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Wills - Life Insurance - Change of Beneficiary by Will

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ed to all trivial indignities. However, the instant decision should not be looked upon as an extension of liability for causing emotional distress any more than if the court had held the recovery to be for the invasion of privacy. The court applied the general rules applied to the right of privacy and resolved that, "Defendant should have reasonably anticipated that the open post card would fall into the hands of plaintiff's wife, would be read by her and would cause such reaction as it actually did cause in this case." The opinion therefore took into consideration the requirements for recovery under the right of privacy.[14] In holding that the right to personal security in his home, including the right to enjoyment of life, and the enjoyment of the happiness of the home and the love and confidence of his wife was violated, it went no further. The only question which could then arise is, whether the court properly resolved the requirements in accordance with the facts, not whether the theory of relief was beyond that usually given by a court.

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WILLS — LIFE INSURANCE — CHANGE OF BENEFICIARY BY WILL. — By the terms of his last will, X bequeathed all his property, including the proceeds of life insurance policies, to W, his wife. The will alternately provided that X bequeathed all of said property to G, his grandmother, in the event he should die unmarried. W, the designated beneficiary in the policies, divorced X, who died shortly thereafter without having made any attempt, beyond his testamentary declaration, to effect a change of beneficiary in compliance with the requisites prescribed in the policies. Both W and G claimed the insurance proceeds in an action in which the insurers interpleaded and paid into court the amounts due under their respective policies. *Held:* the will executed by X could not effect a change of beneficiary. *Stone v. Septhens,* 99 N.E.2d 766 (Ohio 1951).

The named beneficiary in an insurance policy, which reserves to the insured the privilege of changing the beneficiary therein, enjoys only an expecancy during the lifetime of the insured, which does not become a vested right until the insured's death. Similarly, the expectation of a legatee under a will vests only upon the death of the testator since it may always be revoked or adeemed. When the conflicting expectations of a beneficiary and a legatee supposedly vest simultaneously at the death of the insured-testator, which should prevail?

Although the interest of the beneficiary in an insurance policy during the lifetime of the insured is commonly treated as a mere expectancy or contingency,[1] it seems that such interest has the character of a more secured right. The limitations upon the reserved right of the insured to change his beneficiary at will, as outlined in the contract of insurance, are sometimes said to be for the benefit of the insurer alone,[2] but it is certain that both insured and beneficiary are protected and benefited as well.[3] One expres-

14. The court also stated that the implication of the post card was libelous.

1. Freund v. Freund, 218 Ill. 189. 75 N.E. 925 (1905).
2. Provident Life & Accident Ins. Co. v. Dotson, 93 F. Supp. 538 (S.D. W. Va. 1950).
3. *See* Wannamaker v. Stroman, 167 S.C. 484, 166 S.E. 621, 623 (1932); *See* Pedron v. Olds, 193 Ark. 1026, 105 S.W.2d 70 (1937).

sion of this view, contrary to the general opinion, is that the beneficiary has a vested interest, subject to be divested by the insured only by following the specified procedure.[4] However, definition of the beneficiary's interest prior to the death of the insured does not appear to be the sole controlling factor.[5]

The great majority of courts uphold the rule that a provision of the insured's will is ineffectual toward compliance with the requirements of the insurance policy whereby the name of the beneficiary may be changed,[6] except, of course, where the policy is silent as to the method of making such change,[7] or where no specific person is named as beneficiary.[8] The method outlined in the policy for designating a new beneficiary is considered exclusive,[9] subject only to the equitable exceptions of waiver of strict compliance by the insurer, impossibility of literal compliance by the insured, and where the insured has done everything in his power to accomplish the change.[10]

Whatever may be the interest of the beneficiary in an insurance policy, it is fundamental that the actions of the insured in expressing his intent to change the beneficiary are of prime importance. There is appealing authority favoring the interest of the legatee in the instant case in view of the general policy of the courts in giving effect to the last expressed intent of a testator, wherever possible.[11] According to this minority view, the only essential acts to be performed by the insured are those which manifest a clear intention to change the beneficiary.[12] Where such an intent is manifested by will, it has been given effect by courts which reason that the desires of the insured are paramount to the technical requirements of the policy.[13] In effect, these decisions hold that the formality of executing a valid will

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4. United States v. Burgo, 175 F.2d 196 (3d Cir. 1949) (decision based on New Jersey law); Siebold v. Mayfield, 136 N.J.L. 512, 57 A.2d 248 (1948). *Contra:* Rasmussen v. Mutual Life Ins. Co. of New York, 70 N.D. 295, 293 N.W. 805 (1940) (designated beneficiary acquires no vested interest).

5. Stephenson v. Stephenson, 64 Iowa 534, 21 N.W. 19 (1884).

6. Cook v. Cook, 17 Cal.2d 639, 111 P.2d 322 (1941); Johnson v. New York Life Ins. Co., 56 Colo. 178, 138 Pac. 414 (1914) (case collected); Daniels v. Pratt, 143 Mass. 216, 10 N.E. 166 (1887) (policy required change of beneficiary to be made during insured's lifetime).

7. Jorgensen v. DeViney, 57 N.D. 63, 222 N.W. 464 (1928) (the change of beneficiary clause in the policy stated merely that such change should take effect "upon the indorsement of the same on the policy by the company . . ."). Provisions of this type generally have been considered restrictive of the right to change beneficiary and non-compliance renders void an attempted disposition by will or otherwise.

8. Anderson v. Northern & Dakota Trust Co., 67 N.D. 458, 274 N.W. 127 (1937) (where payable to the estate of the insured); Hill v. Hanna, 57 N.D. 412, 222 N.W. 459 (1928) (where payable to executor).

9. Miller v. Miller, 200 Iowa 1070, 205 N.W. 870 (1925) (cases collected). *But see* Eickelkamp v. Carl, 193 Ark. 1155, 104 S.W.2d 814 (1937).

10. Shuman v. Ancient Order of United Workmen, 110 Iowa 642, 82 N.W. 331, 332 (1900) (original beneficiary's interest vested at death of insured and subsequent notice to insurer could not divert her rights).

11. Pedron v. Olds, 193 Ark. 1026, 105 S.W.2d 70 (1937); Finnerty v. Cook, 118 Colo. 310, 195 P.2d 973 (1948) (war risk insurance).

12. Typifying the liberal construction of insurance contracts is Arnold v. Newcomb, 104 Ohio St. 578, 136 N.E. 206 (1922) in which the rules and by-laws incorporated into the contract provided that the change of beneficiary would not become valid or binding until the old policy was cancelled and a new one issued in its place. Insured had executed the proper form and left it with his wife, the new beneficiary, who did not forward it to the insurer until after insured's death more than 11 months later. The court held that this was substantial compliance and awarded the wife the proceeds of the policy.

13. Pedron v. Olds, 193 Ark. 1026, 105 S.W.2d 70 (1937); Eickelkamp v. Carl, 193 Ark. 1155, 104 S.W.2d 814 (1937).

serves to satisfy the provisions of the policy as to change of beneficiary, thereby avoiding results which often seem harsh.[14]

Additional support is given to the minority view by the theory that interpleader of the insurance company and payment into court of the proceeds of the policy constitute a waiver of the policy requirements.[15] It is considered the provisions for change of beneficiary are for the benefit of the insurer, it alone may question the eligibility of beneficiaries and insist upon strict compliance; and, for those reasons, it alone can waive compliance.[16] This theory is rejected by the majority of courts, however, which follow the rule that the filing of an action of interpleader by the insurer cannot operate as a waiver of the policy's requirement as to change of beneficiary and thereby effectuate an otherwise defective substitution of beneficiaries.[17] The rights of the named beneficiary become vested on the death of the insured and cannot thereafter be affected by a subsequent act of the insurer.[18]

In disallowing the last declared intent of the insured, the decision of the instant case conforms to the rule exercised in most jurisdictions in regard to such expressions by will and, of course, less formal means. The rule is consonant with the ideal of certainty required in the public interest of insurance rights and liabilities.[19] Yet, no less attention is required or paid to certainty in the execution and administration of wills. There is compelling reason, therefore, to recognize the overriding factor of the last declaration of intent by the insured when made by will and to allow distribution of insurance proceeds accordingly.

PAUL K. PANCRATZ

WILLS — REVOCATION BY OPERATION OF LAW — DIVORCE WITH A PROPERTY SETTLEMENT. — Plaintiff's former wife died leaving a will which contained a bequest to him of $1000. Subsequent to the making of this will she had obtained a divorce with a property settlement. The court *held* that a divorce with a property settlement did not act as a revocation by operation of law of a previously executed will. *Ireland v. Terwilliger,* 54 So.2d Fla. 1951).

The general doctrine of revocation by operation of law was developed in England.[1] Two events which would act as such a revocation were the subsequent marriage of a feme sole [2] and the subsequent marriage and birth

14. In war risk insurance cases involving change of beneficiary, courts brush aside legal technicalities to effectuate the insured's manifest intention. See Roberts v. United States, 157 F.2d 906 (4th Cir. 1946). *But cf.* Owens v. Owens, 305 Ky. 460, 204 S.W.2d 580 (1947).

15. Arrington v. Grand Lodge of Brotherhood of Trainmen, 21 F.2d 914 (5th Cir. 1927).

16. Provident Life & Accident Ins. Co. v. Dotson, 93 F. Supp. 538 (S.D. W. Va. 1950).

17. Equitable Life Assurance Society v. McClelland, 85 F. Supp. 688 (W.D. Mich. 1949) (insurance company was a party to the action).

18. Rasmussen v. Mutual Life Ins. Co. of New York, 70 N.D. 295, 293 N.W. 805 (1940); Dogariu v. Dogariu, 306 Mich. 392, 11 N.W.2d 1 (1943); Knights of Macabees of the World v. Sackett, 34 Mont. 357, 86 Pac. 423 (1906) any waiver regarding a change of beneficiary must occur during the lifetime of the insured. After the death of the insured, the insurer cannot waive anything to the prejudice of the beneficiary).

19. The controlling factor in Wannamaker v. Stroman, 167 S.C. 484, 166 S.E. 621 (1932) seemed to be the policy consideration of prompt payment to properly designated beneficiaries without incurring liability.

1. Atkinson, Wills 397 (1937).

2. *E.g.* Vandeveer v. Higgins, 59 Neb. 333, 80 N.W. 1043 (1899); Colcord v. Conroy, 40 Fla. 97, 23 So. 561 (1898); Nutt v. Norton, 142 Mass. 242, 7 N.E. 720 (1886) (marriage and birth of issue to a woman revoked her will).