

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

August 29, 2000

Cornelia G. Clark  
Clerk, Court of Appeals  
of Wisconsin

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**No. 00-0118-FT**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**IN THE MATTER OF THE ESTATE OF  
MICHAEL TILLEMAN:**

**DELAINE TILLEMAN,**

**APPELLANT,**

**v.**

**CAROL TILLEMAN**

**RESPONDENT.**

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APPEAL from a judgment of the circuit court for Sawyer County:  
FREDERICK A. HENDERSON, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Delaine Tilleman, Michael Tilleman's wife at the time of his death, appeals a summary judgment directing the personal

representative of Michael's estate to pay his former wife, Carol, funds received by the personal representative from Michael's IRA account.<sup>1</sup> Delaine argues: (1) Michael withdrew the funds from the IRA account before his death and therefore they belong to his estate, not the beneficiary named in the IRA account; (2) summary judgment is inappropriate because there are outstanding issues of material fact regarding the withdrawal; and (3) Carol is not entitled to the funds because WIS. STAT. § 854.15 terminated her interest in the account as of the date of the divorce. We reject these arguments and affirm the judgment.

¶2 The dispositive facts are set out in the parties' stipulation. In 1992, Michael opened an IRA account with Charles Schwab & Co., Inc., naming Carol the primary beneficiary and their daughter, Brandy, the contingent beneficiary. Michael and Carol divorced in 1996 and Michael married Delaine in 1997. On December 29, 1998, Michael instructed Schwab to sell some of the investments in the account. Michael died four days later. Twenty-four days after his death, Schwab sent Michael the check representing the proceeds of the sales.

¶3 Delaine's argument that the funds were no longer part of Michael's IRA on the date of his death depends on her assertion that the funds had been withdrawn before his death. The parties' stipulation establishes that Michael directed Schwab to sell some securities, but that the check transferring the proceeds from the IRA account to Michael was not sent until after his death. Delaine cites no authority for the proposition that money is deemed "withdrawn" from an account on the date the withdrawal is requested rather than the date the money is actually transferred. It is not this court's function to supply legal

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<sup>1</sup> This is an expedited appeal under WIS. STAT. RULE 809.17 (1997-98). All references to the Wisconsin Statutes are to the 1997-98 version.

research and develop the appellant's argument. *See State v. Waste Management*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978). In the absence of any authority supporting Delaine's argument, we will construe the date the check was sent as the date the money was withdrawn from the account.

¶4 Delaine argues that her affidavit creates an issue of fact regarding the date of the withdrawal. The affidavit states that prior to his death, Michael "withdrew" money from the account. The facts upon which the summary judgment is based are set out in the parties' stipulation. Whether a request to sell securities constitutes a withdrawal is a question of law. *See Morris, Law & Fact*, 55 HARV. L. REV. 1303, 1314-15, 1328-29 (1942). By her conclusory statement that Michael "withdrew" the money before his death, Delaine attempts to assign legal significance to the facts contained in the stipulation. Her affidavit averring a conclusion of law does not meet the statutory requirements for creating an issue of fact that would preclude summary judgment. *See Hopper v. City of Madison*, 79 Wis. 2d 120, 130, 256 N.W.2d 139 (1977).

¶5 Also, we fail to see how Delaine has standing to challenge the trial court's conclusion that Carol should receive the funds rather than Brandy. If Carol's right to the money was revoked under WIS. STAT. § 854.15 at the time of the divorce, the contingent beneficiary, Brandy, receives the money. Delaine has not established that whether Carol or Brandy receives the money has any direct effect on Delaine's legally protected interest. Therefore, she has no standing to appeal that decision. *See In re Adoption of J.C.G.*, 177 Wis. 2d 424, 427, 501 N.W.2d 908 (Ct. App. 1993).

*By the Court.*—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE  
809.23(1)(b)5.

