

IN THE COURT OF APPEALS OF TENNESSEE
WESTERN SECTION AT JACKSON

FILED

December 31, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

**NELL MAY PUTNAM, Individually
and NELL MAY PUTNAM,
Administratrix of the Estate of
CHARLES O. PUTNAM,**

Plaintiff-Appellee,

Weakley Chancery No. 13112
C.A. No. 02A01-9511-CH-00250

Vs.

**RUSSELL PUTNAM AND
WINSTON PUTNAM,**

Defendants-Appellants.

FROM THE CHANCERY COURT OF WEAKLEY COUNTY
THE HONORABLE WILLIAM MICHAEL MALOAN, CHANCELLOR

Nancy Miller-Herron; Herron & Miller-Herron of Dresden
For Appellee

Jeffrey W. Parham and H. Max Speight of Martin
For Appellant, Russell Putnam

AFFIRMED AND REMANDED

Opinion filed:

**W. FRANK CRAWFORD,
PRESIDING JUDGE, W.S.**

CONCUR:

DAVID R. FARMER, JUDGE

HEWITT P. TOMLIN, JR., SENIOR JUDGE

This is a T.R.A.P. 9 appeal from an interlocutory order of the chancery court denying the motion of defendant, Russell Putnam, to dismiss plaintiff's suit for lack of personal jurisdiction and lack of subject matter jurisdiction.

The facts are apparently undisputed and implicitly stipulated by the appellate briefs and memoranda filed in the trial court. Plaintiff, Nell May Putnam, widow of Charles O. Putnam, was appointed administratrix of his estate, and plaintiff filed a petition in the probate proceeding against defendants, Russell Putnam and Winston Putnam¹, to set aside fraudulent conveyances pursuant to T.C.A. § 31-1-105 (1984). The petition alleges that Charles O. Putnam, resident of Weakley County, Tennessee, died intestate without surviving issue. The petition avers that the petitioner is the widow and the duly appointed administratrix of the estate of Charles Putnam. She avers that defendant, Russell Putnam, is the deceased's brother and is a resident of West Monroe, Louisiana. The petition further avers:

7. After entering upon the administration of the estate, Plaintiff determined that Decedent had made certain conveyances to Defendants without consideration, with the intent to defraud and deprive her of her share of the estate. The conveyances were as follows:

(A) Certificates of Deposit in the First Alabama Bank in the face amount of \$66,353.00;

(B) Cash in the amount of \$34,486.00 deposited in Sunburst Bank, Calhoun City, Mississippi.

The petition seeks to set aside the "fraudulent conveyances" of the funds and that the funds be made a part of the estate.

Russell Putnam filed a motion to dismiss for lack of personal jurisdiction and lack of subject matter jurisdiction. The motion avers that he has no connection with the Tennessee forum, that he conducts no business in Tennessee, and that he does not have any minimum contacts with the State of Tennessee. The motion further states that the certificates of deposit were purchased from an Alabama bank with funds derived from sources outside of Tennessee and were purchased before the deceased moved to the State of Tennessee. Putnam also avers that the property is outside the State of Tennessee, and that the state has no subject matter jurisdiction over the property. Before the motion was heard, the petitioner was allowed to amend the petition, adding Count II which alleges that on the morning after the decedent's death, Russell Putnam instructed the petitioner's son-in-law, Dan Blackman, to bring to him Charles

¹Winston Putnam has filed no pleadings in the trial court and is not a party to this appeal.

Putnam's "gray duffle bag" when the family came to Mississippi for the funeral. The petitioner alleges that the gray duffle bag contained the certificates of deposit for the Alabama funds. The amended petition alleges in part:

(5) Russell Putnam and the deceased engaged in a civil conspiracy against Plaintiff with the intent to defraud and deprive Plaintiff of her interest in the decedent's estate.

The undisputed facts are as follows: Petitioner and Charles Putnam were married in 1953 and were property owners and residents of the State of Alabama until approximately 1992 when they sold the Alabama property. They moved in with petitioner's daughter in Martin, Weakley County, Tennessee, where they were living at the time of Charles Putnam's death on April 30, 1993.

Russell Putnam, the brother of the decedent, is a citizen and resident of West Monroe, Louisiana, and never visited his brother while his brother lived in Tennessee. Russell Putnam was last in the State of Tennessee in the late 1940's when he worked in the state for a brief period of time.

Beginning in 1983, during the time that petitioner and the deceased lived in Alabama, the deceased purchased several certificates of deposit in the name of "C. O. Putnam or Russell Putnam." The purchases were made from an Alabama bank, and the funds remained in the Alabama bank even after the deceased and petitioner moved to the State of Tennessee.

The trial court denied Russell Putnam's motion to dismiss, and this appeal presents the sole issue of whether the trial court erred in denying the motion.

Russell Putnam was served with process under the Tennessee long arm statute, T.C.A. § 20-2-214 (1994), and petitioner asserts that he was properly served pursuant to the following provisions of the statute:

20-2-214. Jurisdiction of persons unavailable to personal service in state - Classes of actions to which applicable.- (a) Persons who are nonresidents of Tennessee and residents of Tennessee who are outside the state and cannot be personally served with process within the state are subject to the jurisdiction of the courts of this state as to any action or claim for relief arising from:

* * *

(2) Any tortious act or omission within this state;

(3) The ownership or possession of any interest in property located within this state;

* * *

(6) Any basis not inconsistent with the constitution of this state or of the United States.

The petitioner has the burden of making out a prima facie case that exercising personal jurisdiction over this defendant under the long arm statute is proper. *Davis Kidd Booksellers v. Day-Impex*, 832 S.W.2d 572, 577 (Tenn. App. 1992).

Petitioner first asserts that Russell Putnam is subject to the jurisdiction of the court because the cause of action arises from a tortious act or omission within the state. Petitioner argues that under T.C.A. § 20-2-214 (a)(2), service may be obtained even though the tortious acts were committed outside the state but the tortious injury was sustained within the state and relies upon *Hanvy v. Crosman Arms Co.*, 225 Tenn. 262, 466 S.W.2d 214 (1971) and *Godwin Aircraft, Inc. v. Houston*, 851 S.W.2d 816 (Tenn. App. 1992). Petitioner's reliance upon these cases is misplaced. In the instant case, petitioner alleges and the uncontroverted facts are that the so-called fraudulent conveyances were made by the decedent during his lifetime in the State of Alabama while he was a resident of the State of Alabama. If, in fact, the conveyances were fraudulent, they resulted in injury to the petitioner at the time they were made, which was an injury that was sustained in the State of Alabama. The fact that petitioner and her husband subsequently moved to the State of Tennessee did not change that situation and cause petitioner to sustain a new injury in the State of Tennessee.

Petitioner also asserts that the amended complaint includes a count for civil conspiracy, and that each co-conspirator is liable for all the damages naturally flowing from any wrongful act by a co-conspirator. We have no quarrel with such law, but petitioner fails to take into account that here again the conspiracy alleged is that of the decedent with Russell Putnam which occurred during the decedent's lifetime while he was a resident of the State of Alabama and any conspiracy between the parties occurred in the State of Alabama. We find no basis for service of process on Russell Putnam under the provisions of T.C.A. § 20-2-214 (a)(2).

Petitioner next asserts that Russell Putnam is subject to jurisdiction of the court pursuant to the provisions of T.C.A. § 20-2-214 (a)(3), the ownership or possession of an interest in

property located in the state.

The certificates of deposits are in the name of C. O. Putnam or Russell Putnam. It is undisputed that these certificates were in the State of Tennessee at the time of C. O. Putnam's death and were removed from the state at the instance of Russell Putnam without any authority from C. O. Putnam's administratrix.

The transactions for the issuance of the certificates of deposit were conducted entirely within the State of Alabama, and the certificates were issued in that state. Although Alabama law may apply as to the legal effect of the certificates, in the absence of a showing to the contrary, we presume that Alabama law is the same as that of Tennessee. *Shepard & Gluck v. Thomas*, 147 Tenn. 338, 347, 246 S.W. 836 (1922); *John H. Heirigs Const. Co. v. Exide*, 709 S.W.2d 604, 609 (Tenn. App. 1986).

T.C.A. § 47-3-104 (j)(1996) provides:

47-3-104. Negotiable instrument.

* * *

(j) "Certificate of deposit" means an instrument containing an acknowledgment by a bank that a sum of money has been received by the bank and a promise by the bank to repay the sum of money. A certificate of deposit is a note of the bank.

A bank cannot be compelled to pay a certificate of deposit issued by it without a surrender of the certificate unless its production has become impossible on account of its loss or for other reasons and then a bond of indemnity must be given. *Devine v. Unaka National Bank*, 125 Tenn. 98, 140 S.W. 747 (1911).

A certificate of deposit is presumed to belong to the person whose name appears thereon. 9 C.J.S. *Banks & Banking* § 299 (1996).

T.C.A. § 47-50-102 (1995) provides:

47-50-102. Assignable instruments - Suit by assignee. - Bonds with collateral conditions, bills or notes for specific articles or the performance of any duty, nonnegotiable notes for money and accepted orders shall be assignable, and suit may be prosecuted by the assignee in the assignee's own name.

We conclude from the above that a certificate of deposit is property, and that Russell Putnam had an ownership interest in property located in this state at the time of C. O. Putnam's

death. It is also undisputed that the property was removed from the state by the unilateral action of Russell Putnam. The administratrix of C. O. Putnam's estate disputes the ownership of the certificates by virtue of a statute that prohibits transfers to defeat a widow's distributive share. We hold that when a dispute exists between the estate of a Tennessee resident and a nonresident third party as to ownership of assets located within the state at the death of decedent, service may be obtained on the non-resident under the provisions of T.C.A. § 20-2-214 (a)(3).

Had Russell Putnam not arranged for the removal of the certificates from the state prior to the commencement of the estate proceedings, he would have been compelled to utilize the Tennessee courts to obtain possession of the certificates. He certainly could have anticipated that if he did not quickly remove the certificates from the State of Tennessee that he could be involved in a court proceeding in the state to determine ownership of the certificates. Therefore, he could reasonably anticipate that he could become involved in litigation in Tennessee.

Accordingly, the order of the trial court dismissing appellant's motion to dismiss is affirmed, and the case is remanded to the trial court. Costs of the appeal are assessed against the appellant.

**W. FRANK CRAWFORD,
PRESIDING JUDGE, W.S.**

CONCUR:

DAVID R. FARMER, JUDGE

**HEWITT P. TOMLIN, JR.
SENIOR JUDGE**