

IN THE COURT OF APPEALS 12/29/95

OF THE

STATE OF MISSISSIPPI

NO. 94-CA-00152 COA

**IN THE MATTER OF THE ESTATE OF LEON MYERS,
DECEASED: L.T. MYERS, EXECUTOR OF THE ESTATE
OF LEON MYERS, DECEASED; L.T. MYERS, INDIVIDUALLY APPELLANT**

v.

ALICE MARIE MYERS APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. RAY H. MONTGOMERY

COURT FROM WHICH APPEALED: MADISON COUNTY CHANCERY COURT

ATTORNEY(S) FOR APPELLANT(S): JAMES H. HERRING

ATTORNEY(S) FOR APPELLEE(S): BENTLEY E. CONNER

NATURE OF THE CASE: DOMESTIC RELATIONS/WILLS - PROCEEDS OF TWO (2) BANK
ACCOUNTS

TRIAL COURT DISPOSITION: BOTH ACCOUNTS TERMED IRA ACCOUNTS; FORMER
WIFE AWARDED PROCEEDS AS BENEFICIARY OF BOTH ACCOUNTS

BEFORE THOMAS, P.J., COLEMAN, AND PAYNE, JJ.

PAYNE, J., FOR THE COURT:

INTRODUCTION

This case involves a cornucopia of legal subjects including domestic relations, wills, contracts, and banking. The controversy concerns the ownership of two bank accounts of the decedent. We affirm the chancery court's ruling regarding the proceeds of the decedent's first Individual Retirement Account (IRA) bank account. However, we reverse the court's ruling regarding the proceeds of the decedent's second bank account.

FACTS

Leon Myers and Alice Myers were married in October, 1974. One month before, in September, 1974, they executed an ante-nuptial contract, which stated that: (1) Alice would have control of and title to all property that she owned then or would later acquire and could dispose of any or all by will, in any way she desired; (2) Leon would have the same rights in his property as Alice had, or would have, regarding hers; and (3) as to all properties acquired after [during] marriage in any joint venture, these would be governed not by the ante-nuptial contract but by the laws of descent and distribution or by will.

Leon executed his last will and testament in March, 1986. His brother, L. T. Myers, was the executor and the sole beneficiary of his will. The will stated that Alice should receive no part of his estate and referenced the ante-nuptial agreement whereby neither would share in the other's estate at the death of either party.

In April 1986, Leon opened an individual retirement account (IRA) with a beginning balance of \$2,000.00 at Citizens Bank & Trust Company under account number 1164004156. He named Alice as the beneficiary. At trial, this account had a balance of \$830.44.

Leon and Alice were granted a divorce based on irreconcilable differences in June, 1988. The divorce included a property rights settlement agreement in which the parties acknowledged that they owned no jointly-owned property. It also stated that any separately-owned property not mentioned would become the exclusive property of each individual party.

Leon retired from his employment in July, 1988. In August 1988, Leon directed Trustmark National Bank to transfer \$75,000.00 to Citizens. These funds were employer pension retirement proceeds that the deposit receipt indicated were an IRA rollover with an account number of 1164014156. No additional IRA contract was executed between Leon and Citizens. At trial, this account had a balance of \$42,024.27.

Leon died in April, 1992. L.T. Myers, as the executor of the estate and sole beneficiary under the will, petitioned the Madison County Chancery Court to determine the ownership of the account funds. The court ruled that Alice owned the funds of both accounts, despite the language contained in the ante-nuptial agreement, the property settlement agreement of the divorce, and Leon's will. The court denied the estate's motion for rehearing. L.T. Myers and the estate appeal that decision.

ARGUMENT

I. WAS THE TRIAL COURT CORRECT IN FINDING THAT ALICE WAS THE THIRD PARTY BENEFICIARY OF THE IRA CONTRACT AND THEREFORE THE OWNER OF THE FUNDS OF BOTH ACCOUNTS?

The estate argues that the two accounts are part of the estate since Alice renounced her present and future interest in both accounts by signing the ante-nuptial agreement and the property settlement agreement of the divorce. Additionally, Leon's will states that Alice, his wife when he executed his will, would take nothing from his estate at his death, again showing his clear intentions regarding the proceeds of his estate. Alternatively, the estate contends that the second account is not a part of the initial IRA account created in April 1986. The contract creating the initial IRA refers only to account number 1164004156 and not to any other account. Therefore, the second account

should not be controlled by the original IRA contract. The tax implications arising from a decision that Alice is not the beneficiary of the funds in the second account is a matter to be resolved between the estate and the Internal Revenue Service. Finally, the estate agrees that Leon intended to create the initial IRA with Alice as beneficiary. However, she later renounced any future interest in that account through the property settlement agreement. Moreover, Leon had no intention of Alice becoming the beneficiary of the \$75,000.00 deposit into the second, separate account since he believed that she had no interest in the initial IRA account.

Alice's arguments are as follows: (1) Leon consciously failed to change the beneficiary of his IRA account; (2) Leon had only one custodial IRA agreement with Citizens, although he made two separate deposits; (3) both accounts must be governed by the custodial agreement of the initial IRA account, since only then would the \$75,000.00 rollover deposit be treated as an IRA and be afforded the proper tax advantages--therefore, no new custodial agreement was executed when Leon made the second deposit; (4) Alice had no interest in either account that was affected by either the ante-nuptial agreement or the property settlement agreement since she had no present possessory interest in either account as a beneficiary--she had only a future contingent interest based upon Leon's death and did not transfer this interest by executing the agreements; and (5) Alice believes that the contract between Leon and Citizens was not affected by any agreement or act based on marriage, divorce, or the husband-wife relationship. Alice contends that the estate should have no interest in any of the funds since beneficial interests created by contract do not pass through an estate. She also asks that the estate be subject to the fifteen percent statutory penalty under section 11-3-23, if the lower court decision is affirmed.

THE FIRST ACCOUNT

Mississippi statutory law forms the basis for establishing a bank account payable at the depositor's death. Miss. Code Ann. § 81-5-62(a) (1972). A bank account may be opened by any person with directions to make it payable on the death of that person to the named beneficiary or beneficiaries. *Id.* This banking practice also includes an individual retirement account (IRA), which the Internal

Revenue Service further affords special tax treatment. An individual retirement account, upon the death of the depositor, does not become an asset of the decedent's estate, but passes to the named beneficiary or beneficiaries. 31 Am. Jur. 2d *Executors and Administrators* § 502 (1989). "An IRA is a trust or custodial account created for the exclusive benefit of an individual or his [or her] beneficiaries, and is not a trust created by will or a trust to be entirely administered as part of the estate." *Id.*; see also 60A Am. Jur. 2d *Pensions and Retirement Funds* §§ 42-44 (1988).

Although Mississippi has yet to decide this exact issue, courts of other jurisdictions have a wide spectrum of opinion regarding the effect of later agreements, such as a divorce property settlement or a will, upon the interest of an unintended beneficiary to proceeds of a decedent's IRA account. Although the opinions are fact-driven, some courts take the position that the named beneficiary prevails. *Estate of Bruce v. Bruce*, 877 P.2d 999, 1002 (Mont. 1994) (court held that property settlement agreement, that mentioned two IRA accounts and that gave title to husband, did not affect ex-wife's inchoate interest in the IRA for which she had been *named beneficiary while married* and prior to property settlement agreement); *Estate of Bowden v. Aldridge*, 595 A.2d 396, 397-98 (D.C. 1991) (court held that divorce property settlement agreement, which made reference to IRAs but did not include a waiver of any contractual expectancy interests of ex-wife as beneficiary of life insurance and IRA proceeds, did not divest ex-wife of her interest as designated beneficiary);

Graves v. Summit Bank, 541 N.E.2d 974, 978 (Ind. 1989) (court held that ex-wife, who at the time of the property settlement agreement had only an expectancy interest in the IRA as beneficiary, was entitled to decedent's IRA proceeds, despite the awarding of the IRA to the husband/decedent by the property settlement agreement itself); *Sowell v. Teacher's Retirement Sys.*, 693 P.2d 1222, 1224-25 (Mont. 1985) (court held that provision of divorce property settlement agreement containing general relinquishment of property rights did not divest ex-wife's interest in decedent's retirement account proceeds where the beneficiary designation of ex-wife was never changed).

Other courts have allowed a named beneficiary to be defeated. *Estate of Morse*, 568 N.Y.S.2d 689, 691-92 (N.Y. 1991) (court held that, although beneficiary designation had not been changed under the IRA guidelines, decedent's IRA proceeds should be distributed according to his will, which unmistakably identified each account by title, number, and custodian name, and which sufficiently established his intent); *Johnson v. Johnson*, 746 P.2d 1061, 1062-63 (Idaho 1987) (court held that ex-wife waived and relinquished her right as beneficiary to decedent's IRA since the property settlement agreement stated that the IRA would be awarded to the husband/decedent free and clear of any claims by the ex-wife).

In the present case, we believe the IRA that Leon began in April, 1986, naming his wife, Alice, as beneficiary, was a valid IRA account. At Leon's death, the proceeds properly passed to Alice, who at that time was Leon's ex-wife. Despite the divorce property settlement agreement and Leon's will, indicating Leon's intent for Alice not to share in any asset of his estate, Leon failed to change the beneficiary of this IRA. The property settlement agreement, subsequent to the opening of the IRA, does not negate the beneficiary designation on this IRA account. As a result, Alice is the proper, although unintended, beneficiary of this valid IRA account. Leon took affirmative action to name Alice beneficiary of the IRA account when he first opened it and had complete control to change the beneficiary designation at any time. He did nothing to change that designation. The portion of the trial court's final judgment awarding Alice the proceeds of Leon's IRA account is therefore affirmed.

THE SECOND ACCOUNT

The second account is a horse of a different color. A bank account, in the name of a single individual, with no designated beneficiary passes to the owner's estate upon death. 9 C.J.S. *Banks and Banking* § 1004 (1938). The bank has an obligation to see that payment of the deposit of a deceased depositor is made to the legal representative or estate. *Id.*

In the present case, Leon agreed to a transfer of his retirement proceeds amounting to \$75,000.00 from Trustmark to Citizens in August 1988. Citizens placed this amount in a separately-numbered, verifiable account having a number different, by only one digit, from his original IRA account. We do not know why the bank failed to prepare a contract for the 1988 account. It may have been for its own convenience or based on normal operating procedures. The bank simply chose to incorporate this new account under the same contract as Leon's original IRA account. However, the bank was in no position to unilaterally determine that this second account should also be governed by the same contractual terms as the 1986 IRA account agreement it had with Leon. The bank simply was not at liberty to decide for Leon that the second account would also be bound by the terms of the IRA account, and more particularly by the IRA contract's beneficiary designation. This result becomes even clearer when coupled with the fact that Leon and Alice, the beneficiary of the IRA account, were divorced prior to the opening of the 1988 account. It is irrelevant whether or not Leon knew the bank had made these determinations for him and failed to act, or whether Leon thought that the prior ante-nuptial agreement, property settlement agreement, and will were effective in preventing Alice from benefitting from any account proceeds upon his death.

Citizens' representative James Chandler testified that normally the bank would set up an IRA account under one contract and that, in this case, the bank gave Leon's second deposit of \$75,000 an account number different than the first account number. We feel that this procedure improperly implied Leon's intent regarding a beneficiary as to the second account and that Alice would be that beneficiary. Our result is even more pronounced by the fact that, when the second account was opened, Alice was no longer Leon's wife as she was when the 1986 IRA was opened. Citizens knew that Alice was the beneficiary of the IRA account and knew, after the second account had been opened, that Leon had no intention of carrying over the named beneficiary of the IRA to the second account. It knew, after the second account had been opened, that Leon had no intention of allowing Alice to benefit from the proceeds of the second account. At the opening of the second account, Citizens alone decided that a new contract, naming the same or a completely new beneficiary, for that second account was unnecessary.

We hold that the terms of the contract of the IRA account that Leon opened in 1986 did not control the second account that he opened in 1988. The bank indirectly took action to name Alice as beneficiary of the second account. However, Leon took no affirmative action to name Alice, or anyone else, as beneficiary of that account. Since the second account failed to name a beneficiary, the proceeds should have properly passed to Leon's estate upon his death. Therefore, the trial court's final judgment awarding Alice the proceeds of the second account is reversed and rendered. We do not reach the issue of whether the second account was or should have been considered another IRA account, nor do we decide any tax implications of how it should be treated. The issue of tax consequences regarding the account's characterization is a matter to be resolved between the estate and the Internal Revenue Service.

We do not assess any statutory penalty on the portion of the judgment that we affirm. Mississippi law mandates the application of a statutory penalty, when the requisites are met, only to unconditional affirmances. *Powell v. Powell*, 644 So. 2d 269, 277-78 (Miss. 1994) (citing *Old Sec. Casualty Ins. Co. v. Clemmer*, 458 So. 2d 732, 733 (Miss. 1984)); Miss. Code Ann. § 11-3-23 (1972). Section 11-3-23 does not apply because this Court's affirmance is not unconditional.

THE JUDGMENT OF THE MADISON COUNTY CHANCERY COURT IS AFFIRMED IN PART AND REVERSED AND RENDERED IN PART. COSTS OF THIS APPEAL ARE TAXED TO THE APPELLANT AND APPELLEE IN EQUAL SHARES.

FRAISER, C.J., BRIDGES AND THOMAS, P.J.J., BARBER, COLEMAN, DIAZ, KING, McMILLIN, AND SOUTHWICK, J.J., CONCUR.