APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, FIRST DEPARTMENT

Matter of Durcan

2018 NY Slip Op 07241 (App. Div. 2018) · No. 7506 · Decided October 30, 2018

SUMMARY

The New York Appellate Division, First Department held that a claimant was not entitled to proceeds from the decedent's individual retirement accounts because the purported beneficiary change was not made in a signed writing as required by EPTL 13-3.2(e)(1). The court rejected substantial-compliance and speculative-mailing arguments and affirmed the decree directing turnover of the IRA assets to the petitioner.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, First Department
WRITING FOR THE COURT	Acosta, P.J.; Friedman, J.; Kapnick, J.; Webber, J.; Moulton, J.
JURISDICTION	New York
DECIDED	October 30, 2018
DOCKET	7506
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order of Surrogate's Court granting the petitioner's motion for summary judgment and denying respondent Cunney's cross-motion for summary judgment; the appeal was deemed taken from the subsequently entered decree directing turnover of the decedent's IRA assets.
STANDARD OF REVIEW	Summary judgment is reviewed de novo; the appellate court determines whether the movant established entitlement to judgment as a matter of law and whether any genuine issue of material fact required denial of summary judgment.
PRECEDENTIAL VALUE	Published appellate decision; precedential within the applicable New York appellate hierarchy.
PARTIES	Mary Anne Cunney v. James Kevin Durcan

TOPICS

probate procedure | estate planning | statutory interpretation | appellate procedure | standard of review

PRACTICE AREAS

probate | estate planning | trusts and estates

QUESTIONS PRESENTED

1. Whether an unsigned client data form and evidence of the decedent's intent could satisfy the statutory requirement of a signed writing changing the beneficiary of an individual retirement account.
2. Whether the doctrine of substantial compliance excused the absence of a signed change-of-beneficiary form for the decedent's IRAs.
3. Whether the possibility that the beneficiary designation form was lost in the mail or at Morgan Stanley created a triable issue of fact.

HOLDINGS

1. A beneficiary designation for the decedent's IRAs was ineffective absent a writing signed by the decedent; Cunney was therefore not entitled to the IRA proceeds despite the decedent's clear intent to designate her.
2. The doctrine of substantial compliance did not excuse the absence of a signed writing in the context of the decedent's retirement accounts.
3. The claim that the beneficiary designation form may have been lost in the mail or at Morgan Stanley was speculative and did not defeat summary judgment.

KEY QUOTATIONS

> *“The Surrogate correctly determined that, despite the decedent's clear intent to designate respondent Cunney as the beneficiary of her IRAs, Cunney is not entitled to the proceeds of the IRAs in the absence of a signed change of beneficiary form”* (at 1)

> *“This argument is purely speculative, as there is no evidence that the decedent actually mailed the form.”* (at 2)

FACTUAL BACKGROUND

The decedent owned individual retirement accounts at Morgan Stanley. Although the decedent clearly intended to designate Mary Anne Cunney as the beneficiary, no signed change-of-beneficiary form could be located in the decedent's apartment or Morgan Stanley's offices. A Morgan Stanley client data form for new personal accounts, completed in the decedent's handwriting but not requiring a signature, identified Cunney, and witnesses testified that the decedent said she intended to send a beneficiary designation form; there was no evidence that she actually mailed it.

PROCEDURAL HISTORY

Surrogate's Court, New York County, granted James Kevin Durcan summary judgment directing the respondents to turn over the proceeds of Joan Durcan's individual retirement accounts and denied Mary Anne Cunney's cross-motion to dismiss the petition. After entry of a decree directing turnover of the IRA assets, the Appellate Division deemed the appeal to be from that decree and unanimously affirmed.

DISPOSITION

affirmed

CASES CITED

- Androvette v Treadwell, 73 NY2d 746 (1988)
- McCarthy v Aetna Life Ins. Co., 92 NY2d 436, 440 (1998)
- Lincoln Life & Annuity Co. of N.Y. v Caswell, 31 AD3d 1, 7 (1st Dept 2006)

OPINION

PER CURIAM.

Matter of Durcan (2018 NY Slip Op 07241) Matter of Durcan 2018 NY Slip Op 07241 Decided on October 30, 2018 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on October 30, 2018 Acosta, P.J., Friedman, Kapnick, Webber, Moulton, JJ. 7506 4296C/14 [*1]In re Joan Durcan, Deceased.

In re James Kevin Durcan, Petitioner-Respondent, vMary Anne Cunney, Respondent-Appellant, Morgan Stanley Smith Barney, LLC, Respondent. Mahon, Mahon, Kerins & O'Brien, LLC, Garden City (Robert P. O'Brien of counsel), for appellant. Greenfield Stein & Senior, LLP, New York (Angelo M. Grasso of counsel), for respondent. Appeal from order, Surrogate's Court, New York County (Rita Mella, S.), entered on or about April 11, 2018, which granted petitioner's motion for summary judgment directing respondents to turn over to him the proceeds of the individual retirement accounts (IRAs) owned by the decedent at the time of her death, and denied respondent Cunney's cross motion for summary judgment dismissing the petition, deemed appeal from decree, entered on or about August 3, 2018, directing respondents to turn over to petitioner all assets in the IRAs owned by the decedent at the time of her death, and, so considered, said decree unanimously affirmed, without costs.

The Surrogate correctly determined that, despite the decedent's clear intent to designate respondent Cunney as the beneficiary of her IRAs, Cunney is not entitled to the proceeds of the IRAs in the absence of a signed change of beneficiary form (see EPTL 13-3.2[e][1] ["A designation of a beneficiary or payee to receive payment upon death of the person making the designation... must be made in writing and signed by the person making the designation"]; Androvette v Treadwell, 73 NY2d 746 [1988]).

Citing the doctrine of substantial compliance, Cunney argues that Morgan Stanley's Client Data Form for New Personal Accounts filled out in the decedent's handwriting is sufficient to satisfy the requirement of a signed writing, as that document did not require a signature.

However, she cites no authority for excusing the signed writing requirement in the context of a retirement account. Indeed, as the Surrogate noted, even in the insurance context, where strict compliance is not always required (see McCarthy v Aetna Life Ins. Co., 92 NY2d 436, 440 [1998]), this Court has rejected the contention that an insured's specific testamentary disposition of an insurance policy in a will constitutes substantial compliance with the policy's requirements for effecting a change in the beneficiary of the policy (see Lincoln Life & Annuity Co. of N.Y. v Caswell, 31 AD3d 1, 7 [1st Dept 2006]).

Cunney argues that the beneficiary designation form, which was part of a second set of documents sent to Morgan Stanley, may have been lost in the mail or in Morgan Stanley's offices. This argument is purely speculative, as there is no evidence that the decedent actually mailed the form.

The decedent's financial advisor and his assistant testified that the decedent said she was going to send the form, but it is undisputed that the form could not be located in the [*2]decedent's apartment or Morgan Stanley's offices.

We have considered Cunney's remaining arguments and find them unavailing. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: OCTOBER 30, 2018 CLERK

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