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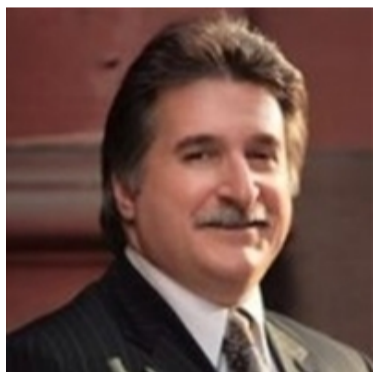
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# Joint bank account, outdated will increase potential for estate fight



A recent estate dispute involving a joint bank account dating back more than 25 years underscores the importance of reviewing and updating your will regularly and making your intentions clear, says Toronto-area estates litigator [Charles Ticker](#).

In [Swiderski v. Walsh](#), 2015 ONSC 3443 (CanLII), siblings Richard Swiderski and Carol Walsh were at odds over the intention of their late mother Stella Swiderski's will.

Created in 1984, Stella Swiderski's will named Walsh as executor and left the residue of her estate to her issue alive at her death equally. However, Stella Swiderski's most significant assets were funds held in two bank accounts totalling approximately \$160,000 — accounts that were held jointly by Stella Swiderski and Walsh. When she died in 2013, the account funds became Walsh's property by virtue of survivorship.

Richard Swiderski alleged that it was his mother's intention that he and his sister be treated equally and she could not have intended for the bank accounts to pass outside the estate, while Walsh submitted that her mother carefully arranged her affairs and there was no reason to interfere with her manifest intention. The court noted the siblings had been estranged for the last decade or so and they did not speak to each other.

In dismissing Swiderski's application, Ontario Superior Court Justice Helen Rady stated that Walsh had demonstrated, on a balance of probabilities, that there was no resulting trust in favour of the estate.

The dispute presents some interesting issues, says Ticker, who did not act on the case and makes his comments generally.

"The lessons learned are that if you are a testator or person making an estate plan, keep your will up to date and be very clear and careful with joint bank accounts," he tells [AdvocateDaily.com](#). "If you're a lawyer taking will instructions, you really need to drill down and get at the testator's intention with respect to joint assets."

Ticker points to the 2007 Supreme Court of Canada decision in [Pecore v. Pecore](#), [2007] 1 SCR 795, 2007 SCC 17 (CanLII). "The court held where you have an adult child and parent on joint bank account, there is a presumption — if all of the money is the parent's — those funds are being held in trust for the beneficiaries of the estate. However, that presumption is rebuttable," he says.

In determining Stella Swiderski's intention, the court looked at whether she treated her children equally in other areas.

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“The judge looked at the will that was prepared in 1984, and Stella Swiderski named her daughter as the executor and she named her son-in-law as the alternate executor,” he says. “The fact that she named her daughter and not her son as the executor, and gave her daughter broad discretion with respect to treatment of the estate, in the court’s view, militated against the conclusion that she intended to treat her children equally.” he says. However, according to Ticker, another judge may have decided the case differently based on the same facts.

Ticker says in his experience joint bank accounts increase the potential for estate fights if the intentions are not clear and people have to second guess what the testator wanted.

“I think what the case really points out is that where a lawyer is taking instructions for a will, one of the things he has to ask about is what assets the testator has and if there are any joint accounts,” he says. “When I used to draft wills, I would get the client to sign a separate document as a declaration of intention as to what they wanted to happen with that joint account. Is it a gift? Is it going to go by right of survivorship? Or is it deemed to be held in trust for the estate?”

Ticker says many of these disputes could be avoided if people make their intentions clear to their family and their lawyer, in writing. This case also underscores the necessity to review and update your wills.

"Here Stella Swiderski made a significant change to the way her assets were being held subsequent to the making of her will — without updating the will. As a result, it led to this dispute," he says. "An out-of-date estate plan basically increases the potential for an estate fight."

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