

**ARKANSAS COURT OF APPEALS**

DIVISION II

No. CA10-859

THRONA MARIE TARKINGTON  
APPELLANT

V.

WANDA M. RIDDLE and RONALD W.  
RIDDLE

APPELLEES

**Opinion Delivered** MARCH 2, 2011

APPEAL FROM THE FAULKNER  
COUNTY CIRCUIT COURT  
[NO. CV-2008-452]

HONORABLE MICHAEL A.  
MAGGIO, JUDGE

REVERSED AND REMANDED

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**JOSEPHINE LINKER HART, Judge**

The underlying complaint in this lawsuit was brought by Throna Marie Tarkington, appellant, against her granddaughter, appellee Wanda M. Riddle, for breach of fiduciary duty and demand for an accounting.<sup>1</sup> According to the complaint, Tarkington asserted that she entered into a confidential relationship with Riddle and relied on Riddle to act as a fiduciary to handle her personal and household-management costs and her banking affairs. She further asserted that Riddle “fraudulently converted” for her own use around \$100,000 in a First Service Bank account,<sup>2</sup> around \$20,000 in a First Security Bank account, and various other property.

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<sup>1</sup>Ms. Tarkington died following the filing of her complaint, and the circuit court substituted special administrator Dion Reagan as plaintiff. We also note that Ronald W. Riddle was dismissed from the cause of action without objection.

<sup>2</sup>Though the complaint actually states that this account was a First Security Bank account, the exhibits show otherwise.

At trial, following the close of all the evidence, the circuit court granted Riddle's motion for a directed verdict, concluding that Tarkington and Riddle were joint owners of the accounts, as the accounts were joint with the right of survivorship. The court later entered an order stating that after testimony had concluded, Riddle moved for a directed verdict "on the basis that as a matter of law, Wanda Riddle was a co-owner of the bank accounts and all checks written were as a matter of law not a breach of any fiduciary duty" and further stating that all claims against Riddle were also dismissed with prejudice. On appeal, Tarkington contends that the circuit court erred on this question of law.<sup>3</sup> We review questions of law de novo. *Williams v. Davis*, 2009 Ark. App. 850, 373 S.W.3d 381. We reverse and remand the circuit court's decision for it to again consider Tarkington's claim, as the court in fact committed error.

We need only briefly discuss the testimony. At the hearing, Riddle testified that after Tarkington's husband, Riddle's grandfather, died, Tarkington resided with her from January to November 2007. Riddle testified that during that time she removed funds from two accounts, the First Security Bank account and the First Service Bank account. She asserted that her name was on both accounts. Documentary evidence submitted by Riddle indicated Riddle, Tarkington, and Tarkington's deceased husband were named as account holders on the First Security Bank account and that the account was joint with the right of survivorship. Curiously, the First Service Bank account document listed only Tarkington and her deceased

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<sup>3</sup>We also note that Riddle appears to raise two separate points in her own brief. We do not address them, as there was no cross-appeal.

husband as account owners, though Tarkington signed the document, acknowledging that she agreed to the terms of the account agreement. A witness from First Service Bank, however, testified that the account was joint with the right of survivorship between Tarkington, her deceased husband, and Riddle.

The circuit court granted Riddle's motion for a directed verdict, concluding that Riddle was a joint owner of the accounts with the right of survivorship and, solely on that basis, dismissed Tarkington's claim for breach of fiduciary duty and demand for an accounting. Though not cited by the circuit court, presumably the court's decision was based on statutory law. The relevant statute provides that the "designation of ownership interest contained in account documents shall be conclusive evidence in any action or proceeding involving the deposit account of the intention of all depositors to vest title to the deposit account in the manner specified in the account documents." Ark. Code Ann. § 23-47-204(b)(3) (Repl. 2000).

Here, however, Tarkington alleged fraud. When there is an allegation of fraud, the statute is not conclusive. *Williams, supra*. Even if both accounts were joint accounts with the right of survivorship, the statute does not absolutely bar the imposition of a constructive trust on the proceeds of a joint account with the right of survivorship. *Id.* A constructive trust arises in favor of someone entitled to a beneficial interest against one who secured legal title either by an intentional false oral promise to hold the title for a specified purpose, or by violation of a confidential or fiduciary duty, or is guilty of any other unconscionable conduct that amounts to a constructive fraud. *Id.* Further, even though one has a right to withdraw funds

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from a joint bank account, a joint tenant may not, by withdrawing funds in a joint tenancy, acquire ownership to the exclusion of the other joint tenant. *Monk v. Griffin*, 92 Ark. App. 320, 213 S.W.3d 651 (2005). When one withdraws in excess of his moiety, he is liable to the other joint tenant for the excess withdrawn. *Id.*

We hold that the circuit court erred in granting a directed verdict on the basis that Riddle was a joint owner of the bank accounts with the right of survivorship. Here, Tarkington alleged that she and Riddle were in a fiduciary relationship and that Riddle fraudulently converted to her own use the bank-account funds. Given Tarkington's allegations, the statute is not conclusive. Accordingly, we reverse and remand.

Reversed and remanded.

WYNNE and BROWN, JJ., agree.