Dean, Mead, Egerton, Bloodworth, Capouano & Bozarth, P.A.
800 N. Magnolia Avenue, Suite 1500
Orlando, FL 32803

407-841-1200
407-423-1831 Fax
www.deanmead.com

Orlando
Fort Pierce
Viera
Gainesville

DAVID P. HATHAWAY
SHAREHOLDER
407-841-1200
dhathaway@deanmead.com

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# Was Your Late Father's Joint Florida Bank Account Legitimate?
## *Parol Evidence Can Help Determine the Truth*

By: David P. Hathaway, Esq.

Consider a situation where an elderly relative, your father (although it could be your mother, an aunt or an uncle), who had retired and moved from Ohio to Florida, has passed away. You know your father had a will and a trust, but in working to wind up his affairs you unexpectedly learn there was also a joint bank account in the name of your father and someone you do not know. The unknown person could be a Florida friend or neighbor of your father, but because neither this person nor the account was ever mentioned in family conversations, you're suspicious.

Upon checking with the bank you find that all proper procedures were followed when the joint account was set up. The signature cards are in order, and the person you never met was given right of survivorship in the account. Yet from the large amount of money on the last bank statement, you are sure that your father had said he intended these funds to be placed in the trust upon his death, so they could be used to care for your mentally disabled sister. The branch manager at the bank where the account was opened remembered a similar comment.

You strongly believe that the other person named on the account either ignored your father's wishes or exercised what is legally called ***undue influence*** that somehow tricked or coerced your father into opening the joint account. Yet when you talk to your lawyer in Ohio and the bank in Florida, both say you can do nothing about the joint account. The signature card says what it says, the funds are going to bypass the trust, and the joint account with survivorship will not go through probate. All you have is what your father said to you about funding the trust – and that looks like it's not enough.

Or is it? Actually, under Florida law, your father's expressed intention about funding the trust carries legal weight. Florida Statute section 655.79, which covers the vesting of bank accounts in two or more names when one of the named persons dies, does say that, unless expressly provided otherwise, an account with a valid signature card passes to the other person. But it adds that this presumption of a valid account "may be overcome only by proof of fraud or undue influence or ***clear and convincing proof of a contrary intent***."

What is your proof in this instance? First, that your father actually created the trust for your sister. And second, he told you it would be funded after he died – funded with money that appears to be in the joint bank account. Your father's statements to you and the branch manager may be what is termed ***parol evidence*** (note the different spelling from "parole"). Generally speaking, parol evidence is a verbal communication made prior to or upon the execution of a written contract. Florida courts often do not accept parol evidence, but in a 2004 case a state appeals court held that under section 655.79 parol evidence was relevant to the disposition of a joint bank account.[1]

What this means is that you now have the opportunity to send a demand letter or initiate litigation in Florida to determine the truth behind and the best disposition of the joint bank account. It may be that undue influence led to its creation; it may be that the other account holder simply didn't know your father's intentions. Either way, by engaging a Florida attorney who understands the application of parol evidence to section 655.79, you will have a course of action that many banks and other lawyers might not realize exists.

**About the Author:**

*Mr. Hathaway is a shareholder in the firm's Litigation department and he is also the Chair of the Trust and Estate Litigation Practice Group. He represents trustees, personal representatives and family members in controversies regarding wills, trusts and estates. If you would like to reach Mr. Hathaway, please email him at dhathaway@deanmead.com.*

[1] *See Caputo v. Nouskhajian*, 871 So. 2d 266, 270 (Fla. 5th DCA 2004).