STATE OF MICHIGAN

COURT OF APPEALS

IN RE HORACE GREEN, DECEASED.

UNPUBLISHED

TYRONE GREEN,

Petitioner/Appellee/Cross-Appellant,

August 16, 1996

v

No. 173335
LC No. 91-859483 SE

DOUGLAS D. ELLIARD and GREEN GREEN,

Respondents/Appellants/Cross-Appellees,

and

JUANITA DEAN,

Respondent.

Before: Wahls, P.J., and Young and H.A. Beach,* JJ.

PER CURIAM.

Petitioner brought this action for tortious interference with an inheritance against his uncle Willie Green (Green), his cousin Juanita Dean, [1] and their attorney, Douglas Elliard. The jury awarded petitioner $80,000 in damages. Respondents Green and Elliard moved for judgment notwithstanding the verdict. The trial judge granted this motion in part, reducing Elliard's liability, but denied the motion as to Green. On appeal, respondents Green and Elliard argue that the trial judge should have granted the JNOV motion in full. On cross-appeal, petitioner challenges the partial grant of JNOV and disputes the manner in which damages and costs have been apportioned among respondents. We reverse in part and affirm in part.

In 1969, decedent, who was petitioner's uncle, executed a will in which he left petitioner: 1) any automobiles which he might own at the time of his death; 2) all of his real estate; 3) a Class C and SDM

* Circuit judge, sitting on the Court of Appeals by assignment.

bar business in Detroit; and, 4) all cash on hand and in bank accounts belonging to this business. Following his uncle's death in December, 1990, petitioner brought this action against respondents, alleging that they had conspired to obtain decedent's wealth for themselves, thereby depriving petitioner of the devises left him in the will. Petitioner testified at trial that respondents took advantage of decedent's debilitated state to influence him to sell the bar property and deplete the savings accounts. Petitioner accused respondents of using decedent's money for their own gain, rather than for decedent's care. Petitioner presented the testimony of a handwriting analyst who testified that decedent's signature on a deed representing the sale of the bar property had been forged.

The jury awarded petitioner $80,000 in damages. The trial judge later determined that Elliard was liable only to the extent of $4,000, the value of the bar property. However, the judge held that the verdict against Green was supported by competent evidence, because Green admitted withdrawing funds from joint accounts and forwarding this money to Dean. The trial judge then determined that Elliard was liable only for five percent of the interest, fees, and costs associated with the judgment, whereas Dean and Green would be jointly and severally liable for ninety-five percent of the interest, fees and costs related to the judgment.

On appeal, Green and Elliard argue that the trial court erred in denying their motion for JNOV in full. In reviewing a trial court's decision regarding a defendant's motion for JNOV, this Court examines the testimony and all legitimate inferences that may be drawn in a light most favorable to the plaintiff. *Thorin v Bloomfield Hills Bd of Educ*, 203 Mich App 692, 696; 513 NW2d 230 (1994). Neither this Court nor the trial court may substitute its own judgment for that of the jury where reasonable jurors could honestly have reached different conclusions. *Id.*

The Second Restatement of Torts defines tortious interference with an expected inheritance as follows:

> One who by fraud, duress or other tortious means intentionally prevents another from receiving from a third person an inheritance or gift that he would otherwise have received is subject to liability to the other for loss of the inheritance or gift. [4 Restatement Torts, 2d, § 774B, p 58.]

This Court gave tacit recognition to the restatement provision in *Estate of Doyle v Doyle*, 177 Mich App 546, 549; 442 NW2d 642 (1989), lv den 433 Mich 910 (1989). We expressly recognize this tort and join the numerous jurisdictions which have defined its elements as: (1) the existence of an expectancy; (2) intentional interference with that expectancy; (3) the interference involved conduct tortious in itself such as fraud, duress or undue influence; (4) a reasonable certainty that the devise to the plaintiff would have been received had the defendants not interfered; and (5) damages. *Doughty v Morris*, 871 P2d 380, 384 (NM App, 1994); *Firestone v Galbreath*, 67 Ohio St 3d 87; 616 NE2d 202, 203 (1993); *In re Estate of Knowlson*, 204 Ill App 3d 454; 562 NE2d 277, 280 (1990); see also *Hammons v Eisert*, 745 SW2d 253, 258 (Mo App, 1988); *Harmon v Harmon*, 404 A2d 1020, 1022 (Me, 1979).

Respondents argued below that petitioner could not demonstrate that he had any interest in the bank accounts. This argument in effect stated that petitioner could not satisfy the expectancy element of the tort. The trial court never addressed this issue, and respondents have apparently abandoned this argument on appeal. Ordinarily, this Court will not review sua sponte issues abandoned on appeal. *McGruder v Michigan Consolidated Gas Co*, 113 Mich App 664, 667; 318 NW2d 531 (1982). However, review of an abandoned issue may be granted on appeal if failure to consider an issue would result in manifest injustice, if considering the issue is necessary to a proper determination of the case, or if the question is one of law concerning which the necessary facts have been presented. *Richards v Pierce*, 162 Mich App 308, 316; 412 NW2d 725 (1987); see *Froling v Carpenter*, 203 Mich App 368, 373; 512 NW2d 6 (1994). Furthermore, the court rules provide that this Court may "enter any judgment or order or grant further or different relief as the case may require." MCR 7.216(A)(7). Because manifest injustice would result if we declined to consider whether petitioner satisfied the elements of this tort, we will review this issue despite respondents' failure to vigorously pursue it.

Part of petitioner's complaint alleged tortious interference with two bank accounts, one held jointly by decedent and petitioner's father, Jerry, and the other held jointly by decedent and Green. As to the joint account of decedent and Jerry, petitioner cannot satisfy the first element of the tort, the existence of an expectancy. Assuming arguendo that Green and Dean used fraud or undue influence to persuade Jerry to withdraw money from this account and send it to Alabama, petitioner has not proved that he had any expectancy of inheriting this money. Decedent's will made no mention of this account. There was no evidence that this account had any connection to the bar. Petitioner did not demonstrate any survivorship rights he might have to the account. Had the money not been withdrawn from this account, it would have passed to Jerry, as joint owner, on decedent's death. The record is void of any facts which would delineate petitioner's rights to Jerry's estate, either by intestacy or by a will. Similarly, petitioner has not established that he had any interest or claim to the money in the accounts held jointly by decedent and Green. Petitioner has failed to establish any expectancy in the money in these two joint accounts. *Harris v Kritzik*, 166 Wis 2d 689; 480 NW2d 514, 517 (Wis App, 1992); compare *Doughty, supra;* see *McKibben v Chubb*, 840 F2d 1525, 1532 (CA10, 1988).

In addition, the holders of a joint bank account are joint tenants with the right of survivorship. *Treasury Dep't v Comerica Bank*, 201 Mich App 318, 325; 506 NW2d 283 (1993). MCL 487.703; MSA 23.303 creates a statutory presumption that a jointly held bank account confers full ownership rights to the survivor of the joint owners. *In re Wright Estate*, 430 Mich 463, 467-468; 424 NW2d 268 (1988). Reasonably clear and persuasive proof is required to overcome this statutory presumption. *Id.* In the instant case, petitioner has not offered any evidence to rebut the presumption that decedent intended Jerry and Green to have full ownership rights of the respective bank accounts upon his death. Therefore, any funds remaining in the accounts at the time of decedent's death would not have passed through decedent's will or through the intestacy statutes, but would have become the sole property of Jerry and Green respectively.

This leaves the issue of whether petitioner satisfied the elements of tortious interference with an inheritance with regard to the assets left him in the will, namely the bar business and related moneys, real estate, and automobiles. Petitioner offered no evidence to establish that the business still existed or had

any value prior to decedent's death. Petitioner offered no evidence from which a trier of fact could conclude that respondents in any way impaired the value of this legacy. Petitioner did not demonstrate intentional interference on the part of respondents, tortious conduct, or damages with regard to the business.

The parties did not dispute that decedent owned a Chrysler automobile which some unidentified relatives drove to Dean's house prior to decedent's death. The expectancy element of the tort was thus satisfied with respect to the automobile. However, petitioner offered no evidence to indicate what eventually became of this automobile. There was no evidence offered to indicate that the car was sold, or that title was transferred to another person. Consequently, the trier of fact could not have inferred that respondents collaborated to remove the car from the estate and deprive petitioner of his inheritance. Petitioner therefore failed to satisfy the elements of intentional interference and tortious conduct with respect to the car.

Petitioner did establish all the elements of this tort with respect to the bar property mentioned in the will. The deed to sell the property was prepared in February, 1990, less than a year prior to decedent's death. It was therefore reasonably certain that petitioner would have received the property had it not been sold. This satisfies the first and fourth elements of the tort. The second and third elements are intentional interference with the expectancy by use of fraud or undue influence. Petitioner's handwriting expert gave extensive and detailed testimony in support of her conclusion that decedent did not sign his own name to the deed. A reasonable trier of fact could therefore conclude that Elliard and Green fraudulently forged decedent's name with the intent of removing the property from the estate, effectively depriving petitioner of his inheritance. With respect to the final element, damages, petitioner has not argued that the property was worth more than $4,000, the amount paid by the buyer. Petitioner therefore offered evidence from which a trier of fact could conclude that respondents utilized fraud in order to deprive him of his inheritance of an $4,000 asset.

The trial judge should therefore have granted respondents' motion for JNOV with respect to all damages except for those attributable to the deprivation of the bar property. This would cause petitioner's judgment to be reduced to $4,000, jointly and severally against all three respondents.

We find respondents' other issues, concerning the doctrine of ademption and the duties of a personal representative to be without merit, as they are irrelevant to petitioner's cause of action for tortious interference with an inheritance.

All issues raised by petitioner on cross-appeal are rendered moot by our decision.

Reversed and remanded for entry of JNOV with regard to all damages except those arising from the sale of the bar property. We do not retain jurisdiction.

/s/ Myron H. Wahls
/s/ Robert A. Young, Jr.
/s/ Harry A. Beach

[1] Dean made no response to this complaint and has not taken part in this appeal. A default judgment has been entered against her.