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## INSURANCE-GIFT-RIGHT OF NAMED BENEFICIARY OF LIFE POLICY TO PROCEEDS AS AGAINST A DONEE BY DELIVERY

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INSURANCE—GIFT—RIGHT OF NAMED BENEFICIARY OF LIFE POLICY TO PROCEEDS AS AGAINST A DONEE BY DELIVERY—Insured, in accordance with the terms of a life insurance policy, named the woman with whom he was then living as beneficiary. Subsequently, he returned to his wife and handed the policy to her with appropriate words indicating an intention to make a present and absolute delivery of it to her as a gift. No notice of a change of beneficiary was given to the insurance company. The policy reserved the right to insured to change the beneficiary by filing a written request with the company, such change to take effect only when indorsed on the policy by the company.<sup>1</sup> In an interpleader action, the named beneficiary claimed the proceeds of the policy as against the donee. *Held*, the donee is entitled to the proceeds. *Jennings v. Jennings*, (Ala. 1947) 33 S. (2d) 251.

When an insurance policy reserves to the insured the right to change the beneficiary, the general, if not the universal, rule is that the insured may make a gift of the policy in the same manner as any other chose in action.<sup>2</sup> In some

<sup>1</sup> The policy provisions are found in the opinion on the first trial of the case. *Jennings v. Provident Life & Accident Insurance Co.*, 246 Ala. 689, 22 S. (2d) 319 (1945).

<sup>2</sup> *Metropolitan Life Ins. Co. v. Woolf*, 138 N.J. Eq. 450, 47 A. (2d) 340 (1946); 24 AM. JUR., Gifts, § 70; 6 COUCH, CYCLOPEDIA OF INSURANCE LAW, § 1458bb (1930), and cases cited therein.

When the right to change the beneficiary is not reserved, the policy cannot be

jurisdictions the rule is qualified by the requirement that the donee must have an insurable interest.<sup>3</sup> The two essential requirements for the gift to be valid are unconditional delivery and present intent to pass full title to the donee.<sup>4</sup> When the insured has not previously assigned the policy or named a beneficiary, the decisions clearly hold that the gift vests in the donee the right to the proceeds of the policy.<sup>5</sup> Not infrequently, however, the insured has named a beneficiary and has subsequently made a gift of the policy without changing the beneficiary in the manner required by the policy. In this situation most courts have held, in accord with the principal case, that the donee is entitled to the proceeds of the policy upon the death of the insured.<sup>6</sup> The conflict in the decisions is based essentially upon conflicting views in relation to the respective interests of the beneficiary and the insured. A majority of courts regard the beneficiary's interest as a mere expectancy.<sup>7</sup> By reserving the right to change the beneficiary, the insured is deemed to retain the beneficial ownership of the policy during his life, and a gift of the policy, therefore, passes the beneficial ownership to the donee.<sup>8</sup> This approach involves the idea that an insurance policy creates property rights to a fund, rights that belong to the insured and may be transferred in the same manner as any other property rights.<sup>9</sup> The provisions in the policy regarding the manner of changing the beneficiary have presented no obstacle to these courts. The view most frequently taken in regard to

made the subject of a gift for the reason that rights under the policy are vested in the beneficiary and cannot be disturbed by the insured's transfer of the policy, *Sovereign Camp W.O.W. v. Downing*, (Mo. App. 1918) 201 S.W. 951, nor by a written assignment. 60 A.L.R. 191 (1929).

<sup>3</sup> *Ingram v. Johnson*, 226 Ala. 68, 147 S. 172 (1933); *Milliken v. Haner*, 184 Ky. 694, 212 S.W. 605 (1919). This qualification of the rule is against the weight of authority, however. See 6 COUCH, *CYCLOPEDIA OF INSURANCE LAW*, § 1458e (1930); and 73 A.L.R. 1036 (1936).

<sup>4</sup> 24 AM. JUR., *Gifts*, § 70; 47 A.L.R. 738 (1927). A very few states require a written assignment as well as delivery. *Weaver v. Weaver*, 182 Ill. 287, 55 N.E. 338 (1899); *Steele v. Gatlin*, 115 Ga. 929, 42 S.E. 253 (1902).

<sup>5</sup> *Travelers Insurance Co. v. Mayo*, 103 Conn. 341, 130 A. 379 (1925); *Ponlain v. Sullivan*, 308 Mass. 58, 30 N.E. (2d) 848 (1941); 4 JOYCE, *INSURANCE*, 2d ed., § 23261 (1918). But a gift does not pass to the donee the right to disability payments, which are regarded as personal to the insured. See *Donahue v. N.Y. Life Ins. Co.*, 259 N.Y. 98, 181 N.E. 62 (1932).

<sup>6</sup> *Opitz v. Karel*, 118 Wis. 527, 95 N.W. 948 (1903); *Smith v. Pacific Mutual Life Ins. Co.*, 130 Neb. 501, 265 N.W. 534 (1936); *Finger v. Treidler*, (N.Y. Co. S.Ct. 1945) 52 N.Y.S. (2d) 841; *Peel v. Reibel*, 205 Minn. 474, 286 N.W. 345 (1939); *Gordon v. Clark*, 149 Ark. 173, 232 S.W. 19 (1921); *In re Estate of Thompson*, 328 Ill. App. 103, 65 N.E. (2d) 131 (1946). The last two cases cited involved a gift causa mortis of the policy while the other cases involved a gift inter vivos.

<sup>7</sup> *Mutual Benefit Life Ins. Co. v. Swett*, (C.C.A. 6th, 1915) 222 F. 200; *Potter v. N.W. Mutual Life Ins. Co.*, 216 Iowa 799, 247 N.W. 669 (1933); *VANCE, INSURANCE*, 2d ed., § 147 (1930); 60 A.L.R. 191 (1929).

<sup>8</sup> Cases cited, notes 6 and 7, *supra*.

<sup>9</sup> This approach is criticized by Professor Grismore on the ground that it confuses property rights with contract rights, that an insurance policy is a contract creating contract rights. Grismore, "The Assignment of a Life Insurance Policy," 42 MICH. L. REV. 789 (1944).

them is that such provisions are solely for the benefit of the insurance company and cannot be made use of by the beneficiary; and that the company waives these provisions by paying the money into court and interpleading the claimants.<sup>10</sup> Another line of decisions holds that these policy provisions are entirely inapplicable to a gift for the reason that a gift and change of beneficiary are different things. A gift is a transfer of rights to the fund whereas a change of beneficiary is an exercise of a power of appointment.<sup>11</sup> A minority of the courts regard the insurance policy as creating contract rights, as distinguished from property rights, which cannot be terminated in a manner other than that provided in the contract.<sup>12</sup> Courts following this view have held that while the insured may make a gift of the policy, the gift passes only the donor's interest, which is the right to change the beneficiary in the manner provided in the policy.<sup>13</sup> The beneficiary's right to the proceeds thus remains unimpaired until defeated by a proper change of beneficiary as required by the policy. The problem presented by the principal case has arisen quite frequently where there has been a written assignment of the policy for consideration instead of a gift. Essentially the same issues are involved and by the same lines of reasoning a majority of courts have upheld the right of the assignee to the proceeds of the policy as against the named beneficiary.<sup>14</sup>

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<sup>10</sup> See *Alkire v. King*, 183 Okla. 187, 80 P. (2d) 309 (1938); *Travelers Ins. Co. v. Mayo*, 103 Conn. 341, 130 A. 379 (1925); *Opitz v. Karel*, 118 Wis. 527, 95 N.W. 948 (1903).

<sup>11</sup> *Metropolitan Life Ins. Co. v. Woolf*, 138 N.J. Eq. 450, 47 A. (2d) 340 (1946); *Ponlain v. Sullivan*, 308 Mass. 58, 30 N.E. (2d) 848 (1941). It has similarly been held that a written assignment vests the right to the proceeds in the assignee notwithstanding the change of beneficiary provisions because the two transactions are essentially different. *Pearsall v. Bloodworth*, 194 N.C. 628, 140 S.E. 303 (1927); *Mutual Benefit Life Ins. Co. v. Swett*, (C.C.A. 6th, 1915) 222 F. 200. But some cases have regarded an assignment as the equivalent of a change of beneficiary. See *Atlantic Mut. Life Ins. Co. v. Gannon*, 179 Mass. 291, 60 N.E. 933 (1901); *Shay v. Merchants Banking Trust Co.*, 335 Pa. 101, 6 A. (2d) 536 (1939).

<sup>12</sup> *Johnson v. N.Y. Life Ins. Co.*, 56 Colo. 178, 138 P. 414 (1913); *Sullivan v. Maroney*, 76 N.J. Eq. 104, 73 A. 842 (1909).

<sup>13</sup> Note 12, *supra*.

<sup>14</sup> The cases *pro* and *con* are collected in 135 A.L.R. 1040 (1941). For a discussion of the problems involved, see Grismore, "The Assignment of a Life Insurance Policy," 42 MICH. L. REV. 789 (1944).