

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 8, 2005

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2004AP1106

Cir. Ct. No. 1999PR14

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**IN RE THE ESTATE OF JUNE ANN CHRISTOPHERSON,
DECEASED:**

**ESTATE OF MAE NEUGART AND CHARLES NEUGART
PERSONAL REPRESENTATIVE,**

APPELLANTS-CROSS-RESPONDENTS,

v.

**LORI BELL, PAULINE DEVAULT, JOAN JAMESON,
MIKE KOSOBUD AND SUSAN WALTER,**

RESPONDENTS-CROSS-APPELLANTS.

APPEAL and CROSS-APPEAL from a judgment of the circuit court for Adams County: PATRICK TAGGART, Judge. *Affirmed.*

Before Lundsten, P.J., Vergeront and Deininger, JJ.

¶1 PER CURIAM. This case has previously been before this court. *Bell v. Neugart*, 2002 WI App 180, 256 Wis. 2d 969, 650 N.W.2d 52. The case centers on a dispute over two bank accounts of the deceased June Ann Christopherson. *Id.*, ¶1. The accounts were in the names of Christopherson and Mae Neugart, Christopherson’s sister, and are worth about \$70,000. Joan Jameson and Leonard Kosobud, children of a deceased sibling of Christopherson (collectively, “the objectors”), sought to prove the accounts were joint accounts of convenience, rather than true joint accounts with the right of survivorship.¹ The circuit court ruled that the joint accounts were true joint tenancy accounts. *Id.*, ¶46. The objectors appealed and we reversed and remanded that part of the circuit court’s decision based on evidentiary errors, among other things. *Id.*, ¶2. After trial on remand, the circuit court ruled that Christopherson intended to create the joint accounts for her convenience in managing her financial affairs, rather than true joint tenancy accounts. Neugart is now deceased, so her estate appeals and the objectors cross-appeal. We affirm the circuit court’s order on both the appeal and the cross-appeal.

¶2 Neugart first argues that our prior opinion misled the circuit court. She contends that we raised and disposed of an issue that the parties did not raise and that we did so in a way that was highly likely to mislead the circuit court on remand. We reject this characterization of our opinion. We addressed whether the circuit court’s erroneous decision to prohibit Neugart from testifying and to exclude her deposition was harmless. We stated:

¹ Leonard Kosobud died while the litigation was pending. His heirs have been substituted in his place. We refer to Leonard Kosobud and his heirs interchangeably as the objectors.

Neugart does not argue that, if the court erred in prohibiting her from testifying and in excluding her deposition, the errors were harmless; and we conclude they were not. Neugart's deposition testimony supports Jameson's position that Christopherson intended only that Neugart be able to handle her accounts while she was alive. Since Neugart prevailed because there was no evidence to overcome the statutory presumption, there is a reasonable probability that the outcome would have been different had the court heard Neugart's deposition testimony, or had Neugart testified consistent with that testimony at the hearing.

Id., ¶25 (citations omitted). Our statement that “there is a reasonable probability that the outcome would have been different” was not a directive to the circuit court to rule in a certain manner on remand, but was an explanation of the legal standard that had been met. We addressed whether the error was harmless because we would not have reversed simply because the circuit court erred in not admitting the evidence unless the error was not harmless. Our discussion of the standard was thus a necessary logical component of our decision. We see no indication that the circuit court was misled by our opinion.

¶3 Turning to the central issue on appeal, Neugart argues that the circuit court erred in concluding that Christopherson did not intend to create true joint accounts with the right of survivorship. She points out that the circuit court was required to begin with the presumption that the accounts were intended as true joint accounts and contends that Christopherson's intention as *donor* controls, so the circuit court should not have considered Neugart's prior testimony that she did not intend to take an interest in her sister's money when the accounts were created; she intended only to help her sister with her financial affairs. Neugart also argues that the testimony of Neugart's daughter, Patti Rhinehart, who was present when Christopherson signed the papers to make the accounts joint, and Patricia Thome,

Christopherson's banker, shows that Christopherson intended to create true joint accounts with the right of survivorship.

¶4 While Neugart accurately notes that the intention of the donor is determinative, the intention must be determined by the trier of fact from *all the evidence*. The circuit court considered Neugart's testimony because there was very little testimony as to what Christopherson may have said or thought herself. The circuit court properly used Neugart's testimony to make inferences as to Christopherson's intent. It did not consider Neugart's intent as determinative of whether the accounts were convenience joint tenancies.

¶5 As for the other evidence Neugart contends shows these were true joint tenancies, Patti Rhinehart was the only person who provided testimony that supported this position. The circuit court could reasonably reject her testimony on credibility grounds. Contrary to Neugart's assertion, Thome did not present testimony that tended to show that Christopherson intended to create true joint tenancies with rights of survivorship. More importantly, Neugart's argument ignores the standard of review. Because the circuit court's credibility and factual determinations regarding Christopherson's intent were not clearly erroneous, we uphold them. *See* WIS. STAT. § 805.17(2) (2003-04).²

¶6 The objectors cross-appeal, arguing that Neugart acted in bad faith with regard to her fiduciary relationship with Christopherson. They contend that Neugart should pay the objectors' attorney fees because she acted in bad faith, arguing that fees may be awarded because this was an equitable action. "The

² All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

findings by the circuit court of what was said, what was done, what was thought, and reasonable inferences drawn therefrom, are questions of fact.” *Stern v. Thompson & Coates, Ltd.*, 185 Wis. 2d 220, 236, 517 N.W.2d 658 (1994) (citation omitted). “Such findings will not be upset unless they are against the great weight and clear preponderance of the evidence.” *Id.* The circuit court found that Neugart did not act in bad faith. The objectors have strenuously argued that Neugart *did* act in bad faith, but they have not met the standard they must meet for us to overturn the circuit court’s factual finding. They have not shown that the finding was clearly erroneous. Therefore, we reject the argument that the circuit court should have ordered Neugart to pay the objectors’ attorney fees.

¶7 Finally, both parties move for attorney fees and costs on the grounds that the appeal and cross-appeal are frivolous. WIS. STAT. RULE 809.25(3)(c). Given the presumption in favor of survivorship, we cannot conclude that Neugart brought this appeal frivolously. By the same token, we do not believe the cross-appeal bad-faith argument was frivolous because Neugart’s testimony that she did not intend to take an ownership interest in her sister’s money contradicted her legal position that the accounts were true joint accounts with rights of survivorship. These seemingly contradictory positions certainly raised a question as to what her true motive was in pursuing this action. Because we are convinced that both parties had valid points to argue, we deny both motions for costs and fees on appeal based on frivolousness.³

³ Neugart has also argued that Christopherson’s estate should not have to pay the attorney fees of the objectors, but she has withdrawn this argument in her reply brief. Therefore, we do not consider it.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE
809.23(1)(b)5.

