CASE SUMMARIES

In re Estate of Maxfield. 856 P.2d 1056 (Supreme Ct. Of Utah 1993). John Ben Maxfield (Ben) and Louise A. Maxfield (Louise) 2nd marriage situation, each party had grown children. Created joint accounts. Louise withdrew all funds from all jt. accounts. Ben wanted money back, commenced litigation and died. Louise's unilateral withdrawal severed the joint tenancy. U.C.A. §75-6-103(1) governs ownership at time funds were withdrawn, Ben (his estate) entitled to recovery of his portion of the funds. Appeal was to determine which portion was Ben's; lower court ruled funds were commingled and therefore all funds were marital property with each party receiving one-half. Supreme Court remanded for determination of actual amount of each party's contribution (marital/separate property only applies in divorce proceedings).

Ct. states that there is an assumption that "a person who deposits funds in a multiple-party account normally does not intend to make an irrevocable gift of all or any part of funds represented by the deposit. Rather, he [or she] usually intends no present change of beneficial ownership." The assumption may be disproved, but burden of proof is on the non-depositor. During the lives of all owners, "[t]he funds retain their separate character unless a gift is proved." However, at death, all funds pass to survivor–unless clear and convincing evidence of different intent. The survivor,"receives for the first time at the death of the owner" the other owner's interest. "[T]he account operates as a valid disposition at death rather than as a present joint tenancy." If it were otherwise, gift tax implications would arise at creation.

Estate of Wolfinger v. Wolfinger. 793 P.2d 393 (Ct. of Appeals for Utah 1990). Walter F. Wolfinger (Walter) deposited a promissory note for $30,000 with NEFCO Finance Company. Later, Walter orally instructed NEFCO to name daughter, Susan Wolfinger, as "joint payee." NEFCO added Susan's name to ledger card for account. Still later, Walter orally instructed NEFCO to remove Susan's name from account. NEFCO had not removed name when Walter died. Estate took $30,000 Susan sued. Trial court decided joint account was never created. Appeals Court disagreed and reversed–joint account was created–no prohibition on oral instruction (Utah common law allows oral modification of a contract). However, Appeals Court ruled that Walter could not remove Susan's name without a written order pursuant to §75-6-104.

Pagano v. Walker. 539 P.2d 452 (Supreme Ct. Of Utah 1975). Luke and Lucy Pagano were married with 4 kids. Luke died and Lucy created some joint accounts with daughter Mary Walker. Lucy died. Will states equal division among 4 children. Probate estate equals $39,774 and joint accounts total $73,544. Mary's 3 brothers sue to impose a trust on joint accounts. Brothers claim mother's intent was that Mary act as trustee for benefit of all 4 children–based on statement by Mary to brothers after Lucy's death, "Mother told me to pay her personal bills, keepa little out for my arthritis, and divide up the rest." At trial, jury and judge ruled that Mary had made the statement; judge imposed constructive trust. Supreme Court reversed, but did not overturn lower ct's finding that Lucy made statement. No evidence as to when statement was made and intent had to be shown as of date of creation of jt. account. Further, mother's statement was not specific enough to create a trust–no direction as to who Mary should divide up the rest with or in what percentages. Even if statement had been in writing and signed, it would not have been specific enough to form a trust. "The joint account is a tripartite contract between the bank and the joint depositors; and it is also a contract between the joint depositors themselves. Upon a showing of its due execution it is entitled to the presumption of validity and

should be given effect according to its terms. That is, it creates an ownership of the funds in joint tenancy, with a right of survivorship so that upon the death of one, the other becomes the owner of the funds. It is of course subject to attack only the same basis as any other written agreement or contract by showing that because of fraud, duress, undue influence, mistake, incapacity or other infirmity that in equity and good conscience it should not be enforced. But because of the verity accorded written instruments, its effect can be overcome only by clear and convincing evidence." (footnotes citing other cases omitted)

McCullough v. Wasserback 30 Utah 398 (Supreme Ct. 1974). Anna Olofson purchased a cd in joint names (her own and half sister Joyce Wasserback). A year later she opened a joint savings account. Anna became sick, before going to hospital she gave Joyce the passbook and certificate of deposit. Joyce used money from savings account to pay Anna's bill until Anna died. Anna's will left everything to her son. Executor of estate sued for proceeds of cd and savings account. Trial court ruled that joint ownership was for convenience only and Joyce owned no interest in funds. Supreme Ct. reversed. They ruled that there was no evidence that the accounts had been created merely for convenience. Accounts were created 4 and 3 years before trip to hospital–Joyce was not managing money for Anna until Anna went in the hospital. No reason to turn CD over to Joyce if Anna didn't want her to have it.

Hardy v. Hendrickson. 27 Utah 2d 251 (Supreme Ct. Of Utah 1972). Bertha S. Hardy (mother), caused or permitted funds to be placed in joint accounts with daughter, Edna Hardy Hendrickson. Mother died. Edna was executor and filed inventory with probate court. In inventory she listed joint accounts as assets of the estate. Edna died and the dispute as to the actual ownership of the accounts came into dispute. Trial court ruled that there was clear and convincing evidence that joint accounts were created "for the sole purpose of assisting Mrs. Hardy in paying her obligations after she was partially paralyzed by a stroke and incapable of handling her own business affairs. . ." Supreme Court affirmed–intent was clear at creation of joint accounts that creation was for convenience only. However, dissent points out that contracts can only be reformed because of "fraud, mistake, incapacity, or other infirmity" not because the from of the contract does not reflect the intent of the parties.

Hobbs v. Fenton. 25 Utah 2d 206 (Supreme Ct. Of Utah 1971) Lee Hobbs is executor of Joseph Buhler's estate and Ethel Jeanne Buhler Fenton and James e. Fenton are defendants (Ethal is Joseph's daughter) Joseph Buhler, in the 50's expressed an intent to leave assets to his 5 children equally, but beginning in 1954 and continuing for the next 11 years, he proceeded to transfer all of his property except a car and a judgement to joint-ownership with his daughter. He even consulted a lawyer before transferring home and lot to joint tenancy. Will left everything to all kids. Executor sued daughter. Executor lost at trial level. Supreme Ct. affirmed–no showing that Joseph did not intend to do what he did.

JOINT ACCOUNTS ARE VALID

The creation of the joint tenancy accounts was valid and Mrs. Galloway was and is entitled to any and all funds deposited in said accounts. As the Court stated in Pagano v. Walker, a joint account is a contract and "[u]pon showing of its due execution it is entitled to the presumption of validity and should be given effect according to its terms."[1] Like any other written agreement, it is valid absent a showing of fraud, duress, undue influence, mistake, incapacity or other infirmity. Further, the standard of proof for overcoming the presumption of validity is clear and convincing evidence.

There is no clear and convincing evidence showing that fraud, duress, undue influence, mistake, incapacity or other infirmity were present at the formation of the contract creating the joint accounts. The accounts were created years before Mrs. Galloway was named guardian/conservator. Mrs. Farrell was not incapacitated or infirm at the time the accounts were created. Also, if the accounts creation was a result of fraud, duress, or undue influence, why did Mrs. Farrell not do anything to protest their creation or Mrs. Galloway's involvement in her affairs. It is clear from the record of the guardianship/conservatorship hearing that Mrs. Farrell consented to the appointment of Mrs. Galloway. Mrs. Farrell knew what she was doing when she created the accounts and it was her intention to create joint accounts and thereby benefit Mrs. Galloway.

Plaintiff may also try to attack the creation of the joint accounts under §75-6-104 (1) which states that a joint account may be undone if there is "clear and convincing evidence of a different intention at the time the account is created." Again, there is no evidence, clear and convincing or otherwise, of what Mrs. Farrell's intent was at the time the accounts were created. Therefore, the court must assume that the joint tenancy was validly created. That same statute, §75-6-104 (1) also clearly states that: "Sums remaining on deposit at the death of a party to a joint account belong to the surviving party or parties as against the estate of the decedent." Neither Plaintiffs nor the estate has any right to the funds in the joint accounts. At Mrs. Farrell's death, all remaining funds in these accounts passed to Mrs. Galloway.

Further, as a joint owner, Mrs. Galloway was entitled to withdraw or use the funds as she desired. A joint owner's access to funds is unlimited.[2] Plaintiff may argue that during Mrs. Farrell's life, Mrs. Galloway was only entitled to her net contributions absent a clear showing that Mrs. Farrell intended to gift part or all of the money to Mrs. Galloway.[3] However, prior to Mrs. Galloway's appointment as guardian/conservator, she made several large withdrawals. There is no evidence to suggest that Mrs. Farrell was not aware of the withdrawals and that she, if not explicitly, implicitly approved of the withdrawals. Mrs. Farrell never made any attempt to recover funds withdrawn by Mrs. Galloway.

Mrs. Galloway was also clearly entitled to make withdrawals at any time –notwithstanding that Mrs. Farrell may have at some point become incapacitated. The law clearly states that a party may continue to draw on a joint account even if the other party is incapacitated (or even deceased).[4] There is no statutory or case law that says that this provision does not apply to joint owners who are also guardians/conservators.

Plaintiffs may argue that as guardian/conservator, Mrs. Galloway had a duty to preserve her estate plan. We agree. That duty included preserving the joint accounts for Mrs. Galloway's benefit. The statute regarding preservation the estate plan (75-5-427) instructs the conservator to be mindful of any "joint ownership arrangement."[5] Mrs. Galloway was mindful and fulfilled her duty to preserve Mrs. Farrell's estate plan by preserving the jointly owned accounts as Mrs. Farrell intended.

1. "The joint account is a tripartite contract between the bank and the joint depositors; and it is also a contract between the joint depositors themselves. Upon a showing of its due execution it is entitled to the presumption of validity and should be given effect according to its terms. That is, it creates an ownership of the funds in joint tenancy, with a right of survivorship so that upon the death of one, the other becomes the owner of the funds. It is of course subject to attack only the same basis as any other written agreement or contract by showing that because of fraud, duress, undue influence, mistake, incapacity or other infirmity that in equity and good conscience it should not be enforced. But because of the verity accorded written instruments, its effect can be overcome only by clear and convincing evidence." (footnotes citing other cases omitted) (Pagano v. Walker)

2. **75-6-103. Ownership during lifetime.**
(1) A joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions by each to the sums on deposit, unless there is clear and convincing evidence of a different intent.

3. **§ 75-6-103 Editorial Board Comment.** - This section reflects the assumption that a person who deposits funds in a multiple-party account normally does not intend to make an irrevocable gift of all or any part of the funds represented by the deposit. Rather, he usually intends no present change of beneficial ownership. The assumption may be disproved by proof that a gift was intended.

4. 75-6-109. Financial institution protection - Payment after death or disability - Joint account.
Any sums in a joint account may be paid, on request, to any party without regard to whether any other party is incapacitated or deceased at the time the payment is demanded; but payment may not be made to the personal representative or heirs of a deceased party unless proofs of death are presented to the financial institution showing that the decedent was the last surviving party or unless there is no right of survivorship under Section 75-6-104.

5. **75-5-427. Preservation of estate plan.**
In investing the estate, and in selecting assets of the estate for distribution under Subsections **75-5-425**(1) and (2), in utilizing powers of revocation or withdrawal available for the support of the protected person, and exercisable by the conservator or the court, the conservator and the court should take into account any known estate plan of the protected person, including his will, any revocable trust of which he is settlor, and any contract, transfer, or joint ownership arrangement

with provisions for payment or transfer of benefits or interests at his death to another or others which he may have originated. The conservator may examine the will of the protected person.