SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0443-21

RICHARD G. QUICK,
CYNTHIA LYNNE QUICK,
and DENISE QUICK
MOSCHETTE,

Plaintiffs-Appellants,

v.

MORGAN STANLEY,
JACOB R. QUICK, MARISSA
J. MOSCHETTE, and JESSICA
M. MOSCHETTE,

Defendants,

and

KURTIS R. QUICK,
KYLE F. QUICK,

Defendants-Respondents.

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Argued January 30, 2023 – Decided June 29, 2023

Before Judges Mawla, Smith and Marczyk.

On appeal from the Superior Court of New Jersey, Chancery Division, Somerset County, Docket No. C-012002-20.

Craig S. Provorny argued the cause for appellants (Herold Law, PA, attorneys; Craig S. Provorny, of counsel and on the briefs; George W. Crimmins III and Adam Gallagher, on the briefs).

Alvin H. Kim argued the cause for respondents (Kozyra & Hartz, LLC, attorneys; Michael J. Rankin, of counsel and on the brief; Alvin H. Kim, on the brief).

PER CURIAM

Plaintiffs Richard Quick, Cynthia Quick, and Denise Quick-Moschette appeal from the trial court's August 27, 2021 order granting summary judgment in favor defendants Kyle Quick and Kurtis Quick. Following our review of the record and applicable legal principles, we affirm.

I.

This matter arises from a dispute over the rightful beneficiaries of a Roth IRA account held by Frederick Quick (decedent) at Morgan Stanley. Decedent had various accounts at Morgan Stanley including two Roth individual retirement accounts (IRAs)—the "934 Account" and "944 Account." Plaintiffs only challenge the trial court's order regarding the 944 Account, although we will discuss both accounts to provide context for this litigation.

By way of background, decedent had two children—Richard and Cynthia—prior to marrying Marie Quick.[1] Marie had a daughter, Denise, before marrying decedent. Decedent and Marie had one child together, Mark Quick, who predeceased his parents. Mark had one child, defendant Jacob Quick. Decedent and Marie had four other grandchildren, Marissa Moschette, Jessica Moschette,[2] Kurtis, and Kyle. Although all five grandchildren are named as defendants, plaintiffs' dispute is with the latter four grandchildren.[3]

In 2015, 2017, and 2018, decedent submitted three individual beneficiary designation forms related to the 934 or 944 Accounts. On each occasion he communicated with Jane Osipova, a client services associate (CSA) for Morgan Stanley. This case centers on the events surrounding the submission of a 2017 beneficiary designation form (2017 Form).

It is uncontested decedent filed a beneficiary designation form in 2015 with respect to the 944 Account (2015 Form) that Morgan Stanley accepted. That 2015 Form named decedent's five grandchildren as the primary

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[1] We refer to the various family members by their first names because they share a common surname. By doing so, we intend no disrespect.

[2] It does not appear Marissa and Jessica filed answers or otherwise participated in this case.

[3] Morgan Stanley was also named as a defendant.

beneficiaries with varying percentages of the IRA allocated to each. According to Osipova's deposition, she called decedent to confirm the account to which the beneficiary designation form applied, and he orally verified the 2015 Form referenced the 944 Account alone. Morgan Stanley thereafter accepted the form.[4]

Marie passed away on September 22, 2017. Following her death, Osipova sent decedent new beneficiary designation forms, under the mistaken belief that Marie was the primary beneficiary of both Roth IRA accounts, as opposed to just the 934 Account. Decedent, upon receiving the forms in 2017, enlisted Audrey Getsy, a long-time business assistant and close friend to assist with completing the forms. Getsy filled out a single IRA designation of beneficiary form—the 2017 Form—naming Jacob[5] and plaintiffs as equal primary beneficiaries, but left blank the account number as to which IRA account the form should apply. Getsy testified the form was meant to apply to a Roth IRA

[4] Decedent also signed a beneficiary designation form in 2013, applicable to the 934 Account, naming Marie as the primary beneficiary. The 2013 Form named plaintiffs and Jacob as contingent beneficiaries, each having an equal twenty-five percent share of the 934 Account.

[5] Plaintiffs maintain decedent intended to treat Jacob not as a grandchild, but as the representative of his father Mark, who passed away in 2013. Plaintiffs note decedent's will also treated Jacob differently than the other four grandchildren.

account, but purposefully left the account number blank as she conceded she did not know how to read the account numbers the way Morgan Stanley had designated them. The 2017 Form, dated October 10, 2017, was then sent to Osipova by either decedent or Getsy. Because the specific account was not identified, Osipova handwrote decedent's account numbers on top of the 2017 form pursuant to Morgan Stanley's protocols. These numbers reflected the only two Roth IRA accounts held by decedent. Osipova testified she then set the form aside to later clarify with decedent regarding what account beneficiaries he sought to change.

Osipova testified she spoke with decedent on October 17, 2017, to obtain clarification as to which account the 2017 Form was intended to apply. At her deposition, Osipova admitted she could not recall the substance of that conversation. However, in accordance with Morgan Stanley's procedures, she composed and uploaded four separate typed notes using Morgan Stanley's internal annotation system called "Branch Workflow." This process is required following a Morgan Stanley representative's discussion with a client. Osipova's Branch Workflow notes appended on October 17, 2017, at 10:51 a.m., to the 944 Account's page state "this form was sent to client by mistake. CSA thought he wanted to remove his late wife from the beneficiary list. She was not listed as

[beneficiary]. [C]lient wants to keep existing beneficiaries." Also appended to the 944 Account was a Branch Workflow note submitted at 11:19 a.m. which stated, "this was sent to client by mistake. CSA thought he had to remove his wife from [beneficiary] but she was not listed there. [C]lient wants to keep existing beneficiaries."[6] The Branch Workflow audit trail indicates the 2017 Form proposed changes were rejected.

On August 28, 2018, decedent—with Getsy's assistance—forwarded to Morgan Stanley another IRA designation of beneficiary form (2018 Form), again without identifying the account number to which it should apply. The 2018 Form was identical to the 2017 Form in naming plaintiffs and Jacob as equal beneficiaries of the unidentified Roth IRA account. Upon receiving the form, pursuant to Morgan Stanley procedures, Osipova contacted decedent, who confirmed the 2018 Form was intended to apply to the 934 Account. Osipova

[6] Similar notes were entered regarding the 934 Account from the same day. Specifically, appended to the 934 Account, Osipova entered a Branch Workflow note at 10:49 a.m. reading: "[T]his form was sent in by mistake client wants to keep the existing beneficiaries on this account please disregard." Also appended to the 934 Account, a Branch Workflow note entered at 11:41 a.m., reading "CSA sent this form to client by mistake to remove his late wife from beneficiaries. She was not listed as [beneficiary] on the account[.] Client would like to keep the existing beneficiaries."

hand-wrote the 934 Account number on top of the 2018 Form, and it was subsequently accepted by Morgan Stanley.[7]

On September 4, 2018, Osipova emailed Getsy the 2015 Form Morgan Stanley had on file for the 944 Account. The 2015 Form appears as an attachment to the email. Getsy testified she made decedent aware Osipova had forwarded the 2015 Form, and that decedent had not initiated any amendments to that form thereafter, even though he allegedly stated "apparently [Morgan Stanley] claim[s] they never received" the 2017 Form. However, contrary to her statement that she advised defendant about the email and the 2015 Form attached thereto, she expressed uncertainty as to the dates when certain events occurred and further stated she was not aware there was a question about the rightful beneficiaries to the 944 Account until after decedent died.

Decedent passed away on April 1, 2019. Richard and Denise were appointed as executors of his estate, and Getsy assisted the executors. Upon decedent's death, Morgan Stanley produced the 2015 Form for the 944 Account, and the 2018 Form for the 934 Account, as the controlling beneficiary designation forms on file.

[7] As discussed further below, decedent also updated his will on August 30, 2018.

After receiving the 2015 and 2018 Forms, plaintiffs contested the validity of the 2015 Form based on Getsy finding the 2017 Form in decedent's files following his death.[8] Following the completion of Morgan Stanley's internal investigation, plaintiffs filed a complaint and order to show cause (OTSC) against Morgan Stanley on January 13, 2020. Plaintiffs asserted decedent had in fact filed an updated beneficiary designation form applicable to the 944 Account on October 10, 2017, naming plaintiffs and Jacob Quick as equal-part primary beneficiaries of that account. Plaintiffs contended, as they reiterate on appeal, the 2017 Form was the only beneficiary designation form found among decedent's papers after his death.

The trial court issued an OTSC as to whether Morgan Stanley should be enjoined from making any distributions from the 934 and 944 Accounts. Morgan Stanley, asserting it did not have an interest in the litigation, filed an answer, complaint, and counterclaim interpleading defendants on February 20,

[8] Getsy acknowledged she filled in the account number on the form after decedent's death. The account number is marked somewhat ambiguously, as the second digit, identifying the IRA Account, appears to have a four written over the three. The form otherwise appears identical to the 2017 Form rejected by Morgan Stanley. Plaintiffs' dispute prompted Morgan Stanley to undergo an internal investigation. Morgan Stanley concluded that the 2015 Form was controlling for the 944 Account.

2020. The trial court ultimately granted plaintiffs' request for preliminary restraints on disbursements from the two accounts on February 27, 2020.

Defendants subsequently filed answers to Morgan Stanley's counterclaim, including counterclaims against plaintiffs. Following discovery, the parties filed motions for summary judgment.[9] The court ultimately determined, as discussed more fully below, the 2015 Form is the controlling beneficiary form for the 944 Account.[10]

II.

Plaintiffs contend the trial court erroneously admitted hearsay, namely Osipova's internal company notes, in rejecting the 2017 Form wherein decedent purportedly sought to change his beneficiaries for the 944 Account. Plaintiffs further argue the trial court erred by declining to consider decedent's probable intent in determining the beneficiaries of the 944 Account. Lastly, plaintiffs assert the court erred by failing to properly apply the doctrine of substantial compliance in assessing whether the 2017 Form superseded the 2015 Form.

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[9] Defendant Morgan Stanley did not participate in the motions for summary judgment underlying this appeal.

[10] Specifically, the court held the rightful beneficiaries of the 944 Account were: Kurtis (eighteen percent), Kyle (twenty-three percent), Jacob (nineteen percent), Marissa (fifteen percent), and Jessica (twenty-five percent).

We review a ruling on a summary judgment motion de novo. Templo Fuente De Vida Corp. v. Nat'l Union Fire Ins. Co. of Pitt., 224 N.J. 189, 199 (2016). Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c); Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 528-29 (1995). We "must accept as true all the evidence which supports the position of the party defending against the motion and must accord [them] the benefit of all legitimate inferences which can be deduced therefrom . . . ." Brill, 142 N.J. at 535 (quoting Lanzet v. Greenberg, 126 N.J. 168, 174 (1991)).

"When . . . a trial court is 'confronted with an evidence determination precedent to ruling on a summary judgment motion,' it 'squarely must address the evidence decision first.'" Townsend v. Pierre, 221 N.J. 36, 53 (2015) (quoting Est. of Hanges v. Metro. Prop. & Cas. Ins. Co., 202 N.J. 369, 384-85 (2010)). The Court in Hanges reiterated that determinations of evidentiary admissibility are reviewed "under the abuse of discretion standard . . . [as] the decision to admit or exclude evidence is one firmly entrusted to the trial court's discretion." 202 N.J. at 383-84 (internal citation omitted).

Generally, when reviewing the admission or exclusion of evidence, appellate courts afford "[c]onsiderable latitude" to a trial judge's determination, "examining the decision for abuse of discretion." State v. Kuropchak, 221 N.J. 368, 385 (2015) (alteration in original) (first quoting State v. Feaster, 156 N.J. 1, 82 (1998); then Hisenaj v. Kuehner, 194 N.J. 6, 12 (2008)); see also State v. Jenewicz, 193 N.J. 440, 456 (2008) (stating "the abuse-of-discretion standard" is applied "to a trial court's evidentiary rulings under Rule 702"). "Under [this] standard, an appellate court should not substitute its own judgment for that of the trial court, unless 'the trial court's ruling "was so wide of the mark that a manifest denial of justice resulted."'" Kuropchak, 221 N.J. at 385-86 (quoting State v. Marrero, 148 N.J. 469, 484 (1997)). "[Our] review of the trial [judge's] decisions proceeds in the same sequence, with the evidentiary issue resolved first, followed by the summary judgment determination of the trial [judge]." Townsend, 221 N.J. at 53.

III.

A.

The trial court framed the key issue in this case as "whether [decedent] updated his 944 Account's beneficiaries from those designated in the 2015 Form by successfully executing a subsequent beneficiary designation form." To

address this question, the court properly began its analysis by addressing the Branch Workflow notes hearsay issue. The trial court noted the disputed statements by decedent implicated two layers of hearsay: "the notes Osipova entered into the Branch Workflow program[,] and [decedent's] statements to Osipova regarding his accounts, which are reflected in Osipova's notes."

N.J.R.E. 801(c) defines hearsay as "a statement that: (1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement." Hearsay is generally inadmissible "except as provided by [the Rules of Evidence] or by other law." N.J.R.E. 802.

Here, there is no dispute Osipova's Branch Workflow notes constitute hearsay. Plaintiffs argue the trial court erred in finding the notes, relating to the 2017 Form, were admissible under the business records exception, N.J.R.E. 803(c)(6). Plaintiffs further contend the court erred in determining decedent's embedded statements in the Branch Workflow notes were admissible as trustworthy statements by a deceased declarant pursuant to N.J.R.E. 804(b)(6).

N.J.R.E. 805 provides that "hearsay within hearsay"—such as the content of a business record—"is not excluded by the rule against hearsay if each part of the combined statements conforms with an exception to the rule." Therefore,

both the Branch Workflow notes, and decedent's statements contained therein, as transcribed by Osipova, must both be independently admissible to be considered by the court in ruling on the summary judgment motions.

Under N.J.R.E. 803(c)(6), "Records of a Regularly Conducted Activity," a hearsay statement is admissible where the statement is

> contained in a writing or other record of acts, events, conditions, and, subject to Rule 808, opinions or diagnoses, made at or near the time of observation by a person with actual knowledge or from information supplied by such a person, if the writing or other record was made in the regular course of business and it was the regular practice of that business to make such writing or other record.
>
> This exception does not apply if the sources of information or the method, purpose or circumstances of preparation indicate that it is not trustworthy.

We have noted "[t]he purpose of the business records exception is . . . 'broaden[ing] the area of admissibility of relevant evidence where there is necessity and sufficient guarantee of trustworthiness.'" Liptak v. Rite Aid, Inc., 289 N.J. Super. 199, 219 (App. Div. 1996) (quoting State v. Hudes, 128 N.J. Super. 589, 599 (Law Div. 1974)). When assessing the business records exception in a civil litigation context, this court has characterized N.J.R.E. 803(c)(6) as permitting the admission of a business record as long as (1) the writing is made in the regular course of business, and (2) it was the regular

practice of that business to make it. Hahnemann Univ. Hosp. v. Dudnick, 292 N.J. Super. 11, 17 (App. Div. 1996); see also Biunno, Weissbard & Zegas, Current N.J. Rules of Evidence, cmt. 1 on N.J.R.E. 803(c)(6) (2022-23).

N.J.R.E. 803(c)(6) contains a proviso "that permits exclusion of the record if the sources of information or the method or circumstances of its preparation indicate that it is untrustworthy." Report of the Supreme Court Committee on the Rules of Evidence (1991), reprinted in Biunno at 949. One significant factor in determining whether a business document is trustworthy concerns "whether there was a duty to make a truthful record." Ibid.; see also A.J. Tenwood Assocs. v. Orange Senior Citizens Hous. Co., 200 N.J. Super. 515, 528 (App. Div. 1985) (noting the presence of a business duty to supply honest information as a factor in determining the admissibility of a business record); Phoenix Assocs. v. Edgewater Park Sewer. Auth., 178 N.J. Super. 109, 116 (App. Div. 1981) (noting that the failure to demonstrate a "business necessity" for a purported hand-written business record weighed against the record's trustworthiness and admission). Lastly, the rule carries a requirement that "business records sought to be introduced were made at or about the time of the act, condition or event recorded in them . . . ." Biunno, N.J.R.E. 803(c)(6) cmt. 2.

Plaintiffs submit the Branch Workflow notes should not have been admitted as a business record because decedent's statement was not based on personal knowledge, nor was there a probability the statements were trustworthy. Plaintiffs assert the surrounding circumstances cast doubt as to whether the statements were "dependable or worthy of confidence." Feldman v. Lederle Labs., 132 N.J. 339, 354 (1993). They further assert the statements are not reliable because Osipova has no recollection of the discussion with decedent.

The trial court found the Branch Workflow notes containing a record of decedent's conversation with Osipova qualify for admission under the business records hearsay exception. N.J.R.E. 803(c)(6). The court observed Osipova testified "it is a 'requirement by Morgan Stanley to [prepare] these notes based upon conversations'" with clients and to document the reasons for rejecting a beneficiary designation form. The trial court also found Osipova recorded these notes contemporaneously with her communications with decedent. Notably, the court further determined Osipova had "no personal interest in [decedent's] beneficiary designations . . . and stood to gain nothing from misrepresenting what [decedent] represented to her." The trial court found it "inconsequential" that Osipova stated she could not remember the conversation when she was deposed, and it was "entirely reasonable that Osipova . . . could not recall a

specific conversation related to a single client on a single date several years in the past."

We are convinced the court did not abuse its discretion in addressing N.J.R.E. 803(c)(6). Osipova was required to make the notations in the regular course of business, and it was her regular practice to record such information. She had no motive or incentive to fabricate or misrepresent what she documented. Osipova also stated that upon receiving beneficiary amendment forms where there is any uncertainty as to which account is being contemplated, it is "the business practice that [she] always used" to call the client and clarify the intended amendment. In short, the circumstances surrounding the entry of the Branch Workflow notes in no way suggest they were not trustworthy, and the trial court did not err in determining the notes themselves—separate and apart from their embedded hearsay content—fall under the business records hearsay exception.

B.

Plaintiffs further contend the trial court erred because there was no "independent pathway for admission" of the embedded hearsay statements decedent made to Osipova pursuant to N.J.R.E. 804(b)(6). Accordingly,

plaintiffs contend even if the business record exception applies generally to Osipova's notes, the embedded hearsay is not admissible.

N.J.R.E. 804(b)(6) provides "[i]n a civil proceeding, a statement made by a person unavailable as a witness because of death if the statement was made in good faith upon declarant's personal knowledge in circumstances indicating that it is trustworthy" is not excluded by the hearsay rule. It has been noted the "[t]rustworthy statements" exception "reflects the judgment that if a statement is trustworthy and the declarant cannot be called because of his death, the gain of evidential value of the statement outweighs the loss of ability to cross-examine." Biunno, 804(b)(6) cmt. 5.

"[F]our conditions must be satisfied" to admit evidence under N.J.R.E. 804(b)(6): "(1) the declarant must be dead; (2) the statement must have been made in good faith; (3) the statement must have been made upon the declarant's own personal knowledge; and (4) there must be a probability from the circumstances that the statement is trustworthy." DeVito v. Sheeran, 165 N.J. 167, 194 (2000) (citing Ayala v. Lincoln, 147 N.J. Super. 304, 307 (App. Div. 1977); accord Hanges, 202 N.J. at 385-86).

Significantly, while the proponent of a statement must offer some evidence of the manner in which the statement was given, as we noted in Ramos

v. Community Coach, 229 N.J. Super. 452, 458 (App. Div. 1989), the court need not find the statement absolutely trustworthy before it may be admitted under the Rule. See Hanges, 202 N.J. at 386. The statement further need not be corroborated; it is sufficient the court find "only a probability that the statement is trustworthy from the circumstances surrounding its making." Biunno, 804(b)(6) cmt. 5 (citing Hanges, 202 N.J. at 386, and Est. of Grieco v. Schmidt, 440 N.J. Super. 557, 565-66 (App. Div. 2015)).

Plaintiffs contend decedent's statements, as transcribed by Osipova, do not meet all four elements necessary to fall under N.J.R.E. 804(b)(6). Specifically, plaintiffs argue factors (3) and (4)—requiring that the statement be based on decedent's personal knowledge, and under circumstances bespeaking trustworthiness—are not satisfied. Plaintiffs assert the evidence shows decedent did not have knowledge of who the beneficiaries of record were, given he did not have knowledge his beneficiary designation form had been rejected, as Morgan Stanley did not inform him of the rejection. We are unpersuaded.

The trial court held the personal knowledge factor was satisfied "given that [decedent's] discussion with [Osipova] involved his own Roth IRA accounts and their respective beneficiaries." The trial court was unpersuaded by plaintiffs' contention there was some gap in decedent's actual knowledge,

namely whether decedent was indeed informed after submitting the 2017 Form that it had been rejected, and that the 2015 Form still controlled. Rather, the trial court found that any such disparity "does not detract from the fact that [decedent's] statement would have been based on his own personal knowledge."

The court further held there was nothing in the record to suggest decedent's statement to Osipova was not trustworthy. The court observed decedent had "no reason to misrepresent the truth" to Osipova, who was his CSA since 2007, and he had routinely communicated with her regarding his financial accounts. The court reasoned, "[u]nlike a situation where an interested party makes a self-serving statement to support that party's status as a beneficiary, [decedent] stood to gain nothing from [making] . . . false statements to Osipova regarding the beneficiary designations for his own accounts."

We conclude the court did not misapply its discretion in admitting the embedded hearsay pursuant to N.J.R.E. 804(b)(6). The court's analysis regarding the personal knowledge and trustworthiness factors was sound. Even though decedent submitted the 2017 Form following his wife's passing, there is no indication decedent's statement to Osipova to keep the same beneficiaries was not based on his personal knowledge. Moreover, in light of the circumstances surrounding the preparation of the Branch Workflow notes, there

appears to be no reason for either Osipova or decedent to have spoken less than candidly regarding an intended amendment of designated beneficiaries on the 944 Account. To the contrary, the context of this conversation would suggest trustworthiness from the parties involved, given decedent's vested interest in having his intentions accurately implemented by Morgan Stanley.

IV.

Plaintiffs next contend the trial court committed reversible error by failing to consider "questions about the available evidence upon which [it] premised its judgment" and decedent's "probable intent" based on his estate planning. Plaintiffs argue that although this case does not involve a will contest, the trial court should have employed the caselaw utilized in construing ambiguities in a will. Specifically, plaintiffs assert the court should have determined decedent's probable intent from examining the 2017 beneficiary designation form, decedent's later beneficiary designations for his other investment accounts, and the will he executed in 2018. We are unpersuaded by plaintiffs' arguments.

We have described the doctrine of probable intent as permitting "the reformation of a will in light of a testator's probable intent by 'searching out the probable meaning intended by the words and phrases in the will.'" In re Estate of Flood, 417 N.J. Super. 378, 381 (App. Div. 2010) (quoting Engle v. Siegel,

74 N.J. 287, 291 (1977)). The doctrine is applied to introduce extrinsic evidence "to show an ambiguity in a will[,]" or "to shed light on the testator's actual intent" where an ambiguity in a will exists. Ibid. (quoting Wilson v. Flowers, 58 N.J. 250, 263 (1971)).

The trial court rejected plaintiffs' argument decedent's purported "probable intent" with respect to his overall testamentary scheme should control the beneficiary designations for the non-probate 944 Account. The court noted plaintiffs did not cite "any controlling authority" applying the doctrine of probable intent outside the will context and to non-probate transfers in a circumstance analogous to this matter. The court recognized we previously permitted the use of the doctrine in a different context under what the trial court considered "extraordinary circumstances" not present in this case. Stephenson v. Spiegle, 429 N.J. Super. 378 (App. Div. 2013).

The court further noted even if the doctrine of probable intent applied in this case, plaintiffs failed to present sufficient evidence to demonstrate it was decedent's intent for plaintiffs and Jacob to be equal beneficiaries of the 944 Account. The court observed the portion of the will cited by plaintiffs "merely bequests and devises [decedent's] residuary estate in five equal shares" to plaintiffs, Jacob, and the four remaining grandchildren. However, the court

noted this portion of the will does not "even match the disbursement plaintiffs assert" was intended for the 944 Account: "four equal shares divided among the three plaintiffs and Jacob (excluding the other four grandchildren)." Lastly, the court declined to "manipulate the beneficiaries of the 944 Account to better reflect [decedent's] purported intention" as the court noted this case is limited to the issue of the rightful beneficiaries of the 944 Account. Moreover, the court determined that simply because decedent may have sought to treat Jacob as he would have treated Jacob's deceased father in decedent's will does not equate with Jacob receiving more than the other grandchildren from the 944 Account.

We agree with the court's analysis of the doctrine of probable intent and affirm substantially for the reasons set forth in the court's opinion.[11] However, we add the following. We agree Stephenson is not applicable in this case. There, the decedent executed a will leaving his estate to his family members and in trust for certain family members. Stephenson, 429 N.J. Super. at 380. Two months later, he opened an account at a bank and sought to name his trust as a

[11] In discussing the lack of sufficient evidence proffered by plaintiffs, even if the doctrine of probable intent was applicable, the court also relied on the fact defendant failed to amend his beneficiaries after Getsy received the 2018 email, which included the 2015 Form for the 944 Account identifying the beneficiaries on file with Morgan Stanley. As discussed below, we part company with the trial court regarding its reliance on this email.

beneficiary, but "was dissuaded by a bank representative because the trust documents were not at hand." Ibid. He therefore named his attorney as the "pay-on death" beneficiary. Ibid. The trial court struggled to identify a theory of relief for plaintiff, but ultimately determined that "rescission based on a unilateral mistake" was the appropriate remedy. Id. at 384. In affirming the trial court, we noted decedent "mistakenly created a windfall for his attorney" as it was decedent's intention to create a trust for the benefit of his heirs. Id. at 385. We further observed that additional theories, including the doctrine of probable intention, would also be applicable under the facts in this case. Id. at 386.

The facts in Stephenson, however, are far afield from the facts in this case. The Stephenson trial court found it was "virtually inconceivable" that decedent would leave his bank account to his attorney with whom he had no special relationship. Id. at 382 n.1, 383. As the trial court here observed, unlike Stephenson, decedent named his grandchildren as beneficiaries of the 944 Account in 2015, and it was "perfectly conceivable" decedent wished to benefit his grandchildren. In sum, we are satisfied the court did not err in rejecting plaintiffs' contentions based on the doctrine of probable intent.

V.

We next turn to plaintiffs' contentions decedent substantially complied with Morgan Stanley's procedures. Plaintiffs argue while Morgan Stanley rejected decedent's 2017 Form, it should be considered as valid under the doctrine of substantial compliance.

Initially, we note the Uniform Transfer on Death Securities Registration Act (UTDSRA), N.J.S.A. 3B:30-1 to -12, governs transfer on death (TOD) accounts, which includes IRA accounts with TOD provisions. The UTDSRA sets forth the method by which the owner of an individual security can identify an individual or individuals who will take the account upon the account owner's death, without the account becoming a probate asset. "A security, whether evidenced by certificate or account, is registered in beneficiary form when the registration includes a designation of a beneficiary to take the ownership at the death of the owner or the deaths of all multiple owners." N.J.S.A. 3B:30-5. A financial institution "may establish the terms and conditions under which it will receive requests for registrations in beneficiary form . . . including requests for reregistration to effect a change of beneficiary." N.J.S.A. 3B:30-11(a).

The trial court noted decedent only initially sought to change his beneficiaries under the mistaken belief his wife was listed as a beneficiary of

the 944 Account. Moreover, the court observed Osipova's notes expressly reflect that Morgan Stanley rejected the 2017 Form with respect to both the 934 and 944 Accounts. More importantly, Osipova's notes indicated decedent wanted to maintain his existing beneficiaries. In short, the court noted decedent did not meet Morgan Stanley's terms and conditions to effectuate a change in beneficiaries. See N.J.S.A. 3B:30-11.

The court further held decedent did not substantially comply with Morgan Stanley's terms and conditions to change his beneficiaries. The court determined it was unclear which account decedent was attempting to update and without that clarity there could be no substantial compliance. Moreover, the court found that "although [decedent] initially took steps to change the beneficiaries for his accounts in 2017 . . . the Branch Workflow notes . . . [demonstrate] that he abandoned that attempt after communicating with Osipova." The court emphasized decedent's "knowledge or intentions" are ultimately secondary under the UTDSRA to "whether [decedent] followed Morgan Stanley's prescribed rules and procedure[s]."

The court further relied on decedent's failure to change his beneficiaries on the 944 Account in 2018 as evidence he was aware the 2015 Form identified his beneficiaries for the 944 Account. First, the court noted decedent updated

the beneficiary designations for the 934 Account on August 28, 2018. "The beneficiaries and their respective shares identified in the 2018 Form [were] identical to those in the 2017 Form[,]" indicating that if decedent believed the 2017 Form had been accepted for the 934 Account, he would have no reason to file the same form in 2018. Further, on September 4, 2018, Morgan Stanley sent Getsy an email attaching the 2015 Form regarding the beneficiaries for the 944 Account. The court noted decedent had the "opportunity and clear impetus" to change the beneficiaries, if he so desired, after Getsy received that email. The court concluded that when decedent failed to direct Morgan Stanley to change any beneficiaries on the 944 Account in 2018, it "dismisses any notion that he believed . . . that the 2017 Form governed his 944 Account."

Although we ultimately affirm the trial court's decision regarding plaintiffs' failure to demonstrate substantial compliance, we disagree with the court's reliance on the email sent to Getsy to buttress its decision regarding the rightful beneficiaries of the 944 Account. The record is not clear Getsy communicated with decedent regarding the 2018 email attaching the 2015 beneficiary designation form. She initially testified she shared this email with decedent and he, in turn, indicated Morgan Stanley apparently did not receive the 2017 Form. However, Getsy then indicated she was "getting a little

confused" with the dates and stated she was not "aware that there was a . . . question about the beneficiaries . . . until after [decedent] died." When asked again if she had spoken with decedent, she replied, "[a]pparently I did. I [do not] remember it." The court determined the inference from Getsy's initial testimony regarding her conversation with decedent was that decedent made a conscious decision in 2018 to maintain the beneficiaries he designated in 2015 because he did not seek to change the 944 Account as he did with respect to the 934 Account.

However, the record does not fully support the proposition decedent was in fact advised about the 2018 email, particularly when viewing the facts in a light most favorable to the plaintiffs under Rule 4:46-2.[12] Given the subsequent contradictions in Getsy's deposition testimony, the court should not have relied upon her initial testimony that she spoke with decedent about the 2018 email from Morgan Stanley. See Conrad v. Michelle & John, Inc., 394 N.J. Super. 1, 12-13 (App. Div. 2007) (holding a credibility issue requiring a fact finder's determination is raised by a witness's inconsistent or recanted sworn statements,

[12] Although plaintiffs state the facts in this case are not disputed, they appear to acknowledge, at least with respect to this discrete issue, there is a fact issue.

and a judge cannot decide which of the two versions is more credible without a hearing or trial).

Nevertheless, although the court should not have used the facts stemming from this email and Getsy's purported discussion with decedent to support the court's decision, it does not alter our conclusion. The court properly granted defendants' motion for summary judgment because the trial court otherwise correctly determined decedent did not properly change the 2015 beneficiary form in 2017. Accordingly, the 2015 Form remained as the controlling beneficiary designation regardless of what transpired in 2018. Moreover, the court also correctly determined plaintiffs did not satisfy the doctrine of substantial compliance. Therefore, the court's error was harmless. R. 2:10-2.

"The doctrine of substantial compliance allows for the flexible application of a statute in appropriate circumstances." Negron v. Llarena, 156 N.J. 296, 304 (1998). "Courts invoke the doctrine of substantial compliance to avoid technical defeats of valid claims." Id. at 305 (internal quotation marks omitted) (quoting Cornblatt v. Barow, 153 N.J. 218, 239 (1998)).

To prove substantial compliance, a defaulting party must demonstrate:

> (1) the lack of prejudice to the defending party; (2) a series of steps taken to comply with the statute involved; (3) a general compliance with the purpose of the statute; (4) a reasonable notice of petitioner's

> claim[;] and (5) a reasonable explanation why there was not a strict compliance with the statute.
>
> [Ibid. (alteration in original) (quoting Bernstein v. Bd. of Trs. of Tchrs.' Pension & Annuity Fund, 151 N.J. Super. 71, 76-77 (App. Div. 1977)).]

Like the trial court, we are unpersuaded decedent substantially complied with Morgan Stanley's procedures to change the beneficiaries. Because the beneficiary form was not properly completed, Morgan Stanley correctly rejected the submission by decedent, particularly in light of the notes reflecting decedent wanted to keep his existing beneficiaries.

Setting aside the prejudice to defendants under the first factor, the record does not demonstrate a series of steps taken to comply with the statute involved or a general compliance with the purpose of the statute under factors two and three. Although decedent took the initial step to fill out an amended beneficiary form, he fell short of taking the necessary following steps to identify the proper account and confirm the changes he sought. Moreover, the events following the initial submission of the 2017 Form, including decedent's communication with Osipova and her documentation of same, do not favor a finding of substantial compliance as there was no general compliance with Morgan Stanley's procedures for changing beneficiaries. Finally, there is no reasonable explanation as to why there was not strict compliance with the statute under the

fifth factor. The record simply does not indicate decedent made any particular effort to ensure the 2017 Form complied with Morgan Stanley's procedures, or that it should have been treated as superseding the 2015 Form.

In sum, we find no basis to conclude plaintiffs established substantial compliance with the UTDSRA statute or Morgan Stanley's procedures. We therefore hold the trial court correctly granted defendants' summary judgment motion.

To the extent we have not specifically addressed any remaining arguments raised by plaintiffs, we conclude they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.