

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

Lincoln Life & Annuity Co. v. Caswell

31 A.D.3d 1 (1st Dep't 2006) · Decided April 11, 2006

OPINION

FRIEDMAN, J.

OPINION OF THE COURT Friedman, J. In *McCarthy v Aetna Life Ins. Co.* (92 NY2d 436 [1998]), the *3Court of Appeals held that, where a life insurance policy sets forth a procedure for changing beneficiaries and does not authorize making such a change by will, a general testamentary statement in the insured's will does not override a prior designation of the policy beneficiary that was made in the manner provided by the policy.

This appeal requires us to decide which instrument controls—the will or the prior beneficiary designation made in accordance with the terms of the policy—where, unlike *McCarthy*, the will specifically identifies the policy in question and purports to require a disposition of its proceeds inconsistent with the beneficiary designation under the policy.

We hold that, under these circumstances, the purported testamentary disposition of the policy proceeds does not constitute “substantial compliance” with the policy and, therefore, cannot be given effect over the policy's beneficiary designation.

As in *McCarthy*, this result is not affected by the insurance company's waiver of “strict compliance” with the policy terms by its commencement of an interpleader action to adjudicate among the conflicting claims to the policy proceeds. There is no dispute as to the material facts.

In April 1985, Aetna Life Insurance and Annuity Company (Aetna) issued policy No. U1179854, a life insurance policy in the face amount of \$200,000 (the ‘854 policy), to Martha L. Hubbard (hereinafter, the insured). The ‘854 policy provides that, to change the beneficiary, “[a] signed request must be sent to Aetna. When Aetna gives its written acceptance, the change will take effect as of the date the request was signed.” On two occasions, the insured changed the beneficiary designation in the manner provided by the ‘854 policy.

Her last such change was made by a signed request dated October 9, 1987. That request, made on a printed form Aetna provided for the purpose, designated the insured's son, Robert W. Hubbard, Jr., as primary beneficiary, and defendant Bennie Caswell, Jr. (sued herein as Benjamin Caswell), as contingent beneficiary. Aetna's acceptance of that request is dated October 27, 1987.

Since Robert W. Hubbard, Jr. predeceased the insured, giving effect to the October 1987 beneficiary designation would make Caswell the sole beneficiary of the '854 policy. More than 15 years after she filed the October 1987 beneficiary designation with Aetna, the insured executed a last will and testament, dated June 16, 2003. This will specifically refers to the '854 policy by number, and purports to "devise and bequeath" portions of the proceeds of that policy to various individuals and charities.

It appears that the will purports to *4leave Caswell only \$25,000 of the proceeds of the '854 policy. There is no indication that the insured ever took any steps to have the legatees of the '854 policy under the will designated as beneficiaries of the policy in the manner provided by the policy itself.

The insured died on May 17, 2004, and her will of June 2003 has been filed in probate proceedings in Surrogate's Court. In June 2004, Caswell and the nominated executors of the insured's estate, by their respective attorneys, sent letters to the insurance company asserting conflicting claims to the proceeds of the '854 policy. Thereafter, plaintiff Lincoln Life and Annuity Company of New York, as Aetna's administrator, in accordance with CPLR 1006, commenced this interpleader action in the Supreme Court, Bronx County, seeking to be discharged of its obligations under the policy while allowing the competing claims to the proceeds to be resolved among the interested parties.

The defendants named in the amended interpleader complaint are Caswell, the preliminary executors of the insured's estate, the various individual and charitable legatees of the '854 policy under the will, and the Attorney General, as statutory representative of the charitable legatees. Plaintiff admits that the '854 policy's death benefit is now due and owing, but takes no position on the question of whether such payment should be made to Caswell alone, pursuant to the October 1987 beneficiary designation, or, alternatively, to the executors of the insured's estate for disposition in accordance with the June 2003 will.

Although Caswell's answer is not set forth in the record, it appears that he asserted a counterclaim seeking an order directing plaintiff to pay over the proceeds of the '854 policy to him. In January 2005, Caswell moved for summary judgment on his counterclaim. Plaintiff cross-moved for an order, pursuant to CPLR 1006 (f), permitting it to pay the proceeds of the policy into court, discharging it from any further liability under the policy, and awarding it costs, disbursements and reasonable attorneys' fees.

By order entered on or about March 7, 2005, the motion court denied Caswell's summary judgment motion, based on the court's view that the dispositive consideration was the insured's intent, as to which, the court opined, there exists a triable issue of fact.

The same order granted plaintiffs cross motion insofar as it sought permission to pay the policy proceeds into court and a discharge upon so doing. The branch of plaintiffs cross *5motion seeking an award of costs, disbursements and reasonable attorneys' fees was granted to the extent of setting the matter down for a framed issue hearing.

On Caswell's appeal, we now modify to grant Caswell's summary judgment motion to the extent of declaring him the sole beneficiary of the '854 policy, and otherwise affirm. As the Court of Appeals stated in *McCarthy v Aetna Life Ins. Co.* (92 NY2d 436 [1998], *supra*), the general rule is that "the method prescribed by the insurance contract must be followed in order to effect a change of beneficiary" (*id.* at 440 [citations omitted]).

As a corollary of this rule, it has long been recognized that, unless an insurance policy permits the beneficiary to be designated or changed by will, even a specific testamentary bequest of the policy proceeds generally will not override a prior beneficiary designation made in accordance with the terms of the policy (see *Fink v Fink*, 171 NY 616, 625 [1902]; *Matter of Jaccoma*, 142 AD2d 875, 876-877 [1988], *lv denied* 73 NY2d 703 [1988]; *Pruchnowski v Prudential Ins.*

Co. of Am., 242 App Div 899 [1934], *affd* 270 NY 530 [1936]; *Matter of Ziolkowski*, 47 Misc 2d 752, 753-754 [Sur Ct, Erie County 1965]; *Ralph v Equitable Life Assur. Soc. of U.S.*, 46 NYS2d 957, 959 [Sup Ct, Kings County 1944]). Over the years, there has been some relaxation of the requirement of strict compliance with the procedures specified by an insurance policy for designating or changing beneficiaries.

At first, it was held that "exact compliance with the provisions of the policy [would be excused] where the attempt at such compliance has been substantial and its full success prevented by some cause not within the control of the person attempting to make the change" (*Schoenholz v New York Life Ins. Co.*, 234 NY 24, 29-30 [1922] [citations omitted]).¹ As the law has evolved, the courts, recognizing that a primary purpose of specifying a procedure for changing beneficiaries is to protect the insurer from double liability, have come to hold that exact compliance with *6the contractual procedure will be deemed waived where the insurer, faced with conflicting colorable claims to the same policy proceeds, pays the proceeds into court in an interpleader action so that the opposing claimants may litigate the matter between themselves (see *McCarthy*, 92 NY2d at 442 [noting that "the insurer who has brought the proceeds of the policy into court and requested the court to adjudicate the rights of contesting claimants may no longer insist upon strict compliance"]; *Cable v Prudential Ins.*

Co. of Am., 89 AD2d 636, 636 [1982] ["strict compliance" with the policy's requirements for effecting a change of beneficiaries was "unnecessary" where the insurer had "paid the proceeds of the policy into the court leaving the parties to settle the controversy between themselves"]).

Although an interpleading insurer is deemed, by paying the policy proceeds into court, to waive exact compliance with the policy's procedures for changing beneficiaries, the question is still not purely one of the insured's intent. Rather, "[t]here must be an act or acts designed for the purpose of making the change, though they may fall short of accomplishing it.

Mere intent is not enough" (*Aetna Life Ins. Co. v Sterling*, 15 AD2d 334, 335 [1962], *affd* 11 NY2d 959 [1962] [designation of beneficiary for new policy did not change beneficiary of old policy that was still in effect when insured died]; see also *Cook v Aetna Life Ins. Co.*, 166 AD2d 895, 896 [1990] [insured's alleged statements of intent to change beneficiary were not a sufficient basis for giving effect to such change]; *Cable v Prudential Ins.*

Co. of Am., 89 AD2d at 636 [change given effect where insured failed only to send the policy to the insurer for endorsement, but otherwise followed the procedure set forth in the policy]; *Hunnell v Hunnell*, 45 AD2d 521, 523 [1974], *affd* 37 NY2d 931 [1975] [to same effect as *Cook*]).

Thus, the controlling consideration as to whether a change of beneficiary has been effectuated in such cases is whether there has been "substantial compliance with the terms of the policy" (*McCarthy*, 92 NY2d at 440 [emphasis added and citation omitted]; see *John Hancock Mut. Life Ins. Co. v McManus*, 247 AD2d 513, 513, 514 [1998] ["the insured did not substantially comply with the requirements of her life insurance policies in order to effectuate a change of beneficiary" where, after the insurer advised her that her initial change-of-beneficiary form was unacceptable and sent her a new form, "she failed to fill out and return the new form in the month before her death, even though completion of the new form was within her power to accomplish"]; *Connecticut Gen. *7Life Ins.*

Co. v Boni, 48 AD2d 621 [1975], appeal dismissed 37 NY2d 917 [1975] [there was no "triable issue concerning decedent's attempted substantial compliance" where the change-of-beneficiary form he executed 11 years before his death was never delivered to the insurer]). Obviously, as the law has developed, it still seeks to encourage compliance with the requirements of the policy for changing beneficiaries.

Against the foregoing legal background, the dispositive question that emerges in this case is whether the insured's specific testamentary disposition of the '854 policy in her will can be deemed to constitute "substantial compliance" with that policy's requirements for effecting a change of beneficiary. Our answer to this question is "no." Although the will may constitute some evidence of the insured's subjective intentions, the making of the will plainly was not an attempt to comply with the simple change-of-beneficiary procedure set forth in the '854 policy.

So far as the record shows, in the I6V2 years the insured lived after effecting the October 1987 change of beneficiary, she did nothing at all that could be characterized as an attempt to comply with the change-of-beneficiary procedure required by the policy, which, again, was simply to send

the insurer a signed request—a procedure the insured herself had followed twice before she executed her will.

Nor is there any evidence that the insured was “physically or mentally incapable of attempting to substantially comply with the requirements of the policy” (McCarthy, 92 NY2d at 441-442). We recognize that at least two reported pre-McCarthy Surrogate’s Court decisions have given effect to a specific testamentary bequest of an individual retirement account as a change of the beneficiary, although the bequest did not comply with the contractual requirements for effectuating such a change (see *Matter of Trigoboff*, 175 Misc 2d 370 [Sur Ct, NY County 1998]; *Matter of Morse*, 150 Misc 2d 415 [Sur Ct, NY County 1991]).

In both *Trigoboff* and *Morse*, the court deemed the custodian of the account to have waived the contractual requirements for effecting a change of beneficiary, thereby rendering the question (in those courts’ views) purely one of the decedent’s intent (see *Trigoboff*, 175 Misc 2d at 373; *Morse*, 150 Misc 2d at 418).

In the life insurance context, we do not believe that this position continues to be tenable in light of the Court of Appeals’ McCarthy decision. McCarthy, after all, specifically rejected the view “that the requirement of substantial compliance with the requirements of the insurance policy is waived where... the *8insurance company becomes a stakeholder in an interpleader action” (92 NY2d at 442).² In this regard, we note that the policy consideration the McCarthy court invoked in support of its holding that a general testamentary statement in a will does not constitute substantial compliance—avoiding uncertainty on the part of the insurers that could lead, to the delay of payment on life insurance policies (*id.* at 441, citing *Stone v Stephens*, 155 Ohio St 595, 600-601, 99 NE2d 766, 769 [1951])—applies as much to specific testamentary bequests as to general testamentary statements.

In view of the foregoing, Caswell’s motion for summary judgment should have been granted to the extent of declaring him the sole beneficiary of the ‘854 policy. Plaintiff did, however, act appropriately in bringing this interpleader action in the face of the conflicting demands made upon it for payment of the policy proceeds, neither of which was “patently without substance” (*Connecticut Gen.*

Life Ins. Co. v Boni, 48 AD2d at 621, quoting *Boden v Arnstein*, 293 NY 99, 103 [1944]). Plaintiff, as an insurance company rather than a court, was entitled to avail itself of the interpleader mechanism for the purpose of discharging its obligations under the policy while affording the interested parties an opportunity to litigate the dispute between themselves.

Accordingly, Caswell was not entitled to an order directing plaintiff to pay the proceeds directly to him, and Supreme Court correctly granted plaintiffs cross motion insofar as it sought permission to pay the proceeds into court and a discharge pursuant to CPLR 1006 (f).

Finally, the motion court did not improvidently exercise its discretion under CPLR 1006 (f) in ordering a framed issue hearing on plaintiffs claim for costs, disbursements and reasonable attorneys' fees (see e.g. *American Intl. Life Assur. Co. of N.Y. v Ansel*, 273 AD2d 421, 422 [2000], citing *Republic Natl. Bank of N.Y. v Lupo*, 215 AD2d 467, 468 [1995]; see also Siegel, NY Prac § 149, at 258 [4th ed]; *Commercial Litigation in New York State Courts* § 16:11, at 1004 [2 West's NY Prac Series 2d ed]).

We hasten to add that, in determining "such terms relating to payment of expenses, costs and disbursements as may be just" *9(CPLR 1006 [f]), Supreme Court should bear in mind that any award of attorneys' fees should be limited, given that plaintiff has no interest in the underlying dispute and has been required to establish only its entitlement to interpleader relief as a neutral stakeholder.

Any further discussion of this issue should await Supreme Court's determination after the framed issue hearing (should an appeal be taken from that determination), when a fuller record will be available for review. We do not perceive a need to set forth more specific guidelines for Supreme Court in advance of the hearing.

Accordingly, the order of the Supreme Court, Bronx County (Mary Ann Brigantti-Hughes, J.), entered on or about March 7, 2005, which denied defendant Caswell's motion for summary judgment on his counterclaim, granted plaintiffs cross motion for leave to deposit into court the proceeds of policy No. U1179854, issued by Aetna Life Insurance and Annuity Company to Martha L. Hubbard, deceased, discharged plaintiff from any liability under such policy, and granted the branch of plaintiffs cross motion seeking costs, disbursements and reasonable attorneys' fees to the extent of setting the matter down for a framed issue hearing, should be modified, on the law, to grant Caswell's motion for summary judgment to the extent of declaring him the sole beneficiary of the subject insurance policy, and otherwise affirmed, without costs..

For example, a change of beneficiary has long been given effect, notwithstanding a failure to complete the procedure specified by the policy, where the insured died while in the process of making the change in accordance with the contractual procedure (see *Luhrs v Luhrs*, 123 NY 367 [1890]; *Greenfield v Massachusetts Mut. Life Ins. Co.*, 253 App Div 51 [1937]; *Matter of Farnam*, 232 App Div 598 [1931]), or was prevented from completing the contractual procedure by the originally designated beneficiary's refusal to surrender the policy for the insurer's required endorsement (see *Lahey v Lahey*, 174 NY 146 [1903]; *Levy v New York Life Ins.*

Co., 238 App Div 711 [1933], *affd* 266 NY 570 [1935]).. In light of *McCarthy*, it appears that *Kane v Union Mut. Life Ins. Co.* (84 AD2d 148 [1981]) is no longer good law to the extent it stands for the proposition that, where the insurer has become a stakeholder of policy proceeds alleged to have been disposed of by will, the issue is simply "whether the will of the decedent

‘clearly manifested [his] intent’ to change the beneficiaries of the... policy in question” (id. at 154, quoting Franklin Life Ins.

Co. v Mast, 435 F2d 1038, 1043 [9th Cir 1970]).

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