

IN THE COURT OF APPEALS OF TENNESSEE

EASTERN SECTION

FILED
August 22, 1996
Cecil Crowson, Jr.
Appellate Court Clerk

FRANCES S. LYONS,)	C/ A NO. 03A01-9512-CH-00440
As Executrix of the)	
Estate of John Phillips)	WASHINGTON CHANCERY
)	
Plaintiff - Appellant,)	HON. G. RICHARD JOHNSON,
)	CHANCELLOR
v.)	
)	
FIRST AMERICAN NATIONAL BANK,)	
and VIOLA LEONARD,)	AFFIRMED IN PART,
)	VACATED IN PART,
Defendants - Appellees.)	AND REMANDED

JOHN D. GOODIN, and KENNETH R. WORLEY, Johnson City, for Plaintiff - Appellant.

RICK J. BEARFIELD, Johnson City, for Defendant - Appellee, First American National Bank.

STEVE MERRITT, Maryville, for Defendant - Appellee, Viola Leonard.

O P I N I O N

Franks. J.

This declaratory judgment action was initially filed by the Deceased, John C. Phillips, against First American National Bank (Bank), asking a decree be entered removing the name of his daughter, Viola J. Leonard, from two certificates

of deposit which Phillips claimed to have pledged to secure Leonard's debt. Subsequently, Phillips amended his complaint to add Viola J. Leonard as a defendant, and charged that Leonard had defrauded Phillips "in obtaining the security arrangement", wherein Phillips' certificates of deposit were changed from his sole ownership to their names jointly with the right of survivorship. Subsequently, Phillips died and the Executrix of his Estate revived the action in her name and filed yet another amended complaint.

Defendants filed motions for summary judgment which the Trial Court ultimately granted, and the Estate has appealed insisting there is disputed material evidence as to whether the deceased intended to add Viola Leonard to the certificates of deposit with a right of survivorship, and that defendant Bank should be held liable for failure to follow the instructions of the owner of the certificate of deposit. Several depositions and affidavits were considered as a part of the summary judgment motion. The Trial Court and this Court must take all of the evidence and view it in the light most favorable to the opponent of the motion and all legitimate conclusions of fact must be drawn in favor of the opponent. *Gray v. Amos*, 869 S.W2d 925 (Tenn. App. 1993).

The record establishes that Phillips intended to pledge his CD's as security for Viola's loan. This is first established by the complaints. Factual statements contained in a pleading may be considered as admissions. *Pankow v. Mitchell*, 737 S.W2d 293 (Tenn. App. 1992). However, an amended complaint supersedes the original complaint and the original remains in effect only if the amended complaint

specifically refers to or adopts it. *Christian v. Lapidus*, 833 S.W2d 71 (Tenn. 1992).

Plaintiff filed three complaints. The first complaint stated that "plaintiff has always understood that he was putting these up [CD's] to secure a loan for his daughter. . . ." The second complaint adopts by reference the factual averments of the original complaint and states that Viola Leonard defrauded the plaintiff in obtaining the security arrangement and retitling the CD's because she had no intention of repaying the debt. The third complaint, filed after Phillips' death, states that Phillips did not sign or endorse the CD's and that he did not authorize, direct, or consent to the purchase of the joint ownership CD's or to the change of ownership. This complaint did not adopt the previously filed complaints. However, as we noted in *Pankow*, while such admissions "lose their conclusive character once they have been amended or withdrawn, they continue to be evidentiary admissions. . . ." P.296. There is no material evidence that Phillips did not intend to pledge the CD's as collateral for his daughter's loan.

The daughter subsequently defaulted on the loan, and the CD's, as collateral, were liquidated by the Bank to pay off the loan. Whether the CD's should have remained in the Deceased's name alone is of no consequence as to the Bank, since the record establishes he intended the CD's to be pledged as collateral for the loan. Under either circumstance the Bank was entitled to the proceeds of the CD's to satisfy the loan. Accordingly, as to the Bank, summary judgment was proper and we affirm the Trial Court on this issue.

We conclude the summary judgment on behalf of the daughter should be vacated and the cause remanded for further proceedings. The signature of the Deceased was required at the time the certificates of deposit were transferred to the name of the Deceased and the daughter jointly with the right of survivorship. An affidavit of a handwriting expert was filed who opined that signatures "beyond a reasonable degree of scientific certainty are not authentic" signatures of J. C. Phillips. Taking the strongest legitimate view of the probative evidence in this record on behalf of the Estate, there is a disputed issue of material fact as to whether Phillips authorized the transfer of the certificates into joint ownership with his daughter with the right of survivorship. Accordingly, the cause is remanded for the entry of a judgment in favor of defendant Bank and for further proceedings in accordance with this opinion as to defendant Viola Leonard.

The costs of the cause are adjudged one-half to plaintiff, and one-half to defendant Leonard.

Herschel P. Franks, J.

CONCUR:

Don T. Murray, J.

William H. Inman, Sr. J.