
Insurance - Change of Beneficiary by Will - Suga v. Suga, 35 Ill. App. 355, 182 N.E.2d 922 (1962)

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The Court went on to say, that since the state was relying solely on the repudiated confession of the defendant, justice demanded that the third party's confession be received. It is also interesting to note that the declarant was not shown to be dead, as required by the *Bartlett* case. Since the only subsequent case that considered the exception in Illinois³⁷ was concerned solely with a declaration against a pecuniary interest, it is still a moot question whether the *Lettrich* case will be confined to its particular facts.

In conclusion, it is submitted that a declaration against penal interest cannot be treated in the same manner as a declaration against pecuniary interest. If the confession of every crackpot (and such are not uncommon in cases of wide notoriety) were held to be admissible, the issues before the jury would become a hopeless morass. However, the refusal of the majority jurisdictions to admit penal declarations, even where it would seem that justice demands a departure from the orthodox rule, is untenable. The rational rule, it would seem, is the minority rule.

³⁷ *Haskell v. Siegmund*, 28 Ill. App. 2d 1, 170 N.E. 2d 393 (1960).

INSURANCE—CHANGE OF BENEFICIARY BY WILL

Plaintiff's son brought an action against his mother claiming the right to the proceeds of two group life insurance policies. The policies, taken out by John Suga, father of the plaintiff and husband of the defendant, named the defendant as beneficiary. John Suga died testate, however, and his will bequeathed the proceeds of the life insurance to the plaintiff. The policies provided for a change of beneficiary by any written request filed at the headquarters of the employer or home office of the company; such change was to be effective as of the date of execution of the request, whether the insured be living or not at the time of the filing, but without prejudice to the insurer. The insurer, previously joined, was dismissed upon payment of the proceeds to the clerk for deposit. Plaintiff argued that the unique wording of the policy permitted change of beneficiary by will, and that the court effectuate his father's intent. The decision in the lower court for the defendant was affirmed by the Illinois Appellate Court. The basis of the decision was that where the policy regulates the method of change, such method is generally exclusive to that extent. Furthermore, it was held that the widow's rights vested upon the death of the insured; the request for change must be made during the lifetime of the insured, and the will was ineffective until after death. *Suga v. Suga*, 35 Ill. App. 355, 182 N.E. 2d 922 (1962).

Generally, if there is no restriction or exclusive method for changing

the beneficiary, nor a method prescribed, a change of beneficiary by will may be sustained.¹ The plaintiff in the *Suga* case argued that the policy has no such restrictions so that this rule could be applied. But the court based its judgment on another rule, that the right to change is sometimes denied as a theoretical impossibility, since the proceeds vest in the named beneficiary upon the death of the insured.² The rationale of the vesting theory is that the insured has a right to change the beneficiary only during his lifetime. Since a will is not effective until death, a change of beneficiary in a will is not a change made during the lifetime of the insured.³ No change being effected before death, the proceeds become vested in the named beneficiary immediately upon death; they do not become part of the estate and cannot be left by will.⁴ The result is the same, whether the court considers the beneficiary's interest vested but subject to divestment (by proper change during the insured's lifetime) or contingent until the interest becomes vested.⁵

In support of the theory that the vesting of the proceeds make a change of beneficiary by will impossible are two supplementary arguments. The first is that the rule protects both the insurer and the public. As stated in one case, "on the proposition of non-prejudice and actual protection of the companies in the instant case . . . the case must be decided by the rule and the rule cannot be altered to fit the case."⁶ The basis of this argument is that if the proceeds are permitted to be passed by will, the insurer may pay the designated beneficiary and subsequently face a claim by the legatee.⁷ Since it is in the public interest to have expeditious payment and disbursement of proceeds, and since any other rule (it is argued) would bring litigation, confusion, and delay, any attempt to change the beneficiary by will is considered ineffectual.⁸ In logical counterpoise to these arguments, it has been correctly stated that the insurer can always demand compliance, pay the designated beneficiary, and not be hurt.⁹

¹ 5 COUCH, *CYCLOPEDIA OF INSURANCE LAW* 146 (2d ed. 1959).

² *Ibid.*

³ *Stone v. Stephens*, 155 Ohio St. 595, 99 N.E. 2d 766 (1951); *Cook v. Cook*, 17 Cal. 2d 639, 111 P. 2d 322 (1941).

⁴ *Thatcher v. Conway*, 296 S.W. 2d 790 (1956); *Parks' Ex'rs. v. Parks*, 288 Ky. 435, 156 S.W. 2d 480 (1941).

⁵ See *Strohsahl, Ex'r. v. Equitable Life Assurance Soc'y.*, 71 N.J. Super. 300, 176 A. 2d 814 (1962).

⁶ *Parks' Ex'rs. v. Parks*, 288 Ky. 435, 444, 156 S.W. 2d 480 (1941).

⁷ *Wannemaker v. Strohm*, 167 S.C. 484, 166 S.E. 621 (1932); followed in *Stone v. Stephens*, 155 Ohio St. 595, 99 N.E. 2d 766 (1951); *Parks' Ex'rs. v. Parks*, 288 Ky. 435, 156 S.W. 2d 480 (1941).

⁸ *Strohsahl, Ex'r. v. Equitable Life Assurance Soc'y.*, 71 N.J. Super. 300, 176 A. 2d 814 (1962).

⁹ *Pedron v. Olds*, 193 Ark. 1026, 105 S.W. 2d 70 (1937); See also *Stone v. Stephens*, 155 Ohio St. 595, 99 N.E. 2d 766 (1951) (dissenting opinion, Zimmerman, J.).

The second argument in support of not allowing a change of beneficiary by will is that the contract (policy) itself may require that the change be made before death.¹⁰ Whether or not such a contract may exist depends upon the circumstances of the case and how the court construes the language of the policy. In the *Suga* case, despite plaintiff's arguments to the contrary, the court interpreted the policy as providing for an exclusive method for a change of beneficiary. Thus the attempt to change by a method other than the one stated in the policy failed.

The vesting theory (though accepted by the majority of jurisdictions) has nonetheless been a subject of controversy. One objection is that though a will is ordinarily effective upon death, a provision changing the beneficiary is an expression of a change made during the lifetime of the insured.¹¹ A second objection is that where both the vesting and the will become effective upon death,¹² the will should prevail, since it is the insured's last expression of intent.¹³ But in the *Suga* case, neither of these objections were directly considered by the court. The court instead held that the policy required the request to become effective on the *date of execution*, and that a will is not executory until death; after death, the vesting predominated over the will.¹⁴

Besides these objections, there is authority that a change by will is allowed where the method is not exclusive,¹⁵ because the provisions are for the benefit of the insurer and may be waived by him.¹⁶ Under this theory, a beneficiary cannot properly contend that the policy provisions have not been met; only the insurer may take advantage of these provisions. By

¹⁰ *Strohsahl, Ex'r. v. Equitable Life Assurance Soc'y.*, 71 N.J. Super. 300, 176 A. 2d 814 (1962).

¹¹ See *Stone v. Stephens*, 155 Ohio St. 595, 99 N.E. 2d 766 (1951) (dissenting opinion, Stewart, J.). Accord, *United States v. Pahmer*, 238 F. 2d 431 (2d Cir. 1956). The court in the *Pahmer* case said, at 431, "To say that 'X, a substituted beneficiary, shall receive the insurance on my death' is in legal effect the same as to say that 'X is hereby designated as my substituted beneficiary.' We hold here that the intent to substitute the mother as beneficiary was not ineffective because accompanied by an expression of intent that the change should not take effect until the death of the insured."¹²

¹² Note that this objection may not be raised if the beneficiary's interest is considered vested subject to divestment as in the *Strohsahl* case. *Strohsahl, Ex'r. v. Equitable Life Assurance Soc'y.*, 71 N.J. Super. 300, 176 A. 2d 814 (1962).

¹³ *Pedron v. Olds*, 193 Ark. 1026, 105 S.W. 2d 70 (1937); See also *Stone v. Stephens*, 155 Ohio St. 595, 99 N.E. 2d 766 (1951).

¹⁴ A third objection, besides those mentioned above, is that since the insured can defeat the beneficiary's interest in many ways, lapse of payments or assignment, for example, there is no reason why he cannot do it by will. *Supra*.

¹⁵ The court held that there was an exclusive method in the *Suga* case, omitting the case from the permissive rule. But a study of the cases which used the rule shows that the court could have held otherwise.

¹⁶ COUCH, *CYCLOPEDIA OF INSURANCE LAW* 149 (2d ed. 1959).

paying the proceeds into court, he waives his right to do so.¹⁷ It has been said that if a court assumes that the policy provisions relating to change of beneficiary are for the benefit of the insurer, it cannot make a conclusive case for substantial compliance.¹⁸ One case does assert, however, that though the provisions are for the benefit of the insurer, the beneficiary's rights are established by the vesting of the proceeds in him upon death, so that the will is nonetheless ineffective.¹⁹ Another argument is that the insurer cannot, by waiving his own rights, waive the rights of others.²⁰ It is also to be noted here that where the provisions are considered to be for the benefit of both the insurer and the last beneficiary, substantial compliance can be required.²¹

The authority for permitting a change of beneficiary by will may possibly receive a new impetus from a recent federal decision involving a Federal Employees Group Life Policy.²² The decision in this case was based upon several decisions under National Life Insurance (servicemen) which allowed a change by will. Quoting another case, the court said:

But in the field of National Life Insurance the cases are legion which hold that in judging the efficacy of an attempted change of beneficiary the courts brush aside all legal technicalities in order to effectuate the manifest intent of the insured. . . . This case may be cited as typical of this long, unbroken, line of authority.²³

Of course, even in these cases, the manifest intent alone is insufficient; there must be an affirmative act in pursuance of the intent.²⁴ It has also been made very clear that this is federal and not state law; first, because the insurance is based on a federal statute, and second, because there is a need for uniformity of the law dealing with federal insurance.²⁵ But the

¹⁷ *Pan American Life Ins. Co. v. Alvarez*, 160 F. Supp. 292 (D.C. Puerto Rico 1958); *Stone v. Stephens*, 155 Ohio St. 595, 99 N.E. 2d 766 (1951) (dissenting opinion, Zimmerman, J.).

¹⁸ Note, 37 *CORNELL L.Q.* 305.

¹⁹ See *Parks' Ex'rs. v. Parks*, 288 Ky. 435, 156 S.W. 2d 480 (1941).

²⁰ *Metropolitan Life Ins. Co. v. Jones*, 307 Ill. App. 652, 30 N.E. 2d 937 (1940).

²¹ *Creighton v. Barnes*, 152 Tex. 309, 257 S.W. 2d 101 (1953), quoting *Kotch v. Kotch*, 151 Tex. 471, 251 S.W. 2d 520 (1952).

²² See *Austin v. Sears*, 180 F. Supp. 485 (N.D. Cal. 1960); *aff'd* 292 F. 2d 690 (9th Cir. 1961); *cert. denied* 368 U.S. 929 (1961).

²³ *United States v. Pahmer*, 238 F. 2d 431, 431 (2d Cir. 1956) quoting *Roberts v. United States*, 157 F. 2d 906, 909 (4th Cir. 1946), *cert. denied* 330 U.S. 829 (1947). The following cases to the same effect were footnoted: *Kell v. United States*, 202 F. 2d 143 (5th Cir. 1953); *Moths v. United States*, 179 F. 2d 824 (7th Cir. 1950); *McKewen v. McKewen*, 165 F. 2d 761 (5th Cir. 1948); *Johnson v. White*, 39 F. 2d 793 (8th Cir. 1930). But see note, 2 *A.L.R.* 2d 489 (1948).

²⁴ *Lane v. United States*, 116 F. Supp. 606 (W.D.S.C. 1953).

²⁵ *Austin v. Sears*, 292 F. 2d 690 (9th Cir. 1961); *cert. denied* 368 U.S. 929 (1961).

court in this case deemed the insured's will a "reasonable effort" to change the beneficiary.²⁶

Nevertheless, there is question as to whether this case is a good precedent for permitting a change of beneficiary by will. The defendant did not claim as a designated beneficiary, but rather as the person entitled to take the policy proceeds in the absence of a designated beneficiary. Thus an important factor was that the will did not truly change the beneficiary, but rather that it designated one for the first time. Also, the decision of the case was almost immediately rejected by another court.²⁷

Many federal decisions recognize that the manifested intent of the insured is the determining consideration. Besides being one of the basic legal arguments to permit change of beneficiary by will, it also is a moral factor which the court must consider. One often quoted Arkansas decision declares that ". . . *this being the insured's last expression on the subject, it ought to control.*"²⁸ In answer, it was said that where no steps are taken to comply with the policy provisions, the expressed purpose is an unexecuted intention and accomplishes nothing.²⁹ Nevertheless, the insured keeps the policy in force and pays the premiums, and his last wish should be respected.³⁰ Furthermore, an expression of intention documented in a will is much more convincing than any informal writing would be.³¹

These arguments between strict construction on the one hand and the insured's intention on the other are still highly controverted. Whether the courts are finally learning to support the intention is something to be determined at a future date.

²⁶ *Sears v. Austin*, 180 F. Supp. 485 (N.D. Cal. 1960).

²⁷ See *Breckline v. Metropolitan Life Ins. Co.*, 40 Pa. 573, 178 A. 2d 748 (1962). (Held: The policy provisions were statutory and could not be waived). Note that if subsequent decisions show that the rules applicable to Federal Employee's Life Insurance, as with National Life Insurance, are not applicable to private commercial insurance, the precedent of the *Sears* case will be valid only within this narrow sphere of insurance created by federal statute, if at all.

²⁸ *Pedron v. Olds*, 193 Ark. 1026, 1030, 105 S.W. 2d 70, 72 (1937) (Emphasis added).

²⁹ *Parks' Ex'rs. v. Parks*, 288 Ky. 435, 156 S.W. 2d 480 (1941).

³⁰ *Stone v. Stephens*, 155 Ohio St. 595, 99 N.E. 2d 766 (1951), (dissenting opinion, Zimmerman, J.).

³¹ *Ibid.* (dissenting opinion, Stewart, J.).

LABOR—EXTENSION OF THE ENTITY CONCEPT TO ALLOW RECOVERY TO UNION MEMBERS IN TORT ACTIONS AGAINST UNION

The defendant union, an unincorporated association, maintained a parking lot adjacent to its meeting hall as an accommodation for its members.