

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA  
COURT OF APPEAL  
FIRST CIRCUIT

2006 CA 0861

IN THE MATTER OF THE SUCCESSION OF  
WILLIAM ANTHONY PEPE

Judgment rendered: February 9, 2007

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On appeal from the 19th Judicial District Court  
Parish of East Baton Rouge, State of Louisiana  
Probate Number 78,764  
The Honorable Curtis A. Calloway, Judge Presiding

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BEFORE: PETTIGREW, DOWNING AND HUGHES, JJ.

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## **DOWNING, J.**

This appeal challenges a trial court's granting of summary judgment upon finding that an ex-wife was not a beneficiary of a life insurance policy. We reverse the summary judgment, decree that Anna Louise Plaisance is the beneficiary to the proceeds of the life insurance policy, and enter judgment awarding her the policy proceeds.

### **BACKGROUND**

Most of the facts forming the basis for this litigation are undisputed. In 1990, Mr. William Anthony Pepe obtained a group life insurance policy through his employer from Connecticut General Life Insurance Company (Connecticut General), a subsidiary of CIGNA. At the time he procured the policy, Mr. Pepe completed an enrollment form wherein he selected coverage in the amount of one-time his annual salary and designated his father, Anthony M. Pepe, as the beneficiary.

In April of 1998, Mr. Pepe married Anna Louise Plaisance (hereafter Ms. Plaisance). On October 19, 1998, Mr. Pepe filled out a document entitled "Group Universal Life Insurance Enrollment or Waiver Form" in which he sought to increase his coverage to four times his annual salary, and to obtain a new policy covering his wife in the amount of \$100,000.00. On the form, which was signed and dated by him, Mr. Pepe designated Ms. Plaisance as his beneficiary.

Thereafter, Connecticut General advised Mr. Pepe that he would have to undergo a medical examination at the insurer's expense in order to increase his coverage amount. He also was apprised his wife would have to undergo a medical examination at her expense to obtain her own life insurance policy. According to evidence in the insurer's file, Mr. Pepe cancelled his request for additional coverage and the request for a separate policy for his wife. Neither

Mr. Pepe nor his wife underwent the requisite medical examination, and the insurer cancelled Mr. Pepe's application for additional insurance and Ms. Plaisance's application for coverage.

In September of 1999, prior to his divorce from Ms. Plaisance, Mr. Pepe requested a change of beneficiary form from his insurer. On September 9, 1999, Connecticut General sent Mr. Pepe a letter along with a change of beneficiary form, advising him that the form must be signed.

On April 5, 2000, Mr. Pepe and Ms. Plaisance were divorced. On May 3, 2003, Mr. Pepe died of a heart attack. Later that month, a Connecticut General representative, Mr. Chuck Bayer, wrote a letter to Ms. Plaisance acknowledging her claim to the proceeds of Mr. Pepe's life insurance policy and advising her that the insurance proceeds would be deposited into an account in her name.

On June 2, 2003, Mary Pepe, William Pepe's sister, instituted this succession proceeding, seeking to be recognized as his sole heir.<sup>1</sup> Thereafter, Ms. Pepe, individually and as the administrator of her brother's succession, made a formal claim to the insurance proceeds. In support of her claim, Ms. Pepe sent Connecticut General a copy of a letter dated September 9, 1999, from CIGNA to Mr. Pepe, acknowledging that Mr. Pepe had requested a form for a change to his certificate of insurance from Connecticut General. Ms. Pepe also sent Connecticut General a change of beneficiary form for the policy in which her handwritten name appears in the beneficiary designation. This form was not signed or dated by Mr. Pepe, and it is undisputed that Mr. Pepe did not send the insurer a completed change of beneficiary form prior to his death.

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<sup>1</sup> At the time of his death, Mr. Pepe was survived by his father, Anthony M. Pepe. On September 18, 2003, Anthony Pepe formally renounced any right of inheritance he may have under Louisiana law over all of his son's property.

In light of the competing claims to the proceeds of Mr. Pepe's insurance policy, Connecticut General intervened in the succession proceeding and invoked a concursus, naming Ms. Plaisance and Ms. Pepe as defendants. Therein, Connecticut General deposited the \$96,000.00 value of Mr. Pepe's life insurance policy into the registry of the court and asked that the court determine the proper beneficiary of those proceeds.

Ms. Plaisance and Ms. Pepe filed cross-motions against Connecticut General, seeking penalties and attorney's fees. They also filed motions for partial summary judgment. In her motion for partial summary judgment, Ms. Plaisance sought a determination that she was the beneficiary of the life insurance policy and was entitled to the proceeds of the policy. In support of her claim, Ms. Plaisance relied on the 1998 Enrollment and Waiver Form in which Mr. Pepe listed her as his beneficiary, as well as evidence demonstrating that the insurer considered the 1998 form effective to make her the beneficiary of Mr. Pepe's life insurance policy. She urged that the evidence established that the 1998 form was sufficient, as a matter of law, to revoke Mr. Pepe's earlier designation of his father as the beneficiary of the policy and make her the beneficiary on the policy.

To substantiate her claim to the policy proceeds, Ms. Plaisance relied on the affidavits of Beth Miller, a life claims examiner authorized to determine claims for Connecticut General, and Stephanie Smith, a CIGNA process representative, who examined the competing claims to the life insurance benefits. The affiants attested to their experience and familiarity with the insurer's processes for enrollment and beneficiary designations. Ms. Miller attested that while Mr. Pepe's 1998 application to increase his coverage was ineffective because he withdrew his application to do so, his designation in that document of Ms. Plaisance as the beneficiary of his life

insurance, at one-time his annual salary, was effective, and Ms. Plaisance became the beneficiary of record. Ms. Smith also reviewed Mr. Pepe's 1998 application and stated that the change of beneficiary contained therein applied not only to the amount by which Mr. Pepe sought to increase his life insurance coverage, but also applied to his life insurance already in force at the time of his 1998 application.

Both affiants reviewed the evidence submitted by Ms. Pepe in support of her claim and concluded that the change of beneficiary form she relied on was invalid and ineffective under the clear and unambiguous terms of the policy, because it was unsigned and undated. Ms. Miller stated that following her investigation, she referred the matter to Connecticut General's legal department, because while she concluded that it appeared Mr. Pepe designated Ms. Plaisance as his beneficiary, Ms. Pepe contended that Mr. Pepe expressed his intent to change his beneficiary after he divorced Ms. Plaisance. She further expressed her awareness that Mr. Pepe had made such a change in 2000 with regard to separate life insurance he maintained through his employment, and noted that on July 1, 2003, Ms. Pepe was paid the proceeds of \$144,000.00 on that basic insurance policy.

In her motion for a partial summary judgment, Ms. Pepe challenged Ms. Plaisance's status as the alleged beneficiary. Specifically, she sought a judgment declaring that the 1998 Enrollment and Waiver Form had no effect and did not result in Ms. Plaisance becoming Mr. Pepe's beneficiary. She asserted that because Mr. Pepe had later withdrawn his request for additional insurance coverage, the beneficiary designation contained in the 1988 document did not effect a change of beneficiary, and thus was not effective to revoke Mr. Pepe's earlier designation of his father as the beneficiary. Ms.

Pepe insisted that since Mr. Pepe's father renounced any right to the insurance proceeds, the proceeds of the policy fell to Mr. Pepe's estate.

After considering the evidence on the motions, the trial court denied Ms. Plaisance's motion for partial summary judgment, and granted Ms. Pepe's motion for a partial summary judgment on the issue of the effect of the 1998 Enrollment and Waiver Form. The trial court ruled that the 1998 form did not make Ms. Plaisance a beneficiary of Mr. Pepe's life insurance policy, and upon finding that the proceeds of the policy were not payable to her, dismissed Ms. Plaisance as a defendant in the concursus proceeding.

This appeal, taken by Ms. Plaisance, followed.

### DISCUSSION

Appellate courts review summary judgment *de novo* under the same criteria that govern the trial court's consideration of whether a summary judgment is appropriate. **Schroeder v. Board of Supervisors of Louisiana State University**, 591 So.2d 342, 345 (La. 1991). The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with supporting affidavits, if any, show that there is no genuine issue as to material fact, and that the mover is entitled to judgment as a matter of law. La. Code Civ. P. art. 966(B).

We find that the trial court clearly erred in declaring the 1998 enrollment form in which Mr. Pepe designated Ms. Plaisance as his beneficiary to be without effect. In determining the beneficiary of a life insurance policy, a court is required to ascertain the intention of the deceased. In so doing, a court is bound to give legal effect to the terms of the insurance policies, according to the intent of the parties, and that intent is to be determined by the words of the contract when they are clear and explicit and

lead to no absurd consequences. **Commercial Life Insurance Company v. Robinson**, 95-186 (La. App. 5 Cir. 7/25/95), 662 So.2d 486, 488.

The Connecticut General policy sets forth the following with respect to a change of beneficiary:

Each Owner may change the Beneficiary at any time, unless the Beneficiary designation is irrevocable. The change must be made on a form satisfactory to CG and signed by the Owner. No change in Beneficiary will take effect until this form is received by CG. When this form is received, the change will take effect as of the date of the form. If the Insured dies before the form is received, CG will not be liable for any payment that was made before receipt of the form.

The evidence on the motions for summary judgment established that Mr. Pepe's 1998 designation of Ms. Plaisance as the beneficiary of his life insurance policy was made on a form satisfactory to Connecticut General, was signed by him, and was received by Connecticut General. The insurer concluded that Mr. Pepe's 1998 designation of Ms. Plaisance as the beneficiary was effective to make her the beneficiary of his life insurance policy, at one-time his annual salary, even though his request to increase the amount of coverage to four times his salary was later withdrawn. As such, the insurer considered Ms. Plaisance to be the beneficiary of record. Clearly, by his actions, Mr. Pepe intended to make Ms. Plaisance the beneficiary on the policy.

Moreover, the evidence establishes that Mr. Pepe did not revoke that designation prior to his death. The form relied on by Ms. Pepe in support of her claim to the proceeds was insufficient under the clear and unambiguous terms of the policy to revoke the designation, as the form was not signed by Mr. Pepe, and the form was not received by Connecticut General until after Mr. Pepe's death. Furthermore, we find that Mr. Pepe's failure to execute the change of beneficiary form and his failure to submit it to his employer or his

his insurer for over three years after the request, evidences a lack of intent on his part to revoke his designation of Ms. Plaisance as the beneficiary on the policy.

Therefore, we conclude that as a matter of law, Ms. Plaisance is the beneficiary of Mr. Pepe's life insurance policy, and she is entitled to the proceeds thereof. Accordingly, we reverse the trial court's judgment granting summary judgment in favor of Ms. Pepe, and we reverse the trial court's denial of Ms. Plaisance's motion for summary judgment. Judgment is hereby entered in favor of Anna Louise Plaisance, declaring her to be the beneficiary of the Connecticut General Life Insurance Company Policy, and as such, is entitled to all money deposited by the insurer in the registry of the trial court, plus interest. Costs of these proceedings are assessed to Mary Pepe. The case is remanded to the trial court for consideration of the cross-claim asserted against Connecticut General Life Insurance Company and for the assessment of costs of the trial court proceedings.

**REVERSED, RENDERED AND REMANDED.**