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Personal Property: Joint Bank Account Held Not to be Joint Tenancy

Thomas W. Barnes

order to act in official capacity.[9]

The decision of this case is sound, but the dictum, insofar as it implies that a mere division, with a subsequent concurrence by the Chief Justice, can determine the constitutionality of a statute or municipal ordinance when the issue is squarely raised at the proper time, is unfortunate.

GRAHAM P. STANSBURY

PERSONAL PROPERTY: JOINT BANK ACCOUNT HELD NOT TO BE JOINT TENANCY

Crossman v. Naphtali, 33 So.2d 726 (Fla. 1948)

Plaintiff and one John Novak, now deceased, jointly executed an application for membership and for a savings share-account in the Dade Federal Savings and Loan Association of Miami. The application stated that the persons named therein should be considered as joint tenants with right of survivorship in the deposit and not as tenants in common. It expressly provided that either person should have the right to act in all matters related to the membership and share-account whether the other person was living or not, and that payment of redemption or repurchase value of the share-account could be made to the one who should first act. A certificate of membership and savings share-account was issued, but the certificate did not contain the statement that the joint holders were "joint tenants with right of survivorship and not tenants in common." This suit was brought against defendant as administratrix of the estate of deceased to determine the ownership of the deposit. From a decree declaring the deposit to be the absolute and sole property of plaintiff, defendant appealed. HELD, the language of the certificate of membership

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Kingery, 27 Wyo. 299, 261 Pac. 122 (1927).

[9]State *ex rel.* Baria v. Alexander, 158 Miss. 557, 130 So. 754 (1930). The court said: "Where several persons are authorized to perform a public service, or to do an act of a public nature as an organized body, which requires deliberation, they must be convened in a body, in order that they may have the counsel and advice of every member. . . . any action otherwise taken although with the consent of the majority of the members of the body is illegal."

and application for membership, read and construed together, was insufficient to create an estate and ownership of the entire deposit in the survivor after the death of one of the depositors. Decree reversed.

At common law, a joint tenancy is created when two or more persons acquire joint ownership or interest in property in such a manner that there exists a unity of interest, title, time, and possession, coupled with a right of survivorship.[1] By statute, many states,[2] including Florida,[3] have abolished the right of survivorship in a joint tenancy unless the instrument creating the estate provides for such an incident by express language.[4] In the absence of such express language, a tenancy in common is deemed to exist.[5]

Some courts[6] have held that a joint tenancy may exist in a joint bank deposit if it be clearly shown that this was the intent of the co-depositors, and other states[7] have expressly provided by statute for the creation of a joint tenancy by making a joint deposit. Still other courts[8] have held that a joint bank deposit, although containing unity of interest, title, time, and possession along with a provision for right of survivorship, does not contain all the necessary incidents of a joint tenancy. The distinction made in such cases is apparently based on the fact that a joint tenant may alienate only his own interest in jointly-owned property, whereas either depositor, under the terms of the usual joint-deposit agreement, may withdraw all or any portion of the funds in a joint bank account to the exclusion of the other joint depositor. These same courts,[9] however, have permitted a right of survivorship in a joint deposit, even though holding that it could be distinguished from a joint tenancy. There

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[1]Andrews v. Andrews, 155 Fla. 654, 21 So.2d 205 (1944); Johnston v. Johnston, 173 Mo. 91, 73 S. W. 202 (1903); 2 BL. COMM. *180.

[2]Simons v. Bollinger, 154 Ind. 83, 56 N. E. 23 (1900); Withers v. Barnes, 95 Kan. 798, 149 Pac. 691 (1915); Free v. Sandifer, 131 S. C. 232, 126 S. E. 521 (1925).

[3]FLA. STAT. 1941, §689.15.

[4]Lynch v. Murray, 139 F.2d 649 (C. C. A. 5th 1943); Kozacik v. Kozacik, 157 Fla. 597, 26 So.2d 659 (1946).

[5]FLA. STAT. 1941 §689.15.

[6]Ferrell v. Holland, 205 Ark. 523, 169 S. W.2d 643 (1943); Reder v. Reder, 312 Ill. 209, 143 N. E. 418 (1924); Holt v. Bayles, 85 Utah 364, 39 P.2d 715 (1934); *In re* Ivers' Estate, 4 Wash.2d 477, 104 P.2d 467 (1940).

[7]N. Y. BANKING LAW §249(3); CAL. GEN. LAWS, Act 652, §15a (1929).

[8]Ambruster v. Ambruster, 326 Mo. 51, 31 S. W.2d 28 (1930); State v. Gralewski's Estate, 176 Ore. 488, 159 P.2d 211 (1945).

[9]*Ibid.*

are still other courts[10] that have expressly refused to recognize that a joint deposit could constitute a joint tenancy or that such a deposit could contain a valid provision for right of survivorship. The Florida Court, by strong implication,[11] has indicated that it would recognize a joint deposit as being a joint tenancy if the instrument creating the deposit stated in unequivocal language that survivorship was intended, and the federal courts have so construed this Florida decision.[12] The Florida Court, however, has never expressed itself as to what it would consider "unequivocal language."

In the principal case, the Court decided that the application for membership and the certificate of membership should be read and construed together to determine the contract of the parties. Even though the construction of the two instruments, as paraphrased by the Court, expressly stated that there should be a joint tenancy with right of survivorship, the language was still held insufficient to create ownership of the entire deposit by the survivor. It is readily apparent that the Court repudiated the implication of its previous decision[13] to the effect that it would recognize a joint deposit as a joint tenancy with right of survivorship whenever the language was unequivocal, as it is difficult to conceive of a more "unequivocal" expression of the parties' intent than their express statement that there should be a right of survivorship.

Since the Court was not unalterably committed by any previous decision[14] to treat joint deposits as joint tenancies, it is beyond criticism in laying down the principle of refusing to recognize such an estate unless all technical requirements are met. In view of the great importance of joint deposits to so many people, however, the Court might well have specifically stated the circumstances under which it would recognize a right of survivorship in a joint deposit. Evidently, though, the Florida Court, following courts in other jurisdictions,[15] regards the creation of such a special estate as being within the purview of the legislature only.

THOMAS W. BARNES

[10]Portland Natl. Bank v. Brooks, 126 Me. 251, 137 Atl. 641 (1927); McGillivray v. First. Natl. Bank, 56 N. D. 152, 217 N. W. 150 (1927); Burnes v. Nolette, 83 N. H. 489, 144 Atl. 848 (1929).

[11]Cerny v. Cerny, 152 Fla. 333, 11 So.2d 777 (1943).

[12]Lynch v. Murray, 139 F.2d 649 (C. C. A. 5th 1943).

[13]Cerny v. Cerny, 152 Fla. 333, 11 So.2d 777 (1943).

[14]Webster v. St. Petersburg Fed. Sav. & Loan Ass'n, 155 Fla. 412, 20 So.2d 400 (1945); Cerny v. Cerny, 152 Fla. 333, 11 So.2d 777 (1943).

[15]N. Y. BANKING LAW §249(3); CAL. GEN. LAWS, Act 652, §15a (1929).