MISSOURI COURT OF APPEALS
WESTERN DISTRICT

IN RE THE ESTATE OF PATRICIA MCDOW, DECEDENT,
GRAY BIRDSONG, APPELLANT,
v.
THE CALLAWAY BANK, RESPONDENT.

DOCKET NUMBER WD86824

DATE: DECEMBER 17, 2024

Appeal From:

Cole County Circuit Court
The Honorable Daniel Green, Judge

Appellate Judges:

Division Three: Mark D. Pfeiffer, Presiding Judge, Gary D. Witt, Judge, and Thomas N. Chapman, Judge

---

Attorneys:

William Nacy, Jefferson City, MO, for appellant.

Thomas Riley, Jacquelyn Brazas, Fulton, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

IN RE THE ESTATE OF PATRICIA MCDOW, DECEDENT,
GRAY BIRDSONG, APPELLANT,
v.
THE CALLAWAY BANK, RESPONDENT.

WD86824 Cole County

Before Division Three Judges: Mark D. Pfeiffer, Presiding Judge, Gary D. Witt, Judge, and Thomas N. Chapman, Judge

The Estate of Patricia McDow ("Estate"), appeals a judgment from the Circuit Court of Cole County, Missouri ("trial court"), denying the Estate's petition for discovery of assets against the Callaway Bank ("Bank"). The Estate raises two points on appeal and argues the trial court erred because: 1) the trial court erroneously applied the law in that the two certificates of deposit ("CDs") at issue were automatically renewed and, as such, there was no final maturity date so they could not have been presumed paid; and 2) the judgment was against the weight of the evidence.

AFFIRMED.

Division Three holds:

The Estate's second point relied on is dispositive and the trial court's judgment is not against the weight of the evidence. The personal representative of the Estate located two, over forty-year-old CDs in the decedent's safety deposit box and demanded payment of the face amount plus interest. Bank refused payment and suit was filed. The lack of a "PAID" notation on each CD is not dispositive because the Bank had procedures in place for clients to redeem a CD even without the original document. As for CD 2, the Bank presented records that this CD was previously redeemed in 2006. Additionally, there was testimony that it would be impossible for a CD to be erroneously marked as "cancelled" due to the Bank's rigorous checks-and-balances system, and more than six employees would have needed to act together in order to fraudulently pay funds on a CD. While the Bank's seven-year records retention policy was in conflict with its implementation of the policy, the trial court was in the best position to resolve these conflicts and we defer to its credibility determinations. Moreover, while there was no direct evidence of payment of CD 1, the evidence supported a finding that it was redeemed prior to 2005. The Bank's records, which do not reflect CD 1's existence, coupled with the witness testimonies

support the trial court's finding that CD 1 had been previously redeemed. We find the trial court's judgment is not against the weight of the evidence.

Opinion by: Gary D. Witt, Judge December 17, 2024

This summary is UNOFFICIAL and should not be quoted or cited.