

**Summary of SC93853, *Eric Williams 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***

Appeal from the Jackson County circuit court, Judge Kathleen A. Forsyth

Argued and submitted September 2, 2014; opinion issued February 3, 2015, and modified on the Court's own motion March 31, 2015

**Attorneys:** Williams was represented by Rex V. Gump and Christian L. Faiella of Tatlow, Gump, Faiella & Wheelan LLC in Moberly, (660) 263-3100. Kenneth Nelson was represented by John M. Kilroy Jr. and Anthony W. Bonuchi of Polsinelli PC in Kansas City, (816) 421-3355. Sandra Nelson was represented by Richard E. McLeod of The McLeod Law Firm in Kansas City, (816) 421-5656, and B. Janeen De Vries of De Vries & Associates PC in Kansas City, (816) 561-2555. William Hubbard of Kansas City represented himself.

*This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** A man appeals the circuit court's grant of summary judgment (judgment on the court filings, without a trial) against him. The man claims that his deceased cousin's attorney and the attorney's wife unduly influenced his cousin to plan her estate so that most of her assets would pass to the attorney's wife upon the cousin's death. In a 5-2 decision written by Judge Paul C. Wilson, the Supreme Court of Missouri affirms the judgment in part, vacates it in part and remands (sends back) the case to the circuit court. The circuit court correctly determined the man lacked standing (legal ability to sue) to challenge four assets for which someone else was a prior joint owner. Even if the subsequent transfer of ownership to the attorney's wife were proven void, these assets would go to the prior joint owner, not to the cousin's estate, and so the man would have had no claim to them. The circuit court was incorrect, however, in dismissing the man's claims with regard to three certificates of deposit. He does have standing to challenge these because there was no prior joint owner or beneficiary designation for them. As such, if the later designations in favor of the attorney's wife are proven void, then these assets would go to the cousin's estate, of which the man was a beneficiary.

Judge George W. Draper III dissents. He would find the man failed to present evidence demonstrating he has a legally protectable interest in the ownership of his cousin's accounts that did not become part of her probate estate and, therefore, would affirm the entirety of the circuit court's grant of summary judgment to the attorney and his wife.

**Facts:** Betty Reynolds hired attorney Kenneth Nelson in 2000 to assist her with estate planning. At that time, she owned four bank accounts – one with Bank of America and three with the Kansas City Police Credit Union – and three brokerage accounts – one with AARP Scudder and two with American Century. She owned one of the accounts jointly with her friend Norma Lamp (mother of Nelson's wife Sandra) and, as to the other six accounts, either owned them jointly with her friend Erma Louise Baughman or designated Baughman as the accounts' "payable on death" beneficiary. At her request, Nelson drafted certain documents for Reynolds: a beneficiary deed, executed in March 2000, transferring certain real property upon her death to her second

cousin, Eric Williams; and a will, executed in May 2000, naming Williams along with Lamp and Baughman as beneficiaries. In 2006, Reynolds had Nelson draft and she executed two new documents: a durable power of attorney naming Nelson's wife as Reynolds' attorney-in-fact; and a new will replacing Lamp and Baughman with Nelson's wife as Reynolds' beneficiaries and naming Nelson's wife as Reynolds' personal representative. Over the years, Reynolds closed three of her bank accounts and one of her brokerage accounts, made changes to the remaining three accounts and opened four new accounts. In 2006, Reynolds opened a new checking account at United Missouri Bank, originally designating Baughman as the POD beneficiary. In July 2006, Reynolds revoked Baughman's POD designation on the UMB account as well as one credit union account, instead making Nelson's wife a joint owner of both accounts with the right of survivorship. In 2008, Reynolds bought two certificates of deposit at UMB naming Nelson's wife as a joint owner with the right of survivorship. In April 2008, Reynolds also terminated Baughman's joint ownership interests in the two American Century brokerage accounts, instead making Nelson's wife the joint owner of these accounts. In 2009, Reynolds purchased a third CD at UMB, designating Nelson's wife as the POD beneficiary. After Reynolds' death, her cousin Williams sued Nelson and his wife, alleging they violated their fiduciary duties to Reynolds by unduly influencing her to give the wife joint ownership or POD beneficiary rights to most of Reynolds' assets. The circuit court granted summary judgment in favor of the Nelsons, determining that Williams lacked standing (legal ability to sue). Williams appeals.

**AFFIRMED IN PART; VACATED IN PART; REMANDED.**

**Court en banc holds:** (1) Because Williams' substitute brief filed in this Court fails to comply with the requirements of Rule 84.04 because his points relied on fail to identify the trial court ruling he challenges (instead identifying aspects of the court of appeals' decision with which he agrees) – a defect that is neither subtle nor technical – the substitute brief is stricken. Instead, this Court relies on the brief Williams filed in the court of appeals. This Court also considers both the brief the Nelsons filed in response in the court of appeals as well as the substitute brief they filed in this Court. As such, the Nelsons are not prejudiced by the decision regarding Williams' brief.

(2) Because Williams only challenges Reynolds' estate planning decisions about how to title or name beneficiaries for her accounts, he need not demonstrate standing to challenge Reynolds' separate investment decisions about whether to purchase new assets and what source(s) to use to fund those purchases. Williams alleges only that the Nelsons unduly influenced Reynolds' estate planning decisions. The decision whether to use cash in one bank to purchase an investment in another is not an estate planning decision. On the other hand, the decision whether and to whom to give joint ownership of the new asset as well as whether and to whom to designate a POD beneficiary for the new asset is an estate planning decision. The designation of a POD beneficiary is a nonprobate transfer as defined by state law. Under this law, any beneficiary designation or revocation of a beneficiary designation that is procured by fraud, duress or undue influence is void. The creation or transfer of joint ownership, however, is not a nonprobate transfer and, therefore, is governed by a different law. Under this law, the creation of a joint owner's interest is considered a gift and must demonstrate certain elements of intent and capacity to be valid. Fraud or undue influence negates the elements of intent and capacity, however, rendering the gift void. This opinion should not be read to suggest Williams can make a submissible case of undue influence or that any undue influence, in fact, occurred.

(3) Williams has standing to challenge Nelson's wife's ownership of, and the Nelsons' conduct regarding, three of Reynolds' assets – the three UMB CDs. If the Nelsons exerted undue influence to cause Reynolds to make a gift to Nelson's wife of joint ownership interests in UMB CDs 1 and 2, as Williams alleges, then the gifts are void and must be disregarded. Because there was no prior joint owner or POD beneficiary, these CDs would have become part of Reynolds' estate when she died and would have been distributed, in part, to Williams. Likewise, if the Nelsons exerted undue influence to cause Reynolds to designate Nelson's wife as the POD beneficiary for UMB CD 3, as Williams alleges, then that designation is void. Because there was no prior joint owner or POD beneficiary, that CD would have become part of Reynolds' estate when she died and would have been distributed, in part, to Williams. The Nelsons failed to show Williams cannot make a submissible case that the Nelsons unduly influenced Reynolds' decisions to give Nelson's wife joint ownership of two of the UMB CDs and to designate Nelson's wife as the POD beneficiary of the third UMB CD. As such, the circuit court's judgment with respect to Williams' claims regarding these three CDs is vacated, and the case is remanded.

(4) Williams does not have standing, however, to challenge Reynolds' remaining assets. Unlike the three UMB CDs, these other assets – the UMB checking account, the remaining credit union account and the two American Century brokerage accounts – had prior joint owners or beneficiaries before Nelson's wife. Before Reynolds made Nelson's wife a joint owner of these assets, she already had made Baughman a joint owner of them. If valid, Reynolds' subsequent designation of Nelson's wife as joint owner was sufficient to divest Baughman of her prior joint ownership interest. If it were proven that the Nelsons unduly influenced Reynolds to make Nelson's wife the joint owner of these accounts, such that the transfers to Nelson's wife were of no legal effect, then the accounts would have passed to Baughman and not to Reynolds' estate. As such, it is only Baughman – not Williams – who would have standing to challenge Nelson's wife's ownership in these assets. The circuit court properly dismissed Williams' claims regarding these assets, and this portion of its judgment is affirmed.

**Dissenting opinion by Judge Draper:** (1) Although the author agrees Williams' substitute brief fails to comply with the rules regarding briefing, the author would find the arguments it raises are understandable and do not rise to the level necessitating striking the brief. He notes the Nelsons were able to discern those arguments and respond. The author further would find that, because the substitute brief's claims are limited to the three UMB CDs, the Court should not consider any claim to any other accounts. He notes the Nelsons were precluded from responding regarding these other claims in their substitute brief.

(2) The author would find Williams failed to present genuine issues of material fact to overcome the Nelsons' motion for summary judgment. Although Williams presented evidence that there was undue influence in Reynolds' closing of certain accounts, those accounts were all subject to valid joint ownership or POD designations to which Williams admits he had no interest. And Williams failed to present any evidence that the Nelsons subsequently exerted undue influence over Reynolds to open any account, including the three UMB CDs.