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INSURANCE-BENEFICIARIES-RIGHT TO CHANGE BENEFICIARY WHERE BENEFICIARY HAS PAID ALL THE PREMIUMS

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INSURANCE—BENEFICIARIES—RIGHT TO CHANGE BENEFICIARY WHERE BENEFICIARY HAS PAID ALL THE PREMIUMS—Insured's mother, who was the original beneficiary of a life policy, paid all the premiums before and subsequent to the time when insured's wife was substituted as beneficiary. The mother was interpleaded in the wife's suit on the policy. *Held,* in the absence of a collateral agreement creating additional rights in the mother, the payments were gratuitous

and created no vested interest in the mother in the proceeds of the policy, where the right to change the beneficiary was reserved; and that the wife was entitled to the proceeds on the insured's death. *McCloud v. Aetna Life Ins. Co.*, (Minn. 1946) 21 N.W. (2d) 476.

Ordinarily, in an old-line life insurance policy where nothing is said about the right to change the beneficiary, the courts have held that the beneficiary has a vested right which cannot be divested without his consent.[1] However, where the right to change the beneficiary is reserved to the insured in the policy, the interest of the beneficiary is that of an expectancy.[2] Of course, the insured may contract for consideration not to change the beneficiary, and a breach of such agreement may result in the imposition of a constructive trust of the proceeds on the new beneficiary for the benefit of the old one.[3] But, in the absence of such a contract, express or implied, the question is: What is the effect of the beneficiary's paying the premiums on the insured's right to change the beneficiary, where that right is reserved to him in the policy? It is generally held that payment of premium on a life policy by the person designated therein as beneficiary will not create a vested right in such person, as he is considered to be a mere volunteer.[4] This is true whether the beneficiary used his separate funds [5] or those from a joint bank account of the insured and the beneficiary.[6] Nor will the fact that the first-named beneficiary retains possession of the policy give that person greater rights.[7] The same result is reached whether the beneficiary paying the premiums is the father,[8] mother,[9] or wife of the insured.[10] Where the commun-

[1] VANCE, INSURANCE, 2d ed., § 144, p. 542-3 (1930). Schongalla v. Hickey, (D.C. N.Y. 1944) 60 F. Supp. 814, affirmed (C.C.A. 2d, 1945) 149 F. (2d) 687. Wisconsin is the exception to the general rule. Clark v. Durand, 12 Wis. 248 (1860).

[2] 2 APPLEMAN, INSURANCE LAW AND PRACTICE 289 (1941); Jennings v. Provident Life and Accident Ins. Co., 246 Ala. 689, 22 S. (2d) 319.

[3] 2 APPLEMAN, INSURANCE LAW AND PRACTICE, § 922, p. 334 (1941). Summers v. Summers, 218 Ala. 420, 118 S. 912 (1928); 3 SCOTT, TRUSTS, § 490.1, p. 2378 (1939).

[4] 2 APPLEMAN, INSURANCE LAW AND PRACTICE, § 923, p. 340 (1941); Supreme Council of Royal Arcanum v. Behrend, 247 U.S. 394 at 400, 38 S. Ct. 522 (1918): "The mere fact that she paid some, and possibly all, of the assessments, prior to the change of beneficiary, . . . raises no legal claim. Perhaps there was not even a moral claim; since throughout the period during which she paid assessments, she enjoyed the full protection which the order agreed to furnish; and for this alone payments were made." Wentworth v. Equitable Life Assur. Soc., 65 Utah 581, 238 P. 648 (1925); Novosel v. Sun Life Assur. Co. of Canada, 49 Wyo. 422, 55 P. (2d) 302 (1936). *Contra:* Tudor v. Tudor, 11 Ohio Dec. 422, 26 Bul. 368 (1891).

[5] Acacia Mut. Life Ins. Co. v. Newcomb, (Del. Ch. 1941) 21 A. (2d) 723.

[6] In re Degnan, 122 N.J. Eq. 470, 194 A. 789 (1937).

[7] Dunnavant v. Mountain States Life Ins. Co., (St. Louis Ct. of App. 1934) 67 S.W. (2d) 785.

[8] Novosel v. Sun Life Assur. Co. of Canada, 49 Wyo. 422, 55 P. (2d) 302 (1936).

[9] McCloud v. Aetna Life Ins. Co., (Minn. 1946) 21 N.W. (2d) 476.

[10] Supreme Council of Royal Arcanum v. Behrend, 247 U.S. 394, 38 S. Ct. 522 (1918).

ity property doctrine prevails, the courts are not in accord as to whether the payment of premiums out of community property by the husband will enhance the rights of his wife, the named beneficiary in his life insurance policy.[11] Conclusions arrived at respecting old line life insurance policies appear to be equally applicable to mutual benefit certificates,[12] but not so as to industrial policies.[13] However, if the original beneficiary is named pursuant to an agreement to pay the premiums, which agreement was in consideration of an express or implied agreement on the part of the insured that the payer should remain the beneficiary, the right in the insured to change the beneficiary no longer exists.[14] A valid gift of the policy to the beneficiary will have the same effect.[15] In the principal case, the court justifiably applied the general rule, that the mother had no vested right, since no agreement showing an intent to the contrary was present. The fact that the mother continued to pay the premiums without protest after the wife was named beneficiary in her place would seem at least to raise the presumption of a gift of the premium payments.[16]

Howard A. Jacobs

[11] Some courts hold that under such circumstances, the wife acquires a vested interest: Occidental Life Ins. Co. v. Powers, 192 Wash. 475, 74 P. (2d) 27 (1937). Others reach an opposite result: Shoudy v. Shoudy, 55 Cal. App. 447, 203 P. 437 (1921); General Amer. Life Ins. Co. v. Jackel, (D.C. La. 1941) 42 F. Supp. 475; Howard v. Howard, (Tex. Civ. App.) 158 S.W. (2d) 591 (1942), error refused. See collection of cases 114 A.L.R. 545 at 555 (1938).

[12] Quist v. Western and Southern Life Ins. Co., 219 Mich. 406, 189 N.W. 49 (1922); Mutual Life Ins. Co. v. Lowther, 22 Colo. App. 622, 126 P. 882 (1912); 18 A.L.R. 383 at 392 (1922).

[13] 2 APPLEMAN, INSURANCE LAW AND PRACTICE, 349 (1941). Under industrial policies, it has been held that a person paying all the premiums usually acquires a lien to the amount thereof.

[14] 2 COUCH, CYCLOPEDIA OF INSURANCE LAW 854 (1929); Reilly v. Henry, 187 Ark. 420, 60 S.W. (2d) 1023 (1933); Jacobson v. New York Life Ins. Co., 199 Iowa 770, 202 N.W. 578 (1925). But some decisions are to the effect that a mere promise to pay assessments on mutual benefit certificate is not sufficient to effect a vested interest in the promisor, who, in consideration of such payment, had been named as beneficiary: 2 COUCH, CYCLOPEDIA OF INSURANCE LAW 856 (1929); Schiller-Bund v. Knack, 184 Mich. 95, 150 N.W. 337 (1915); Hallett v. Taylor, 205 Mich. 655, 172 N.W. 391 (1919).

Where a corporation insures the life of one of its officers, the corporation being the beneficiary and paying the premiums, although the right to change the beneficiary is reserved to the insured, he holds that right in trust for the corporation, and cannot change the beneficiary without the corporation's consent: Wellhouse v. United Paper Co., (C.C.A. 5th, 1929) 29 F. (2d) 886; Williamson v. Williamson Paint Mfg. Co., 113 W.Va. 744, 169 S.E. 408 (1933).

[15] Ratsch v. Rengel, 180 Md. 196, 23 A. (2d) 680 (1942). See also 47 A.L.R. 738 (1927).

[16] Possibility of reimbursement for amount of premiums paid while she was beneficiary. Some courts allow this: Grand Lodge, A.O.U.W. of Missouri v. O'Malley, 114 Mo. App. 191, 89 S.W. 68 (1905). Others do not: Spengler v. Spengler, 65 N.J. Eq. 176, 55 A. 285 (1903); Acacia Mut. Life Ins. Co. v. Newcomb, (Del. Ch. 1941) 21 A. (2d) 723. In general, see 2 APPLEMAN, INSURANCE LAW AND PRACTICE, § 925, p. 352 (1941).