

Steven responded and argued that it was "clear" that the account belonged to him "both as a matter of law and fact." Steven argued that the Beneficiary Designation executed the same day as the Application was part of the "same form" as the Application. Steven also noted that the Beneficiary Designation portion only contained one member signature line and Spencer Sr. signed it. Steven argued that, because both of the account owners were deceased and he was designated "as the 100% beneficiary of the account," he was now the sole beneficiary of the account.

James filed a response, disputing Steven's characterization that the Beneficiary Designation was part of the same form as the Application and further disputing the authenticity of the Beneficiary Designation. James noted that the "Add or Change Beneficiary" box on the Application was not checked and that the beneficiary section in Section C of the Application had been left blank. James contended that the separate Beneficiary Designation form was an "altered or otherwise 'unofficial' document from MSUFCU that utilizes completely different font, spacing, formatting, language, and as stated, the 'NCUA' logo is absent from the alleged" Beneficiary Designation. According to James, because the Beneficiary Designation was suspect and, even if authentic, not signed by Julianne, the account transferred to Julianne on Spencer Sr.'s death, transferred to her estate on her death, and through her will was transferred into the trust to be distributed under its terms. Spencer Jr. also filed a response to the petition, focusing on the estate planning documents executed by Julianne so soon after Spencer Sr.'s death and all of the provision therein that suggested she intended the account to be disposed of through the trust and go equally to all three sons. Spencer Jr. maintained that Julianne's estate planning documents, particularly the CTD and Instructions effectively superseded the 2008 Beneficiary Designation even if it were considered valid.[3]

On October 15, 2020, the probate court held a hearing on the petition and heard oral arguments from the parties. At the conclusion of the hearing, the probate court ruled that the MSUFCU account was an estate asset and not subject to the February 26, 2008 Beneficiary Designation to Steven. The probate court determined that the Application was the controlling document and found that the Application did not show that a new account was opened on February 26, 2008, but instead indicated that Spencer Sr. and Julianne added Julianne to the account as a joint party that day. The court noted that the only box checked on the Application was the one to add a party, and the box to add or change a beneficiary was not checked. It further noted that Section C would have been where Julianne would have indicated her designation of a beneficiary for the account, but that section was blank.

The probate court acknowledged the separate Beneficiary Designation that had been presented for consideration and that was the basis for Steven's position. The court stated that assuming for sake of argument that the Beneficiary Designation was valid, "the question becomes what affect that document would have, if any after the passing of Mr. Johnson, who was the owner

[3] Spencer Jr. also concurred in the arguments advanced by James.

that made the designation." Noting that "the joint account transfers by right of survivorship to the joint owner" and that "the beneficiary is not an owner of the account," the probate court explained:

> So the owners of the account are Mr. and Mrs. Johnson. When Mr. Johnson passes, Mrs. Johnson becomes the owner of the account. Mrs. Johnson is the one who had the authority to make the designation. No where in any documents is there a designation by Mrs. Johnson that Steven Johnson be the owner -- or the beneficiary of the account. The designation made by his father was no longer binding because he was no longer the owner at the time Mrs. Johnson passed away. That is the finding of the Court.
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> * * *
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> So the Court finds and the instruction is that Steven Johnson is not the beneficiary of the MSU FCU [sic] account. His entitlement as a beneficiary ceased when Mr. Johnson, his father, passed away and Mrs. Johnson, his mother, did not ever sign a document making him a beneficiary. That is the ruling of the Court.

II. STANDARD OF REVIEW

We have previously explained the general nature of our appellate review of a probate court's decision as follows:

> This Court reviews for clear error the probate court's factual findings and reviews de novo its legal conclusions. "A finding is clearly erroneous when a reviewing court is left with a definite and firm conviction that a mistake has been made, even if there is evidence to support the finding." "The reviewing court will defer to the probate court on matters of credibility, and will give broad deference to findings made by the probate court because of its unique vantage point regarding witnesses, their testimony, and other influencing factors not readily available to the reviewing court." [*In re Conservatorship of Brody*, 321 Mich App 332, 336; 909 NW2d 849 (2017) (citations omitted).]

Additionally, any issues of statutory interpretation are reviewed de novo. *In re Guardianship of Redd*, 321 Mich App 398, 404; 909 NW2d 289 (2017). We also review de novo issues concerning the proper interpretation of the language in a contractual agreement. *In re Smith Trust*, 480 Mich 19, 24; 745 NW2d 754 (2008).[4]

III. ANALYSIS

[4] "In interpreting a contract, it is a court's obligation to determine the intent of the parties by examining the language of the contract according to its plain and ordinary meaning. If the contractual language is unambiguous, courts must interpret and enforce the contract as written, because an unambiguous contract reflects the parties' intent as a matter of law." *In re Smith Trust*, 480 Mich at 24 (citation omitted).

On appeal, Steven argues that the probate court erred when it concluded that the MSUFCU account was an estate asset. Steven contends that the Beneficiary Designation was effective in making him the sole beneficiary upon the death of the last surviving owner of the MSUFCU account and that the funds in the MSUFCU account therefore passed to Steven as the sole beneficiary upon Julianne's death pursuant to MCL 490.82(2). Steven maintains that the probate court erred by finding that Steven somehow "*ceased* to be the beneficiary because [Spencer Sr.] died prior to Julianne Johnson," and he further argues that nowhere "in the contract that established the joint account, nor in the statute under which these accounts are regulated, is this provided for (nor is there a requirement that both joint owners must sign the beneficiary designation which was only *part* of the contract that was clearly signed by both joint owners)." Steven argues that following the language of the relevant statute, MCL 490.82(2), dictates that the funds belong to him rather than the estate.

MCL 490.82 provides in relevant part as follows:

> (1) During the lifetime of 1 or more owners of a credit union beneficiary account, all rights to the money in the account belong to the owners. The rights of the owners, if there is more than 1, shall be governed by the contract between them and the credit union establishing the account, and by any applicable law pertaining to accounts with more than 1 owner other than section 7 of Act No. 41 of the Public Acts of 1968, being section 490.57 of the Michigan Compiled Laws.
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> (2) Upon the death of the owner of a credit union beneficiary account or upon the death of the last surviving owner of a credit union beneficiary account if there was more than 1 owner, all ownership interests in the account shall pass to the person or persons designated as beneficiaries.
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> * * *
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> (5) The passage of ownership rights to any account covered by this act is not subject to change by will. [MCL 490.82.]

We begin our analysis by determining with the Beneficiary Designation signed only by Spencer Sr. made Steven the sole beneficiary after both Spencer Sr. and Julianne died or whether Julianne's signature was also required to effectuate such an outcome. Steven presumes that the Beneficiary Designation had the effect of making him the sole beneficiary even though it was signed only by Spencer Sr. and was not signed by Julianne, but he does not provide any authority for that presumption. Steven attempts to characterize the separate Beneficiary Designation signed by Spencer Sr. as part of the same Application document that was signed by both Spencer Sr. and Julianne. However, they are clearly separate documents, even if they were executed on the same day.

The Application signed by both Spencer Sr. and Julianne contained its own specific section for designating a beneficiary. This was Section C, which was titled "DESIGNATION OR CHANGE OF BENEFICIARY" and provided as follows:

> Upon the death of the owner, or the last surviving owner if there is more than one, the funds covered by this agreement shall become the property of the

> beneficiary(ies) listed below who are alive at that time. Each beneficiary shall have the power to withdraw their share of the remaining balance. No beneficiary shall have any right under any circumstances to change the terms and conditions of this agreement.

No beneficiaries were listed in this section. It was left blank.

The separate Beneficiary Designation document purporting to name Steven as the benficiary does not contain any indication that it is part of the Application completed to add Julianne as a joint party. The Application does not contain any indication that it incorporates this separate Beneficiary Designation, especially considering that the Application contains its own section for designating a benficiary. The language in the Application's beneficiary designation section is consistent with the nature of a joint account, while the separate Beneficiary Designation signed only by Spencer Sr. only uses singular language (such as "I" or "my") that seems to refer to an account owned by a single owner. Accordingly, we do not ascertain a basis for concluding that these two separate documents are somehow incorporated by reference into a single document such that Julianne can be deemed to have adopted Spencer Sr.'s unilateral designation of Steven as the beneficiary.

Under MCL 490.82(1), the "rights of the owners, if there is more than 1, shall be governed by the contract between them and the credit union establishing the account . . . ."

As previously stated, Spencer Sr. and Julianne both signed Section B of the Application, which was titled "MEMBERSHIP AND ACCOUNT AGREEMENT" and provided that the parties agreed to MSUFCU's terms and conditions applicable to the account. The probate court record also contains an additional MSUFCU document titled "Membership and Account Agreement" that contains more detailed terms and conditions. In relevant part, this agreement provides as follows:

> This Membership and Account Agreement outlines the privileges and liabilities of Michigan State University Federal Credit Union (MSUFCU) and our members regarding the accounts and services we offer. In this Agreement, the words "we," "us," and "our" refer to MSUFCU. The words "you" and "yours" mean any member of MSUFCU.
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> Your account plan(s) and the characteristics of your ownership rights are specified in your Membership Agreement. Your signature(s) on the Membership Agreement indicates your agreement, jointly and individually, to the terms and conditions stated in this Membership and Account Agreement, the Membership Application, the Truth-in-Savings Disclosure, the Fee Schedule, the Rate Schedule, any Account Receipt included with this Agreement, the MSUFCU Bylaws, Policies and Procedures, and any changes made periodically to these terms and conditions, which collectively dictate your membership and accounts.
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> **4. Multiple Party Accounts.** An account with two or more people or entities jointly owning an account is considered a multiple party account and creates

a "joint tenancy with rights of survivorship." Except as modified in this Agreement, joint accounts shall be subject to and governed by PA 41 of the Public Acts of 1968, as amended, being MCLA 490.51, and commonly known as the Credit Union Multiple Party Accounts Act.

a. Control of Multiple Party Accounts. Any owner is allowed and deemed to have the authority to act on behalf of any other account owner(s) with respect to any and all account transactions. Each owner guarantees the signature of any other owner(s). Each owner appoints the other owner to be his/her irrevocable attorney. An owner does not need permission from the other owner(s) in order to withdraw funds, request stop payment on items, or authorize a transfer of all, or any part, of the savings. We are not obligated to inform any owner(s) about any transaction, except as required by law. *We require signatures from all owners authorizing any material changes to the account that are requested by one or more owners*. If we are informed, in writing, of a disagreement between account owners, or if there is a conflict in directions between owners, on how to handle an account, we may place a hold on all funds in the account, close the account, or require a court order or written permission from all owners before taking any action with respect to the account.

* * *

c. Rights of Survivorship. When one owner of a multiple party account dies, all rights and available funds in the account fall to the remaining account owner(s), unless otherwise authorized in the Membership Agreement. If a surviving owner does not exist, the last decedent owner's interest will go to his or her estate. If a surviving owner does exist, his or her share of the account is subject to any financial obligations, security interest, or pledge authorized by the decedent, even if the surviving owner did not agree to it.

In this case, the joint MSUFCU account at issue was governed by Paragraph 4 of the "Membership and Account Agreement," quoted above. Designating a beneficiary is not a mere ordinary account transaction or withdrawal of funds that a single owner of a multiple party account is authorized under Paragraph 4(a) to make unilaterally on behalf of the other owner or owners, without needing permission from the other owner or owners. Instead, designating a beneficiary constitutes a material change to the account. Thus, under Paragraph 4(a), "signatures from all owners" were required to authorize the designation of Steven as a beneficiary to the account where this designation was apparently attempted by Spencer Sr., acting alone,[5] while both Spencer Sr.

[5] Although Steven speculates that Spencer Sr. designated Steven as the beneficiary while Spencer Sr. was the sole owner of the MSUFCU account and before Spencer Sr. and Julianne completed the application to add Julianne as a joint party, Steven does not point to any record evidence to support this assertion. Steven also does not provide any legal authority to support his contentions how this fact, if true, would have any effect on the outcome such that our analysis would be any different. Therefore, any such argument is abandoned. "A party cannot simply assert an error or

and Julianne were still living. Because the attempt to designate Steven as the beneficiary was not authorized by Julianne's signature, it was ineffective pursuant to the terms of the contractual agreement between MSUFCU and the Johnsons. *In re Smith Trust*, 480 Mich at 24.

Hence, under Paragraph 4(c), the rights and funds in the account passed to Julianne upon Spencer Sr.'s death, and Julianne's interest passed to her estate upon her death. There was no validly designated beneficiary to whom the funds could have passed under MCL 490.82(2). Moreover, to the extent that any of these Agreement provisions are inconsistent with the credit union multiple party accounts act, MCL 490.51 *et seq.*, the Agreement controls, as stated in Paragraph 4. See also MCL 490.82(1). The probate court did not err in reaching its determination that the MSUFCU account was an asset of the estate.

Affirmed. Appellees having prevailed in full are entitled to costs. MCR 7.219(A).

/s/ Cynthia Diane Stephens
/s/ Stephen L. Borrello
/s/ Colleen A. O'Brien

announce a position and then leave it to this Court to discover and rationalize the basis for [his] claims, or unravel and elaborate for [him his] argument, and then search for authority either to sustain or reject [his] position." *In re TK*, 306 Mich App 698, 712; 859 NW2d 208 (2014) (quotation marks and citation omitted).