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ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-258

FEBRUARY TERM, 2006

In re Estate of Catherine Williams	}	APPEALED FROM:
	}	
	}	
	}	Lamoille Superior Court
	}	
	}	DOCKET NO. 9-1-04 Lecv
	}	
	}	Trial Judge: Howard E. VanBenthuisen

In the above-entitled cause, the Clerk will enter:

Appellant Laura Brueckner challenges the trial court=s decision affirming rulings of the probate court relating to a joint tenancy of a safe deposit box. We affirm.

The facts are not in dispute, and were well summarized in our decision in a prior related appeal. In re Estate of Catherine Williams, No. 2004-341 (Vt. Feb. 17, 2005) (unreported mem.). In brief, Brueckner and Catherine Williams were joint tenants of a safe deposit box owned by Union Bank. When Williams died, both Brueckner and the executor of Williams= estate, Jane Lohmann, sought access to the safe deposit box. In accordance with the provisions of the safe deposit box lease agreement, the bank refused access to either party, and instead intervened in the probate court action for a determination of the rights to the safe deposit box and its contents. The probate court appointed a commissioner who opened the box in the presence of both Brueckner and the executor and inventoried its contents. At that time, Brueckner conceded that all of the items in the safe deposit box belonged to the estate. Indeed, when the probate court entered its final accounting of the property of the estate, which included this assessment, Brueckner did not appeal that order.

Nonetheless, Brueckner now challenges the probate court=s decisions: (1) permitting Union Bank to intervene; (2) appointing a commissioner to open and inventory the safe deposit box; and (3) awarding attorney fees and costs to Union Bank against Brueckner.

As determined by the probate court and the superior court in reviewing the probate court order, the probate code permits intervention by parties with a legal interest in the proceedings. V.R.P.P. 24(b)(2). Union Bank had a legal interest here because the lease agreement required Union Bank to deny access to the safe deposit box upon the death of one of the joint tenants until the legal rights pertaining to the safe deposit box were determined. The probate court=s decision to appoint a commissioner to open and inventory the contents of the safe deposit box was necessitated by the dispute between Brueckner and executor as to who was entitled to open and review the contents of the safe deposit box. Brueckner makes no coherent argument as to why the probate court would not be permitted to exercise its power to settle the estate in this manner. Finally, Union Bank=s right to be reimbursed for its legal fees and costs is also set forth in the safe deposit box lease agreement:

The Renter agrees to hold the Institution harmless from all costs and expenses to which it may be put in any suit or suits relating to the contents of said Safe and agrees upon

demand to pay such sums as the Institution may have been compelled to pay or incur by reason of such suit or suits.

Brueckner points to no reason why she should not be bound by the terms of her agreement. She does not argue that the probate court lacked jurisdiction to enforce the agreement.

In addition to these issues, which were the three issues we remanded to the superior court, Brueckner raises two additional arguments in her brief. First, Brueckner argues that as a joint tenant of the safe deposit box, she is entitled to replace Williams' name with her own name on all of the documents in the box. Brueckner's claim to the contents of the safe deposit box is unavailing. As we noted in our prior decision in this case, the lease provided that, as to two or more renters, the lease created a joint tenancy as to the lease itself but did not affect the title to any contents of the safe. @ In re Estate of Catherine Williams, No. 2004-341, slip op. at 1. We also pointed out that at the time the commissioner filed his inventory of the contents of the box with the probate court, Brueckner did not dispute that all of the materials in the box belonged to the estate, and they were distributed accordingly. @ Id. at 2. Finally, the record reveals that Brueckner, in answering interrogatories posed by the estate, denied that she had any ownership interest in the contents of the safe deposit box that were explicitly titled to the late Ms. Williams. In light of her own admissions and our prior decision, Brueckner is precluded from arguing that she has an ownership interest in the contents of the safe deposit box. See State v. Gomes, 166 Vt. 589, 590-91 (1996) (mem.) (Supreme Court's decision remanding matter is law of the case for all points addressed in decision). Because we find these arguments precluded, executor's motion to dismiss this portion of the appeal on waiver grounds is denied as moot.

Second, Brueckner argues that these proceedings have violated her rights under the Vermont and United States Constitutions against illegal searches and seizures, deprivation of life, liberty, or property, and violation of due process, among other provisions. These arguments are not adequately supported by reference to facts or law. On the most basic level, because Brueckner cannot establish ownership of any of the estate's property held in the safe deposit box, her arguments claiming a deprivation of property necessarily fail. Similarly, Brueckner's argument that she had a right to review the contents of the safe deposit box in privacy (i.e., not as part of an illegal search and seizure) is defeated by the provisions of the lease agreement she signed, which permit the bank to review the contents of the safe deposit box when there might be a conflict between the surviving joint tenant and the deceased tenant's estate. Finally, as the superior court noted, Brueckner's due process claim fails because, while she was not timely notified of the bank's intent to intervene in the probate court case, she received sufficient notice to actually participate in the hearing and can show no prejudice resulting from the late notice.

Brueckner has not demonstrated error in either the probate court or superior court decision.

Appellee's motion to partially dismiss the appeal is denied. The decision of the superior court is affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice

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