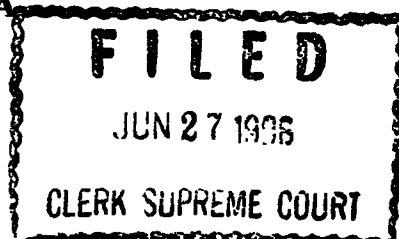


IN THE COURT OF APPEALS OF IOWA

No. 6-060 / 94-1985



**PATRICK T. MONTGOMERY, EXECUTOR,
of the Estate of Noel R. Montgomery, Deceased,
Plaintiff-Appellant,**

vs.

**METROPOLITAN FEDERAL BANK, fsb,
n/k/a FIRST BANK, fsb,
Defendant-Appellee,**

**METROPOLITAN FEDERAL BANK, fsb,
n/k/a FIRST BANK, fsb,
Third-Party Plaintiff-Appellee,**

vs.

**MAXINE MONTGOMERY,
Third-Party Defendant-Appellee.**

Appeal from the Iowa District Court for Cerro Gordo County, Paul W. Riffel,
Judge.

The executor appeals a district court ruling granting defendant's motion for
summary judgment on his claims of breach of contract and conversion. **AFFIRMED.**

Patrick T. Montgomery, Ames, pro se, for appellant.

Brian L. Wirt of Davis, Hockenberg, Wine, Brown, Koehn, & Shors, P.C., Des
Moines, for appellee First Bank.

Walter C. Schroeder of Schroeder, Anderson & Rourick, Mason City, for
appellee Maxine Montgomery.

Considered by Cady, P.J., Huitink, J., and Hayden, S.J.*

*Senior judge from the Iowa Court of Appeals serving on this court by order of the Iowa Supreme Court.

PER CURIAM

This is an appeal by an executor claiming a bank engaged in a breach of contract and conversion by failing to turn certain funds over to him. The district court granted the bank's motion for summary judgment. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

Noel and Maxine Montgomery owned a joint savings account at Metropolitan Federal Bank. On June 13, 1993, Noel was very ill, and he gave his son by a previous marriage, Patrick Montgomery, a power of attorney. On June 14, 1993, Maxine went to the Bank and withdrew the funds from the joint account. At about the same time, Patrick went to another branch of the Bank, and sought to withdraw the funds from the same account. The Bank informed Patrick the funds had already been withdrawn by Maxine. Noel died soon afterward, and Patrick was appointed as his executor.

Patrick filed the present suit, as executor, alleging the Bank engaged in a breach of contract and conversion by allowing the funds to be withdrawn from Noel's account. The Bank filed a third-party action against Maxine, claiming she was a necessary party to the suit. The district court granted the Bank's motion for summary judgment and dismissed Patrick's action. The court found Maxine had the right to withdraw the funds because she was a joint tenant of the account, and thus, the Bank did not breach its agreement with Noel by giving the funds to her.

Patrick now appeals. On appeal of a summary judgment ruling, we must decide whether a genuine issue of material fact exists and if the law was correctly

applied. *Ottumwa Housing Authority v. State Farm Fire & Cas. Co.*, 495 N.W.2d 723, 726 (Iowa 1993).

Patrick claims summary judgment was not proper in this case because there were material facts in dispute. He first states there is a dispute as to whether Noel intended the account to be a joint account. The signature card Noel and Maxine signed clearly stated they were opening an account as joint tenants with right of survivorship and not was tenants in common. We find there was no material dispute that the account was a joint account.

Patrick also claims there is a factual dispute as to whether he demanded the money from the Bank before Maxine did. Patrick testified as his deposition that he immediately asked a clerk to close the account when he entered the Bank at 9:00 a.m. In her deposition, Maxine testified she entered a different branch of the Bank at 9:00 a.m. and asked to close the account. Even if we accept Patrick's assumption that he demanded the money first, the Bank employee who waited on Patrick properly sought identification and made copies of the power of attorney before attempting to close the account. On the other hand, the Bank employee who waited on Maxine recognized her and proceeded to close the account.

We affirm the conclusion of the district court that the Bank's action was not sufficient to constitute breach of contract or conversion, and that summary judgment was proper. Costs of this appeal are assessed to Patrick.

AFFIRMED.