IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2005-CA-00580-COA

THE ESTATE OF LADELL BECKLEY, DECEASED: CLARENCE BECKLEY, AS EXECUTOR — **APPELLANT**

v.

JOHN BECKLEY — **APPELLEE**

DATE OF JUDGMENT:	2/22/2005
TRIAL JUDGE:	HON. JASON H. FLOYD, JR.
COURT FROM WHICH APPEALED:	PONTOTOC COUNTY CHANCERY COURT
ATTORNEYS FOR APPELLANT:	RHETT R. RUSSELL D. KIRK THARP
ATTORNEY FOR APPELLEE:	GENE BARTON
NATURE OF THE CASE:	CIVIL - WILLS, TRUSTS, AND ESTATES
TRIAL COURT DISPOSITION:	JOHN BECKLEY ADJUDICATED TO BE THE OWNER OF CERTAIN FUNDS.
DISPOSITION:	AFFIRMED-08/08/2006
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

EN BANC.

ISHEE, J., FOR THE COURT:

¶1. Clarence Beckley, the executor of the estate of Ladell Beckley, appeals from the decision of the Chancery Court of Pontotoc County awarding approximately thirty thousand dollars plus interest to Ladell's brother, John Beckley. Clarence argues that the chancellor erred (1) by finding that the funds passed upon Ladell's death to John as co-titleholder of a previously redeemed certificate of deposit in which the funds were once invested, and (2) by implicitly invalidating the durable power of attorney used by Ladell's nephew, Larry Satterwhite, to redeem the certificate of deposit and implicitly rescinding the redemption transaction where the chancellor never expressly declared the power of attorney to be invalid and never expressly rescinded the redemption transaction.

¶2. We find that the chancellor's fact-findings were supported by substantial evidence and that the chancellor correctly applied the law. Therefore, we affirm.

FACTS

¶3. Ladell Beckley, a native Mississippian, returned to this state in the early nineteen-eighties to commence his retirement. Ladell moved to Pontotoc, Mississippi and lived near his nephew, Larry Satterwhite. In the late nineties, Ladell's health began to fail, though he remained of sound mind. Satterwhite began caring for Ladell by tending to his health needs, providing his transportation, and performing errands for him.

¶4. While away from Mississippi, Ladell had fathered ten children. Ladell also had a younger brother, John Beckley, who lived in Joliet, Illinois at all times relevant to these proceedings. In September 2000, Ladell met with his attorney, Rhett Russell, and executed a will. In the will, Ladell bequeathed one hundred dollars each to two individuals unconcerned with this litigation, and left the residue of his property to five of his children, in equal shares. Ladell had saved approximately seventy thousand dollars which he had accumulated from his efforts during his lifetime. On October 18, 2000, Ladell purchased a certificate of deposit from BancorpSouth bank in the amount of $28,699.79. This certificate of deposit was titled jointly in the name of "Ladell Beckley or John Beckley." Under the heading "Account Ownership," the certificate of deposit indicated that Ladell had requested a joint account with survivorship.

¶5. On March 8, 2001, Ladell purchased another certificate of deposit, this one in the approximate amount of $29,000. He titled this certificate of deposit in the name of himself or Satterwhite. In October 2001, Ladell's health worsened, and Satterwhite moved in with Ladell to provide more continuous care. On October 18, 2001, Ladell bought a third certificate of deposit in the amount of $10,000 and titled it in the name of himself or Satterwhite.

¶6. In January 2002, Ladell's health declined further and he was admitted to a nursing home. On January 8, 2002, Ladell executed a durable power of attorney appointing Satterwhite as his attorney-in-fact. On January 14, 2002, Satterwhite, wielding the power of attorney, withdrew the funds from the certificate of deposit titled to Ladell Beckley or John Beckley and deposited these funds into another certificate of deposit in the name of Larry Satterwhite or John Beckley. On the same day, Satterwhite also withdrew the funds from the two certificates of deposit that he jointly held with Ladell. Satterwhite used a portion of these funds to pay the balance of a loan of Ladell's in the amount of $2,769.52. With the remainder of the funds, Satterwhite purchased two certificates of deposit in the amounts of $27,136.85 and $10,066.30. These certificates of deposit were titled in Satterwhite's name only.

¶7. Ladell's health having improved, he left the nursing home sometime in January or February 2002. Ladell's son, Clarence, visited him during the month of February. On February 4, 2002, Clarence drove Ladell to attorney Russell's office. Russell testified that Ladell was frantic because his money had been taken from the bank without his permission. At Ladell's request, Russell drafted a complaint against Satterwhite for the return of the funds. In the complaint, Ladell alleged that he was the exclusive owner of the certificates of deposit and that the certificates had been titled alternatively in the name of John or Satterwhite "for survivorship purposes only." Ladell alleged that Satterwhite had a fiduciary and confidential relationship with him and had presented him with the durable power of attorney at a time when Ladell could not read or understand the instrument. Ladell alleged that he had been unduly induced by Satterwhite to execute the instrument; in the alternative, Ladell stated that he hereby revoked the power of attorney. Ladell alleged that Satterwhite had withdrawn Ladell's funds from BancorpSouth without his permission and also had taken some of his

personal property. Ladell prayed for a preliminary injunction against Satterwhite's disposition of the funds, replevin of the personal property, an accounting, damages, and costs.

¶8. During this visit with Russell, Ladell also executed a second will. In this will, Ladell devised the residue of his estate in equal shares to his surviving children. On February 5, Ladell returned to Russell's office and signed the complaint. The complaint was filed on February 7, 2002, initiating the instant lawsuit. Ladell passed away on March 1, 2002, and his will was admitted to probate on March 4, 2002. Clarence was named the executor of Ladell's estate.

¶9. In mid-March, Clarence, John, Satterwhite and Russell met at Russell's office to discuss the proper disposition of the funds from the certificates of deposit. They agreed that Satterwhite would withdraw the funds from the certificates of deposit and give them to Russell to be held in escrow pending the outcome of this litigation.[1]

¶10. On March 4, 2002, Clarence filed a motion, in his capacity as Executor of the Estate of Ladell Beckley, requesting that he be substituted as a party/plaintiff. On May 2, 2002, John filed a motion to intervene asserting his interest in the funds from the certificate of deposit that bore his name prior to Satterwhite's redemption of that certificate of deposit. The chancery court granted both of the motions, and a trial was held on November 23-24, 2004.

¶11. On February 24, 2005, the chancellor entered an amended judgment finding that there was a presumption that Satterwhite had exercised undue influence over Ladell. The chancellor also found that the presumption of undue influence was not rebutted. Consequently, the chancellor

[1]Satterwhite testified that they agreed that he would give up the funds in exchange for an agreement to drop criminal charges against him. He further testified that they agreed that he would keep the approximately ten thousand dollar certificate of deposit but would relinquish the funds from the other two certificates of deposit. The estate disputes this agreement and avers that Satterwhite owes the estate the ten thousand dollars. Satterwhite did not pay over the ten thousand dollars in March 2002 and testified that he spent it.

determined that the funds should be put back into the certificates of deposit as they were before Satterwhite used the power of attorney. Furthermore, the chancellor found that there was no evidence that John exercised undue influence. The chancellor determined that if the certificates of deposit remained unchanged on Ladell's death, John, as survivor, was entitled to the funds in his certificates of deposit. Therefore, the chancellor ordered that Russell deliver the proceeds of the October 18, 2000 certificate of deposit ($30,000) to John.

STANDARD OF REVIEW

¶12. On appeals from chancery court, we employ a limited standard of review. *In re Estate of Carter*, 912 So. 2d 138, 143 (¶18) (Miss. 2005) (citing *Miller v. Pannell*, 815 So. 2d 1117, 1119 (¶9) (Miss. 2002)). Our standard of review is indeed deferential, as we recognize that a chancellor, being the only one to hear the testimony of witnesses and observe their demeanor, is in the best position to judge their credibility. *Id.* (citing *Culbreath v. Johnson*, 427 So. 2d 705, 708 (Miss.1983)). Thus, we will not disturb a chancellor's decision when supported by substantial credible evidence, unless the chancellor abused his discretion, was manifestly wrong or clearly erroneous, or applied an erroneous legal standard. *Id.* (citing *Williams v. Williams,* 843 So. 2d 720, 722 (¶10) (Miss. 2003)).

ISSUES AND ANALYSIS

I. Whether the lower court erred in adjudicating funds of Ladell to have passed as of his death by survivorship to John as a co-titleholder of a previously redeemed certificate of deposit in which at one time such funds had been invested.

¶13. Clarence argues that the chancery court erred in finding that the 2000 certificate of deposit vested in John, as survivor, because the certificate of deposit was not a valid negotiable instrument at the time of Ladell's death, as it was redeemed prior to his death. He further argues that the chancery court's finding "ignores the fact that Ladell Beckley proceeded to the bank so as to redeem the certificate of deposit and reinvest the funds in question jointly into his name and the names of

his children." Moreover, citing *Matter of Estate of Holloway*, 515 So. 2d 1217, 1223 (Miss. 1987), Clarence argues that Ladell never completed an inter vivos gift of the funds in question to John, as Ladell neither intended to make the gift, nor relinquished all dominion and control of the funds. According to Clarence, John failed to prove by "clear and satisfactory proof each and every element requisite to constitute a valid *inter vivos* gift."

¶14. First, with regard to Ladell's intent to make an inter vivos gift, we note that the court in *In re Estate of Holloway* only analyzed whether the requirements of an inter vivos gift had been met because the certificates of deposit in that case bore no survivorship language. *Id.* at 1223. The *Holloway* court determined that where a certificate of deposit "bears facial or contractual indication of intended survivorship, this expressed intent will be given effect." *Id.* Furthermore, in *Madden v. Rhodes*, 626 So.2d 608, 616 (Miss. 1993), the court found that "[t]he statutes of Mississippi have now abolished the need to prove 'intent' in determining ownership of joint accounts." When a joint account is created, the intent to give ownership of the account to the person(s) named on the account is automatically presumed. *Id.*

¶15. In the case sub judice, the certificate of deposit purchased by Ladell on October 18, 2000, was titled jointly in the name of "Ladell Beckley or John Beckley." Under the heading "Account Ownership," Ladell indicated that the certificate of deposit was to be jointly owned with survivorship. Given this express indication of survivorship, Clarence's argument that John had the burden of proving that the requirements of an inter vivos gift had been met is without merit. Pursuant to Mississippi law, at Ladell's death, John presumptively held title to the funds in the certificate of deposit that bore his name with survivorship, absent a showing of "forgery, fraud, duress, or an unrebutted presumption of undue influence." *Madden*, 626 So. 2d at 617.

¶16. Clarence also asserts that Ladell intended that the funds in question be transferred to Ladell's children upon his death, as evidenced by the testimony of his children and the provisions of his will. In support of this argument, Clarence cites the testimony of two of Ladell's children, Kay Terri Ellis and Clarence. Ellis testified that she had a conversation with her father during which he stated his desire to leave his children "something." Ellis stated that the conversation took place in 2002, but she could not recall what time of year it was or whether the conversation took place on the phone or in person. Clarence testified he drove his father to the bank on the day that he discovered that Satterwhite had closed his accounts. He further testified that his father's reason for going to the bank was to transfer the funds into his children's names.

¶17. In addressing whether parol evidence may be used to determine Ladell's intent, we turn to the case *In Re Estate of Huddleston*, 755 So. 2d 435, 439 (¶10) (Miss. Ct. App. 1999). In *Huddleston*, this Court addressed whether funds placed by the decedent into a joint checking account and into certificates of deposit passed according to the joint tenant's right of survivorship or whether the funds became part of the decedent's estate. The proponents of the will argued that, although Mississippi Code Annotated section 81-5-63 (Rev. 1996) "expresses the presumption of intent of the maker of a jointly-held banking instrument to vest in the survivor, the statute does not negate previous will provisions which conflict with the banking instrument." *Id.* at 439 (¶7). The proponents of the will further argued that the decedent's history, prior to executing the banking instruments, proved that she intended to divide her money among her children equally.

¶18. In *Huddleston*, this Court followed the general rule that "where a joint tenancy account in a bank is made payable to either depositor or survivor, the account passes to the survivor upon the death of a joint tenant." *Id.* at (¶10) (quoting *Strange v. Strange*, 548 So. 2d 1323, 1327 (Miss. 1989)). The court further stated that "[w]ithout doubt, our law allows competent adults to use such

will substitutes with effect and thereby avoid probate." *Id.* (quoting *Cooper v. Crabb*, 587 So. 2d 236, 239 (Miss. 1991)). Moreover, because of the common sense premises that "resurrecting the mind of the deceased and deciphering its thoughts four years after the fact is an enterprise fraught with hazard and not just because it is pursued by the self-interested," the court determined that parol evidence may not be used to impeach an express survivorship clause. *Id.* at 440 (¶12) (quoting *Cooper*, 587 So. 2d at 241)). Consequently, the *Huddleston* court found that parol evidence was inadmissible to show the decedent's intent and that the funds represented by the banking instruments never became a part of the decedent's estate. *Id.* at 440 (¶13).

¶19. As in *Huddleston*, we decline to use the testimony of the self-interested to decipher the mind of the deceased. We find that the express language of the certificate of deposit is the most reliable evidence of Ladell's intent. Therefore, this issue is without merit.

II. Whether the lower court erred in invalidating the power of attorney obtained by Satterwhite from Ladell and in rescinding the transaction whereby the power of attorney was utilized by Satterwhite to redeem the 2000 certificate of deposit in the face of Ladell as principal under the terms of such power of attorney having neither declared such instrument to be invalid nor rescinded the redemption transaction.

¶20. Under this assignment of error, Clarence does not take issue with the chancery court's finding that Satterwhite obtained the power of attorney from Ladell through undue influence; he admits in his brief to this Court that the chancery court's finding on this issue was correct. Nonetheless, Clarence asserts that the chancery court did not have the authority to void and set aside the power of attorney. Citing *McKinney v. King*, 498 So. 2d 387, 388 (Miss. 1986), Clarence asserts that the power of attorney may have only been set aside by Ladell, as principal, or his estate.

¶21. In *McKinney*, after the decedent was diagnosed with cancer, he executed a will leaving his house to his wife and his daughter from a previous marriage, and he gave his wife use of the house for as long as she resided in it as a widow. *Id.* The decedent also executed a power of attorney in

favor of his wife. *Id.* After obtaining the power of attorney, the wife executed a warranty deed on the house to herself and the decedent as joint tenants with right of survivorship. *Id.* The chancery court determined that a confidential relationship existed between the decedent and his wife; consequently, the court cancelled and set aside the warranty deed. *Id.* The Mississippi Supreme Court affirmed the chancery court's decision. *Id.* at 389.

¶22. In the case at bar, as a result of finding the existence of a confidential relationship and an unrebutted presumption of undue influence, the court invalidated the power of attorney and set aside Satterwhite's redemption of the 2000 certificate of deposit. The court determined that the redemption was only made possible through the use of undue influence in obtaining the power of attorney. Thus, in *McKinney*, as in the case sub judice, when the chancery court found that the confidential relationship was violated, the court cancelled and set aside the transaction that was accomplished by using the power of attorney. We see no reason to depart from the logic of *McKinney*. Therefore, this issue is without merit.

¶23. THE JUDGMENT OF THE CHANCERY COURT OF PONTOTOC COUNTY IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLANT.

KING, C.J., LEE AND MYERS, P.JJ. AND BARNES, J., CONCUR. CHANDLER, J., DISSENTS WITH SEPARATE WRITTEN OPINION, JOINED BY SOUTHWICK, IRVING, GRIFFIS, AND ROBERTS, JJ.

CHANDLER, J., DISSENTING:

¶24. I respectfully dissent, as I would find that the chancellor exceeded his authority in this case in recreating the certificate of deposit. I believe that the result reached by the chancellor thwarted the statutory right of the estate to prosecute Ladell Beckley's lawsuit against Larry Satterwhite for return of the funds. *See* Miss. Code Ann. § 91-7-237 (Rev. 2004). I would reverse the decision of the chancellor and render a judgment in favor of the estate for the approximately thirty thousand

dollars which Satterwhite wrongfully withdrew from the certificate of deposit, plus the accumulated interest.

¶25. As related by the majority, Ladell created the certificate of deposit at issue on October 18, 2000. He deposited $28,699.79 of his life savings in the certificate of deposit and titled the certificate of deposit in the names of himself "or John Beckley." Language on the certificate of deposit expressed that it was a joint account with survivorship, and not owned as tenants in common. In late January or early February 2002, Ladell went to the bank and discovered that on January 14, 2002, Satterwhite had used a power of attorney to withdraw all of the funds from the certificate of deposit. On February 5, 2002, Ladell swore out a complaint against Satterwhite for the return of the funds, averring that he was the exclusive owner of the certificate of deposit and that he had titled the certificate of deposit in John's name "for survivorship purposes only." He claimed that the power of attorney was the product of undue influence by Satterwhite. The complaint was filed on February 7, 2002, commencing the instant action. M.R.C.P. 3(a).

¶26. On March 2, 2002, Ladell died. On June 10, 2002, Clarence Beckley, the executor of Ladell's estate, was substituted as the party-plaintiff in the action. *See* M.R.C.P. 25(a). The estate executor's substitution as the party-plaintiff is addressed by Mississippi Code Annotated section 91-7-237, which states, in pertinent part, "[w]hen either of the parties to any personal action shall die before final judgment, the executor or administrator of such deceased party may prosecute or defend such action, and the court shall render judgment for or against the executor or administrator." Another section, 91-7-233 (Rev. 2004), provides that,

> Executors, administrators, and temporary administrators may commence and prosecute any personal action whatever, at law or in equity, which the testator or intestate might have commenced and prosecuted. They shall also be liable to be sued in any court in any personal action which might have been maintained against the deceased.

¶27. Under these sections, an action to recover personal property is a "personal action" that survives death. *Caine v. Hardy*, 943 F.2d 1406, 1410 (5th Cir. 1991) (citing *Powell v. Buchanan*, 245 Miss. 4, 8, 147 So. 2d 110, 111 (1962)). A cause of action accrues when it comes into existence as an enforceable claim, that is, when the right to sue becomes vested. *McMillan v. Puckett*, 678 So. 2d 652, 654 (1996). Ladell's action against Satterwhite accrued during his lifetime and survived his death. Upon the executor's substitution as party-plaintiff, the executor effectively stepped into the shoes of Ladell in prosecuting the action. Miss. Code Ann. § 91-7-237. Thus, Clarence could recover such damages as Ladell might have recovered had he lived through final judgment.

¶28. I discuss the chancellor's amended judgment. The chancellor found that a confidential relationship had existed between Ladell and Satterwhite, giving rise to a presumption of undue influence. The chancellor found that the presumption of undue influence was unrebutted, a finding which has not been challenged on appeal. Thus, the chancellor found Ladell's claim to be meritorious. Consequently, had Ladell been alive at the time of the final judgment, the appropriate remedy would have been to award him the approximately $30,000 plus interest from Satterwhite.

¶29. However, the chancellor took Ladell's death into account in fashioning the remedy. The chancellor held that, because the power of attorney was invalid, the certificate of deposit continued unchanged. The chancellor equitably recreated the certificate of deposit as of January 14, 2002. The chancellor then held that the certificate of deposit had become vested in John as the surviving joint tenant as of Ladell's death on March 2, 2002.

¶30. It has been stated that the powers of a chancellor are "as broad as equity and justice require." *Hall v. Wood*, 443 So. 2d 834, 842 (Miss. 1983). Nonetheless, those powers are not without limitation, as discussed in *R.N. Turnbow Oil Investments v. McIntosh*, 873 So. 2d 960, 963 (¶13) (Miss. 2004). In *R.N. Turnbow*, a chancellor amended a sixty-eight-year-old decree upon a claim

that the decree was inaccurate. *Id.* at 961 (¶1). The supreme court reversed, holding that the chancellor, though acting in the name of equity, had exceeded his power by overlooking established rules of law governing the time for requesting amendment of a judgment. *Id.* at 963-65 (¶¶15-27). The court stated, "[w]hile a chancellor's remedial powers may be 'marked by flexibility' and 'plasticity,' they are not unbridled powers. Courts of equity have all remedial powers necessary to the particular case, except those that are expressly forbidden by law." *Id.* at 963 (¶14).

¶31. I would find that, in recreating the certificate of deposit, the chancellor exceeded his broad remedial powers. Under section 91-7-237, the estate was entitled to the same remedy due Ladell had he been alive at the time of the judgment. That remedy was the return of the approximately $30,000 plus interest taken by Satterwhite in the exercise of undue influence. When Satterwhite wrongfully withdrew the funds, a cause of action for the return of the funds accrued to Ladell. Ladell was alive at this time and John's right of survivorship was not implicated. The chancellor's award of the funds to John pursuant to his right of survivorship effectively robbed the estate executor of the cause of action that had arisen in Ladell's favor during his lifetime, which Ladell himself commenced on February 7, 2002, and to which the executor succeeded on June 10, 2002 pursuant to section 91-7-237. For this reason, I dissent.

SOUTHWICK, IRVING, GRIFFIS AND ROBERTS, JJ., JOIN THIS OPINION.