

IN THE SUPREME COURT OF OHIO

Motorists Life Ins. Co. : Case No. 14-2205

Appellee, : On Appeal from the Allen

- vs - : County Court of Appeals

Patricia Sherbourne, et al. : Third Appellate District

Appellee : Court of Appeals

: Case No. 01-14-17

APPELLEE PATRICIA SHERBOURNE'S MEMORANDUM IN RESPONSE TO
MEMORANDUM IN SUPPORT OF JURISDICTION

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**STATEMENT OF APPELLEE'S POSITION AS TO WHETHER THIS CASE IS OF
PUBLIC OR GREAT GENERAL INTEREST**

Appellant argues that this case presents a “critical” issue which may affect every potential beneficiary to life insurance proceeds where the decedent designated his or her spouse as beneficiary prior to divorce and that the public’s interest in being able to rely on R.C. §5815.33 is “profoundly” affected by the holding in the case *sub judice*. However, Appellant’s position is based upon misstatements of both the facts and the law. This case is not of public or great general interest as the case is based upon a unique set of facts and circumstances particular to this case and which place this matter outside the purview of R.C. §5815.33.

As noted by the Court of Appeals, the facts in evidence are undisputed. William R. Murray (hereinafter “Murray”) and Patricia Sherbourne (hereinafter “Sherbourne”) were married in 1989. During the term of the marriage, Murray bought two policies from Motorists Life Ins. Co. insuring his life and he designated Sherbourne the beneficiary of each policy without naming a contingent or successor beneficiary. The parties divorced in 2004 and the divorce decree made no mention of the Motorist policies. Between 2005 and 2012, Murray had three separate discussions with his Motorists Life agent, Dennis Rockhold, relative to changing the beneficiary of said life insurance policies. On each occasion, Murray indicated that he wanted Sherbourne to be the beneficiary of both policies due to his continued affection for her and “the things he had put her through” and that she “was the best thing that ever happened to him”. These conversations wherein he re-designated Sherbourne as the beneficiary of the policies in question took place in 2005, 2011, and 2012, and

were documented at the time of each conversation by Dennis Rockhold, who was aware of the fact that the parties had divorced in 2004. Sherbourne remained the beneficiary of said policies at the time of Murray's death on September 3, 2013.

Murray's course of conduct post-divorce, when he repeatedly and unequivocally communicated his intent to Motorists Life Ins. Co. that Patricia Sherbourne remain the beneficiary of his two life insurance policies, takes this case outside the purview of the statute.

R.C. 5815.33 was designed as a "fail-safe" provision where an individual *takes no action* regarding the beneficiary of his/her life insurance following the divorce. As a part of the contractual relationship, the owner of a life insurance policy has the right to designate a beneficiary who will receive the benefits of the policy upon the death of the insured party. R.C. 5815.33 was not designed to thwart the expressed intention of the insured when the insured determines *post-divorce* that he wants to designate his former spouse the beneficiary of his life insurance policy. While R.C. 5815.33 provides that the designation of a spouse as beneficiary is revoked as a result of divorce, that does not prevent a party from exercising his right to contract and re-designate his former spouse as beneficiary post-divorce, effectively designating a "new" beneficiary following the divorce.

The Appellate court determined there was uncontroverted evidence of the insured's clearly expressed intent to retain his former spouse as the beneficiary on his insurance policies after the divorce and that the "clearly expressed intent" rule articulated by the Ohio Supreme Court in Rindlaub v. Traveler's Ins. Co., 175 Ohio St. 303 (1963) and affirmed in LeBlanc v. Wells Fargo Advisors, L.L.C., 134 Ohio St.3d 250 (2012) was controlling.

A review of the unique set of facts present in this case makes it clear that this matter does not present a question of public or great general interest and, contrary to Appellant's assertions, the

grant of jurisdiction would not “promote the purposes and intent of R.C. §5815.33”; would not “provide future beneficiaries of life insurance policies with assurance that they can fully rely upon the public policy and statutory authority set forth by the legislature”; and is not an opportunity to “review this state’s public policy as to life insurance beneficiary designations between ex-spouses” as the unusual fact pattern present here is unlikely to be repeated and the matter is outside the purview of the statute.

ARGUMENT IN RESPONSE TO APPELLANT’S PROPOSITION OF LAW

Proposition of Law No. 1: R. C. §5815.33(B)(1) requires strict application that an ex-spouse be deemed to have predeceased the decedent unless the decedent explicitly provided in the beneficiary designation of the life insurance policy that the ex-spouse was to remain a beneficiary after the divorce; or the divorce decree or judgment explicitly indicates the parties’ intent to retain the ex-spouse as beneficiary of the life insurance policy.

Appellant argues that the revocation of a former spouse as beneficiary pursuant to R.C. §5815.33(B)(1) is a permanent revocation and that an insured is thereafter barred from designating a former spouse as beneficiary regardless of the insured’s intentions or events post-divorce . This is clearly not the law in Ohio nor should it be construed as the law as such a holding would frustrate the expressed intent of the insured, based upon his change of attitude or post-divorce events.

The case presently before the Court is not one where the spouse inadvertently failed to remove a former spouse as the beneficiary of his life insurance policies. Rather, following the parties’ divorce, Murray repeatedly and unequivocally expressed his intent directly to the Motorist Life Ins. Co. agent that Sherbourne was to be the beneficiary of his life insurance policies upon his death, refusing to designate any other beneficiaries. R.C. 5815.33(B)(1) cannot be applied so

as to interfere with a party's right to contract and cannot act as a permanent bar to the re-designation of an ex-spouse as beneficiary *when said designation is made post-divorce*, as is the case here.

Further, William R. Murray's conduct post-divorce, by repeatedly informing Motorists Life Ins. Co. that Sherbourne be designated the beneficiary of his life insurance policies, falls within the exception to the statute. R.C. §5815.33(B)(1) states as follows:

Unless the designation of beneficiary or the judgment or decree granting the divorce, dissolution of marriage, or annulment **specifically provides otherwise**, and subject to division (B)(2) of this section, if a spouse designates the other spouse as a beneficiary or if another person having the right to designate a beneficiary on behalf of the spouse designates the other spouse as a beneficiary, and if, after either type of designation, the spouse who made the designation or on whose behalf the designation was made, is divorced from the other spouse, obtains a dissolution of marriage, or has the marriage to the other spouse annulled, then the other spouse shall be deemed to have predeceased the spouse who made the designation or on whose behalf the designation was made, and the designation of the other spouse as a beneficiary is revoked as a result of the divorce, dissolution of marriage, or annulment. (Emphasis added).

Murray's instructions to the agent constitute a "designation of beneficiary... (which) specifically provides otherwise" and falls within the exception to the statute so that R.C. §5815.33(B)(1) is not applicable to this case, rendering a review of said statute unnecessary.

Appellant ignores the evidence herein and attempts to argue that "there is conflicting evidence about the relationship of Sherbourne and W. Murray...". Both the Trial Court and the Appellate court noted that the facts herein were uncontroverted and the only evidence regarding the parties' relationship and Murray's intent post-divorce was as noted by Dennis Rockhold, agent for Motorists Life Ins. Co. Appellant's argument that "common sense dictates that a decedent would not have made a post-divorce designation of his ex-spouse as the beneficiary" is baseless and should be held for naught as should his argument that Murray "would have had the foresight to express that very intent within the Divorce Decree itself...". The evidence herein,

including the Affidavit of Patricia Sherbourne, clearly established that certain events occurred *post-divorce* and that Murray regretted that he “ put her through the stuff he did” as noted in the conversations between Dennis Rockhold and Murray.

Appellant argues that the Court of Appeals erred in allowing post-divorce communications to guide their application of R.C. §5815.33(B)(1) to the facts in this case. However, it is Appellee’s position that the application of R.C. §5815.33(B)(1) is irrelevant given that the insurance company accepted Murray’s post-divorce designation of Sherbourne as beneficiary and waived any possible policy defenses by filing the interpleader action. The only real issue is the clearly expressed intent of the decedent, William R. Murray and his clearly expressed intent was that Patricia Sherbourne be the beneficiary of his Motorists Life Ins. Co. policies. Applying the holding in Rindlaub, supra and LcBlanc, supra it is clear that the Appellate Court correctly held that Murray’s intention must be given effect.

CONCLUSION

Based upon the foregoing facts and the law, the Court should decline to exercise its jurisdiction as this case is not of public or great general interest.

Respectfully submitted,

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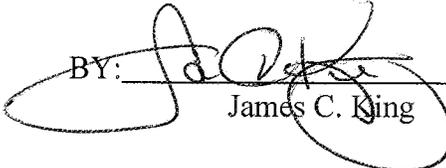
BY: 

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I certify that a copy of the foregoing Brief has been sent to Bruce A. Curry, Attorney for Appellee Motorists Life Ins. Co., at 30 Northwoods Blvd., Suite 300, Columbus, Ohio 43235; to David E. Bowers and Andrea M. Brown, Attorneys for Appellant, at 212 N. Elizabeth St., Suite 410, Lima, Ohio 45801; and to Jerry M. Johnson, Attorney for Appellee T. R. Chiles & Sons-Laman, at 400 W. North St., Lima, Ohio 45801 on the 12th day of January, 2015 by ordinary United States Mail.

BY:  _____
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