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Insurance - Attempt to Change Beneficiary by Will

INSURANCE — ATTEMPT TO CHANGE BENEFICIARY BY WILL

Insured, after learning of a pending divorce suit by his wife, made a will leaving the proceeds of two insurance policies, in which the wife was designated as beneficiary, to his grandmother. After insured's death the ex-wife instituted a declaratory judgment suit to determine her rights under the policies. *Held*, where not expressly or impliedly authorized by the policy, a change of beneficiary by will cannot operate to destroy the right of the beneficiary designated in the policy. The designated beneficiary's right had vested upon death before the will became effective. *Stone v. Stephens*, 155 Ohio St. 599, 99 N.E.2d 766 (1951).

Under earlier insurance policies without the reserved power to change the beneficiary, the right to the proceeds vested absolutely on issuance[1] and was in the nature of a property right,[2] which could only be divested by acts[3] or defaults[4] provided in the policy itself. Most modern policies reserve to the insured the power to change the beneficiary without the designated beneficiary's consent. Under these, some courts hold the beneficiary's right to the proceeds before the insured's death is a mere expectancy;[5] others consider it a conditional,[6] contingent,[7] qualified vested,[8] or vested right subject to defeasance;[9] but all agree[10] that the right is vested absolutely upon death of the insured. The weight of authority is that substantial compliance with the specified mode of change of beneficiary (doing everything *reasonably* within one's power to effect a change) is sufficient, although a few[12] still require strict compliance. The general rule is that an attempt to change a beneficiary by will is not effective,[13] but a strong minority favors the contrary

1. *See* New York Life Ins. Co. v. Halpern, 47 F.2d 935 (D.C. Pa. 1931); Mutual Benefit Life Ins. Co. v. Swett, 222 Fed. 200, 203 (6th Cir. 1915). *Contra:* Estate of Breitung, 78 Wis. 33 (1890); Clark v. Durand, 12 Wis. 223 (1860); WIS. STAT. § 246.09 (adopts vested right doctrine only when beneficiary is a married woman); *see* Oldenburg v. Central State Assur. Soc., 243 Wis. 8, 9 N.W.2d 133 (1943).

2. McManus v. Peerless Casualty Co., 114 Me. 98, 95 Atl. 510 (1915).

3. Ruddock v. Detroit Life Ins. Co., 209 Mich. 638, 177 N.W. 242 (1920) (surrender of policy by insured).

4. Mutual Life Ins. Co. v. Hill, 178 U.S. 347 (1900) (failure to pay premiums).

5. Mutual Benefit Life Ins. Co. v. Swett, *supra* note 3; Davis v. Modern Industrial Bank, 279 N. Y. 405, 18 N.E.2d 639 (1939).

6. Landrum v. Landrum, 186 Ky. 775, 218 S.W. 274 (1920).

7. Morgan v. Penn. Mut. Life Ins. Co., 94 F.2d 129 (8th Cir. 1938).

8. United States v. Aetna Life Ins. Co., 56 F. Supp. 30 (D.C. Conn. 1942).

9. Wagner v. Thieriot, 236 N.Y. 588, 142 N.E. 295 (1923).

10. Federal Life Ins. Co. v. Tietsort, 131 F.2d 488 (7th Cir. 1942); Cook v. Cook, 17 Cal.2d 639, 111 P.2d 322 (1941); Dogariu v. Dogariu, 306 Mich. 392, 11 N.W.2d 1 (1943).

11. Prudential Ins. Co. v. Moore, 145 F.2d 580 (7th Cir. 1944), *cert. denied*, 324 U.S. 849 (1945); Parks' Ex'rs v. Parks, 288 Ky. 435, 156 S.W.2d 480 (1941).

12. Warren v. Prudential Ins. Co., 138 Fla. 443, 189 So. 412 (1929); Second Nat. Bank v. Dunn, 84 S.W.2d 766 (Tex. Civ. App. 1935), *rev'd on other grounds*, Dunn v. Second Nat. Bank, 131 Tex. 198, 113 S.W.2d 165 (1938).

13. Metropolitan Life Ins. Co. v. Jones, 307 Ill. App. 652, 30 N.E.2d 937 (1940) (the *only* way to change beneficiary was to follow the exclusive steps set out in the policy); Dogariu v. Dogariu, *supra* note 12 (must be substantial compliance with steps required by policy); Bennett v. Bennett, 70 Ohio App. 187, 45 N.E.2d 614 (1942) (a residuary clause, "share and share alike to W and son" was held to express a future intent);

view where there is a close proximity between death and the will, so as to express a present intention.[14]

Some courts feel that the effect of interpleader by the company is to waive strict compliance[15] while others hold that being vested, the right of the beneficiary can never be waived after death.[16] The effect of divorce on a beneficiary's right is regulated by statute in some states,[17] but the general rule is that it will not operate to divest the divorced spouse's interest in the policy.[18]

The court in the instant case relied heavily on the public policy doctrine promulgated in *Wannamaker v. Stroman*,[19] that insurers be encouraged to pay as soon as possible, reasoning that otherwise few companies would risk the possibility of a contest by the beneficiary of a will. Because of this possibility of a future claim the companies would tend to wait out the statutory period or to seek judicial disposition of the proceeds. The majority held that the power to change was a personal one and must be exercised during insured's lifetime. In a well-reasoned opinion the dissent tried to show that the insured did all he could reasonably have done under the circumstances,[20] but did not rebut the majority's contention that the will did not become effective until death. The cases mainly relied on held that the insured's intent was a present one, because at the time of making the will the insured knew death was near.[21] Such was not the case here as insured had ample time to notify the company.

Wannamaker v. Stroman, 166 S.E. 621 (1932) (it is in the best public interest that companies pay as soon as possible and few companeis would run the risk of a probated will); Parks Ex'rs v. Parks, *supra* note 11 (a will is presumed to manifest future intent and is not effective until death).

14. Phoenix Mutual Life Ins. Co. v. Cummings, 67 F. Supp. 159 (D.C. Mo. 1946) (a letter by a soldier who was killed was held valid as a soldier's will); Pedron v. Olds, 193 Ark. 1026, 105 S.W.2d 70 (1937) (will was last expression of intent and as right under policy and right under will vested at same time, last expression should control); Eickelkamp v. Carl, 193 Ark. 1155, 104 S.W.2d 814 (1937) (H and W were injured in an accident. H, on notification of W's death, executed a will and died two hours later; his present intention was effective); Finnerty v. Cook, 118 Colo. 310, 195 P.2d 973 (1948) (postcards by a prisoner of war were held to be sufficient as he did all he possibly could to express his intent); Benson v. Benson, 125 Okla. 256, 151 Pac. 912 (1927) (holographic will of person with tuberculosis who knew death was close was sufficient present intention).

15. Arrington v. Grand Lodge of Brotherhood of Railroad Trainmen, 21 F.2d 914 (5th Cir. 1927); Glen v. Aetna Life Ins. Co., 73 Ohio App. 452, 56 N.E.2d 951 (1943).

16. McDonald v. McDonald, 212 Ala. 137, 102 So. 38 (1924); Acacia Mutual Life Ins. Co. v. Feinberg, 318 Mass. 246, 61 N.E.2d 122 (1945).

17. MICH. STAT. ANN., § 25.131 (Cum. Supp. 1946); MINN. STAT. ANN., § 61.15; MO. REV. STAT. ANN., § 5850 (1939); N. Y. CIV. PRAC. ACT. § 1160 (1924).

18. Federal Life Ins. Co. v. Tietsort, *supra* note 10. *Contra*: Hatch v. Hatch, 35 Tex. Civ. App. 373, 80 S.W. 411 (1904).

19. *Supra* note 13 (attempt to leave proceeds by will did not give company sufficient notice to effect change).

20. Arnold v. Newcomb, 164 Ohio St. 578, 136 N.E. 206 (1922) (signing before a notary public sufficient); Atkinson v. Metropolitan Life Ins. Co., 114 Ohio St. 109, 150 N.E. 748 (1926) (failure to sign endorsement after notifying company was still substantial compliance).

21. Arrington v. Grand Lodge of Brotherhood of Railroad Trainmen, *supra* note 15; Phoenix Mutual Life Ins. Co. v. Cummings, *supra* note 14; Finnerty v. Cook, *supra* note 14.

The present decision seems sound since the insured had ample opportunity to follow the mode of the policies to substitute his beneficiary. It also seems indicative of a trend back toward requiring a closer adherence to the steps outlined by the policy to effect the substitution.

TAXATION—ESTOPPEL AGAINST THE GOVERNMENT BASED ON TAXPAYER'S RELIANCE UPON COMMISSIONER'S RULINGS

Petitioner filed no gift tax return in 1938 relying on the "acquiescence"[1] of the Commissioner of Internal Revenue that no duty to file existed. This view was subsequently reaffirmed by the Commissioner's representative in 1941. In 1948, the petitioner's executor was apprised of a deficiency and penalty for the calendar year 1938. *Held*, the Tax Court's ruling that the estate was liable is reversed. The Commissioner is barred from assessing this tax and penalty. *Stockstrom v. Comm'r of Internal Revenue*, 190 F.2d 283 (D.C. Cir. 1951).

The general rule is that the government is not bound by the statements,[2] acts[3] and erroneous regulations of its agents,[4] nor can their neglect or acquiescence commit it to an erroneous interpretation of the law.[5] A taxpayer's claim of estoppel against the state[6] is most often denied by a finding of an absence of authority in its agents[7] or a lack of an essential element of estoppel.[8] The reluctance of the courts to allow estoppel against the government[9] has been particularly notable in the collection and assessment of revenues. Although estoppel has been invoked more frequently against

1. "The expression simply means the Commissioner does not intend to seek further judicial review and is adopting the ruling as a precedent he will follow in other cases. Thus taxpayers are assured they can rely upon it without danger of being forced to litigate the same question in their own cases." Strockstrom v. Comm'r, 190 F.2d 283 (note 1) (D. C. Cir. 1951).

2. Searles Real Estate Trust v. Comm'r, 25 B.T.A. 1115 (1932); James Couzens, 11 B.T.A. 1040 (1928).

3. Niewaidomski v. United States, 159 F.2d 683 (6th Cir.), *cert. denied*, 331 U.S. 850 (1947); Wells v. Long, 68 F. Supp. 671 (S.D. Idaho 1946), *aff'd*, 162 F.2d 842 (9th Cir. 1947).

4. *See* Schaefer v. Helvering, 83 F.2d 317, 320, *aff'd*, 299 U.S. 171 (1936); 10A MERTON, LAW OF FEDERAL INCOME TAXATION § 60.14 (Rev. ed. 1948).

5. Schafer v. Helvering, *supra* note 4.

6. It is essential to distinguish whether it is the government or the taxpayer who assets estoppel since different rules apply. See Atlas, *The Doctrine of Estoppel in Tax Cases*, 3 TAX L. REV. 71 (1947).

7. United States v. Stewart, 311 U.S. 60 (1940); Ritter v. United States 28 F.2d 265 (3d Cir. 1928).

8. Century Electric Co. v. United States, 75 F.2d 589 (8th Cir.), *cert. denied*, 295 U. S. 766 (1935) (taxpayer not misled); James Couzens, *supra* note 2 (no reliance) see 10A MERTON, *op. cit. supra* note 4, § 60.13; Jones, *Estoppel in Tax Litigation*, 26 GEO. L. J. 868, at 871 (1938).

9. Elrod Slug Casting Mach. Co. v. O'Malley, 57 F. Supp. 915 (D. C. Neb. 1944); Branson v. Wirth, 17 Wall. 32 (U. S. 1873); Fletcher v. Peck, 6 Cranch 87 (U. S. 1810).