IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

ERIC WILLIAMS, Appellant, v. WILLIAM L. HUBBARD, LIMITED ADMINISTRATOR AD LITEM OF THE ESTATE OF BETTY MARGARET REYNOLDS AND KENNETH NELSON AND SANDRA K. NELSON, HUSBAND AND WIFE, Respondents.	)	WD76023 Opinion filed: October 15, 2013

APPEAL FROM THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
The Honorable Kathleen A. Forsyth, Judge

Before Division One: Victor C. Howard, Presiding Judge,
Joseph M. Ellis, Judge and Anthony Rex Gabbert, Judge

Appellant Eric Williams appeals from the Circuit Court of Jackson County's grant of summary judgment in favor of Respondents Kenneth and Sandra Nelson.[1] The circuit court granted summary judgment on the basis that the undisputed facts showed that Appellant suffered no harm and had no right to any of Decedent Betty Margaret

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[1] Although a party to this case, William L. Hubbard did not participate in this appeal. The circuit court appointed Hubbard the Limited Administrator *Ad Litem* of Decedent's estate.

Reynolds's assets that transferred outside of probate to Sandra Nelson. For the following reasons, the judgment is affirmed in part and reversed in part.

In 2000, Betty Reynolds ("Decedent") approached Respondent Kenneth Nelson, an attorney, about some estate-planning matters. At Decedent's request, Kenneth drafted a beneficiary deed that named Appellant Eric Williams, Decedent's second cousin, the sole beneficiary of real estate owned by Decedent in Moniteau County, Missouri. Decedent further requested that Kenneth draft her will. The 2000 will named Appellant, Norma Lamp, and Erma L. Baughman as equal beneficiaries of the will. The will also named Baughman as personal representative and attorney-in-fact under a durable power of attorney. Lamp and Baughman were both friends of Decedent. Decedent never married nor had children.

In preparation for drafting Decedent's will, Kenneth had Decedent fill out a questionnaire regarding her assets. On the questionnaire, Decedent indicated that she had four bank accounts, one with Bank of America and three with the Kansas City Police Credit Union ("KCPCU"). Decedent also indicated that she had three brokerage accounts, one with AARP Scudder and two with American Century. Each of the seven accounts was designated either payable on death ("POD") or jointly owned.[2] Appellant

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[2] The following is a list of Decedent's assets in 2000 as represented by Decedent on the questionnaire. We have also included the beneficiary or ownership designations on those accounts.

(1) Bank of America Checking Account - $10,901.00 – jointly owned

(2) KCPCU Account No. 61420 – POD – Baughman
Savings Account - $2,033.00
Certificate of Deposit - $ 100,000.00
IRA - $ 98,826.00

(3) KCPCU Account No. 61421 – jointly owned with right of survivorship – Baughman
Savings Account - $2,030.00
Certificate of Deposit - $100,952.00
Certificate of Deposit - $41,398.00

was not the designated beneficiary or joint owner listed on any of the seven accounts. Prior to her death, Decedent closed two of the KCPCU accounts, the Bank of America checking account ("Bank of America CA"), and the AARP Scudder account.

In 2006, Decedent wrote Kenneth a letter instructing him to change her will. In the letter, Decedent requested that Respondent Sandra Nelson be named as personal representative and as attorney-in-fact under durable power of attorney. She also requested that Sandra and Appellant be named as equal beneficiaries of the will. Sandra is Kenneth's wife. Sandra's mother, Norma Lamp, and Decedent were close friends. Sandra referred to Decedent as her second mother, and Decedent thought of Sandra as a daughter. Kenneth revised Decedent's will as directed. The 2006 will was Decedent's last will and testament.

On April 28, 2010, Decedent died. At the time of her death, Decedent had the following holdings:

(1) UMB Certificate of Deposit - $202, 916.99 ("UMB CD#1")

(2) UMB Certificate of Deposit - $118,684.86 ("UMB CD#2")

(3) UMB Certificate of Deposit - $41,468.75 ("UMB CD#3")

(4) UMB Checking Account - $2,483.81 ("UMB CA")

(5) KCPCU IRA - $60,329.11

(6) KCPCU IRA - $1,138.14

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(4) KCPCU Account No. 61422 – jointly owned with right of survivorship – Lamp
Savings Account - $2,078.00
Certificate of Deposit - $25,084.00

(5) AARP Scudder Account – $8,977.00 – jointly owned – Baughman

(6) American Century Growth Mutual Fund – $21,663.00 – jointly owned – Baughman

(7) American Century Select Mutual Fund – $17,572.00 – jointly owned – Baughman

(7) American Century Growth Mutual Fund - $16,208.08

(8) American Century Select Mutual Fund - $13,226.21

Sandra was the POD beneficiary designated on UMB CD#1. Decedent's other seven holdings listed Sandra as joint owner with the right of survivorship on each respective account. Thus, all of Decedent's holdings transferred upon her death, outside of probate, to Sandra.

In August 2010, Appellant filed a petition in the Circuit Court of Jackson County against Respondents Kenneth and Sandra alleging that Sandra procured her ownership and beneficiary interests in Decedent's holdings as a result of undue influence. In his second amended petition, Appellant requested the imposition of a constructive trust on Decedent's holdings that he alleged were transferred to Sandra as a result of undue influence. The petition further alleged Kenneth breached his fiduciary duties to Decedent and committed legal malpractice by drafting Decedent's will, which named Sandra, his wife, as a beneficiary. Appellant alleged that as a result of Kenneth's malpractice and breach of fiduciary duties, he suffered a loss of half of Decedent's assets.

In 2012, Kenneth and Sandra filed motions for summary judgment. In their motions, Respondents averred that Appellant lacked standing because Appellant was not the beneficiary or joint owner of any of Decedent's holdings prior to the alleged undue influence. Thus, Respondents contended that Appellant suffered no harm even if Sandra procured her beneficiary or ownership interests in Decedent's holdings as a result of undue influence because all of Decedent's holdings were to transfer outside of probate to individuals other than Appellant. Appellant opposed the summary judgment

motions, arguing that he had standing because the holdings would revert back to Decedent's estate upon a finding of undue influence.

On December 14, 2012, the circuit court conducted a hearing on the matter. At the hearing's conclusion, the circuit court ruled from the bench that it was "going to grant [Respondents'] motion for summary judgment based on lack of standing." In its written judgment, the circuit court explained that it was granting summary judgment in Respondents' favor “because the undisputed facts show that [Appellant] suffered no harm and has no right to any of the assets at issue. *See Crocker v. Crocker*, 261 S.W.3d 724, 727 (Mo. App. 2007)."

Appellant now raises five points of error relating to the circuit court's grant of summary judgment in Respondents' favor. We review *de novo* the trial court's granting of summary judgment. ***Rice v. Shelter***, 301 S.W.3d 43, 46 (Mo. banc 2009). "The record below is reviewed in the light most favorable to the party against whom summary judgment was entered, and that party is entitled to the benefit of all reasonable inferences from the record." ***Hammack v. Coffelt Land Title Co.***, 284 S.W.3d 175, 177-78 (Mo. App. W.D. 2009) (internal quotation omitted). "Summary judgment is appropriate only when the record demonstrates that there are no genuine disputes regarding material facts and that the moving party is entitled to judgment as a matter of law." ***Id.*** (internal quotation omitted). "[I]f the trial court's judgment can be sustained on any ground as a matter of law, even if different than the one posited in the order granting summary judgment, it should be affirmed." ***Rice***, 301 S.W.3d at 46 (citing ***ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Co.***, 854 S.W.2d 371, 387-88 (Mo. banc 1993)).

In his first three points on appeal, Appellant contests the circuit court's finding that he lacked standing, as a matter of law, to challenge the transfer of Decedent's eight holdings to Sandra. In his fifth point, Appellant contends that the circuit court erroneously found that he lacked standing to pursue the imposition of a constructive trust upon Decedent's holdings. Because these four points are interrelated and involve similar arguments, we address them together.

The circuit court granted summary judgment on the basis that Appellant lacked standing[3] to bring his suit alleging undue influence and seeking the imposition of a constructive trust because he could not prove that he suffered any harm or had any right to Decedent's assets that transferred to Sandra outside of probate. The circuit court based its decision exclusively upon this Court's holding in ***Crocker v. Crocker***, 261 S.W.3d 724 (Mo. App. W.D. 2007).

Appellant contends that the circuit court erroneously relied upon *Crocker*, which he avers is not applicable to all of Decedent's holdings and does not exclude the possibility that Decedent's holdings would revert back to her estate upon a finding of undue influence. Respondents assert that the circuit court properly relied upon *Crocker*, which they aver stands for the proposition that "[i]f a beneficiary designation, whether joint ownership or payable on death, is set aside as having been procured through undue influence, the immediately preceding joint owner or beneficiary designation – if any – controls the distribution of the property at issue." Thus, Respondents contend

[3] "In order to have proper standing, the party seeking relief must show two things." ***In re Estate of Stroetker v. Caskey***, 934 S.W.2d 35, 36 (Mo. App. E.D. 1993). "First, the party must show that he is sufficiently affected by the action he is challenging to justify consideration by the court of the validity of the action, and second, that the action violates the rights of the particular party who is attacking it and not of some third party." ***Id.***

that Appellant lacks standing because he was not the immediately preceding joint owner or beneficiary designated on any of Decedent's holdings.

Respondents' reading of *Crocker*, however, is overly broad. As explained *infra*, this Court's holding in *Crocker* does apply to some of Decedent's holdings and, therefore, prevents Appellant from seeking the imposition of a constructive trust with respect to those holdings. Nevertheless, *Crocker* does not apply to all of Decedent's holdings and, thus, does not preclude the possibility that several of Decedent's holdings would revert back to her estate, and thereby Appellant, upon a finding of undue influence.

We begin our discussion with UMB CD#1. Appellant avers that Sandra's designation as the POD beneficiary on UMB CD#1 was void as a result of undue influence and that the funds in UMB CD#1 should revert back to Decedent's estate. The parties agree that UMB CD#1 is the only one of Decedent's eight holdings that constitutes a nonprobate transfer.[4] The placement of a POD directive on an account record "is conclusive evidence in the absence of fraud, duress, undue influence or evidence of clerical mistake by the transferring entity that the direction was regularly made by the owner and accepted by the transferring entity, and was not revoked or changed prior to the death giving rise to the transfer." **§ 461.028.5**.[5] However, if a beneficiary designation, or a revocation thereof, is procured by fraud, duress, or undue influence, the designation or revocation is void. **§ 461.054.1**.

[4] A "nonprobate transfer" is defined as "a transfer of property taking effect upon the death of the owner, pursuant to a beneficiary designation." **§ 461.005(7)** RSMo 2000. An owner can make a nonprobate transfer of a bank account by placing "the phrase 'pay on death to' or the abbreviation 'POD' . . . after the owner's name and before the designation of the beneficiary" on the account record. ***In re Estate of Goldschmidt***, 215 S.W.3d 215, 220 (Mo. App. E.D. 2006) (citing **§ 461.005(15)**). Because the POD abbreviation appears on UMB CD#1, it is a nonprobate transfer.

[5] All statutory citations are to RSMo 2000 unless otherwise noted.

Respondents do not contest that Sandra's POD designation would be void upon a finding of undue influence. Instead, they contend that even if Sandra's POD designation is void, our holding in *Crocker* prevents the funds in UMB CD#1 from reverting back to Decedent's estate.

In ***Crocker***, one of the decedent's sons filed a petition alleging a beneficiary deed naming his two brothers as beneficiaries of their parents' farm was void because his brothers procured the deed as a result of undue influence. 261 S.W.3d at 725. Under the previous beneficiary deed, the decedent's son and his two brothers were each given a one-third interest in the farm. ***Id.*** The trial court dismissed the petition on grounds that the decedent's son lacked standing to challenge the subsequent beneficiary deed because the subsequent deed revoked the previous beneficiary deed naming him as a beneficiary. ***Id.*** at 726. On appeal, we determined that the decedent's son had standing because, if the subsequent deed was void as a result of undue influence, then the prior beneficiary deed, under which the decedent's son was a beneficiary, would be the controlling instrument. ***Id.*** at 727.

In reaching our decision, we noted that the brothers argued that even if the subsequent beneficiary deed was void, "the property contained therein would revert to [the decedent's] estate," not the previous deed naming the decedent's son as a beneficiary. ***Id.*** In rejecting this argument, we held that "when a subsequent beneficiary designation . . . is procured by fraud, duress, or undue influence, Section 461.037 applies, and the property reverts back to the original beneficiary." ***Id.*** at 728 (emphasis omitted). Thus, we concluded that if the subsequent beneficiary deed were found to be

void, the deed designating the decedent's son as a beneficiary "would still stand as a valid nonprobate transfer, and the property would not enter the probate estate." ***Id.***

Our holding in Crocker, therefore, turned upon our interpretation of § 461.037. Section 461.037 provides:

> In the event property *subject to a beneficiary designation* is lost, destroyed, damaged or involuntarily converted during the owner's lifetime, the beneficiary succeeds to any right with respect to the loss, destruction, damage or involuntary conversion which the owner would have had if the owner had survived, but has no interest in any payment or substitute property received by the owner during the owner's lifetime.

(Emphasis added). A "beneficiary designation" is "a provision in writing that is not a will that designates the beneficiary of a nonprobate transfer." **§ 461.005(2)**.

Unlike the property in *Crocker*, there was no prior beneficiary designation on UMB CD#1 or the funds from which it is comprised. When Decedent opened UMB CD#1 in August of 2009, Sandra was designated the POD beneficiary on the account. Sandra, therefore, is UMB CD#1's original and only beneficiary designation. Moreover, the parties do not dispute that UMB CD#1 is comprised of funds from Decedent's four closed accounts – KCPCU Account No. 61421, KCPCU Account No. 61422, the Bank of America CA, and the AARP Scudder account. These closed accounts were not subject to beneficiary designations at the time they were closed; rather, Decedent jointly owned each of the four closed accounts with either Baughman or Lamp. Thus, UMB CD#1 and the funds therein would not have been "property subject to a beneficiary designation" when the alleged undue influence occurred. Accordingly, § 461.037 and our holding in *Crocker* are inapplicable to UMB CD#1.

Furthermore, any argument that the immediately preceding joint owners on Decedent's closed accounts are automatically entitled to the funds upon a finding of

undue influence ignores common law principles regarding the closure of joint bank accounts. Missouri law maintains that "[d]uring one's lifetime, an individual who has deposited all the funds in a joint account has the power to divest the interests of a non-contributing joint tenant by transferring those funds to a new account." ***Auffert v. Auffert***, 829 S.W.2d 95, 98 (Mo. App. W.D. 1992) *overruled on other grounds by* ***Maudlin v. Lang***, 867 S.W.2d 514, 516 (Mo. banc 1993); *see also* **Burkholder ex rel.** ***Burkholder v. Burkholder***, 48 S.W.3d 596, 598 (Mo. banc 2001) (stating that "[w]here there is a sole contributor to a jointly held certificate [of deposit], methods to effect an 'actual termination' include: cashing the certificate or surrender of the certificate by the sole contributor and the issuing of a new certificate in his name alone or in the name of a third party"); ***Carrol v. Hahn***, 498 S.W.2d 602, 607 (Mo. App. 1973) (recognizing that the sole contributor of the funds in a joint account "had the power to revoke the account and appropriate any or all of the funds and to open [a] new account" in order "to divest the interests of a joint tenant"). Thus, the closing of a joint account by the sole contributing tenant typically signifies an intent to divest the noncontributing joint tenant of his or her interest in the account.

Given that the closing of a joint account divests the interest of a noncontributing tenant, the possibility exists that the contributing tenant intended to divest the immediately preceding joint owner of his or her interest in the account despite any subsequent undue influence alleged. A rule that automatically assumes the preceding joint ownership designation controls upon a subsequent designation being set aside overlooks such a possibility, and, thus, conflicts with common law joint tenancy principles.

Respondents point to ***Skidmore v. Back***, 512 S.W.2d 223 (Mo. App. S.D. 1974), in further support of their position that the funds in UMB CD#1 would revert back to the preceding joint tenants despite the fact that Decedent closed the joint accounts that now make up UMB CD#1. In *Skidmore*, the decedent had opened a joint bank account that named his daughter as a joint tenant with the right of survivorship. ***Id.*** at 225. Prior to the decedent's death, the joint account was closed, and the funds therein were deposited into the decedent's son personal bank account. ***Id.*** at 225-26. Following the close of the account, the decedent's daughter brought an equitable action for a constructive trust to be placed on the funds deposited in her brother's account on the basis that he caused the account to be closed and the money therein to be deposited in his personal account by exercise of coercion, duress, and undue influence. ***Id.*** at 226. In reversing the trial court's refusal to impose a constructive trust on the funds from the closed account, the court found that there was "very strong evidence warranting an inference of undue influence in connection with the closing of the account" and that her brother "offered no evidence to overcome the presumption that the withdrawal and subsequent gift of the bank account funds were free from undue influence." ***Id.*** at 230.

Finding an inference of undue influence, the court then analyzed whether a constructive trust should be imposed upon the funds from the closed account. The court explained that "a constructive trust is available to one who has been wrongfully deprived of some 'expectancy' in property which but for the wrongful conduct he would have had." ***Id.*** at 231. The court further explained that the decedent's daughter's "interest in the joint bank account was an expectancy" and that "expectancy should be afforded the same equitable protection through the device of constructive trust as would

be afforded the interest of a specific legatee." ***Id.*** The court ultimately remanded the case with instruction to impose a constructive trust on the funds from the closed account. ***Id.*** at 235.

Thus, although *Skidmore* does indicate that a joint tenant of a closed account can retain his or her expectancy interest in the funds therein, such retention was dependent upon a finding that the joint bank account was closed as a result of undue influence. Unlike the decedent's daughter in *Skidmore*, Appellant does not claim that Decedent's bank accounts were closed as a result of undue influence; nor did the circuit court make any factual findings to that effect. Rather, Appellant simply claims that Respondents unduly influenced Decedent into designating Sandra as the POD beneficiary of UMB CD#1. Therefore, if the alleged undue influence did not affect Decedent's decision to close the accounts, Baughman and Lamp would no longer have any interest in the funds, and, thus, the funds would revert back to Decedent's estate.[6] Accordingly, while *Skidmore* indicates that the joint tenants of Decedent's closed accounts possibly retained an expectancy interest in those funds, the retention of their interests is dependent upon a finding that those accounts were closed as a result of undue influence, not upon a finding that they were the preceding joint owners designated on those accounts. Thus, the circuit court erred in finding that Appellant

[6] For example, say Decedent had independently decided to close the joint accounts and purchase a UMB CD, both to divest Baughman and Lamp of their ownership interests and to achieve a higher rate of return; learning of Decedent's intentions, Sandra and Kenneth exercised undue influence to persuade Decedent to list Sandra on the CD as the POD beneficiary. Decedent would have clearly intended to divest Baughman and Lamp of their joint tenancy interests in the accounts, and nothing about Respondents' subsequent undue influence would change the fact that Baughman and Lamp no longer had any interest in the funds from those closed accounts. Thus, in this example, under the general rule, Decedent, the accounts' sole contributor, divested Baughman and Lamp, the noncontributing joint tenants, of their expectancy interests when she closed those accounts and used the funds therein to purchase the UMB CD.

lacked standing, as a matter of law, to seek the imposition of a constructive trust upon the funds in UMB CD#1.

Similarly UMB CD#2 and UMB CD#3 were also comprised of funds from Decedent's closed KCPCU, Bank of America, and AARP accounts. Thus, like UMB CD#1, the possibility exists that the funds therein would revert back to Decedent's estate upon a finding of undue influence. The circuit court, therefore, erroneously concluded that Appellant lacked standing, as a matter of law, to seek the imposition of a constructive trust upon the funds in UMB CD#2 and UMB CD#3.[7]

With respect to Decedent's five remaining holdings, three had previous POD beneficiary designations – the two KCPCU IRAs and the UMB CA. Prior to Decedent naming Sandra the joint owner of these holdings, Baughman was the POD beneficiary designated on the three holdings. Because these accounts had POD beneficiary designations at the time the alleged undue influence occurred, § 461.037 applies.

As previously discussed, § 461.037 applies when "property subject to a beneficiary designation is . . . involuntarily converted during the owner's lifetime." When such involuntary conversion occurs, "the beneficiary succeeds to any right with respect to the . . . involuntary conversion which the owner would have had if the owner had survived." **§ 461.037**. In *Crocker*, we intimated that attaining property as a result of undue influence constitutes an instance of involuntary conversion during the owner's lifetime. *See* 261 S.W.3d at 728. Thus, when property subject to a beneficiary

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[7] We are in no way commenting on the merits of Appellant's undue influence claims by finding that the circuit court erred in concluding that Appellant lacked standing as a matter of law to seek the imposition of a constructive trust with respect to Decedent's UMB CDs. Rather, we are merely concluding that the circuit court's reliance on *Crocker* was misplaced with respect to these holdings, and, without further factual findings, the circuit court could not determine that Appellant lacked standing, as a matter of law.

designation is involuntarily converted as a result of undue influence, the beneficiary succeeds to the rights the owner would have had during his or her lifetime.

As commentators have noted, § 461.037 "is silent as to the remedy which the beneficiary may pursue if the property is improperly converted during the owner's lifetime, as for example, a transfer as a result of the exercise of undue influence." **4A John A. Borron, Jr., *Missouri Practice: Probate and Surrogate Law Manual*, § 461.037 at 587-88 (2001)**. Nevertheless, as our opinion in *Crocker* suggests, because "the property in question is subject to a nonprobate transfer, it seems clear that the involuntarily transferred property would not be subject to probate administration in the owner's estate." ***Id.*** at 588. Accordingly, if a court were to find that Sandra obtained joint ownership in the KCPCU IRAs and the UMB CA as a result of undue influence, then § 461.037 would apply and those accounts would not be subject to the probate administration of Decedent's estate. Appellant, therefore, would not be entitled to the funds in the KCPCU IRAs and the UMB CA. Accordingly, the circuit court did not err in concluding that Appellant lacked standing to seek the imposition of a constructive trust with respect to the two KCPCU IRAs or the UMB CA.[8]

Finally, we turn to Decedent's two American Century brokerage accounts. In April of 2008, Decedent designated Sandra as the joint owner on both her brokerage accounts. Baughman had been the designated joint owner on both accounts up until Decedent designated Sandra as the new joint owner of the accounts. Therefore, §

[8] Appellant cites ***In re Estate of Meyer***, 744 S.W.2d 844 (Mo. App. S.D. 1988), in support of his argument that funds in joint bank accounts that are set aside as a result of fraud or undue influence necessarily revert back to the decedent's estate. The decedent's holdings in *Estate of Meyer* reverted back to the decedent's estate, however, because the circuit court determined that the decedent never established a valid joint tenancy in any of her holdings. ***Id.*** at 847. Unlike *Estate of Meyer*, this is not a situation in which the previous ownership designations were invalid; nor does Appellant make an argument to that effect. Accordingly, *Estate of Meyer* is inapplicable to the present case.

461.037 is not applicable because Decedent's joint brokerage accounts were not subject to a beneficiary designation at the time the alleged undue influence occurred.

Nevertheless, Appellant still lacked standing to seek the imposition of constructive trust upon Decedent's brokerage accounts. Brokerage accounts are governed by the language of the deposit documents, not § 362.470[9] or Missouri's Nonprobate Transfers Law. *See* ***In re Wax***, 63 S.W.3d 668, 672 (Mo. App. E.D. 2001). Similar to statutory joint bank accounts, however, the sole depositor in a joint brokerage account has "the power, during [his or] her lifetime, to divest the interests of a non-contributing joint tenants by transferring the funds to a new account or simply closing the joint account." ***Id.*** at 673. Therefore, a noncontributing joint tenant's interest in a joint brokerage account constitutes an expectancy because the sole contributing joint tenant could lawfully divest the noncontributing tenant of his or her interest therein at any time.

Here, Decedent never closed her joint brokerage accounts or transferred the funds therein to a new account. Baughman remained the joint owner of Decedent's brokerage accounts up until the time that Sandra was designated the new joint owner of the accounts. Baughman, therefore, retained her expectancy interest in the brokerage accounts up until the time that Sandra was designated the new joint owner of the accounts.

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[9] Section 362.470 controls the establishment of statutory joint bank accounts. Pursuant to § 362.470.1, "deposits with banks and trust companies made in the name of the depositor and one or more other persons shall become the property of those people as joint tenants and may be paid to any survivor after the death of any one of the joint tenants." ***In re Estate of Hayes***, 941 S.W.2d 630, 633 (Mo. App. E.D. 1997). Absent fraud or undue influence, "[t]he deposit of funds into a joint account pursuant to § 362.470.1 is conclusive evidence of the depositor's intent that the funds should pass to the co-owner of the account upon the depositor's death." ***Dickinson v. Dickinson***, 87 S.W.3d 438, 444 (Mo. App. W.D. 2002) (internal quotation omitted).

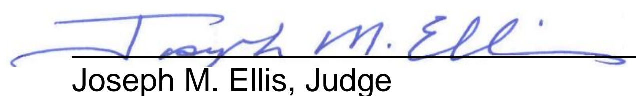
Again, "a constructive trust is available to one who has been wrongfully deprived of some 'expectancy' in property which but for the wrongful conduct he would have had." ***Skidmore***, 512 S.W.2d at 231. The wrongful conduct alleged here is Respondents' exercise of undue influence. Because Baughman retained her expectancy interest in the accounts up until the time that Sandra was designated the new joint owner of the accounts, any alleged undue influence that resulted in Sandra being designated the joint owner of the accounts also resulted in Baughman being divested of her expectancy interest in the joint brokerage accounts. Thus, if there was, in fact, undue influence, the expectancy interest belonged to Baughman, not Decedent's estate. Accordingly, Appellant lacked standing to seek the imposition of a constructive trust with respect to Decedent's brokerage accounts.

In sum, the circuit court erred in concluding that our holding in *Crocker* precluded a finding that Appellant suffered any harm as a result of Respondents' alleged undue influence and, therefore, lacked standing to seek the imposition of a constructive trust on any of Decedent's holdings. As explained *supra*, the possibility exists that Appellant would be entitled to seek the imposition of a constructive trust upon the funds in UMB CD#1, UMB CD#2, and UMB CD#3 upon a finding undue influence. The circuit court did, however, correctly determine that Appellant lacked standing to pursue the imposition of a constructive trust upon the funds in the KCPCU IRAs, the UMB CA, and the American Century brokerage accounts because Decedent's estate would not be entitled to those funds upon a finding of undue influence.

Appellant's remaining point on appeal addresses whether the circuit court erred in granting summary judgment in favor of Respondent Kenneth Nelson with respect to

Appellant's claims of breach of fiduciary duty and legal malpractice. The circuit court granted summary judgment on Appellant's claims of breach of fiduciary duty and legal malpractice based upon its finding that Appellant would not be entitled to any of Decedent's holdings. In light of our determination that *Crocker* did not preclude the possibility that Appellant, as a beneficiary of Decedent's estate, could be entitled to the funds in the UMB CDs upon a finding of undue influence, the circuit court's grant of summary judgment with respect to Appellant's claims of breach of fiduciary duty and legal malpractice was also erroneous. Thus, those claims must be revisited upon remand.

Accordingly, the circuit court erred in granting summary judgment on the basis that Appellant lacked standing to seek the imposition of a constructive trust upon UMB CD#1, UMB CD#2, and UMB CD#3. The judgment is, therefore, reversed with respect to Decedent's UMB CDs as well as with respect to Appellant's claims of breach of fiduciary duty and legal malpractice. The judgment is affirmed in all other respects, and the case is remanded to the circuit court for further proceedings consistent with this opinion.



Joseph M. Ellis, Judge

All concur.