

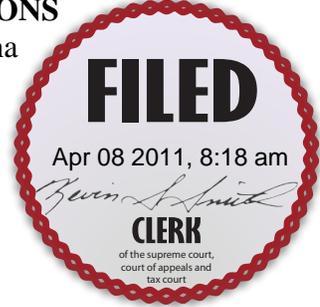
Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEYS FOR APPELLANT:

NATHANIEL LEE
KATHRYN KUEHN
Lee, Cossell, Kuehn & Love, LLP
Indianapolis, Indiana

ATTORNEY FOR APPELLEE:

JOHN V. COMMONS
Indianapolis, Indiana



**IN THE
COURT OF APPEALS OF INDIANA**

DANA BIRDIN,)
)
Appellant-Defendant,)
)
vs.)
)
BARBARA BLAKEMORE, Individually and as)
Executor of the Estate of FRANCES S. SUBER,)
)
Appellee-Plaintiff.)

No. 49A02-1007-EU-833

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Tanya Walton Pratt, Judge
Cause No. 49D08-0705-EU-2117

April 8, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Dana Birdin was the granddaughter of Frances Suber. In 2005, Suber executed a power of attorney appointing Birdin as her attorney-in-fact. Birdin sold Suber's Indianapolis residence and moved her to Birdin's home in Maryland. Birdin maintained Suber's bank accounts until Suber's death in 2007. Suber's daughter, Barbara Blakemore, was the sole beneficiary of Suber's will and the executor of her estate. Blakemore demanded that Birdin perform an accounting of Suber's assets, as required by the power of attorney. When none was forthcoming, Blakemore sued Birdin for specific performance, theft/conversion, replevin, and conversion, alleging that Birdin had misappropriated Suber's funds and demanding that she perform an accounting and return the funds to Suber's estate. Birdin performed an accounting before trial. After a bench trial, the court found that Birdin owned one account jointly with Suber but that Suber was the sole owner of the other accounts. The court entered judgment against Birdin in the amount of \$9450 on the conversion claim and \$75,617.74 on the replevin claim and ordered her to pay Blakemore's attorney fees.

On appeal, Birdin claims that the trial court erred in finding that she did not own a checking account jointly with Suber. Birdin also claims that the trial court erred in including certain assets in Suber's estate for which the estate was entitled to reimbursement from Birdin. We conclude that Birdin has failed to establish clear error and affirm.

Facts and Procedural History

On August 1, 2008, Blakemore, individually and as the executor of Suber's estate, filed a four-count complaint against Birdin that reads in relevant part as follows:

COMPLAINT

Comes now Barbara Blakemore, Individually and as Executor of the Estate of Frances S. Suber, and complains of the Defendant, Dana Birdin, as follows:

1. Barbara Blakemore, a resident of Marion County, Indiana is the daughter of Frances S. Suber, now deceased.
2. Frances S. Suber died on April 7, 2007.
3. Ms. Suber's Will was probated and an estate opened in Marion County Superior Court, Room No. 8 on May 22, 2007 at which time Barbara Blakemore qualified and was appointed as Executor of said estate pursuant to the terms of Ms. Suber's Last Will and Testament.
4. Prior to her death Ms. Suber owned real estate, certificates of deposit and bank accounts in Marion County, Indiana and resided in Marion County, Indiana.
5. As of July 1, 2005 Ms. Suber lived in Marion County, Indiana, had been medically diagnosed as suffering from dementia and ultimately died from complications due to said dementia.
6. On August 9, 2005 a document designated as a Power of Attorney was purportedly executed by Frances S. Suber designating the Defendant, Dana Birdin, as Frances S. Suber's attorney-in-fact pursuant to said document, a copy of which is attached as Exhibit A.
7. Subsequently, said Dana Birdin sold Ms. Suber's residence in Marion County, Indiana, closed her bank accounts and certificates of deposit, kept the proceeds from those transactions and moved Ms. Suber to the State of Maryland where she eventually died from dementia.
8. Frances S. Suber lacked the mental capacity to make decisions regarding [sic] her assets and her residency prior to being removed from the State of Indian [sic] by Dana Birdin.
9. Plaintiff, Barbara Blakemore, was a joint owner of at least one or more of Ms. Suber's bank accounts and/or certificates of deposit which were closed and cashed in by the Defendant.

I

SPECIFIC PERFORMANCE

....

- [11]. Pursuant to paragraph V. of the purported Power of Attorney, Exhibit A, Dana Birdin is required to keep a record of all transactions made on behalf of Frances S. Suber and make an accounting available to Frances S. Suber's Executor at the time of Ms. Suber's death.
- [12]. Ms. Blakemore has made requests for an accounting and Ms. Birdin has refused or otherwise failed to provide an accounting.
- [13]. On January 31, 2008, Ms. Blakemore obtained an ORDER from Marion County Superior Court Room No. 8, a copy of which is attached as Exhibit B, ordering Ms. Birdin to provide an accounting which ORDER was served on Ms. Birdin by Certified Mail.
- [14]. Ms. Birdin has failed or otherwise refused to comply with said ORDER.

WHEREFORE, Plaintiff prays that the Court order and compel the Defendant, Dana Birdin, to specifically perform as required under the terms of the purported Power of Attorney and provide an accounting of the assets and expenses of Frances S. Suber.

II

THEFT/CONVERSION

....

- [16]. Plaintiff made some determinations as to the existence and value of some property owned by Frances S. Suber and filed a PERSONAL REPRESENTATIVE'S INVENTORY in the Frances S. Suber Estate, as required under Indiana law, a copy of which is attached as Exhibit C.
- [17]. Defendant has exerted unauthorized control over the property set out in Exhibit C as demonstrated by her failure to account for said assets.

- [18]. Defendant has exerted unauthorized control over the proceeds of the sale of Frances S. Suber's real estate in Marion County, Indiana, as demonstrated by her failure to account for the proceeds of the sale of said asset, the exact amount of which is currently unknown.
- [19]. Pursuant to Indiana law, Plaintiff is entitled to recover treble damages from the Defendant for said unauthorized control in the amount of \$382,836.54 for the assets listed in Exhibit C and in an as yet to be determined amount for the proceeds of the sale of said real estate, plus interest, costs and attorney fees.

WHEREFORE, the Plaintiff prays for a judgment against the defendant in the amount of \$382,836.54 plus three times the amount of the proceeds of the sale [of] Frances S. Suber's real estate plus interest, costs and attorney fees.

III

REPLEVIN

....

- [21]. The Estate of Frances S. Suber is entitled to the return of Ms. Suber's assets, less reasonable costs and expenses incurred on behalf of Frances S. Suber, for the purpose of the administration of her Estate.

WHEREFORE, the Plaintiff prays that the assets of Frances S. Suber be returned to the Plaintiff for administration of her estate pursuant to the requirements of Indiana law.

IV

CONVERSION

....

- [23]. Plaintiff, Barbara Blakemore, was a joint owner with Frances S. Suber of certain bank accounts and/or certificates of deposit listed in Exhibit C.
- [24]. Defendant took possession of the proceeds of said accounts and/or certificates in an amount as yet to be determined and converted said

proceeds to her own use thus depriving Barbara Blakemore of the use and benefit thereof.

- [25]. Pursuant to Indiana law, Barbara Blakemore is entitled to three times the value of said proceeds plus interest, costs and attorney fees.

WHEREFORE, the Plaintiff, Barbara Blakemore individually, prays that the Court enter judgment for her and against Dana Birdin in an amount to be determined which includes treble damages plus interest, costs and attorney fees.

Appellant's Reply Brief App. at 2-5.

A bench trial was held on January 28, 2010. Blakemore requested findings of fact and conclusions thereon pursuant to Indiana Trial Rule 52(A). On March 24, 2010, the trial court issued a judgment that reads in pertinent part as follows:

FACTS:

1. Barbara Blakemore (Blakemore) a resident of Marion County is Frances S. Suber's (Suber) daughter and sole heir; and is the duly appointed Executor of the Estate of Frances S. Suber.
2. Dana Birdin (Birdin) is the granddaughter of Suber, the decedent.
3. Prior to her death, Suber owned residential real estate in Indianapolis, IN, two bank accounts (Silver Star Plus # *****548 and Money Market Savings # *****289) and four (4) certificates of deposit, all located in National City Bank, Indianapolis, Indiana.
4. On August 9, 2005, Suber executed a Power of Attorney appointing Birdin, a resident of the State of Maryland, as her attorney-in-fact.
5. On December 30, 2005 Frances Suber added Dana Birdin as a signator on her National City Bank, Money Market Savings Account # *****289.
6. In January, 2006 Birdin moved Suber to Birdin's residence in Maryland where Suber remained until her death on April 7, 2007.

7. In the summer of 2006, Blakemore entered her mother's vacant residence and discovered National City Bank statements predating the date of the power of attorney, in a cooking pot in the kitchen. The statements are in the name of Frances Suber.
8. Using the power of attorney, Birdin sold Suber's home in Indianapolis and in October 2006, deposited the proceeds from the sale of Suber's home into National City Bank account # *****548.
9. Birdin maintained Suber's bank accounts and financial holdings at National City continuously until Suber's death.
-
12. Suber died testate and Blakemore opened Suber's estate as her designated Executor on May 22, 2007. Blakemore is the sole beneficiary under [Suber's] Last Will and Testament.
13. The Power of Attorney appointing Birdin as Suber's Attorney-in-Fact required Birdin to provide an accounting of Suber's assets upon demand by the Executor of Suber's estate.
14. Between May of 2007 and August, 2008 Blakemore made demands for an accounting including obtaining an Order from this Court requiring an accounting, which Birdin acknowledges she received, however Birdin failed to provide an accounting until March 17, 2009 and an amended accounting on April 13, 2009.
15. Birdin's Accounting shows the balance in Suber's accounts as of the April 23, 2007 bank statement as follows:

Silver Star Plus account # *****[5]48	\$29,118.19
Money Market Savings # *****289	\$30,534.64
Certificates of Deposit	<u>\$25,964.91</u>
Total	\$85,617.74
16. Birdin wrote a check on account # *****[5]48 for \$20,000 to herself, for anticipated modifications to her home which were never performed, dated April 5, 2007, two days before Suber's death. Said check was not negotiated until two days after Suber's death. The renovations were never done; therefore, the value of Suber's accounts at the time of her death, on April 7, 2007, was \$105,617.74.

17. Birdin acknowledges that she made no contributions to any of the National City accounts.
18. Birdin's mother, [Sharon] Birdin ([Sharon]) died in 1991. Suber was likely the beneficiary of a policy [for] [Sharon's] life insurance. The value of [Sharon's] life insurance policy and a possible pension are unknown.
19. Suber provided approximately \$75,000 to Birdin while she was in college and gave Birdin the proceeds from the sale of [Sharon's] home, to help Birdin purchase her home in Illinois.
20. Birdin believes some of the funds in the National City accounts came from an insurance policy on [Sharon's] life, however, the Court finds there is no evidence that any proceeds from a 1991 insurance policy were still in Suber's bank account 16 years later, at the time of Suber[']s death on April 7, 2007.
21. Birdin has no personal knowledge of the source of any contents in the National City accounts except the deposit of \$46,350 in proceeds from [the] sale of Suber's Indianapolis real estate in October 2006 and Suber's monthly civil service retirement checks.
22. Birdin is listed as joint owner of the National City Money Market savings account # *****289 in bank statements dated February, March and April of 2007 and Suber added Birdin as a signator and not power of attorney in December 2005; therefore the Court finds account # *****289 was a joint account.
23. At all times during the power of attorney, and at the time of her death on April 7, 2007, Frances Suber remained the sole owner of her certificates of deposit # *****068, *****073, *****103, *****381.
24. All checks in Birdin's accounting were written on the Silver Star Plus account #*****[548]. Birdin's Accounting includes copies of over seventy five checks with a check number sequence between 5363 and 5450 with the preprinted account owner's name of "Frances S. Suber ... Indianapolis, IN 46208[']" and all with the payor signature of "Frances Suber". One check, 5451, lists "Frances Suber Dana Birdin" with the payor signature of Dana Birdin and six checks, 5601-5605 and

5608 have a preprinted owner name of “Dana Birdin, POA Frances Suber”.

25. The Court finds that Birdin was not a joint owner of #*****[548].
26. Birdin’s accounting for the time period when she was attorney-in-fact show[s] that Birdin wrote several checks over an extended period of time to herself for reimbursement of expenses and for specific payments for various services rendered related to Suber.
27. Blakemore filed an objection to the accounting alleging \$31,000.00 in unsubstantiated checks. Birdin admitted \$9,450.00 was withdrawn from Suber’s bank account for payment of services. The remaining checks were written after Suber’s death.
28. Birdin incurred \$3,750 in expenses as a result of Suber living in her household from January 2006-April 2007; however a claim for these expenses was not timely filed.
29. The Power of Attorney specifically provides “My attorney-in-fact is entitled to reimbursement of all reasonable expenses advanced on my behalf, but is not entitled to a fee for services rendered.”
30. On August 1, 2008, the Estate filed the Complaint against Birdin for Specific Performance, Theft/Conversion, Replevin and Conversion.
31. In April 2009, Birdin filed a claim against the estate in the sum of \$117,720.00 for services rendered and reimbursement of expenses incurred for Suber’s benefit during her lifetime.
32. The Court took under advisement admission of Plaintiff’s exhibit 10, a National City bank statement predating Birdin’s appointment as Attorney-in-Fact with the account owner name of “Frances S. Suber” found among Suber’s belongings at her Indianapolis residence. Plaintiff’s exhibit 10 is not admitted into evidence.

CONCLUSIONS OF LAW:

....

34. Where the exercises of an attorney-in-fact’s powers are brought into question, the burden of proof is ordinarily on the party asserting breach

of fiduciary duty to establish such breach. However, if the questionable transactions benefited the attorney-in-fact as agent of the principal, Indiana law “imposes a presumption of undue influence and fraudulent transfer. The burden of proof [then] shifts to the agent who must demonstrate by clear and unequivocal evidence that he or she acted in good faith and did not take advantage of [the] trusted relationship.” Villanella v. Godbey, 632 N.E.2d 786, 790 (Ind. Ct. App. 1994), WW Extended Care, Inc. vs. Swinkunas, 764 N.E.2d 787 (Ind. App. 2002).

35. A person who knowingly or intentionally exerts unauthorized control over the property of another person, with intent to deprive the other person of any part of its value or use commits theft. I.C. 35-43-4-2(a).
36. A person who knowingly or intentionally exerts unauthorized control over the property of another person, commits conversion[.] I.C. 35-43-4-3.
37. 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 unless there is clear and convincing evidence of a different intention at the time the account is created. I.C. 32-17-11-18(a).
38. Birdin contends she was a joint owner ... of all the National City accounts prior to being appointed as Attorney-in-Fact for Suber and that she is entitled to the accounts as a joint owner.
39. Suber is listed as the joint owner *only* (emphasis added) on the Money Market Savings Account # *****28[9]. This joint account had a balance of \$30,158.39 at the time of Suber’s death.
40. The Court finds Birdin’s lack of signatory rights, lack of knowledge regarding the contributions to or the existence of the National City accounts prior to being appointed as Suber’s Attorney-in-Fact and the fact that Suber alone is listed as account owner on all but the Money Market Account, lead to the conclusion that Birdin’s interest in the remaining National City accounts is limited to her being given power of attorney and not joint owner.
41. Birdin, as attorney-in-fact, has not met her burden of proof to demonstrate by clear and unequivocal evidence that she acted in good faith and did not take advantage of the trusted relationship with her

grandmother, wherein she now claims joint ownership of Suber's bank accounts.

42. The sum of \$20,000 which was written on April 5, 2007 to make renovations to Birdin's home to accommodate Suber, and removed from Suber's Silver Star Account # *****548 on April 9, 2007 was not jointly held property and must be returned to Suber's estate.
43. By statute, Birdin's Power of Attorney terminated at the time of Suber's death.
44. The power-of-attorney specifically forbids Birdin from receiving a fee for services rendered to Suber.
45. Any services or expenses for which Birdin may have been entitled to reimbursement but had not already paid herself can only be asserted through a claim made in the decedent's estate.
-
47. In order to be valid, Birdin's claim should have been filed no later than nine months after the date of death, January 7, 2008, or three months after the last date of publication of the opening of the estate, which was September, 2007.
48. Birdin had knowledge of the date of death of the decedent and acknowledges she knew an estate had been opened but did not file her claim until April 23, 2009, which is approximately nineteen months after the time for filing claims in this estate expired.
49. Birdin is barred by statute from pursuing her claim due to untimeliness.
50. The Court finds that Birdin has specifically performed by submitting her Accounting.
51. The Court finds for Blakemore in her prayer for replevin and orders Birdin to return the sum of \$75,617.74 to the Estate of Frances S. Suber.
52. The court finds that Blakemore incurred reasonable attorney fees in the amount of \$7,290.00 for which she is entitled to reimbursement.

-
54. Although Indiana's Crime Victim's Relief Act allows a person suffering a pecuniary loss as a result of a violation of criminal deception to bring a civil action against the person causing the loss for treble damages, plus costs and attorney fees, the Act is penal in nature and must be strictly construed. Opportunity Knocks, Inc. v. Maxwell, N.D. Ind. 2009, 618 F. Supp. 2d 920.
 55. It rests within [the] trial court's discretion to determine the amount of damages that should be awarded when an action is brought by [a] crime victim under [the] treble damages statute, and thus even where the victim proves that [the] defendant committed [an] offense against property, there is no absolute entitlement to an award of treble damages. Ballard v. Harman, App. 2000, 737 N.E.2d 411.
 56. Criminal conversion requires proof that the defendant intended to deprive the plaintiff of his or her rights in the property. To establish civil conversion, unlike in a criminal trial, a claimant need prove by only a preponderance of the evidence that the defendant committed the criminal act; a criminal conviction of conversion is not a condition precedent to recovery in the civil action.
 57. The Court finds by a preponderance of the evidence that Birdin converted the sum of \$9,450.00 from Suber's bank account prior to decedent's death.
 58. The Court does not find by a preponderance of the evidence that Birdin committed the crime of Count IV Conversion. Birdin mistakenly believed that she had a right to Suber's funds after she died, because she believed she was a joint owner (which she was not).
 59. The Court enters judgment for Blakemore as executor and heir of the Estate of Frances Suber and against Birdin in the total amount of \$75,617.74 for replevin, \$9,450.00 for conversion, \$7,290.00 for attorney fees, plus costs.
 60. Birdin expended fees for her attorney to prepare the accounting and ... had Birdin filed a timely claim, she may have been entitled to reimbursement for Suber's food and utilities. In its discretion, the Court will setoff those expenses and not award treble damages for the converted funds.

Appellant's App. at 6-14.

Birdin filed a motion to correct error and a motion for relief from judgment, both of which the trial court denied. This appeal ensued.

Discussion and Decision

Our standard of review is well settled:

When a party has requested specific findings of fact and conclusions thereon pursuant to Ind. Trial Rule 52(A), the reviewing court may affirm the judgment on any legal theory supported by the findings. In addition, before affirming on a legal theory supported by the findings but not espoused by the trial court, the appellate court should be confident that its affirmance is consistent with all of the trial court's findings of fact and the inferences drawn from the findings. In reviewing the judgment, we must first determine whether the evidence supports the findings and second, whether the findings support the judgment. The judgment will be reversed only when clearly erroneous. Findings of fact are clearly erroneous when the record lacks any evidence or reasonable inferences from the evidence to support them. To determine whether the findings or judgment are clearly erroneous, we consider only the evidence favorable to the judgment and all reasonable inferences flowing therefrom, and we will not reweigh the evidence or assess witness credibility.

Butler v. Shipshewana Auction, Inc., 697 N.E.2d 1285, 1287 (Ind. Ct. App. 1998) (citations omitted).

When the trial court enters findings in favor of the party bearing the burden of proof, the findings are clearly erroneous if they are not supported by substantial evidence of probative value. We will affirm a judgment where we find substantial supporting evidence, unless we are left with a definite and firm conviction that a mistake has been made.

McCauley v. Harris, 928 N.E.2d 309, 313 (Ind. Ct. App. 2010) (citation omitted), *trans. denied* (2011).

Birdin makes two arguments: (1) that the trial court erred in finding that she was not a joint owner of the National City Silver Star Plus account;¹ and (2) that the trial court erred “when it included certificates of deposits [sic] and jointly-owned accounts in the value of Suber’s estate.” Appellant’s Br. at 8. We address each in turn.

I. Ownership of Silver Star Plus Account

An “account” is “a contract of deposit of funds between a depositor and a financial institution.” Ind. Code § 32-17-11-1(a). “The term includes a checking account, savings account, certificate of deposit, share account, and other like arrangement.” Ind. Code § 32-17-11-1(b). A joint account is defined as “an account payable on request to one (1) or more of two (2) or more parties whether or not mention is made of any right of survivorship.” Ind. Code § 32-17-11-4. A “party” is “a person who, by the terms of the account, has a present right, subject to request, to payment from a multiple party account.” Ind. Code § 32-17-11-7(a). A “party” does not include “a person who is merely authorized to make a request as the agent of another.” Ind. Code § 32-17-11-7(c).

Indiana Code Section 32-17-11-17(a) says, “Unless there is clear and convincing evidence of a different intent, during the lifetime of all parties, a joint account belongs to the parties in proportion to the net contributions by each party to the sums on deposit.” “The statute creates a presumption that, during the lifetime of the parties, the proceeds in a joint account belong to the joint tenants in the proportion that they contributed to the account.

¹ In her brief, Birdin frames the issue as whether the “trial court erred when it determined that [she] was not a joint owner of the National City Money Market savings account.” Appellant’s Br. at 7. We presume that this is an oversight on Birdin’s part, since the trial court found that she *was* a joint owner of the Money Market savings account. Appellant’s App. at 9 (finding 22).

However, the parties can rebut that presumption with clear and convincing evidence of a contrary intent.” *Rollings v. Smith*, 716 N.E.2d 502, 505 (Ind. Ct. App. 1999) (footnote and citation omitted).

Birdin makes the following argument:

Here, Blakemore had the burden to prove by clear and convincing evidence that Birdin’s name was not on Suber’s bank accounts. In Blakemore’s complaint, she alleged that Suber’s bank accounts were not owned by Birdin, but solely by Suber. As a result of her complaint, Blakemore had the burden of proving that Birdin knowingly and intentionally exerted unauthorized control over Suber’s property (bank accounts).

However, Blakemore did not offer any evidence that Birdin was not the owner of the accounts. Blakemore did not testify concerning ownership of the accounts. Birdin, however, testified that she believes she was a joint owner of the accounts.

Appellant’s Br. at 7-8.

Assuming, without deciding, that Blakemore indeed had the burden to prove by clear and convincing evidence that Birdin was not a joint owner of (or, more precisely, a joint party to) the Silver Star Plus account, the evidence recited in the trial court’s findings establishes that Blakemore satisfied this burden. Over seventy-five checks drawn on that account (numbers 5363 through 5450) contain both Suber’s preprinted name and her signature as the payor.² Six checks (numbers 5601 through 5605 and 5608) bear Birdin’s signature and the preprinted designation “Dana Birdin, POA Frances Suber,” from which a finder of fact could reasonably infer that Birdin was not a joint party to the account but merely Suber’s agent as her attorney-in-fact. Only one anomalous check (number 5451,

² The handwriting on these checks strongly suggests that they were made by two different persons. *See, e.g.*, Appellant’s App. at 254 (check #5391 dated “9-4-06” and check #5381 dated “15 Feb 2006”).

which falls between the two previous sequences) bears Birdin’s signature and the preprinted designation “Frances Suber Dana Birdin.” Based on the foregoing, we conclude that the trial court’s finding that Birdin was not a joint owner of the Silver Star Plus account is supported by substantial evidence of probative value and therefore is not clearly erroneous.³ Because Birdin advances no other arguments on this point, we do not address it further.⁴

II. Valuation of Suber’s Estate

Birdin frames this issue as follows:

The trial court used the value of Suber’s accounts at the time of her death to determine the amount of money Birdin must return to the estate. The

³ Birdin asserts that “Indiana law expressly holds that [copies of bank statements and checks] never amount to clear and convincing evidence that a person is not joint owner of an account.” Appellant’s Br. at 8. The “Indiana law” to which Birdin refers is *Rubsam v. Estate of Pressler*, in which the court said,

The estate of the decedent attempts to rebut the presumption that the account was not intended to be a survivorship account with the evidence that the name of the account was “Viva Pressler” and not “Viva Pressler & Maedean Rubsam” as was the case in the other accounts which were admittedly jointly held by the decedent and Rubsam. The name of the account has no legal significance. It may be indicative of the ownership, but the name does not create a conclusive presumption of ownership. [Rubsam] could have named the account “Mickey Mouse;” such a name would not make Disney’s character the owner of the account. Ownership is more properly evidenced by a “present right to withdraw” or other contractual agreements, such as a partnership agreement, which may or may not be revealed by the signature card.

537 N.E.2d 520, 524 (Ind. Ct. App. 1989). In this case, all but one of the eighty-plus checks at issue bore either Suber’s name and signature alone or Suber’s name with Birdin listed as her attorney-in-fact, which clearly and convincingly indicates that Birdin was not a joint party to the Silver Star Plus account. To the extent *Rubsam* suggests that Blakemore was required to submit additional proof to carry her burden (such as the National City account agreement or the testimony of a National City employee), we respectfully decline to follow it as overbroad.

⁴ Birdin emphasizes that “whether she acted properly with regard to her duties as attorney-in-fact is not an issue raised on appeal.” Appellant’s Reply Br. at 5. To the extent the issue raised by Birdin implicates her duties as Suber’s attorney-in-fact, we decline to construct any arguments on her behalf. As a final consideration, Birdin continues to assert that her mother’s estate “is the source of the funds that [are] subject to this appeal.” Appellant’s Reply Br. at 5. The trial court determined otherwise, and we may not second-guess its conclusion. At any rate, Birdin fails to explain why she would be legally entitled to funds that Suber inherited from Birdin’s mother.

bank statement in Birdin's accounting shows a balance of \$85,617.74 as of April 23, 2007. The trial court found that \$20,000.00, which Birdin removed from the bank account on April 5, 2007, should be added back.

However, the trial court also made findings that contradict their [sic] estimates for the value of Suber's estate. The trial court found that the \$30,654.64 in the National City Money Market Savings account was jointly owned by Suber and Birdin and not part of the estate. Further, Suber's bank accounts included \$25,964.91 in Certificate of Deposits [sic]. Blakemore testified that she was the beneficiary on one (1) of the accounts.

Furthermore, Blakemore never presented any documentation required under law to prove that either she or the Estate of Suber were beneficiaries of the certificates of deposit.

Appellant's Br. at 9 (citations to appendix omitted).

Our review of Birdin's argument is complicated somewhat by the judgment's lack of itemization with respect to Blakemore's replevin claim. The \$75,617.74 figure cited by the trial court does not match any of the account balances appearing elsewhere in the judgment, although it is exactly \$30,000 less than the \$105,617.74 total value of Suber's bank accounts in finding 16. This total includes the \$30,534.64 balance in the Money Market Savings account that was jointly owned by Suber and Birdin and the \$25,964.61 balance in Suber's certificates of deposit. One may reasonably infer that the \$30,000 difference between the total and the replevin judgment reflects the trial court's determination that Birdin was entitled to \$30,000 from the Money Market Savings account and that the total should be offset by this amount. We find no grounds for reversal on this point.

Regarding the certificates of deposit, we agree with Blakemore that "Birdin misses the point of the trial court's ruling." Appellee's Br. at 9. As Blakemore puts it,

The trial court found that the certificates of deposit were solely owned by [Suber] presumably based on among other things the fact that the bank

statements which were part of Birdin's accounting showed [Suber] as the sole owner. Therefore, at the time of her death, the value of the certificates became assets of the estate. The ruling has nothing to do with who was or wasn't designated as a "beneficiary" of the certificates of deposit.

Id. Consequently, we affirm.

Affirmed.

KIRSCH, J., and BRADFORD, J., concur.