

# THE RISELING REPORT . . . . .

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## **JTWROS = JTWR0S: The Estate of Metz Case**

On April 5, 2011, in the Estate of Metz Case 2011 OK 26 the Oklahoma Supreme Court held that ***JTWROS is JTWR0S***.

Have you ever heard of (or dealt with) the situation where an account owner (e.g. **"Mom"**) places another person on her account (e.g. **"Daughter"**) with the intent that Daughter will pay Mom's bills from the account, for the convenience of Mom, and that Daughter will later "share" with Mom's other children? This is a very common practice.

In the Estate of Metz matter (the **"Case"**), the decedent, William Metz (the **"Decedent"**) opened a joint tenancy with right of survivorship bank account at Tulsa Teacher's Credit Union with his nephew, David Pense (the **"Account"**). When opening the Account, both joint tenants executed a share account signature card that provided that the account was held:

**“. . . as joint tenants with right of survivorship, and not as tenants in common . . .”**

After the Decedent's death, the beneficiaries under the Decedent's Will petitioned the Court to have the account be included as part of the Decedent's probate estate. The District Court and Appellate Court agreed with the beneficiaries finding that the account should be part of the Decedent's probate estate. The Oklahoma Supreme Court reversed.

In its review, the Oklahoma Supreme Court stated that the Supreme Court recognized two (2) categories of joint tenancy with right of survivorship, to-wit:

1. **THOSE CREATED BY A WRITTEN INSTRUMENT.** Those joint tenancy with right of survivorships **created by a written** instrument expressly declaring the relationship as prescribed by 60 O.S. §74 (the **"Oklahoma Joint Tenancy Right of Survivorship Statute"**), and

2. **THOSE NOT CREATED WITH WORDS.** Those not created with words of joint tenancy with survivorship, but nonetheless, the party initiating the relationship "intentionally and intelligently created essential elements of joint ownership and survivorship."

The Court stated that single instruments containing an express written declaration creating joint tenancy encompassed “the element of intent and leave no question as to the creation of the relationship.”

The Court further noted that in the second category (*i.e. those not created with words of joint tenancy with survivorship*), it was considerably more difficult to ascertain the parties’ intent. This difficulty is compounded where the words creating a joint tenancy with survivorship are absent, and the parties’ actions are contrary.

In the Case, the District Court as well as the Court of Civil Appeals reasoning tracked the analysis applicable to the later category. In so doing, the District Court heard extensive testimony on the parties’ intent, examined their conduct, and ultimately gave little weight to the single instrument that embodied the parties’ intent. It is that slippery-slope analysis in which the Oklahoma Supreme Court declined to engage because it is perfectly clear that the instant case concerns the first category.

**What does all this mean?** The Case provides that the rule of law in Oklahoma is that:

***If there is a single instrument containing an express written declaration to create joint tenancy with right of survivorship, then joint tenancy with right of survivorship is what the Court will find.***

Attorneys, estate planning advisors, and clients should be mindful of the Case - -  
- - JTWROS = JTWROS.