Rel: August 18, 2023

SUPREME COURT OF ALABAMA

SPECIAL TERM, 2023

SC-2022-0533

Mary Jo Fletcher, as personal representative of the Estate of Edwyna Ivey, deceased

v.

Sharyl I. Eddins, individually and as executrix of the Estate of R.E. Ivey, deceased; Dell Ivey Moody; and William R. Ivey

Appeal from Monroe Circuit Court
(CV-14-900125)

SC-2022-0640

Sharyl I. Eddins, individually and as executrix of the Estate of R.E. Ivey, deceased; Dell Ivey Moody; and William R. Ivey

v.

Mary Jo Fletcher, as personal representative of the Estate of Edwyna Ivey, deceased

Appeal from Monroe Circuit Court
(CV-14-900125)

COOK, Justice.

These consolidated appeals concern the division of certain assets contained in the estate of R.E. Ivey ("R.E."). At the time of his death, R.E. was survived by his wife, Edwyna Ivey ("Edwyna"), and his four children from a previous marriage -- Sharyl I. Eddins ("Sharyl"), William R. Ivey ("Robbie"), Dell Ivey Moody ("Dell"), and Ty Ivey ("Ty").

In appeal no. SC-2022-0533, Mary Jo Fletcher, as the personal representative of Edwyna's estate, appeals the Monroe Circuit Court's determination that Edwyna's claims for certain statutory allowances were totally offset by the value of certain assets that Edwyna had

retained from R.E.'s estate. She also appeals the circuit court's determination that three of Edwyna's stepchildren, Sharyl, Robbie, and Dell, were entitled to recover on their claims of conversion and breach of trust against Edwyna. For the reasons stated below, we affirm in part and reverse in part the circuit court's order and remand the cause for the circuit court to enter an order consistent with this opinion.

In appeal no. SC-2022-0640, Sharyl, individually and as the executrix of R.E.'s estate, Dell, and Robbie have filed a cross-appeal challenging the Monroe Circuit Court's determination that Edwyna was entitled to funds contained in an account known by the parties as the "farm account." For the reasons stated below, we affirm that portion of the circuit court's order.

Facts and Procedural History

In 1975, R.E. executed a will leaving the entirety of his estate to his first wife, Nancy S. Ivey, or, in the event Nancy predeceased him, to his and Nancy's four children -- Sharyl, Robbie, Dell, and Ty -- in equal shares.[1] Nancy died in 2001, and, in 2004, R.E. married Edwyna.

[1]It is undisputed that R.E.'s 1975 will is the only will he ever executed and that he never executed a codicil to that will.

After marrying Edwyna, R.E. sold a trailer for approximately $60,000. Although he initially intended to use those proceeds to purchase a new truck, R.E. ultimately decided to deposit those proceeds into a joint account ("the trailer account") that he shared with Edwyna.

In addition to the trailer account, Edwyna and R.E. also had three joint money-market accounts and another account with Dell known by the parties as the "farm account." The record indicates that each of the money-market accounts contained around $15,000, while the farm account contained a little less than $18,000.

On March 26, 2014, R.E. died and was survived by Edwyna, Sharyl, Robbie, Dell, and Ty. Sharyl, as the named executrix of R.E.'s will, petitioned the Monroe Probate Court to admit R.E.'s will to probate. The will was admitted to probate, and letters testamentary were issued to Sharyl.

Approximately two months after R.E.'s death, on May 13, 2014, Edwyna sent a letter to Sharyl, Robbie, Dell, and Ty regarding the funds in the trailer account. That letter stated, in pertinent part:

> "Today, I elected to transfer funds out of mine and your Dad's name for the sale of the trailer ....
>
> "The reason being: With the funds left in my name only,

> Winston [(Edwyna's son)] could have claimed a portion since my name was on the account only; therefore, I have changed the account to:
>
> "Mrs. Edwyna L. Ivey with the beneficiaries: [Sharyl] Eddins, Ty Ivey, Dell Moody, and Robbie Ivey.
>
> "The way the account is set up: If one of you or all four of you want your fourth of the money, you can advise me and I will send you each a check. Or, you can wait until I die and receive your portion of the Money Market Account .... Each is to receive a fourth of the proceeds at the time you desire the money or at my death.
>
> "....
>
> "I know your Dad would want each to receive the same portion of the proceeds from the trailer. ...
>
> "I hope this is satisfactory to each one [of you] as I did not want to involve Winston in any way. She (the lady at the bank) assured me that since it is in my name and you four children are the beneficiaries, he would not be able to get any money from this account .... I just wanted the four children to get the proceeds and I felt that is the way your Dad would want it."

Two days later, Edwyna sent additional letters to Sharyl and Robbie regarding two of the three money-market accounts.[2] Both of those letters stated, in pertinent part:

> "You will recall that your Dad had set up a $15,000 Money

[2]The parties do not dispute that the third money-market account was established by R.E. for Edwyna only and that that account succeeded to Edwyna upon his death.

> Market Account in your name and in his name at CCB.
>
> "On March 10, he elected to move the account from CCB and it was $15,247.85, which was put in Southern Independent Bank, in Andalusia, Alabama ….
>
> "The account was then left in my name, after the passing of your Dad, and I did not want it to look like it was part of my estate so I had it changed to my name and you as the beneficiary. The lady at the bank said I could write you a check any time you want it and I can wire transfer it or mail it to you. If I should die before you get this money, no one could receive it but you as you are the beneficiary. Let me know what you want done with this and I will abide by your wishes. I would like for it to be handled at your earliest convenience so I will know you got the amount due you.
>
> "Hope this is all satisfactory to you ... I just wanted it so Winston would not think it was part of my estate."

Shortly after the above letters were sent, Ty asked for and received his share of the funds in the trailer account. However, when Robbie and Sharyl asked Edwyna for their share of the funds from that account and the accounts containing the funds from the money-market accounts, she informed them that she had been told by her attorney that she could "not write anymore checks pertaining to R.E.'s estate" until after R.E.'s estate had been settled.

On July 16, 2014, Edwyna petitioned the probate court for homestead, exempt-property, and family allowances. See §§ 43-8-110

through -113, Ala. Code 1975.[3] In that same filing, Edwyna also petitioned the probate court for an intestate share of R.E.'s estate pursuant to § 43-8-90, Ala. Code 1975, on the basis that R.E.'s will contained no provision for her ("the omitted-spouse claim").

About a month later, upon petition from Sharyl, the administration of R.E.'s estate was subsequently removed from the probate court to the circuit court. Sharyl then filed her response to Edwyna's petition, in which she argued that the omitted-spouse claim was due to be denied on the ground that R.E. and Edwyna had "a mutual antenuptial agreement ... wherein they each ... agreed that neither would make any affirmative claim in and to the estate of the other" and that R.E. had made "alternative provision[s]" for Edwyna in lieu of a testamentary provision.

As a threshold matter, the circuit court stated that, at the parties' joint request, it would adjudicate Edwyna's request for homestead, exempt-property, and family allowances at a later date and that it was ruling on only the omitted-spouse claim. Following an evidentiary hearing on Edwyna's petition, the circuit court determined that Edwyna

[3]According to the record, the aggregate value of those allowances at the time of R.E.'s death was $15,500.

was not entitled to any share of R.E.'s estate and denied the omitted-spouse claim. It then certified its judgment as final pursuant to Rule 54(b), Ala. R. Civ. P.

Edwyna appealed the circuit court's judgment. This Court reversed the judgment and remanded the case with instructions for the circuit court to enter a judgment awarding Edwyna an intestate share of R.E.'s estate. See Ivey v. Estate of Ivey, 261 So. 3d 198, 213 (Ala. 2017).

On remand, Sharyl moved the circuit court for an order directing Robbie and Dell to join the proceedings, claiming they had individual claims against Edwyna with regard to her petition for homestead, exempt-property, and family allowances. The circuit court granted Sharyl's request, and Robbie and Dell officially joined the proceedings.

Shortly thereafter, Sharyl filed a cross-claim against Edwyna in which she alleged that Edwyna had unlawfully converted the funds in the trailer account by refusing to pay Sharyl her share of the funds in that account. Robbie later joined Sharyl's cross-claim against Edwyna.

In response, on January 25, 2020, Edwyna filed a cross-claim of conversion against Sharyl, Robbie, and Dell pursuant to certain sections of the Uniform Multiple-Person Accounts Act, § 5-24-1, et seq., Ala. Code

1975. In support of her cross-claim, Edwyna alleged that, shortly after R.E.'s death, Dell withdrew $17,867.20 from the farm account and had those funds placed in a separate account that had been set up in the names of all four of R.E.'s children for the purpose of paying estate expenses. She thus sought a judgment for "the amount of the funds wrongfully taken from the Farm Account."

In November 2020, Sharyl and Robbie amended their pleading and added an additional cross-claim against Edwyna for "enforcement of express trust, or alternatively [for] imposition of equitable trust." According to Sharyl and Robbie, despite giving Ty his share of the proceeds in the trailer account and despite promising them that she would give them their share of the proceeds from either the trailer account or the money-market accounts upon request, Edwyna had refused to give them anything. Sharyl and Robbie "demand[ed] judgment against … Edwyna … for the sums which were deposited into the respective bank accounts designated for each of them, together with interest accruing thereon since the date they made demand for such payment thereof, with their costs of action … associated with this Cross-Claim." Dell likewise filed a similar cross-claim against Edwyna.

Following additional filings, on March 31, 2021, the circuit court held an evidentiary hearing in the case. The testimony and evidence presented at that hearing indicated the following.

First, the circuit court heard testimony regarding Edwyna's claims for homestead, exempt-property, and family allowances. Sharyl conceded that Edwyna was entitled to the homestead and exempt-property allowances, but she disputed that Edwyna was entitled to the family allowance because, she said, Edwyna was not dependent upon R.E.'s estate for support and because Alabama's statute governing family allowances was inapplicable in this case. Sharyl further contended that any entitlement Edwyna had to those allowances was due to be offset by the value of various items of personal property that Edwyna had retained from R.E.'s estate, including R.E.'s 2005 Chevrolet Silverado pickup truck ("the pickup truck").

To establish the value of the pickup truck, Sharyl offered the testimony of Wayne Koeppen, the owner of K&B Cars, which is a used-car dealership in Monroeville. Koeppen opined that, based on the condition of the pickup truck at the time of R.E.'s death, the fair market value of the truck would have been around $16,500. On cross-

examination, however, Koeppen admitted that if someone had offered to sell him the pickup truck, he would have paid only $15,500 for it. Based on Koeppen's testimony, Sharyl argued that Edwyna's requested allowances were totally offset by the fair market value of the pickup truck and that she was thus entitled to nothing.

Although Edwyna agreed that the amount of the statutory allowances to which she was entitled was due to be offset by the value of the pickup truck, she disagreed with Koeppen's valuation. She noted that the inventory list that Sharyl had previously submitted to the probate court for R.E.'s estate indicated that the pickup truck's "estimated value" was $10,000. She also had her son, Winston Fletcher, testify as to the value of the pickup truck. Although Winston admitted that he did not know exactly how much the pickup truck was worth, he nevertheless stated that he did not believe that it was worth $16,500.

Next, the circuit court heard testimony regarding the farm account. First, Sharyl testified that, at the time of R.E.'s death, R.E., Edwyna, and Dell held joint interests in that account. According to Sharyl, the funds in that account were used for the maintenance and upkeep of the house and farmland that R.E. owned in Monroeville. When asked about what

R.E.'s long-term intentions for that account were, Sharyl explained that he had told her that he wanted the money in that account to always be used to take care of that property.

The circuit court then heard testimony from Edwyna. She confirmed that the money in that account had almost always been used to pay expenses related to the house and farmland. She also stated, however, that, before he died, R.E. had put a little over $17,000 in that account and that he had intended for her have that money.

Following Edwyna's testimony, Dell testified that the funds in the farm account had traditionally been used to pay for the maintenance and upkeep of R.E.'s house and farmland in Monroeville. Dell also admitted that, after her father's death, she withdrew $17,874.20 from that account. When asked why she did so, Dell stated that she had been instructed to do so by Sharyl's attorney so that the money could be used to pay for the expenses related to R.E.'s estate.

Finally, the circuit court heard testimony regarding the funds that Edwyna transferred from the trailer account and the money-market accounts into separate accounts for the benefit of R.E.'s children. According to Sharyl, Robbie, and Dell, those accounts were, in fact,

declaratory trusts, which, they said, was confirmed by Edwyna in the letters she sent to them shortly after R.E.'s death. They stated that, despite assuring them in her letters that, upon request, she would give them their share of the funds, Edwyna had thus far refused to do so. As a result, Sharyl, Robbie, and Dell alleged that Edwyna had not only breached the terms of the trusts but had also converted those funds and that they were, thus, entitled to a judgment in their favor.

Although Edwyna admitted during the evidentiary hearing that she had sent letters to R.E.'s children confirming that she had set up separate accounts and had named them as beneficiaries on those accounts, she denied that she had done so with the intention of establishing declaratory trusts. According to Edwyna, those accounts were strictly set up as payable-on-death ("POD") accounts, and, thus, she said, R.E.'s children were entitled to receive the funds only if she chose to give them those funds or if she died. Because she had been advised by her attorney not to write any more checks out of those accounts until after R.E.'s estate had been settled, Edwyna stated she could not give Sharyl, Robbie, and Dell the funds they had requested. She also stated, however, that, even if she had been told that she could do so, she would not have

done so because they had treated her so poorly.

After hearing the above testimony, the circuit court issued an order in which it first found that Edwyna, as R.E.'s surviving spouse, was entitled to a homestead allowance of $6,000 pursuant to § 43-8-110; a family allowance of $6,000 pursuant to §§ 43-8-112 and -113; and an exempt-property allowance in the amount of $3,500 pursuant to § 43-8-111, for a total value of $15,500. However, because Edwyna had retained certain assets from R.E.'s estate, including the pickup truck, which testimony had established was worth around $16,500, the circuit court concluded that her claim for the statutory allowances at issue was due to be "totally offset" by the value of those assets and that Edwyna was thus "indebted to the Estate for a refund of $1,000.00."

Next, the circuit court found that Edwyna was entitled to the funds that Dell had withdrawn from the farm account. Because Edwyna was R.E.'s surviving spouse and a joint owner of the account at the time of his death, the circuit court found that, pursuant to § 5-24-12(a), she was "entitled to a payment of $17,867.20 from the Estate, representing the subject account balance …."

Finally, the circuit court found that Sharyl, Robbie, and Dell were

entitled to recover on their conversion and breach-of-trust claims. In support of its conclusion, the circuit court explained:

> "A conversion claim will not lie for an amount of cash, but a conversion claim can be sustained if the cash at issue is 'specific money capable of identification …' Green Tree Acceptance, Inc. v. Tunstall, 645 So. 2d 1384 (Ala. 1994). In this case, Edwyna specifically identified the bank accounts which were the subject of her declaration of trust, as explained below.
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> "§ 19-3B-401(2) of the Alabama Uniform Trust Code provides that a trust may be created by 'declaration by the owner of property that the owner holds identifiable property as trustee.' This statute is in conformity with prior Alabama case law which recognizes the creation of 'declaratory trusts.'
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> "In Coosa River Water, Sewer and Fire Protection Authority v. SouthTrust Bank, 611 So. 2d 1058 (Ala. 1993), the Alabama Supreme Court discussed the elements of declaratory trusts. Initially, the Court observed that a declaratory trust is the only type of trust in which the settlor is not required to give up control of the trust res. Therefore, that Edwyna retained control of the funds in question does not prevent the formation of a valid declaratory trust. Footnote [5] of the Coosa River opinion further explains that in a declaratory trust there is no transfer of the legal title of the trust res, but the settlor is merely separating the legal title from the equitable title. In the case at bar, Edwyna expressly acknowledged in her letter that the four Ivey children were the equitable owners of the identified funds in question, and that the funds were not to be considered a part of her estate.
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> "In Jones v. Ellis, 551 So. 2d 396 (Ala. 1989), the Alabama Supreme Court addressed the elements of a declaratory trust and held that no particular form of words

were required to create an effective declaratory trust, but any instrument in writing signed by the settlor is sufficient, if the: (a) nature; (b) subject matter; and, (c) objects of the trust are manifested with reasonable certainty. The letters written by Edwyna to the Ivey children clearly meet these three requirements. She identified the funds and accounts which she declared she was holding in trust; she stated that the object of the trust was to prevent the funds from becoming co-mingled with her estate in the event of her death; and, she stated that the children could obtain the funds from her at any time at their request, because the funds came from R.E., and their father would want them to receive the funds.

"The final issue with respect to the declaratory trusts is whether Edwyna effectively revoked the trusts. The Alabama Uniform Trust Code departs from prior Alabama law which deemed trusts irrevocable unless expressly made revocable in that § 19-3B-602(a) now provides that a trust may be revoked or amended unless the trust terms expressly provide that it is irrevocable. Even if Edwyna retained a power to amend or revoke the declaratory trusts, she never did so. The letters written to [Sharyl], Robbie, and Dell in June, 2014, do not state that she was revoking the trust arrangement; she only stated that her lawyer had advised her not to make payment at that time, but to await completion of the estate administration. § 19-3B-602(c)(2) imposes a 'clear and convincing' evidence standard in considering whether a settlor intended to revoke a trust. Any evidence that Edwyna intended to revoke the trusts simply does not rise to this level.

"The evidence is undisputed that Robbie, [Sharyl], and Dell had made request for payment of their funds before Edwyna wrote the letters declining to make payment. Therefore, even if her June, 2014 letters are somehow characterized as an attempt to revoke the trusts, the revocation comes too late, because the beneficiaries had complied with the stated requirement for obtaining payment by requesting such payment, which was the only requirement

> Edwyna imposed for them to receive payment under the terms of the declaratory trust. Applying familiar contract law principles, an offer cannot be revoked after it has been accepted.
>
> "Therefore, [Sharyl], Dell and Robbie are entitled to recover for breach of trust and/or conversion from Edwyna their respective shares of the principal amount of the Trust ($15,247.85 + $14,991.57 = $30,239.42), together with interest accrued thereon at the legal rate of 6% from the date that payment was denied in June, 2014."

The parties filed motions to alter or amend the circuit court's order. Following a hearing, the circuit court issued an order denying those motions.[4] The parties appealed.

Edwyna commenced appeal no. SC-2022-0533. However, on January 27, 2023, this Court was notified that Edwyna had died. Mary Jo Fletcher, the personal representative of Edwyna's estate, filed a motion to be substituted for Edwyna, and that motion was granted by our clerk's office. We thus refer to Fletcher as the appellant throughout this

[4]In its order denying the motions to alter or amend, the circuit court noted that it was modifying the portion of its original order in which it concluded that Dell was entitled to recover $15,247.85 against Edwyna -- an amount which, the circuit court initially believed, represented Dell's portion of the proceeds removed from the money-market accounts. After reviewing the record, however, the circuit court realized that it had made a mistake and stated that it was amending its prior order to "eliminate the recovery by Dell against Edwyna for the sum of $15,247.85."

opinion even though all relevant action occurred while Edwyna was still alive.[5] Sharyl, Robbie, and Dell commenced a cross-appeal, appeal no. SC-2022-0640.

Standard of Review

> "'[W]hen a trial court hears ore tenus testimony, its findings on disputed facts are presumed correct and its judgment based on those findings will not be reversed unless the judgment is palpably erroneous or manifestly unjust.' Philpot v. State, 843 So. 2d 122, 125 (Ala. 2002). '"The presumption of correctness, however, is rebuttable and may be overcome where there is insufficient evidence presented to the trial court to sustain its judgment."' Waltman v. Rowell, 913 So. 2d 1083, 1086 (Ala. 2005) (quoting Dennis v. Dobbs, 474 So. 2d 77, 79 (Ala. 1985)). 'Additionally, the ore tenus rule does not extend to cloak with a presumption of correctness a trial judge's conclusions of law or the incorrect application of law to the facts.' Id."

Fadalla v. Fadalla, 929 So. 2d 429, 433 (Ala. 2005). "Under the ore tenus standard, the judgment of the trial court may not be disturbed unless its findings are '"clearly erroneous, without supporting evidence, manifestly unjust, or against the great weight of the evidence."'" Fowler v. Johnson,

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[5]Even when a party has died, we "proceed to resolve the issues raised" on appeal. Slamen v. Slamen, 254 So. 3d 188, 191 n.1 (Ala. 2017); see Rule 43(a), Ala. R. App. P. ("When the death of a party has been suggested, the proceeding shall not abate, but shall continue or be disposed of as the appellate court may direct."); Cox v. Dodd, 242 Ala. 37, 39, 4 So. 2d 736, 737 (1941); and Woodruff v. Gazebo East Apartments, 181 So. 3d 1076, 1080 (Ala. Civ. App. 2015).

961 So. 2d 122, 130 (Ala. 2006) (quoting Pollard v. Unus Props., LLC, 902 So. 2d 18, 23 (Ala. 2004), quoting in turn American Petroleum Equip. & Constr., Inc. v. Fancher, 708 So. 2d 129, 132 (Ala. 1997)).

Discussion

Appeal No. SC-2022-0533 -- Fletcher's Appeal

On appeal, Fletcher challenges the portions of the circuit court's order concluding that the value of the pickup truck totally offset the amount of the homestead, exempt-property, and family allowances to which Edwyna was entitled in the present case. She also challenges the portion of the circuit court's order finding that Sharyl, Robbie, and Dell were entitled to recover on their conversion and breach-of-trust claims against Edwyna. We will address each argument in turn.

A. Statutory Allowances

First, Fletcher argues that the circuit court incorrectly determined that the aggregate value of the claimed allowances was completely offset by the value of the pickup truck. Although Fletcher does not dispute that the aggregate value of the allowances to which Edwyna was entitled under §§ 43-8-110 through -113 was due to be offset by the value of the pickup truck, she nevertheless contends that evidence presented during

the evidentiary hearing established that the value of the pickup truck was less than $16,500 and that, as a result, Edwyna's estate is still entitled to some allowances.[6]

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[6]We note that Fletcher also contends that the circuit court improperly stated in its order on the parties' posttrial motions that it was denying Edwyna's claims for homestead, exempt-property, and family allowances under the provisions of §§ 43-8-110 through -113, Ala. Code 1975, despite having previously ruled that she was entitled to those exemptions and allowances. According to Fletcher, "[i]t may very well be that the trial court phrased the post-trial order in the way that it did because of an offset that it had granted, but even if true, the trial court's order must be rephrased to make its intent clear." Fletcher's brief at 18.

Fletcher's characterization of the circuit court's order is misleading. In its order on the parties' posttrial motions, the circuit court stated:

> "In the Court's former order, the Court concluded that the value of the pick-up truck taken by [Edwyna] was $16,500.00, which exceeded the aggregate value of [the] homestead, family allowance, and exempt property ($15,500.00), which were sought by [Edwyna]. Therefore, [Edwyna's] claims for homestead, exempt property, and family allowance are hereby denied. The Court finds and determines that [Edwyna's] claims for homestead, exempt property, and family allowance are thus finally adjudicated. Pursuant to Rule 54(b), Ala. R. Civ. P., the Court finds that there is no just reason for delay in the entry of a final judgment on such claims, and therefore directs the entry of a final judgment denying such claims with respect to [Edwyna's] claims for homestead, exempt property, and family allowance[s]."

After reading this portion of the circuit court's order in context, it is evident to this Court that the circuit court was merely affirming its previous conclusion that, although Edwyna was entitled to the

As noted previously in this opinion, during the evidentiary hearing, Sharyl, Robbie, and Dell presented the testimony of Wayne Koeppen, a local used-car dealer. Koeppen testified that, based on the condition of the pickup truck at the time of R.E.'s death, its fair market value was $16,500.

In response to Koeppen's testimony, Edwyna noted that the inventory list for R.E.'s estate that Sharyl had filed with the probate court indicated that the pickup truck's "estimated value" was $10,000. Additionally, Edwyna's son, Winston Fletcher, disputed that the pickup truck was worth $16,500. However, he admitted that he had no idea how much the pickup truck was actually worth.

After hearing the above testimony and considering the evidence presented, the circuit court concluded that the pickup truck had a value of $16,500 and that that amount exceeded the aggregate value of the allowances to which Edwyna was entitled. Therefore, the circuit court concluded that her claims to those allowances were due to be denied.

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allowances she sought, the aggregate value of those allowances was nevertheless offset by the value of the pickup truck. We therefore see no reason to grant relief on this basis.

Contrary to the circuit court's conclusion, Fletcher contends that, based on the evidence, Edwyna was entitled to between $1,000 and $5,500 in statutory allowances. In support of this contention, Fletcher notes that Koeppen admitted on cross-examination that he would have paid around $15,500 for the pickup truck and that Sharyl's inventory list for R.E.'s estate indicated that the pickup truck's "estimated value" was $10,000. It is well settled that, when a trial court hears ore tenus testimony and makes findings based on disputed facts, its judgment based on those findings will not be reversed unless they are """'clearly erroneous, without supporting evidence, manifestly unjust, or against the great weight of the evidence.'""" Water Works & Sanitary Sewer Bd. of City of Montgomery v. Parks, 977 So. 2d 440, 444 (Ala. 2007) (citations omitted). The fact that there was at most conflicting testimony as to the value of the pickup truck does not mean that the circuit court's finding as to its value was "clearly erroneous, without supporting evidence, manifestly unjust, or against the great weight of the evidence." Thus, the portion of the circuit court's order concluding that Edwyna's claims for homestead, exempt-property, and family allowances were completely offset by the value of the pickup truck is affirmed.

B. Sharyl's, Robbie's, and Dell's Conversion and Breach-of-Trust Claims

Next, Fletcher contends that the circuit court "failed to follow the law" when it determined that Sharyl, Robbie, and Dell were entitled to relief on their conversion and breach-of-trust claims against Edwyna. Fletcher disputes that there is any evidence in the record indicating that Edwyna intended for the accounts into which she transferred the funds from the trailer account and the money-market accounts to be declaratory trusts.[7] Rather, she contends that those accounts were POD accounts and that, therefore, Sharyl, Robbie, and Dell were not entitled to the funds in those accounts unless Edwyna died. Because R.E.'s children would not have been entitled to those funds until that time,

[7]Even if such evidence did exist, Fletcher alternatively contends that Sharyl, Robbie, and Dell were barred from asserting their breach-of-trust claims because they filed those claims well after the applicable statute-of-limitations period had expired. We note, however, that, generally, a reviewing court cannot consider arguments made for the first time on appeal. Rule 4(a)(3), Ala. R. App. P.; CSX Transp., Inc. v. Day, 613 So.2d 883, 884 (Ala.1993). Rather, our review is restricted to the evidence and the arguments considered by the trial court. Andrews v. Merritt Oil Co., 612 So. 2d 409, 410 (Ala. 1992). Because the record does not indicate that this argument was made during the proceedings below, it has not been properly preserved for appeal, and we will therefore not consider it. See Shiver v. Butler Cnty. Bd. of Educ., 797 So. 2d 1086, 1088 (Ala. Civ. App. 2000) ("We do not consider the statute-of-limitations issue, because it was not properly preserved for appeal.").

Fletcher further contends that they cannot establish that they had a present right to those funds and, thus, that the circuit court erred in concluding that they were entitled to relief on their conversion claims. Under these circumstances, Fletcher contends that the portion of the circuit court's order concluding that Sharyl, Robbie, and Dell were entitled to relief on those claims must be reversed.

Because the lynchpin of this issue appears to be whether the circuit court properly concluded that the accounts at issue in this case were, in fact, established as declaratory trusts, we will address that issue first.

> "'This Court has held consistently that no particular form of words is required to create a trust, but that any instrument in writing signed by the parties, or party, at the time of the trust's creation, or subsequently, will suffice, if the nature, subject matter, and objects of the trust [are] manifested with reasonable certainty by the instrument.'
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> "Jones v. Ellis, 551 So. 2d 396, 399 (Ala. 1989). The intent of the parties to create a trust must be manifested and proven: 'There is no trust unless an intention to create one is manifested. ... The burden of proof is on the party seeking to establish the existence of the trust and that burden is to present clear and definite evidence, without reasonable doubt as to the existence of the trust.' Osborn v. Empire Life Ins. Co. of America, 342 So. 2d 763, 765 (Ala. 1977)."

Honea v. Raymond James Fin. Servs., Inc., 240 So. 3d 550, 564-65 (Ala.

2017). On the one hand, Fletcher contends that there was no evidence presented during the evidentiary hearing below establishing that Edwyna intended for the accounts at issue to be trusts. On the other hand, Sharyl, Robbie, and Dell contend that the letters that Edwyna sent to them in which she discussed the purpose of those accounts do show such an intent.

The record indicates, however, that, during the evidentiary hearing, Edwyna was specifically asked if, when she set up the accounts at issue, she intended for those accounts to constitute individual trusts. She denied having such an intent. Documentation in the record supports this. For example, all the documentation related to those accounts reveals that they were specifically set up as POD accounts. Sharyl, Robbie, and Dell do not point this Court to any evidence in the record demonstrating otherwise. As noted by Fletcher, § 5-24-4(a), Ala. Code 1975, provides that a single-party account with a POD designation "shall be governed by the provisions of" Chapter 24 of Title 5. The evidence demonstrated that the accounts at issue were POD accounts, not individual declaratory trusts, and are therefore governed by the provisions of Chapter 24 of Title 5 -- i.e., the Uniform Multiple-Person

Accounts Act.[8]

Based on the foregoing, Sharyl, Robbie, and Dell were not entitled to relief on their breach-of-trust claims. Therefore, the portion of the circuit court's order finding otherwise is due to be reversed.

Having established that the accounts at issue were POD accounts, we must now determine whether Sharyl, Robbie, and Dell are entitled to receive the funds in those accounts based on their conversion claims. Regarding a claim of conversion, this Court has previously explained:

> "'The elements of conversion include a wrongful taking of specific property and an assumption of ownership or dominion over the separate and identifiable property of another. … Further, the plaintiff must have a right to immediate possession of such property and the taking must be in defiance

[8]Even if we were to conclude that the accounts at issue were declaratory trusts, Alabama law makes clear that, unless the terms of the trust expressly provide that the trust is irrevocable, the settlor may revoke the trust at any time. See § 19-3B-602(a), Ala. Code 1975 ("Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust."). In arguing that the accounts at issue were declaratory trusts, Sharyl, Robbie, and Dell did not allege that those alleged trusts were in any way irrevocable. Alabama law makes clear that, "[w]hile a trust is revocable, rights of the beneficiaries are subject to the control of … the settlor." § 19-3B-603(a), Ala. Code 1975. Thus, if the accounts at issue were declaratory trusts, pursuant to the provisions of §§ 19-3B-602 and -603, Edwyna, as the settlor, would have been in complete control of the funds. More importantly, the rights of the beneficiaries -- here, Sharyl, Robbie, and Dell -- to those funds would have been subject to her control, including her power to refuse to disburse those funds or to revoke the trusts altogether.

> of that right.' Young v. Norfolk Southern Ry., 705 So. 2d 444, 446 (Ala. Civ. App. 1997). In other words, 'to recover under the count of conversion, plaintiff must show legal title in himself to the property at the time of the conversion and his immediate right of possession.' State Farm Mut. Auto. Ins. Co. v. Wagnon, 53 Ala. App. 712, 717, 304 So. 2d 216, 219 (1974) (emphasis added)."

McGee v. McGee, 91 So. 3d 659, 667 (Ala. 2012). This Court has also explained that, generally, "'an action will not lie for the conversion of cash. However, if the cash at issue is "specific money capable of identification," claims of conversion may be appropriate.'" Green Tree Acceptance, Inc. v. Tunstall, 645 So. 2d 1384, 1386 (Ala. 1994) (citations omitted).

According to Fletcher, because the accounts at issue were POD accounts, under Alabama law, Sharyl, Robbie, and Dell had no right to immediate possession of the funds in the accounts. Sharyl, Robbie, and Dell contend that, because Edwyna assured them in her letters that she would give them their share of the funds in those accounts upon request, those funds constituted "specific money capable of identification" and they are thus entitled those funds.

Section 5-24-1(13)a., Ala. Code 1975, provides that a POD designation on an account is the designation of "[a] beneficiary in an

account payable on request to one party during the party's lifetime and on the party's death to one or more beneficiaries, or to one or more parties during their lifetimes and on death of all of them to one or more beneficiaries." A "party" on such an account is "a person who, by the terms of an account, has a present right, subject to request and the terms of the contract of deposit, to payment from the account other than as a beneficiary or agent." § 5-24-1(9) (emphasis added). A "beneficiary" is "a person named as one to whom sums on deposit in an account are payable on request after death of all parties …." § 5-24-1(3). "A beneficiary in an account having a POD designation has no right to sums on deposit during the lifetime of any party." § 5-24-11(c), Ala. Code 1975 (emphasis added).

None of the parties here dispute that, when Edwyna transferred the funds from the trailer account and the money-market accounts into the accounts at issue, she specifically named herself as the party to those accounts and listed R.E.'s children as the beneficiaries of the account into which the money from the trailer account was placed and Sharyl and Robbie as the beneficiaries on the accounts into which the money from the money-market accounts at issue were placed. Accordingly, the only person who would have had a present right to the money in those

accounts would have been Edwyna. Additionally, as the above legal principles make clear, as beneficiaries, Sharyl, Robbie, and Dell have "no right to sums on deposit during the lifetime of any party." § 5-24-11(c). Because Sharyl, Robbie, and Dell have failed to demonstrate that they had a present right to the funds in the accounts at issue, the portion of the circuit court's order granting them relief on their conversion claims is also due to be reversed.[9]

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[9]We note briefly that Fletcher also contends that the circuit court erred in reserving for future determination certain matters concerning the administration of R.E.'s estate, such as fees and commissions which might be claimed by Sharyl. She also criticizes the actions of Sharyl in her role as the executrix of R.E.'s estate. Despite admitting that these issues are not ripe for appeal, Fletcher nevertheless contends that "some direction from this Court to the trial court to correct these problems might avoid the necessity of a third appeal in this matter." Fletcher's brief at 38.

This Court has previously stated:

> "A justiciable controversy is a prerequisite to this Court's subject-matter jurisdiction. Ex parte James, 836 So. 2d 813, 825 (Ala. 2002). A case is justiciable when the party '"has been injured in fact."' Kid's Care, Inc. v. Alabama Dep't of Human Res., 843 So. 2d 164, 166 (Ala. 2002) (quoting State v. 2018 Rainbow Drive, 740 So. 2d 1025, 1027 (Ala. 1999)). Moreover, a justiciable controversy requires the parties to seek remedies from having sustained damage as opposed to seeking advice from the Court. Siegelman v. Alabama Ass'n of Sch. Bds., 819 So. 2d 568, 576 (Ala. 2001). See also State ex rel. Baxley v. Johnson, 293 Ala. 69, 75, 300 So. 2d 106, 111

Appeal No. SC-2022-0640 -- Sharyl, Robbie, and Dell's Cross-Appeal

In their cross-appeal, Sharyl, Robbie, and Dell contend that the circuit court erred in awarding Edwyna the balance of the funds in the farm account pursuant to the provisions of the Uniform Multiple-Person Accounts Act. According to Sharyl, Robbie, and Dell, the Uniform Multiple-Person Accounts Act permits a party to a joint account, including a surviving spouse, to retain the contributions in the account after a joint account holder's death only if there is evidence showing that the account was established for that purpose. In the present case, however, they contend that the farm account "was created for the convenience of R.E. Ivey to be used for the maintenance and upkeep of his Monroe County property during his lifetime, and it was his intention that the account be used for the same purpose after his death." Sharyl, Robbie, and Dell's brief at 29. Because none of the testimony or evidence

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(1974)."

Birmingham Bd. of Educ. v. Boyd, 877 So. 2d 592, 594-95 (Ala. 2003). Because it is undisputed by the parties in this case that the "additional errors" that Fletcher alleges in this section of her brief are not ripe for appellate review, there is no basis for us to consider those claims at this time.

presented during the evidentiary hearing refutes that intention or otherwise establishes that R.E. intended for either Dell or Edwyna to retain the funds in the farm account upon his death, Sharyl, Robbie, and Dell contend that the portion of the circuit court's order awarding the funds in the farm account to Edwyna is due to be reversed.

In response, Fletcher relies on the narrow provisions of §§ 5-24-11 and -12, Ala. Code 1975, of the Uniform Multiple-Person Accounts Act for the proposition that Edwyna, as R.E.'s surviving spouse, is entitled to the funds in the farm account as a matter of law regardless of whether R.E. intended for those funds to continue to be used for the maintenance and upkeep of the property in Monroeville. We agree with Fletcher.

As an initial matter, we note that § 5-24-11(b) provides:

> "During the lifetime of all parties, an account belongs to the parties in proportion to the net contribution of each to the sums on deposit, unless there is clear and convincing evidence of a different intent. As between parties married to each other, in the absence of proof otherwise, the net contribution of each is presumed to be an equal amount."

(Emphasis added.) Under § 5-24-11(a), the "net contribution" of a party means

> "the sum of all deposits to an account made by or for the party, less all payments from the account made to or for the party which have not been paid to or applied to the use of another

> party and a proportionate share of any charges deducted from the account, plus a proportionate share of any interest or dividends earned, whether or not included in the current balance."

In the present case, it is undisputed that R.E., Edwyna, and Dell were joint tenants with rights of survivorship with respect to the farm account. It is also undisputed that, before his death, R.E. paid all the net contributions to that account and that, as a result, he was beneficially entitled to all the proceeds in that account during his lifetime.

The question of who was entitled to those proceeds after R.E.'s death is governed by § 5-24-12. Subsection (a) of that Code section provides:

> "Except as otherwise provided in this chapter, on death of a party sums on deposit in a multiple-party account belong to the surviving party or parties. If two or more parties survive and one is the surviving spouse of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled under Section 5-24-11 belongs to the surviving spouse. If two or more parties survive and none is the surviving spouse of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled under Section 5-24-11 belongs to the surviving parties in equal shares, and augments the proportion to which each survivor, immediately before the decedent's death, was beneficially entitled under Section 5-24-11, and the right of survivorship continues between the surviving parties."

(Emphasis added.) Additionally, the Comment to § 5-24-12 states that

"[t]he effect of subsection (a) is to make an account payable to one of two or more parties a survivorship arrangement unless a nonsurvivorship arrangement is specified in the terms of the account." Applying the provisions of the above Code section to the present case, Edwyna, as R.E.'s surviving spouse and an undisputed joint tenant with a right of survivorship with respect to the farm account, is entitled to the funds that Dell withdrew from that account.

Sharyl, Robbie, and Dell attempt to get around the provisions of § 5-24-12(a), however, by noting that the Comment to § 5-24-12 also provides that subsection (a)

> "permit[s] a court to implement the intentions of parties to a joint account governed by § 5-24-4(b) if it finds that the account was opened solely for the convenience of a party who supplied all funds reflected by the account and intended no present gift or death benefit for the other party. In short, the account characteristics described in this section must be determined by reference to the form of the account and the impact of §§ 5-24-3 and 5-24-4 on the admissibility of extrinsic evidence tending to confirm or contradict intention as signaled by the form."

According to Sharyl, Robbie, and Dell, it is undisputed that R.E. created the farm account solely for his convenience for the maintenance and upkeep of his house and farmland in Monroeville during his lifetime and that it was his intention that the account be used for the same purpose

after his death. They further contend that Dell withdrew the money from that account so that it could be used to prepare the house for sale.

Although we acknowledge that the intention of parties to a joint account may be relevant regarding how the funds in that account should be used, that does not mean that the provisions in § 5-24-12(a) are rendered meaningless by the evidence of such intent. Thus, the fact that the funds in the farm account may have been used strictly for the maintenance and upkeep of R.E.'s house and farmland in Monroeville is irrelevant to determining who became the beneficial owner of that account entitled to payment of the funds in that account, once R.E. died. Because the relevant provisions of the Uniform Multiple-Person Accounts Act make clear that a surviving spouse -- here, Edwyna -- was entitled to the funds that Dell withdrew from the farm account, the portion of the circuit court's order awarding those funds to Edwyna is due to be affirmed.

Conclusion

In appeal no. SC-2022-0533, we affirm the circuit court's order insofar as it denied Edwyna's claims for homestead, exempt-property, and family allowances pursuant to §§ 43-8-110 through -113 on the basis

that those claims were completely offset by the value of the pickup truck. However, we reverse the circuit court's order insofar as it determined that Sharyl, Robbie, and Dell were entitled to recover the funds held in the POD accounts, and we remand the cause for the circuit court to enter an order consistent with this opinion.

In appeal no. SC-2022-0640, we affirm the circuit court's determination that Edwyna, as R.E.'s surviving spouse, was entitled to the funds that Dell withdrew from the farm account.

SC-2022-0533 -- AFFIRMED IN PART; REVERSED IN PART; AND REMANDED.

SC-2022-0640 -- AFFIRMED.

Parker, C.J., and Wise, Sellers, and Stewart, JJ., concur.