

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
SAN ANGELO DIVISION

IN RE:	§	
	§	
JAY LESLIE BUTTS AND	§	CASE NO. 99-60056-7
DONNA SUE BUTTS,	§	
	§	
Debtors.	§	
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HARVEY MORTON, TRUSTEE,	§	
	§	
Plaintiff	§	
vs.	§	ADVERSARY NO. 00-6001
	§	
BANK OF AMERICA, N.A.	§	
	§	
Defendant.	§	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Findings of Fact

1. The Chapter 7 Trustee, Harvey Morton, initiated this adversary proceeding by filing his complaint contending that the bankruptcy estate of Jay Leslie Butts and Donna Sue Butts (the Debtors) is entitled to Donna Sue Butts's one-third share of her deceased father's estate. At issue is a checking account, the value of which is unknown, and a certificate of deposit valued at approximately \$12,900.00, both of which are held by Bank of America. Donna Sue Butts's sister, Mary Churchwell, appearing *pro se*, disputes that the Trustee is entitled to any share of the checking account or CD, contending, among other things, that Donna Sue Butts and Patricia Jones, her other sister, mismanaged and squandered her father's affairs and should not receive any portion of their inheritance. Bank of America responded to the original complaint by filing its action in the nature of an interpleader, asserting that there are multiple claims against the funds represented by the checking account and the certificate of deposit and requests attorney's

fees under § 37.009 of the Texas Civil Practice and Remedies Code.

2. Gilbert C. Marriott died on August 4, 1994. Mr. Marriott's wife, Hallie A. Marriott, predeceased him. Mr. Marriott left a will stating as follows:

Last Will and Testament

Of

Gilbert C. Marriott

I, Gilbert Marriott, of Versailles, Missouri, presently on active duty in the United States Air Force and stationed at Kelly Air Force Base, Texas, being of sound and disposing mind, memory, and understanding, do hereby make, publish and declare this to be my last will and testament, hereby expressly revoking any and all former wills and codicils by me at any time heretofore made or published.

FIRST: It is my desire, and I hereby direct, that my executrix hereinafter named pay off and discharge all of my just debts as soon after my decease as may be practicable.

SECOND: All the rest, residue and remainder of my estate of every kind and description, real, personal and mixed, howsoever and wheresoever the same may be situated, now owned or that which may hereafter be acquired by me, I give, devise and bequeath unto my beloved wife, Hallie A. Marriott, absolutely and in fee simple.

THIRD: In the event my wife named herein should predecease me or we should perish in a common disaster, then all the rest, residue and remainder of my estate of every kind and description, real, personal and mixed, howsoever and wheresoever the same may be situated, now owned or that which may hereafter be acquired by me, I give, devise and bequeath unto my beloved children, Mary Ann Marriott, Patricia Lynn Marriott, and Donna Sue Marriott, share and share alike.

FOURTH: In the event my wife named herein should predecease me or we should perish in a common disaster, then I hereby appoint my sister-in-law, Margaret B. Reynolds, 607 S. High, California, Missouri, to be guardian of the persons and estates of my minor children after my death, and I direct that she shall not be required to give bond for the management of the estates devised to such children by this will.

FIFTH: I hereby nominate, constitute, and appoint my wife, Hallie A. Marriott, Executrix of this my last will and testament; in the event of her death or inability to act I appoint my sister-in-law, Margaret B. Reynolds, Alternate Executrix of this my last will and testament. I direct that no bond be required of the executrices herein appointed for the faithful performance of their duties as such by any court of any jurisdiction, and that they shall have power to sell any property of my estate without the order of any court of any jurisdiction.

Trustee's Exh. 3.

3. Gilbert C. Marriott's will was signed by the testator and the attesting witnesses on February 12, 1959. *Id.*

4. The children referenced in Mr. Marriott's will, Mary Ann Marriott, Patricia Lynn Marriott, and Donna Sue Marriott, are now, as a result of marriage, Mary Churchwell, Patricia Jones, and Donna Sue Butts, respectively.

5. Gilbert C. Marriott's estate includes, as is relevant here, (a) a checking account at Bank of America (Account #477-212-1); (b) a certificate of deposit (CD) deposited at Bank of America; and (c) a 1984 Chevrolet Caprice automobile.

6. No evidence was offered regarding the amount on deposit in the checking account. Trustee's counsel stated in argument that he understood there was approximately \$900.00 in the account. The CD has a value of approximately \$12,900.00. The 1984 Chevrolet Caprice was described as being of "negligible value", and the Trustee's counsel stated at trial that the Trustee asserts no claim to the car.

7. An unsigned signature card for the checking account dated 8/8/94 lists Gilbert Marriott as the depositor of the account, identifies the account ownership as "Individual/Sole Proprietor", states "TWO SIGNATURES REQUIRED", and reflects that the two required signatures must come from Mary Churchwell, Pat Jones, and Donna Butts. Trustee's Exh. 1-A, Page 1 of 2. A second signature card was introduced into evidence, which was signed by Gilbert Marriott as depositor and states "TWO SIG REQ", and indicates the signees must come from Gilbert Marriott, Patricia L. Jones, and Donna Butts. Trustee's Exh. 1-A, Page 2 of 2. Neither card specifies a right of survivorship.

8. The CD was deposited in the amount of \$10,000.00 and is made payable to "Gilbert Marriott or Donna Butts or Pat Jones or Mary Churchwell". Trustee's Exh. B, Page 1 of 1. The face of the CD also recites "THREE SIGNATURES REQUIRED". *Id.* The signature card for the CD specifies the ownership as "joint-no survivorship" and is otherwise consistent with the

face of the CD, although the signature card itself is not signed. Trustee's Exh. C, Page 1 of 1.

9. On December 5, 1997, an application to probate the will and to issue letters testamentary was filed by Patricia Jones, Mary Churchwell, and Donna Sue Butts.

10. As of the date of the hearing on this matter, no executor or administrator has been appointed as the three sisters have been unable to agree on an executor or administrator.

11. The Debtors filed this Chapter 7 case on January 27, 1999. They listed the CD, the checking account, and the automobile on their schedules as non-exempt assets.

12. The Debtor, Donna Sue Butts, died on March 9, 1999, and is survived by her husband and Co-Debtor, Jay Leslie Butts.

13. Funeral expenses of \$2,651.00 incurred upon Mr. Marriott's death have not been paid. The Debtors scheduled the funeral expenses as an unsecured non-priority claim.

14. Mary Churchwell contends \$1,980.00 in ad valorem taxes are owing on Mr. Marriott's home; the Debtor, Mr. Butts, and Patricia Jones assert the taxes have been paid. There was no evidence adduced at trial, or otherwise, that indicates Mr. Marriott's estate has any other expenses or debts outstanding.

15. If appropriate, these findings of fact shall be considered conclusions of law.

Conclusions of Law

16. This court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding. 28 U.S.C. § 157(b)(2)(A) and (E); *see also In re Silva*, 185 F.3d 996 (9th Cir. 1999, and *In the Matter of Querner*, 7 F.3d 1199 (5th Cir. 1993).

17. It is undisputed that the entire proceeds of both the checking account and the CD pass

through Mr. Marriott's estate. *See* Trustee's proposed pretrial order; *see also* Trustee's Exh. 1.¹

18. Since Mr. Marriott's wife, Harriet A. Marriott, predeceased him and, pursuant to paragraph three of Mr. Marriott's Last Will and Testament, Mary Churchwell, Patricia Jones, and Donna Sue Butts each inherit an equal undivided one-third (1/3) interest in Mr. Marriott's estate.

19. The Trustee, as successor to Donna Sue Butts, is entitled to a one-third distribution from Gilbert Marriott's estate. It is well settled under Texas law, however, that those who take under a lawful will take subject to payment of the debts of the testator. Tex. Prob. Code Ann. § 37 (Vernon 2000); *see also Morris v. Ratliff*, 291 S.W.2d 418 (Tex. Civ. App.— Dallas 1956, ref. n.r.e.) (devisees take subject to the lawful administration of the estate); *Edwards v. State*, 162 Tex. Crim. 390, 286 S.W.2d 157 (1955) (upon death of a decedent, all of the estate immediately vested in legatees or devisees under the will, subject to payment of debts and except such as might be exempt by law); *O'Connor v. City of Dallas*, 337 S.W.2d 741 (Tex. Civ. App.— Texarkana 1960, error dismissed) (will being valid, title to property vested immediately in devisee, subject to debts of estate); *Woodward v. Jaster*, 933 S.W.2d 777 (Tex. App. — Austin 1996, rehearing overruled) (until administrator pays all debts owed by estate and distributes estate property, beneficiaries do not actually hold legal title to devised property).

20. All expenses of Gilbert Marriott's estate have not been satisfied as evidenced by the outstanding funeral bill of \$2,651.00. If ad valorem taxes are still owing against Mr. Marriott's home, such unpaid taxes would create a lien against the home.

¹With respect to the CD, the evidence is somewhat inconclusive regarding who deposited the funds for the CD. As noted in the court's findings of fact, it is a joint account with no rights of survivorship. As set forth in the Trustee's proposed pretrial order, the basic premise of the Trustee's position in this case is that the bankruptcy estate is entitled to Donna Sue Butt's one-third share of the CD (and the checking account proceeds). The court therefore infers that the CD was established with Mr. Marriott's money and, given no right of survivorship, it must pass through his estate. *See Stauffer v. Henderson*, 801 S.W.2d 858 (Tex. 1990); *Magee v. Westmoreland*, 693 S.W.2d 612 (Tex.App.—San Antonio 1985, writ ref'd n.r.e.); *Chopin v. Interfirst Bank Dallas N.A.*, 694 S.W.2d 79 (Tex.App.—Dallas 1985, writ ref'd n.r.e.).

21. The Bank of America will be instructed to disburse to the Trustee one-third of the remaining proceeds derived from the CD and the checking account after deducting \$3,500.00 from the total proceeds of both. The \$3,500.00 is withheld to cover the funeral expenses and other expenses, if any, of Mr. Marriott's probate estate. The Trustee shall retain all rights to the bankruptcy estate's one-third interest in the \$3,500.00 to the extent such amount is not used to satisfy expenses of Mr. Marriott's probate estate.

22. There is no evidence of the present maturity of the CD or whether a penalty would be charged for partially withdrawing the CD proceeds prior to maturity. If there are restrictions or a penalty for distributing a portion of the CD proceeds prior to maturity, the Bank and the Trustee are instructed to attempt to resolve any such issues. If unsuccessful, either party may raise such issues with the court.

23. Mary Churchwell contends her sisters, Patricia Jones and Donna Sue Butts, spent approximately \$50,000.00 of Mr. Marriott's money prior to his death through use of a wrongly obtained power of attorney. This claim is not relevant to the issue before the court.

24. Bank of America made no appearance at trial and thus presented no evidence regarding attorney's fees. Its request for attorney's fees is, therefore, denied.

25. If appropriate, these conclusions of law shall be findings of fact.

Signed January 31, 2001.

Robert L. Jones
UNITED STATES BANKRUPTCY JUDGE