

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

HENKLE SCHUELER & ASSOCIATES, INC.,	:	APPEAL NO. C-070509
	:	TRIAL NO. A-0300735
Former Plaintiff	:	
	:	<i>JUDGMENT ENTRY.</i>
and	:	
	:	
WARDS CORNER/I-275 RESEARCH CENTER, LLC.,	:'	
Plaintiff-Appellant,	:	
vs.	:	
MARCIA FERTIG,	:	
Intervening Plaintiff-Appellee,		
and		
NEWELL and MARGARET CRANE,		
Defendants.		

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

The issue before us concerns whether a judgment creditor may garnish funds in a joint-and-survivorship bank account, when those funds have been deposited solely by someone other than the judgment debtor. Applying the “realities of the

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

ownership” test, we hold that the answer is no. Therefore, we affirm the trial court’s judgment ordering the clerk of courts to return funds garnished from a joint-and-survivorship bank account that had been solely funded by the non-debtor joint-account owner.

Plaintiff-appellant Wards Corner/I-275 Research Center, L.L.C.,² sued its commercial tenants, defendants Newell and Margaret Crane, for breach of lease. The trial court awarded Wards Corner \$113,075.63. A certificate of judgment was entered for this amount. To satisfy this judgment, Wards Corner sent a notice of garnishment to Provident Bank, which maintained a joint-and-survivorship account in the names of Newell Crane and his mother, intervening plaintiff-appellee, Marcia Fertig.

It is undisputed that this joint-and-survivorship account was originally set up by Mrs. Fertig and her late husband. Following the death of her husband, Mrs. Fertig added her son, Newell Crane, to the account simply for convenience. Crane’s name did not appear on the checks connected to the account, and he never deposited or withdrew any money from the account. Crane did sign a signature card to be added to the account. He did have full withdrawal rights, even though Fertig testified, in her affidavit, that that was not her intention. It is also undisputed that this joint-and-survivorship account was solely funded by Mrs. Fertig—her pension was deposited monthly into this account.

In compliance with the garnishment order, Provident Bank sent \$120,060.73 to the Hamilton County Clerk of Courts. By agreed entry, Mrs. Fertig timely

² Under an agreed entry dated May 16, 2003, Wards Corner, the owner of the property that was the subject of the underlying breach-of-lease action, was substituted for the original plaintiff, Henkle Schueler & Associates, Inc., the property manager of the subject commercial property.

intervened in the proceedings to contest the garnishment of the joint account that she held with her son. The magistrate, applying the “realities-of-ownership” test, found that all the funds in the account belonged solely to Mrs. Fertig and thus were not subject to garnishment to satisfy the judgment against Crane. Wards Corner filed objections, which were overruled by the trial court. Wards Corner now appeals, asserting in a single assignment of error that the trial court erred by adopting the magistrate’s decision in its entirety.

In Ohio, property held by a third party is subject to garnishment to satisfy the debts of a judgment debtor when, at the time of service of the garnishment order, the judgment debtor has a right to or title to the property.³ Thus, a creditor can attach through garnishment only property that the judgment debtor has a legal right to receive.⁴ “[W]here the judgment debtor has no present right to obtain the money or property from the garnishee, then the judgment creditor likewise has no right to the property.”⁵ Accordingly, we must determine whether Newell Crane had a present right to demand payment of the funds from the joint-and-survivorship bank account he maintained with his mother, Mrs. Fertig.

Joint-and-survivorship accounts create both a survivorship interest and a present joint interest in the funds in the account. Because joint-and-survivorship accounts are “frequently utilized without their legal ramifications being fully understood by their creators[,] * * *[the Ohio Supreme Court] has held that the creation of such accounts raises a rebuttable presumption that the parties to the

³ See *Toledo Trust Co. v. Niedzwiecki* (1993), 89 Ohio App.3d 754, 757, 627 N.E.2d 616.

⁴ *Leman v. Fryman*, 1st Dist. No. C-010056, 2002-Ohio-191, at ¶15.

⁵ *Id.*

account share equally in the ownership of the funds on deposit, allowing the presumption to be rebutted by a showing of the ‘realities of ownership.’”⁶

For example in *Union Properties, Inc. v. Cleveland Trust Co.*,⁷ the Ohio Supreme Court held that where a wife could demonstrate that the money in a joint-and-survivorship account was in reality her sole property, then the judgment creditor of her husband could not garnish those funds. The court noted, “[I]n controversies like the present one involving the deposit and arising during the joint lives of the depositors, the form of the deposit should not be treated as conclusive on the subject of joint ownership and the door should be opened to evidence that the deposit was in truth made and maintained on a different basis. In other words, the ‘the realities of ownership’ may be shown.”⁸ In *Union Properties*, the wife had presented evidence that the husband’s name was only on the account because an injury had prevented her from going to the bank.

At the garnishment hearing in this case, Mrs. Fertig presented evidence that she was the sole owner and depositor of the funds in the joint-and-survivorship account at issue. Mrs. Fertig, a woman in her mid-80s, stated that Crane’s name was added to her account after her husband had died and only for the sake of convenience. Further, she stated that her intent was not to give Crane a present interest in her account. This testimony is supported by the fact that Crane’s name was not listed on the checks connected to the account. Finally, it was undisputed that Crane had never withdrawn or deposited any money into this account. Because there was clear and convincing evidence to demonstrate that the reality of ownership

⁶ *In re Estate of Thompson* (1981), 66 Ohio St.2d 433, 436, 423 N.E.2d 90, citing *Vetter v. Hampton* (1978), 54 Ohio St.2d 227, 375 N.E.2d 804; *Union Properties v. Cleveland Trust Co.* (1949), 152 Ohio St. 430, 89 N.E.2d 638.

⁷ *Union Properties*, supra.

⁸ *Id.* at 435.

of the account rested with Mrs. Fertig, we hold that the trial court properly determined that Crane had no present right to those funds at the time that the garnishment was ordered.⁹ Accordingly, Wards Corner, the judgment creditor, had no right to the funds in the joint-and-survivorship account.

Wards Corner, citing *Ingram v. Hocking Valley Bank*,¹⁰ argues that a garnishment is proper if the judgment debtor had the right to withdraw the entire balance of the joint-and-survivorship account at the time of the garnishment, regardless of who had deposited the funds into the account. But this case is inapposite. In *Ingram*, a judgment creditor of the wife had garnished a joint-and-survivorship account the wife maintained with her husband, and the husband had sued the bank for conversion of funds, arguing that the bank had a duty to determine what proportion of a joint account each holder owned under the “realities-of-the-ownership” test. The *Ingram* court held that that was a judicial determination, and thus, the bank was not liable for attaching the funds in the joint-and-survivorship account because the wife had a present right to withdraw them. This case speaks only to the bank’s liability.

Here, Mrs. Fertig is not suing Provident bank for disbursing the funds in response to the garnishment order. Instead, she is merely arguing that Crane, under the realities-of-the-ownership test, did not have a present interest in the funds that had been garnished from the joint account.

Because the trial court properly determined that Mrs. Fertig was the sole owner of the funds in the joint-and-survivorship account, we overrule Wards Corner’s single assignment of error.

⁹ See *Household Finance Corp. v. Black* (July 15, 1983), 5th Dist. No. 2145.

¹⁰ (1997), 125 Ohio App.3d 210, 708 N.E.2d 232.

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Therefore, the judgment of the trial court is affirmed.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., HENDON and CUNNINGHAM, JJ.

To the Clerk:

Enter upon the Journal of the Court on July 30, 2008
per order of the Court _____.
Presiding Judge