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## 1998 Survey of Rhode Island Law: Cases: Property Law

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**Property Law.** *Bielecki v. Boissel*, 715 A.2d 571 (R.I. 1998). In *Bielecki v. Boissel*,<sup>1</sup> the Rhode Island Supreme Court resolved a dispute concerning a jointly held bank account.<sup>2</sup> In doing so, the court abandoned the rigid rule concerning jointly held bank accounts previously articulated in *Robinson v. Delfino*.

In *Bielecki v. Boissel*,<sup>3</sup> the Court determined that a showing of fraud, undue influence, or duress, as stated in *Robinson*, are but one method of defeating a surviving joint holders claim to the proceeds of a jointly held bank account, the other being a showing that the jointly held account was for convenience only.<sup>4</sup>

#### FACTS AND TRAVEL

Christine Bielecki (Christine) and her husband, Dennis Bielecki (Dennis), were co-executors of Ernest Boissel's (Ernest) estate.<sup>5</sup> Shortly before Ernest's death, Lynne-Marie Boissel (Lynne), Christine's sister and defendant in this case, withdrew funds from several joint bank accounts which stood in both her name and that of her father.<sup>6</sup> As co-executors of Ernest's estate, Christine and Dennis filed suit against Lynne, asserting three counts under theories of recovery.<sup>7</sup> The first count alleged "unlawful detention" of the funds.<sup>8</sup> The second count was brought under the theory of constructive trust.<sup>9</sup> The third count asserted that Lynne had converted the funds of the jointly held accounts.<sup>10</sup> Even though the complaint alleged three different counts under three seemingly different theories of recovery, the court noted that "[e]ach count alleges that Lynne 'falsely, fraudulently and with intent to deceive' induced Ernest to create the several joint accounts by representing to him that such were in his best interest" knowing these representations to be false.<sup>11</sup>

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1. 715 A.2d 571 (R.I. 1998).

2. See *Robinson v. Delfino*, 710 A.2d 154 (R.I. 1998).

3. 715 A.2d 571 (R.I. 1998).

4. *Id.* at 574-75.

5. See *id.* at 572.

6. See *id.*

7. See *id.*

8. See *id.*

9. See *id.*

10. See *id.*

11. *Id.*

The following facts were deduced at trial. Ernest's health began to fail after the death of his wife in 1981.<sup>12</sup> Shortly after his wife's death, Ernest decided to open several joint bank accounts in the name of himself and his daughter, Lynne.<sup>13</sup> Ernest's reasoning for creating these accounts was so Lynne could take care of him during his lifetime.<sup>14</sup> It was Ernest's intent that, upon his death, the funds remaining in the joint accounts would be divided among his family members.<sup>15</sup> Ernest's will was introduced at trial as further proof of his intent.<sup>16</sup> The will specifically provided that "those names on the aforementioned accounts [including all jointly held bank accounts] were placed on those accounts for convenience only," and furthermore, that Ernest "did not intend to give those accounts as a gift to any person other than" as bequeathed in his will.<sup>17</sup>

On December 22, 1993, Ernest slipped into a coma while in Pawtucket Memorial Hospital.<sup>18</sup> While Ernest was in a coma, Lynne, with knowledge of the provisions of his will, closed the joint accounts she held with her father and transferred the funds into accounts bearing her name only.<sup>19</sup> Therefore, upon Ernest's death, on March 22, 1993, the provision in his will declaring that all money held in the joint bank accounts was for naught, since such accounts no longer existed.<sup>20</sup>

The trial justice, sitting without a jury, entered judgment in favor of the plaintiff-coexecutors.<sup>21</sup> Lynne appealed to the Rhode Island Supreme Court, alleging that the plaintiffs were not entitled to the relief granted by the trial justice due to the fact that there was no finding of fraudulent conduct on her part.<sup>22</sup>

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12. *See id.* at 573.

13. *See id.* at 572.

14. *See id.* at 572-73. The purpose of these joint accounts were not in dispute. Lynne testified at trial that Ernest, her father, "wanted me to take care of him, and that there was one particular account that was for \$2,000 and that he wanted to use that for his funeral costs . . . and that after I paid all the bills, to distribute the funds to family members and to include Jason [Ernest's grandson]." *Id.* at 573.

15. *See id.* at 573.

16. *See id.*

17. *Id.*

18. *See id.* at 574.

19. *See id.*

20. *See id.*

21. *See id.* at 571.

22. *See id.* at 572. On appeal, defendant also asserted that the trial justice erroneously ruled on her motion to dismiss made at the conclusion of plaintiff's

## ANALYSIS AND HOLDING

The Rhode Island Supreme Court, in an opinion written by Justice Bourcier, determined that a finding of fraudulent conduct was not necessary in order for the plaintiffs to recover.<sup>23</sup> Even though plaintiffs' complaint asserted fraud and deceit by the defendant, the court held that under the Rhode Island Rules of Civil Procedure, plaintiffs failure to amend their complaint to conform with the evidence presented at trial was not fatal to the final judgment.<sup>24</sup>

Furthermore, the court found that the trial justice's decision was based, not upon fraudulent conduct, but rather upon the nature of the jointly held bank accounts.<sup>25</sup> Since, according to the court, the trial justice's decision rested upon his finding that "the accounts in dispute were all in the first instance created as convenience accounts and not as true joint accounts with right of survivorship," his decision was well-founded in law.<sup>26</sup>

The court summarily determined that it's recent opinion in *Robinson v. Delfino*<sup>27</sup> was "inapplicable to this case."<sup>28</sup> The court further noted that nothing in *Robinson* neither "suggests that joint bank accounts established for purposes of convenience only are no longer permitted," nor "proclaim[s] that any right of present ownership in the account funds is transferred in a joint bank account to a person whose name is placed thereon for convenience only."<sup>29</sup>

In *Robinson*, the court attempted to once and for all clarify the law surrounding survivorship rights in jointly held bank accounts.<sup>30</sup> In order to effectuate this task, the court established a

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case-in-chief. *See id.* The court noted that even though the trial justice employed a rule of law "totally inapplicable" to the defendant's motion, his error was "harmless in light of the after-developed case facts." *Id.*

23. *See id.* at 574.

24. *See id.* The court noted that Rhode Island Superior Court Rule of Civil Procedure 15(b) provides that "failure to so amend [the complaint] does not affect the result of the trial of [those] issues." *Id.* at 574 n.4 (quoting R.I. Super. R. Civ. P. 15(b)).

25. *See id.* at 574.

26. *Id.*

27. 710 A.2d 154 (R.I. 1998).

28. *Bielecki*, 715 A.2d at 574. Lynne first raised for consideration the recent holding in *Robinson v. Delfino* at oral argument before the supreme court. *See id.*

29. *Id.*

30. *Robinson*, 710 A.2d at 156.

rigid rule concerning such accounts.<sup>31</sup> The rigid rule established by the court provided that "the opening of a joint bank account wherein survivorship rights are specifically provided for is conclusive evidence of the intention to transfer to the survivor an immediate *in praesenti* joint beneficial possessory ownership right in the balance of the account remaining" upon the death of the depositor.<sup>32</sup> The sole restriction on this immediate ownership right is that there must be an absence of fraud, undue influence, duress, or lack of mental capacity.<sup>33</sup>

In *Bielecki*, the trial justice's decision in favor of the plaintiffs was not based upon fraud, undue influence, duress, or lack of mental capacity. Instead, his decision was grounded upon the finding that the accounts were established as convenience accounts.<sup>34</sup> Since, according to the court, the trial justice's decision "was amply supported by the evidence," the decision of that court, ordering Lynne to return to the estate the funds removed from the jointly held bank accounts, must be affirmed.<sup>35</sup>

#### CONCLUSION

The court's decision in *Bielecki* once again adds confusion to the law surrounding jointly held bank accounts as articulated just three months earlier in *Robinson v. Delfino*. The court's goal in *Robinson* was to conform the law surrounding jointly held accounts to the public's common understanding.<sup>36</sup> Finding the public's common understanding to be that the establishment of joint bank accounts creates an immediate possessory interest in the survivor, the court held that absent fraud, undue influence, duress, or lack of mental capacity, the survivor receives an immediate ownership right in the balance of the accounts.<sup>37</sup>

In *Bielecki*, the court departs from the rigid rule established in *Robinson*, specifically noting that a finding by the trial justice of fraud was not actually necessary in order for a determination that the sole survivor of a jointly held bank account was not entitled to

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31. *See id.*

32. *Id.* at 160-61.

33. *See id.*

34. *Bielecki*, 715 A.2d at 574.

35. *Id.* at 575.

36. *Robinson*, 710 A.2d at 156.

37. *See id.* at 160-61.

the proceeds of those accounts.<sup>38</sup> In finding as it did, the court once again re-establishes the “account of convenience” exception, thus weakening the rigid rule established in *Robinson*.

Christopher E. Friel

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38. *Bielecki*, 715 A.2d at 574.

**Property Law.** *Curato v. Brain*, 715 A.2d 631 (R.I. 1998). A property settlement agreement under which a couple's minor daughters were each to receive a one-fourth interest in a parcel of property, entered into by a father and mother upon their divorce, created a third-party beneficiary contract, not a trust. The daughters, as beneficiaries of the contract, had to assent to or ratify the contract in order to enforce their rights in the contract. Because the daughters had no knowledge of the agreement, and therefore did not ratify it before their father subsequently disposed of the property, their rights in the property, as third-party beneficiaries, were extinguished.

In *Curato v. Brain*,<sup>1</sup> the issue before the Rhode Island Supreme Court was whether the plaintiff, Cathie L. Wilson,<sup>2</sup> acquired a one-fourth interest in a parcel of property as a result of a property settlement agreement entered into by her parents upon their divorce.<sup>3</sup> The plaintiffs attempted to establish a constructive trust on the property. The court held that the property settlement agreement constituted a third-party beneficiary contract, not a trust, and that, to enforce the contract, Cathie had to assent to or ratify the contract.<sup>4</sup> Because Cathie did not learn about the agreement until eleven years after her father disposed of the property, she did not, and could not, ratify the contract.<sup>5</sup> Therefore, any rights she had in the property had been extinguished.<sup>6</sup>

#### FACTS AND TRAVEL

In 1965, John I. Brain (John) married his first wife, Barbara Brain (Barbara).<sup>7</sup> The couple had two children, Bethanie, born in 1967, and Cathie, born in 1968.<sup>8</sup> In 1971, the couple received a parcel of land on Beach Avenue on Block Island from John's par-

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1. 715 A.2d 631 (R.I. 1998).

2. Cathie and her sister, Bethanie J. Curato, instituted suit in the superior court. Only Cathie appealed the judgment. *See id.* at 632.

3. *Id.* at 632.

4. *See id.* at 634-35.

5. *See id.* at 635.

6. *See id.*

7. *See id.* at 632.

8. *See id.*

ents, upon which they built a house.<sup>9</sup> Shortly thereafter, the couple separated.<sup>10</sup>

On February 12, 1974, the John and Barbara entered into an informal property settlement agreement that addressed various issues, including custody of the children, support payments, and division of the property.<sup>11</sup> A finalized version of the agreement was executed on February 23, 1974.<sup>12</sup> In the agreement, Barbara agreed to transfer her right, title and interest in the property to John by quit claim deed, with the understanding that, should the property be transferred or sold, the minor children would receive a one-fourth interest in the property.<sup>13</sup> Accordingly, Barbara executed a quitclaim deed, conveying all of her interest in the property to John.<sup>14</sup> Their divorce was finalized on March 5, 1974.<sup>15</sup>

On April 11, 1976, John remarried.<sup>16</sup> He and his new wife, Margaret, lived continuously on the Beach Avenue property.<sup>17</sup> In 1980, John conveyed the property by warranty deed to himself and Margaret as tenants by the entirety with rights of survivorship.<sup>18</sup> Margaret contributed to the maintenance and upkeep of the property, paying taxes, the mortgage and repair costs.<sup>19</sup>

John passed away in October 1991.<sup>20</sup> After John's death, Barbara told Bethanie<sup>21</sup> about the property settlement agreement; she also told her that each daughter was to receive a one-fourth interest in the property upon its transfer.<sup>22</sup> Prior to this conversation,

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9. *See id.*

10. *See id.*

11. *See id.*

12. *See id.*

13. *See id.*

14. *See id.* The quitclaim deed does not refer to the property settlement agreement, nor was the agreement (or any other document reflective of its terms) ever recorded in the land evidence records of New Shoreham. *See id.*

15. *See id.* The property settlement agreement was incorporated into, but not merged with, the divorce decree. *See id.*

16. *See id.*

17. *See id.*

18. *See id.* at 632-33.

19. *See id.* at 633.

20. *See id.*

21. Bethanie, in turn, told Cathie about the agreement. *See id.*

22. *See id.*



neither daughter had any knowledge of their purported interest in the property.<sup>23</sup>

In March of 1992, Cathie and Bethanie filed this action in superior court seeking a declaratory judgment that they each possess a one-fourth interest in the property and an injunction preventing Margaret from interfering with their use and enjoyment of the property.<sup>24</sup> They argued 1) that a trust in their favor was created by the terms of the property settlement agreement, and 2) that John violated a fiduciary duty to his daughters by transferring the property to Margaret, thereby justifying the imposition of a constructive trust on the property.<sup>25</sup> Margaret denied prior knowledge of the February 23, 1974 agreement, and maintained that the sisters had no enforceable rights in the property.<sup>26</sup> She filed a counterclaim seeking to recover the money she expended on the maintenance and improvement of the property should the sisters prevail in the action.<sup>27</sup>

Prior to trial, the sisters filed a motion to compel the deposition testimony of Robert H. Breslin, Jr. (Breslin), John and Margaret's attorney, who had drafted John and Margaret's will in 1987.<sup>28</sup> The sisters sought to question Breslin about any communications he may have had with John or Margaret concerning the 1980 warranty deed, in an attempt to demonstrate fraudulent conduct on their part.<sup>29</sup> Margaret invoked the attorney-client privilege,<sup>30</sup> and Breslin refused to answer any questions concerning any communications he may have had with his clients.<sup>31</sup> A Superior Court Justice denied the motion, rejecting the sister's argument that the attorney-client privilege did not apply.<sup>32</sup>

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23. *See id.* Barbara never told anyone about the agreement because she thought that John "would do the right thing." *Id.*

24. *See id.*

25. *See id.*

26. *See id.*

27. *See id.*

28. *See id.*

29. *See id.*

30. She invoked the privilege on her own behalf and on behalf of John's estate. *See id.*

31. *See id.*

32. *See id.* The sisters argued that the attorney-client privilege did not apply because John's transfer of the property to Margaret violated the terms of the settlement agreement, which constituted a fraudulent act. *See id.*

Following a bench trial, a justice of the superior court rejected all of the claims submitted by the plaintiffs. The justice found 1) that the property agreement was "at most" a third-party beneficiary contract to be performed by John at a future date, 2) that, "at most," the sisters possessed an unvested and unenforceable contract right to one-fourth of the property, 3) that there was no evidence to indicate that John and Barbara created, or intended to create, a trust, and, 4) that the imposition of a constructive trust would be inappropriate because there was no evidence to establish that Margaret had ever defrauded the sisters.<sup>33</sup> Cathie appealed this decision to the Rhode Island Supreme Court.

#### ANALYSIS AND HOLDING

On appeal, Cathie maintained that the trial justice erred in four respects—1) in rejecting her request for the imposition of a constructive trust, 2) in denying her motion to compel the testimony of Breslin, 3) in characterizing the agreement as a third-party beneficiary contract, and 4) in finding that John had an unencumbered ownership interest in the real estate.<sup>34</sup>

Cathie's appeal is comprised of three basic assertions. First, she argues that the agreement reflects a promise made between two parties who stood in a fiduciary relationship to each other, and that the breach of that promise constituted a breach of a fiduciary relationship necessitating the imposition of a constructive trust.<sup>35</sup> The court rejected this argument.

A constructive trust is "a relationship imposed by operation of law as a remedy to redress a wrong or prevent an unjust enrichment."<sup>36</sup> To justify the imposition of a constructive trust, the plaintiff must establish by clear and convincing evidence the existence of fraud or breach of a fiduciary duty.<sup>37</sup> With real property,

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33. *See id.*

34. *See id.* at 634. Before addressing Cathie's allegations, the court set forth the proper standard of review—the court will not disturb the findings of the trial justice "unless such findings are clearly erroneous or unless the trial justice misconceived or overlooked material evidence or unless the decision fails to do substantial justice between the parties." *Id.*

35. *See id.*

36. *Id.* (quoting *Simpson v. Dailey*, 496 A.2d 126, 128 (R.I. 1985)).

37. *See id.*

“there must be some element of fraudulent conduct by the person in the possession of the property in procuring the conveyance.”<sup>38</sup>

In the instant case, the court held that there was no evidence that would necessitate the imposition of a constructive trust. First, there was no evidence that would indicate that John or Barbara intended to create a trust—there was no clear declaration of a trust, and the property agreement itself does not evince a trust.<sup>39</sup> The settlement agreement, the court held, merely established that Barbara quitclaimed her interest in the property in return for John’s *promise* to provide for the children should he sell or transfer the property.<sup>40</sup> Furthermore, the court held that there was no evidence to establish any fraud on the part of Margaret in obtaining title to the property—there was no evidence to establish a fiduciary relationship between Margaret and the sisters, and there was no evidence to show that Margaret had any knowledge of the 1974 agreement between John and Barbara.<sup>41</sup> The court therefore concluded that John had full ownership rights in the property as a result of the quitclaim deed executed by Barbara, and that the imposition of a trust would be inappropriate.<sup>42</sup>

Cathie also argues that “the characterization of a property settlement agreement that provides support for a divorcing couple’s children as a third party beneficiary contract is ‘inconsistent with public policy.’”<sup>43</sup> The court quickly dismissed this argument.

The court held that, to sue on a contract made for his or her benefit, an intended beneficiary must assent to or ratify the contract.<sup>44</sup> The court determined that although Cathie had rights pursuant to the property settlement agreement that may have been actionable *at one time*, these rights remained unvested and therefore unenforceable until Cathie either assented or in some way ratified the contract, which she did not do until 1991, when she learned about the agreement for the first time.<sup>45</sup> By then, it was too late—the agreement was breached, if at all, in 1980, when

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38. *Id.*

39. *See id.*

40. *See id.*

41. *See id.*

42. *See id.*

43. *Id.* at 635.

44. *See id.*

45. *See id.*

John conveyed the property.<sup>46</sup> Barbara should have taken action, or told her daughters about the agreement, in 1980.<sup>47</sup>

Cathie's final argument "concerns the denial of the sister's motion to compel the deposition testimony of Breslin."<sup>48</sup> Cathie asserts that Margaret's denial of any knowledge of the agreement "strains credulity," and that she should have been allowed to question Breslin to prove Margaret's involvement.<sup>49</sup> Cathie further argues that the attorney-client privilege asserted by Margaret does not apply because if Margaret took the property with knowledge of the property settlement agreement, the transfer constituted a fraud.<sup>50</sup> The court disagreed and held that the attorney-client privilege applied.

Generally, "communications made by a client to his attorney for the purpose of seeking professional advice . . . are privileged communications not subject to disclosure."<sup>51</sup> The attorney-client privilege will generally survive the death of the client except in limited circumstances where the communications are needed to interpret a will.<sup>52</sup>

Here, the attorney-client privilege attached for two reasons. First, Cathie was not challenging the validity of a will, but rather, she was challenging the conveyance of property.<sup>53</sup> Second, the crime-fraud exception to the attorney-client privilege did not apply because that exception only pertains to ongoing crimes—anything referring to the 1974 property settlement agreement, if it happened at all, concerned past conduct and is therefore protected.<sup>54</sup> Accordingly, the court held that the communications are privileged and not subject to disclosure.<sup>55</sup>

### CONCLUSION

A property settlement agreement under which a couple's minor daughters were each to receive a one-fourth interest in a parcel

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46. *See id.*

47. *See id.* A ten-year statute of limitation applies in this case. *See id.*

48. *Id.*

49. *See id.*

50. *See id.*

51. *Id.* at 636 (citing Callahan v. Nystedt, 641 A.2d 58, 61 (R.I. 1998)).

52. *See id.*

53. *See id.*

54. *See id.*

55. *See id.*

of property, entered into by a father and mother upon their divorce, created a third-party beneficiary contract, not a trust. The daughters, the beneficiaries of the contract, had to assent to or ratify the contract in order to enforce their rights in the contract. Because the daughters had no knowledge of the agreement, and therefore did not ratify it before their father subsequently disposed of the property, their rights in the property, as third-party beneficiaries, were extinguished.

Christine M. Fraser

**Property Law.** *Mellor v. O'Connor*, 712 A.2d 375 (R.I. 1998). A surviving joint tenant who has become sole owner of property is not entitled to contribution from a deceased joint tenant's estate toward payment of a jointly executed promissory note secured by a mortgage on such property.

In *Mellor v. O'Connor*,<sup>1</sup> the Rhode Island Supreme Court considered, for the first time, whether a surviving joint tenant who has become the sole owner of property is entitled to contribution from a deceased joint tenant's estate for payment of a jointly executed promissory note secured by a mortgage on the property. The court ruled that the surviving joint tenant is not entitled to contribution.<sup>2</sup> The court said that under joint tenancy, all of the decedent's interest in the property has passed to the survivor, who retains total ownership, and because the decedent has no remaining interest, it would be inequitable to compel contribution from the decedent's estate.<sup>3</sup>

#### FACTS AND TRAVEL

The plaintiff, Colleen Mellor (Colleen), and the decedent, Robert O'Connor (Robert), were engaged to be married.<sup>4</sup> On June 13, 1991, they jointly purchased a house in Warwick, Rhode Island for \$229,000.<sup>5</sup> The plaintiff contributed \$11,450 and the decedent contributed approximately \$85,000 as an initial deposit towards the purchase price.<sup>6</sup> They obtained a mortgage from Plymouth Mortgage Company for the remaining balance of the purchase price and jointly executed a promissory note for \$140,000.<sup>7</sup> About one month later, prior to the date when the first payment on the promissory note was due, Robert died.<sup>8</sup> His estate was probated, and the decedent's two daughters were named executrices of his estate.<sup>9</sup>

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1. 712 A.2d 375 (R.I. 1998).

2. *See id.* at 379.

3. *See id.* at 380.

4. *See id.* at 375.

5. *See id.*

6. *See id.*

7. *See id.* at 375-76.

8. *See id.* at 376.

9. *See id.*

On October 28, 1991, Colleen filed a claim against the estate for \$70,332.26, which was half of the balance that was due under the note.<sup>10</sup> The decedent's estate denied the claim.<sup>11</sup> Subsequently, on March 20, 1992, Colleen filed this action in Kent County Superior Court.<sup>12</sup> The first count of the complaint alleged that the estate had breached its obligation under the note by failing to pay any money due under the note.<sup>13</sup> The second count alleged that the estate was liable for one-half of the total amount owed under the note, plus one-half of all expenses incurred, or to be incurred, to maintain the residence under the doctrine of equitable contribution.<sup>14</sup> The defendants filed a four-count counterclaim.<sup>15</sup>

A jury trial was commenced on April 29, 1996, and on May 1, 1996 the trial justice granted the defendants' motion for judgment as a matter of law with respect to the plaintiff's complaint.<sup>16</sup> The trial justice determined that the first count of the complaint, alleging breach of an obligation under the note, was a cause of action for the note holder, and that the plaintiff was not entitled to contribution from the decedent's estate as alleged in count two.<sup>17</sup> The plaintiff appealed this judgment to the Rhode Island Supreme Court.<sup>18</sup>

#### BACKGROUND

In 1955, the Rhode Island Supreme Court addressed the question of whether a plaintiff was entitled to have the executor of her

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10. *See id.*

11. *See id.*

12. *See id.* at n.1 (citing R.I. Gen. Laws § 33-11-48 (1956) (1992 Reenactment)). Section 33-11-48 provided that:

[s]uit on claims disallowed prior to the expiration of six (6) months from first publication may be brought no later than thirty (30) days after the expiration of six (6) months from first publication, . . . unless the estate has been represented as insolvent or request that the claim before commissioners has been duly filed.

R.I. Gen. Laws § 33-11-48 (1956) (1992 Reenactment).

13. *See id.* at 376.

14. *See id.*

15. *See id.*

16. *See id.* at 377. The motion for a judgment as a matter of law was filed pursuant to Rule 50(a) of the Superior Court Rules of Civil Procedure. *See id.* at 377 n.2.

17. *See id.* at 377.

18. *See id.*

deceased husband's will directed to pay from the estate a certain joint and several promissory note, which is secured by a mortgage on real estate whose title is now in dispute.<sup>19</sup> The court held that the plaintiff was not entitled to demand, from the executor, exonerating her husband's estate on an existing mortgage indebtedness, but left the question of entitlement of contribution from a deceased joint tenant's estate unanswered.<sup>20</sup>

#### ANALYSIS AND HOLDING

There are two conflicting views concerning this issue. The first is the majority rule, which permits contribution to a surviving joint tenant.<sup>21</sup> The second is the minority rule, which holds that a survivor is not entitled to contributions.<sup>22</sup> The Rhode Island Supreme Court recognized that this is an issue of first impression.<sup>23</sup>

The trial justice relied on the case *Florio v. Greenspan*<sup>24</sup> for support.<sup>25</sup> In *Florio*, the plaintiff and her husband had jointly executed a promissory note and mortgage on a piece of property.<sup>26</sup> After the death of her husband, the plaintiff brought a bill of equity for declaratory relief against the administrator of the husband's estate, seeking a ruling that the unpaid balance of the note was an obligation of the estate which the administrator must fulfill.<sup>27</sup> The Supreme Judicial Court of Massachusetts ruled that the plaintiff was not entitled to either exoneration or contribution because "despite the fact that both spouses were originally equally liable for the mortgage debt, it is inequitable to require the estate of the deceased spouse to contribute to the discharge of an encumbrance on property, where the entire ownership of which is in the surviving spouse."<sup>28</sup>

The Rhode Island Supreme Court followed this reasoning and concluded that a surviving joint tenant who has become sole owner

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19. See *id.* at 377-78 (citing *Gardner v. Waldman*, 111 A.2d 922 (R.I. 1955)).

20. See *id.* (citing *Gardner*, 111 A.2d at 923-24).

21. See *id.* at 378.

22. See *id.*

23. See *id.*

24. 165 N.E.2d 753 (Mass. 1960).

25. See *Mellor*, 712 A.2d at 379.

26. See *id.* (citing *Florio*, 165 N.E.2d at 754).

27. See *id.*

28. *Id.* (quoting *Florio*, 165 N.E.2d at 754).



of property is not entitled to contribution from a deceased joint tenant's estate toward payment of a jointly executed promissory note secured by a mortgage on such property.<sup>29</sup> To hold otherwise, according to the court, would cause unjust enrichment on the part of the plaintiff, who already holds all the rights incident to ownership of the property.<sup>30</sup> The court also noted that although the cases from jurisdictions adopting the minority rule have involved parties who were married and held property as tenants by the entirety, this distinction does not alter the analysis.<sup>31</sup>

#### CONCLUSION

Since this is a case of first impression in Rhode Island, it has substantial significance to state property laws. The court sets out the rule that a surviving joint tenant who has become sole owner of property is not entitled to contribution from a deceased joint tenant's estate toward payment of a jointly executed promissory note secured by a mortgage on such property. In adopting this minority rule, the court has determined that it would be inequitable to require the estate of a deceased spouse to contribute toward payment of a mortgage where the entire ownership of the property lies in the surviving spouse.

Ryan M. Borges

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29. *See id.*

30. *See id.* at 380-81.

31. *See id.*

**Property Law.** *Robinson v. Delfino*, 710 A.2d 154 (R.I. 1998). Under Rhode Island law, the surviving named holder of a joint bank account is entitled to receive the remaining funds in that account absent fraud, undue influence, duress, or lack of mental capacity.

In *Robinson v. Delfino*,<sup>1</sup> the Rhode Island Supreme Court sought to set out a rigid rule concerning survivorship rights in jointly held bank accounts.<sup>2</sup> Accordingly, the court determined that the named surviving holder of the joint account shall receive the funds contained therein absent a showing of fraud, undue influence, duress, or lack of mental capacity.<sup>3</sup>

#### FACTS AND TRAVEL

Florence A. Izzi (decedent) died intestate on December 27, 1993, leaving two siblings: John Izzi (Izzi) and Elisa Delfino (Delfino).<sup>4</sup> Decedent maintained several joint bank accounts with both Delfino and her husband, Donald Rich (Rich).<sup>5</sup> Each of these accounts were funded entirely with decedent's money.<sup>6</sup> Neither Delfino nor Rich ever had possession of any of the passbooks, statements, or certificates of deposit for any of the accounts.<sup>7</sup> After decedent's death, both Delfino and Rich withdrew all the money contained in the respective joint accounts maintained by the deceased.<sup>8</sup> Decedent's brother, Izzi, sought to have those joint accounts treated as if they were established solely for convenience, therefore adding the proceeds into decedent's estate.<sup>9</sup>

The defendants, Delfino and Rich, appealed this case to the Rhode Island Supreme Court from an order of trial justice di-

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1. 710 A.2d 154 (R.I. 1998).

2. *Id.* at 156.

3. *See id.* at 160-61.

4. *See id.* at 155.

5. *See id.* at 155-56. On February 5, 1993, decedent opened three joint bank accounts in her and Rich's names. *See id.* at 155. Decedent also maintained seven joint bank accounts with Delfino. *See id.* Additionally, decedent also maintained two safe-deposit boxes, one as a joint tenant with Delfino, the other as a joint tenant with Rich. *See id.*

6. *See id.* at 155.

7. *See id.*

8. *See id.*

9. *See id.*

recting them to return money which had previously been contained in joint bank accounts with decedent.<sup>10</sup>

#### BACKGROUND

The trial justice's decision was based, in great part, upon the Rhode Island Supreme Court's holding in *Nocera v. Lembo*.<sup>11</sup> In *Nocera*, the court stated that a joint bank account's form "constitutes prima facie evidence of ownership in the survivor upon the death of the other joint owner."<sup>12</sup> However, the court noted in *Nocera* that this presumption is not controlling.<sup>13</sup> Evidence may be introduced to show that the original owner of the joint account added the survivor's name for convenience sake, not intending to make a gift of the account to the named survivor.<sup>14</sup>

#### ANALYSIS AND HOLDING

In *Robinson v. Delfino*, the Rhode Island Supreme Court sought to clarify, once and for all, Rhode Island's law on survivorship rights in joint bank accounts.<sup>15</sup> Noting that the current law was not only "both unpredictable and inconsistent," but also "frustrat[ed] the public's common understanding of what it always believed that a joint bank account was intended to accomplish," the court established a rigid rule concerning joint bank accounts.<sup>16</sup>

This new law concerning survivorship rights in joint bank accounts was set forth by the court to make the law predictable and reliable to those people who establish joint bank accounts.<sup>17</sup> Therefore, the court concluded that:

the opening of a joint bank account wherein survivorship rights are specifically provided for is conclusive evidence of the intention to transfer to the survivor an immediate *in praesenti* joint beneficial possessory ownership right in the

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10. See *id.* at 154-55.

11. See *id.* at 156 (citing *Nocera v. Lembo*, 397 A.2d 524 (1979)).

12. *Nocera*, 397 A.2d at 525.

13. See *id.* at 526.

14. See *id.*

15. *Robinson*, 710 A.2d at 156-57. The court "facetiously noted" that, in Rhode Island, there are two ways to start a civil suit: first, is to file a complaint pursuant to Superior Court Rule of Civil Procedure 3, and second, to open a joint bank account with the right of survivorship. *Id.* at 156-57 n.8.

16. *Id.* at 156.

17. See *id.* at 160.

balance of the account remaining after the death of the depositor, absent evidence of fraud, undue influence, duress, or lack of mental capacity.<sup>18</sup>

This reasoning, according to the court, is based upon the current trend among courts to treat joint bank accounts in the way in which the majority of the public actually perceive joint bank accounts.<sup>19</sup>

The court determined that "the absolute common understanding of the vast majority of people establishing joint bank accounts nowadays is that they create immediate possessory as well as survivorship rights."<sup>20</sup> Therefore, to permit the introduction of extrinsic evidence to analyze the depositor's intent is, according to the court, denying individuals their rights under such joint bank accounts.<sup>21</sup>

In formulating its opinion, the Rhode Island Supreme Court relied heavily on *Wright v. Bloom*,<sup>22</sup> an Ohio court case.<sup>23</sup> In *Wright*, the Ohio Supreme Court reasoned that survivorship rights in a joint bank account should not be defeated through use of extrinsic evidence of the depositor's intent.<sup>24</sup> Because the "need for uniformity" in this area of law is essential, the Ohio Supreme Court noted that permitting extrinsic evidence of the depositor's intent served only to perpetuate confusion and encourage "the very evils of misinformation and litigation sought to be avoided."<sup>25</sup> The Rhode Island Supreme Court based its opinion on similar grounds, namely, that:

[a] surviving named joint account holder should be entitled to obtain funds remaining on deposit in a joint account without the necessity of first having to travel through several court systems and to have lawyers, trial judges, juries, and appel-

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18. *Id.* at 160-61.

19. *See id.* at 158.

20. *Id.* at 160.

21. *See id.*

22. 635 N.E.2d 31 (Ohio 1994).

23. *See Robinson*, 710 A.2d at 158-60.

24. *Wright*, 635 N.E.2d at 38. The Rhode Island Supreme Court expressly adopts the Ohio court's conclusion that "the depositor's intent to transfer a present interest in a joint and survivorship account to be irrelevant in a controversy involving the rights of a surviving party to the sums remaining in such account at the death of the depositor." *Robinson*, 710 A.2d at 159 (quoting *Wright*, 635 N.E.2d at 36).

25. *Robinson*, 710 A.2d at 159 (quoting *Wright*, 635 N.E.2d at 37).

late judges perform post mortem cerebral autopsies and examinations in order to determine and second-guess what the subjective intent of the deceased joint owner of the account was at the time the account was created.<sup>26</sup>

Thus, in order to implement this reasoning, the court was forced to issue a rigid decision, basically stating that a surviving holder takes absent fraud, duress, undue influence, or lack of mental capacity.<sup>27</sup>

#### CONCLUSION

In *Robinson v. Delfino*, the Rhode Island Supreme Court clarified the law concerning survivorship rights in joint bank accounts, at least for the time being.<sup>28</sup> By eliminating the convenience account exception to joint bank accounts, the court's holding mandates that the named surviving holder receive any remaining funds in the joint account absent a showing of fraud, undue influence, duress, or lack of mental capacity.

Christopher E. Friel

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26. *Id.* at 160.

27. *See id.* at 161.

28. *See Bielecki v. Boissel*, 715 A.2d 571 (R.I. 1998).