IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

T.M.B.,	:	
Plaintiff	:	
	:	
v.	:	No. 91-20,459
	:	
	:	
B.R.W., Jr.,	:	
Defendant	:	

OPINION and ORDER

This opinion addresses the objection Father filed after the Domestic Relations Office attached a joint bank account listed in the names of Father and his current wife. The Domestic Relations Office acted pursuant to Pa. R.Civ.P. 1910.23(a), which permits the DRO to attach assets of an obligor that are held by a financial institution.

At argument, it was uncontested Father would present evidence the account was funded entirely by his wife's pre-marital assets, and that the couple had signed a pre-nuptial agreement in which he waived all rights to her pre-marital assets.

Father argues the situation is governed by 20 Pa.C.S.A. §6303, which states:

> A joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions by each to the sum on deposit, unless there is clear and convincing evidence of a different intent.

Father offers the case of Deutsch, Larrimore & Farnish, P.C. v. Johnson et al., 848 A.2d 137 (Pa. 2004) in support of his position. Deutsch involved a joint account established by an elderly mother, funded with her own money but placed in the name of herself and her daughter. The Supreme Court held that a judgment creditor of the daughter could not attach the funds. In reaching this decision, the court noted the purpose of 20 Pa.C.S.A. §6303 is to permit individuals to use joint accounts as testamentary vehicles without subjecting them to seizure by the intended beneficiary's creditors.

It is clear, however, that 20 Pa.C.S.A. §6303 does not apply to joint accounts held by a husband and wife, presumably because such accounts are not usually used for

testamentary purposes. Carney v. Carney, 673 A.2d 367 (Pa. 1996); Constitution Bank v. Olson et al., 620 A.2d 1146 (Pa. Super 1993). For joint accounts held by a married couple,

> An intention to create the entirety is assumed from the deposit of an asset in both the names of a husband and wife, without more, and from the fact of a marital relationship.

Constitution Bank at 1149. This is the case even when the funds used to create the account were exclusively those of husband or wife. Id. The presumption of tenancy by the entireties can be rebutted only by clear and convincing evidence. Id. Because of the undivided interest each spouse holds in entireties property, such property is immune from action by judgment creditors. Id. *See also* Garden State v. Seese, 611 A.2d 1239 (Pa. Super. 1992).

Turning to the case before this court, if Father and his wife successfully rebut the presumption of entireties property and prove the money in the account belongs to Father's wife, the Domestic Relations Office clearly has no right to attach the account.

Alternatively, if Father and his wife fail to rebut this presumption, the property is entireties property and the court holds that entireties property is excluded from seizure under Rule 1910.23(b), because "the account is not subject to attachment as a matter of law." In reaching this conclusion, we note the comment to Rule 1910.23(b) states that the primary property contemplated by this seizure exclusion is "assets held by the obligor and his or her spouse as tenants of the entireties."[1]

[1] We note, however, that 23 Pa.C.S.A. §4355 carves out an exception for entireties property held by an obligor and the obligee.

O R D E R

AND NOW, this _____ day of September, 2005, for the reasons stated in the foregoing opinion, the Domestic Relations order issued against the Jersey Shore Bank account held in the name of B.R.W., Jr. and his wife is hereby vacated.

BY THE COURT,

_____
Richard A. Gray, J.

cc: Dana Jacques, Esq., Law Clerk
Hon. Richard A. Gray
Christina Dinges, Esq.
T.B.
Domestic Relations
Gary Weber, Esq.