

No. 1-11-2503

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(3)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ESTATE OF RAYMOND RUSSELL LANZENDORF,)	Appeal from the
Deceased,)	Circuit Court of
)	Cook County.
Petitioner-Appellant,)	
)	
v.)	08 P 5508
)	
PNC BANK, NATIONAL ASSOCIATION, Successor)	
to National City Bank and RUSSELL RAYMOND)	
LANZENDORF,)	Honorable
)	Thomas R. Allen,
Respondents-Appellees.)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Steele and Justice Murphy concurred in the judgment.

ORDER

¶ 1 *HELD:* A party who claims a bank account owner owes him money may not use a release signed by the bank account owner to compel the bank to transfer the account to the claimant, because the Adverse Claims to Deposit Accounts Act specifies procedures for such transfers.

¶ 2 When Raymond Lanzendorf died, he left a will, and bank accounts that listed as their

sole beneficiary a person not named in the will. Raymond's estate exchanged some items for an agreement by the accounts' beneficiary to release all claims to Raymond's assets. The estate demanded that the bank give the estate all funds in the bank accounts. When the bank refused, the estate sued the bank, claiming that the bank withheld the estate's funds from the estate. The trial court granted the bank's motion for summary judgment.

¶ 3 On appeal, the estate argues that the will should prevail over the account's designation of a beneficiary, and if the will does not prevail, the release makes the account the property of the estate. We find that Lanzendorf created a payable on death account, within the meaning of the Illinois Trust and Payable on Death Accounts Act (POD Act) (205 ILCS 625/4 (West 2008)), and the account became the property of the account's beneficiary when Lanzendorf died. To make a claim for the funds in the account based on the release, the Adverse Claims to Deposit Accounts Act (Adverse Claims Act) (205 ILCS 700/1 *et seq.* (West 2008)) required the estate either to obtain a court order for payment of the funds or to post an indemnity bond for the funds. Because the estate did neither, the bank correctly refused to disburse the funds to the estate. Accordingly, we affirm the trial court's judgment.

¶ 4 BACKGROUND

¶ 5 In 2007, Raymond signed a will leaving most of his assets to his niece, Sarah Davidson. On May 7, 2008, Raymond set up a savings account and a checking account with National City Bank. He put a total of about \$15,000 into the accounts. He signed two signature cards for the accounts, and each signature card included a printed section that said:

"PAYABLE ON DEATH (POD)/IN TRUST FOR (ITF) BENEFICIARIES.

Depositor(s) request that, upon the death of the last surviving Depositor and subject to Bank's right of setoff and to any relevant law, the designated share of the Account balance be paid to each beneficiary listed below who survives Depositor(s). The death of a beneficiary prior to the death of the last surviving Depositor revokes that beneficiary's designated share."

Both cards list Raymond's son, Russell Lanzendorf, as the sole beneficiary of the accounts.

¶ 6 Raymond died on July 27, 2008. The court admitted Raymond's will to probate and issued letters of office naming Sarah as executor. Sarah contacted the bank and asked it to give the estate the money in the two bank accounts. The bank refused, claiming that because Raymond put the money in POD accounts, the money belonged to Russell and not to Raymond's estate.

¶ 7 Sarah then contacted Russell, and in May 2009, in exchange for some personal items from the estate, Russell agreed to "release *** all further claims to any and all property *** owned by [Raymond] at, or within one year before, the time of his death." The estate presented the release to the bank, which still refused to release the funds to the estate.

¶ 8 On July 1, 2009, the estate filed a "petition for citation to recover assets" against the bank. On July 16, 2009, Russell demanded all funds from the two accounts, and the bank issued him checks for those amounts. The estate later amended its petition to add Russell as a defendant. The estate claimed that the accounts belonged to the estate after Raymond died, because Raymond did not create a POD account, and even if he had meant to create such an account, his will required the payment of the funds to his estate for distribution to

the heirs he listed in his will. The estate also argued that Russell's release of his claims to Raymond's assets made the estate the proper owner of the accounts at the time Russell demanded the funds. The bank and the estate both moved for summary judgment. The court granted summary judgment for the bank and denied the estate's motion for summary judgment, leaving only the estate's claim against Russell unresolved. The estate now appeals.

¶ 9

ANALYSIS

¶ 10

Supreme Court Rule 304(b)(1) confers jurisdiction on this court to review a judgment that finally determined the estate's claim against the bank. Ill. S. Ct. R. 304(b)(1) (eff. Feb. 26, 2010).

¶ 11

We review orders granting motions for summary judgment *de novo*. *Hernandez v. Alexian Brothers Health System*, 384 Ill. App. 3d 510, 519 (2008). A reviewing court may affirm the judgment on any basis that has adequate support in the record. *In re Application of Cook County Treasurer*, 185 Ill. 2d 428, 436 (1998). The estate argues that (1) Raymond did not create a POD account, (2) the Probate Act requires payment of the accounts to the estate, and (3) the release made the estate the owner of the accounts. We address the three arguments in that order.

¶ 12

POD Accounts

¶ 13

Section 4 of the POD Act provides:

"If one or more persons opening or holding an account sign an agreement with the institution providing that on the death of the last surviving person designated as holder the account shall be paid to or held by another person or persons, the

account, and any balance therein which exists from time to time, shall be held as a payment on death account." 205 ILCS 625/4 (West 2008).

¶ 14 The estate claims that the signature card Raymond signed does not constitute an "agreement" within the meaning of the POD Act. The POD Act does not define "agreement."

¶ 15 The appellate court interpreted section 4 of the POD Act in *In re Estate of Weiland*, 338 Ill. App. 3d 585 (2003). The court there said, "a written instrument executed by the holder expressing his or her intent to create a POD account raises the presumption of the holder's intent" and such an instrument can suffice to create a POD account. *Weiland*, 338 Ill. App. 3d at 598. The *Weiland* court further clarified: "neither a signature card nor any other particular form of writing is required by the statute. Instead, the record must establish the existence of a writing expressing the intent of the holder to establish a POD account." *Weiland*, 338 Ill. App. 3d at 603; see *Gonzalez v. Second Federal Savings & Loan Ass'n*, 2011 IL App (1st) 102297, ¶47-55.

¶ 16 The signature card Raymond signed here qualifies as a written instrument. See *Weiland*, 338 Ill. App. 3d at 603; *Gonzalez*, 2011 IL App (1st) 102297, ¶47-55. By naming a beneficiary and signing the card under the printed section that provides for payment to the beneficiary of the account balance when Raymond died, Raymond expressed an intent to create a POD account. See *Weiland*, 338 Ill. App. 3d at 598; *Gonzalez*, 2011 IL App (1st) 102297, ¶47-55. The written instrument here, under *Weiland* and *Gonzalez*, constitutes a written agreement within the meaning of the POD Act. We find that Raymond created a

valid POD account.

¶ 17 Probate Act

¶ 18 Section 4-7 of the Probate Act, which restates the former Statute of Wills (Ill. Rev. Stat. 1977, ch. 110½, par. 4-1 *et seq.*), provides that a testator may revoke his will only in a specific written revocation. 755 ILCS 5/4-7 (West 2008). Raymond's signature card provided for distribution of some of his assets in a manner inconsistent with the provisions of the will. However, the signature card does not meet the requirements of the Probate Act for revocation of Raymond's 2007 will. 755 ILCS 5/4-7 (West 2008).

¶ 19 The appellate court in *In re Estate of Gubala*, 81 Ill. App. 2d 378 (1967), addressed the conflict between the Statute of Wills and the POD Act. The *Gubala* court found POD accounts "irreconcilably inconsistent with and repugnant to the Statute of Wills." *Gubala*, 81 Ill. App. 2d at 383. But, the *Gubala* court held, "it was the intention of the legislature to validate the specific testamentary disposition of funds in a 'P.O.D. account' even though the form of such disposition is not in accordance with the requirements for testamentary dispositions in general as set forth in the Statute of Wills." *Gubala*, 81 Ill. App. 2d at 383-84.

¶ 20 We see no reason to deviate from the holding of *Gubala*. We hold that the Probate Act does not require distribution of the funds in a POD account in accord with the will, but instead ownership of the POD account passes to the account's designated beneficiaries, despite any contrary provisions in the will. Therefore, when Raymond died, Russell became the owner of both POD accounts.

¶ 21 Release

¶ 22 After Raymond died, Russell signed a release that purported to transfer to Raymond's estate all of Russell's interest in any property Raymond owned within the year before he died. Although the estate presented the release to the bank, the bank refused to give the accounts to the estate, and instead the bank permitted Russell to withdraw all funds from both POD accounts. Because ownership of the POD accounts passed to Russell when Raymond died, Russell's release of his rights made the estate an adverse claimant to the accounts. See *In re Estate of Waggoner*, 5 Ill. App. 2d 130, 136 (1955); *Domain Industries, Inc. v. First Security Bank & Trust Co.* 230 N.W.2d 165, 168-69 (Ia. 1975).

¶ 23 The Adverse Claims Act provides:

"In the absence of a court order or indemnity bond as required by this Act, a financial institution shall not be required to recognize any claim to, or any claim of authority to, exercise control over a deposit account held by the financial institution made by a person other than the depositor." 205 ILCS 700/15 (West 2008).

¶ 24 The estate never presented to the bank a court order instructing the bank to give the estate the funds, and the estate never presented to the bank an indemnity bond. Therefore, under section 15 of the Adverse Claims Act, the bank correctly decided not to release the funds to the estate. Accordingly, the trial court did not err when it entered judgment in favor of the bank on the estate's claim against the bank.

¶ 25 CONCLUSION

¶ 26 The signature cards sufficed as written agreements setting up POD accounts and

naming Russell as the accounts' beneficiary. The legislature in the POD Act created an exception to the Probate Act, allowing a testator to distribute some of his assets in a manner inconsistent with his will, without complying with the Probate Act's special provisions for amendment or revocation of a will. The release Russell signed here did not meet the specific provisions of the Adverse Claims Act for an adverse claim to a bank account, so the bank correctly refused to give Russell's account to the estate. Accordingly, we affirm the decision to grant summary judgment in favor of the bank on the petition for citation to discover assets.

¶ 27 Affirmed.