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INSURANCE-GRATUITOUS ASSIGNMENT OF LIFE POLICY WHERE RIGHT TO CHANGE BENEFICIARY IS RESERVED

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INSURANCE—GRATUITOUS ASSIGNMENT OF LIFE POLICY WHERE RIGHT TO CHANGE BENEFICIARY IS RESERVED—Defendant issued a life insurance policy to deceased, naming plaintiff, then insured's wife, as beneficiary. The policy reserved to the insured the right at any time to change the beneficiary without the knowledge or consent of the latter, and it further provided that no assignment should affect the rights of insurer until due notice was given to defendant. Sometime later, plaintiff divorced insured, who had indicated by personal conversation and correspondence with his sister the intervener, that he intended that the sister should receive the proceeds of the insurance. In one letter the insured referred to the policy and said, "The thing is yours to do with as you see fit." Though on several occasions he had stated that he intended to notify the defendant of a change of beneficiary this was never done. The insured also retained possession of the policy until his death. In plaintiff's suit on the policy, the insured's sister intervened, asserting a gratuitous assignment of the insurance to her. The trial court awarded judgment to plaintiff, holding the letter ineffective as an assignment of the policy. *Held,* reversed, one justice

dissenting.[1] *Petty v. Mutual Benefit Life Ins. Co.*, (Iowa 1944) 15 N.W. (2d) 613.

The courts generally hold that where the right to change the beneficiary is not expressly reserved in a life insurance policy, the beneficiary named therein has a vested interest which may not be cut off by insured's assignment or attempted change of beneficiary.[2] But where such a right is reserved, as is the case in most policies issued by modern companies, the right of the beneficiary may be defeated by a valid assignment. These decisions are based either on the theory that the beneficiary has only an expectancy and no vested right until maturity of the policy,[3] or on the theory that the insured indicated by the assignment the intended change of beneficiary.[4] The assignment may be effectuated by the insured without complying with the provisions stipulated in the policy as to change of beneficiary or assignment, for the courts usually hold these provi-

[1] Mr. Justice Oliver dissented from the majority on the ground that an examination of the entire letter indicated the insured intended to change the beneficiary only and not to effectuate an assignment.

[2] Koch v. Aetna Life Ins. Co., 165 Wash. 329, 5 P. (2d) 313 (1931); Harley, admr. v. Heist, 86 Ind. 196 (1882); Yore v. Booth, 110 Cal. 238, 42 P. 808 (1895); Ricker v. Charter Oak Life Ins. Co., 27 Minn. 193, 6 N.W. 771 (1880); Hooker v. Sugg, 102 N.C. 115, 8 S.E. 919 (1889); Freund v. Freund, 218 Ill. 189, 75 N.E. 925 (1905).

Contra, Boehmer v. Kalk, 155 Wis. 156, 144 N.W. 182 (1913).

[3] For an analysis and criticism of this theory as contrary to law of contract see Professor Grismore's article in 42 MICH. L. REV. 789 (1944).

In Morrison v. Mutual Life Ins. Co. of New York, 15 Cal. (2d) 579 at 583, 103 P. (2d) 963 (1940) the court declared "The modern view is that the insured, by reserving power to change the beneficiary, has retained complete control over the policy, and in consequence the beneficiary has only an expectancy and not a vested right."

Again in Taylor v. Southern Bank & Trust Co., 227 Ala. 565 at 569, 151 S. 357 (1933) the court stated, "The named beneficiary had no vested right only, an expectancy. The insured had the right to assign the policy as security for his indebtedness and reserved full control to that end." Accord: Mutual Benefit Life Ins. Co. v. Swett, (C.C.A. 6th, 1916) 222 F. 200; Davis v. Modern Industrial Bank, 279 N.Y. 405, 18 N.E. (2d) 639 (1939); Farmers State Bank v. Kelly, 155 Ga. 733, 118 S.E. 197 (1923); Mutual Life Ins. Co. of Kentucky v. Twyman, 122 Ky. 513, 92 S.W. 335 (1906); Potter v. Northwestern Mutual Life Ins. Co., 216 Iowa 799, 247 N.W. 669 (1933); Antley v. N.Y. Life Ins. Co., 139 S.C. 23, 137 S.E. 199 (1927) overruling Deal v. Deal, 87 S.C. 395, 69 S.E. 886 (1911).

Contra: Muller v. Penn Mutual Life Ins. Co., 62 Colo. 245, 161 P. 148 (1916); Farra v. Braman, 171 Ind. 529, 86 N.E. 843 (1908); Sullivan v. Maroney, 76 N.J. Eq. 104, 73 A. 842 (1909).

[4] Fuos v. Dietrich, (Tex. Civ. App. 1907) 101 S.W. 291; Rattray v. Banks, 31 Ga. App. 589, 121 S.E. 516 (1924); Shay v. Merchants Bkg. Trust Co., 335 Pa. 101, 6 A. (2d) 536 (1939); Mente v. Townsend, 68 Ark. 391, 59 S.W. 41 (1900); Pipper v. Schram, (C.C.A. 6th, 1938) 97 F. (2d) 507.

But an assignment is not effective against a beneficiary who has an equitable interest in the policy; Aetna Life Ins. Co. v. Morlan, 221 Iowa 110, 264 N.W. 58 (1935); Strickland v. Dyer, 192 Ark. 462, 92 S.W. (2d) 206 (1936).

sions to be for the exclusive benefit and protection of the insurer.[5] Intervener's claim in the principal case rested exclusively on the expectancy theory. The principal difficulty faced by the court in carrying out its desire to decide in favor of the intervener related to the question whether there was a valid assignment of the policy. Though there was no consideration, other than natural love and affection, and though there was no delivery of the policy on which a gift could be predicated, the court after some struggle sustained the validity of the transaction as an assignment of a chose in action in accordance with the Iowa statute.[6] Relying on an analogous line of stock certificate cases, the court held that a written assignment of a chose in action delivered to the assignee is sufficient to effectuate a valid assignment without the delivery of any other document. But apparently not too convinced of the soundness of the analogy, the court declared further that lack of consideration for an assignment by the insured cannot be asserted by a beneficiary who acquired no vested interest in the policy. The court then turned to the problem of whether the words which insured used in concluding his letter to intervener, "The thing is yours to do with as you see fit," constituted an assignment by the insured.

By the weight of authority, any language, however informal, if it shows the intention of the owner of a chose in action to transfer it will be sufficient to vest the property in the assignee.[7] Adopting this rule, the court declared that an examination of the entire letter made it clear it was the intention of the insured that the intervener should receive the proceeds of the insurance. To further substantiate its decision that the insured intended to effectuate an assignment of

[5] Opitz v. Karel, 118 Wis. 527, 95 N.W. 948 (1903); Schade v. Western Union Life Ins. Co., 125 Wash. 200, 215 P. 521 (1923); Travelers' Ins. Co. v. Mayo, 103 Conn. 341, 130 A. 379 (1925); Rothstone v. Norton, 231 App. Div. 59, 246 N.Y.S. 354 (1930). But see Johnson v. N.Y. Life Ins. Co., 56 Colo. 178 at 182, 138 P. 414 (1913) where the court said, "In policies like this the general rule is that the beneficiary has an interest in the policy which, while subject to be defeated by change of beneficiary, can be defeated only in the manner prescribed in the policy, the charter or by-laws of the company or by statute." Also contra: Security Mutual Life Ins. Co. v. Bankers' Trust Co., 32 Ga. App. 536, 124 S.E. 53 (1924); Metropolitan Life Ins. Co. v. Zgliczenski, 94 N.J. Eq. 300, 119 A. 29 (1922).

[6] Iowa Code (Reichman, 1939) § 9451 provides, "Bonds, due bills, and all instruments by which the maker promises to pay another, without words of negotiability, a sum of money . . . . are assignable by indorsement thereon, or by other writing, and the assignee shall have a right of action thereon in his own name, subject to any defense or counterclaim which the maker or debtor had against any assignor thereof before notice of such assignment."

[7] "In the absence of restrictions imposed by statute or by the instrument creating the interest or right, no particular mode or form is necessary to effect a valid assignment, and any acts or words are sufficient which show an intention of transferring or appropriating the owner's interest." 5 CORPUS JURIS § 61.

Accord; Southern Mutual Life Ins. Ass'n. v. Durdin, 132 Ga. 495, 64 S.E. 264 (1909); Metcalf v. Kincaid, 87 Iowa 443, 54 N.W. 867 (1893); Moore v. Lowrey, 25 Iowa 336 (1868); Hall v. Kansas City Terra Cotta Co., 97 Kan. 103, 154 P. 210 (1916); Macklin v. Kinealy, 141 Mo. 113, 41 S.W. 893 (1897); McCleery v. Stoup, 32 Pa. Sup. 42 (1906); Levins v. Stark, 57 Ore. 189, 110 P. 980 (1910); Tatum v. Ballard, 94 Va. 370, 26 S.E. 871 (1897).

the policy, the court pointed out that the deceased would not desire his divorced wife to receive the proceeds of the insurance.[8] The writer submits that it is more likely that the insured's unexpected death occurred before an intended change of beneficiary was accomplished. Likewise, it is doubtful if the insured ever conceived of himself as assigning his insurance by writing the letter to his sister. The justification of the decision must be found in the fact that the court reached a result consistent with the intent of deceased, clearly demonstrated from the evidence produced, that the intervener should receive the proceeds of the insurance.

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[8] By the overwhelming weight of authority a beneficiary's interest in an insurance policy is not automatically cut off by a divorce from the insured; Conn. Mutual Life Ins. Co. v. Schaeffer, 94 U.S. 457 (1876); Overhiser v. Overhiser, 63 Ohio St. 77, 57 N.E. 965 (1900); McGrew v. Mutual Life Ins. Co., 132 Cal. 85, 64 P. 103 (1901).

Contra; Hatch v. Hatch, (Tex. Civ. App. 1904) 80 S.W. 411; Sea v. Conrad, 155 Ky. 51, 159 S.W. 622 (1913).

But the court in the principal case was careful to cite the divorce of plaintiff and insured only as further evidence of an intent by the insured to assign the policy.