

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2016 CA 1225

ALLSTATE LIFE INSURANCE COMPANY

VERSUS

ALFRED S. SMITH, THURMAN S. OFFORD, SR.,  
KIMBERLEE KATRINA OFFORD, KEVIN EDWARD DARR, AND  
KENNETH JOHN DARR

Judgment rendered: SEP 15 2017

\*\*\*\*\*

Appealed from the  
Nineteenth Judicial District Court  
In and for the Parish of East Baton Rouge  
State of Louisiana  
Docket Number 633,783

Honorable Todd Hernandez, Judge

\*\*\*\*\*

Judy Y. Barrasso  
Kristin L. Beckman  
New Orleans, LA

Counsel for  
Plaintiff-Appellee  
Allstate Life Insurance  
Company

Kenneth L. Riche  
Baton Rouge, LA

Counsel for  
Defendants-Appellants  
Thurman S. Offord, Sr.,  
Kimberlee Katrina Offord,  
Kevin Edward Darr, and  
Kenneth John Darr

Roy K. Burns, Jr.  
Lam M. Tran  
Covington, LA

Counsel for  
Defendant-Appellee  
Alfreda Smith

BEFORE: WHIPPLE, C.J., GUIDRY, McCLENDON, WELCH,  
AND THERIOT, JJ.

*Whipple, C.J. dissents and assigns reasons.  
Stahlkopf, J. dissents for reasons assigned by Judge Whipple.  
McClelland, J. concurs with the result reached by  
the majority.*

*Gay  
MRT w/ Gay*

## **GUIDRY, J.**

The surviving spouse and children of the deceased insured appeal a judgment in a concursus proceeding awarding insurance benefits to the deceased's mother. Based on the record before us, we find error in the trial court's judgment, and accordingly, we vacate that judgment and remand this matter for further proceedings.

### **FACTS AND PROCEDURAL HISTORY**

In August 1997, Tanya Offord, then Tanya Darr, obtained a policy of life insurance from Allstate Life Insurance Company in which she named her two sons, Kevin and Kenneth Darr, and her then husband, Robert Darr, as beneficiaries under the policy. In January 2002, Tanya changed the primary beneficiary of the life insurance policy to Alfreda Smith, her mother. Then in February 2009, Tanya married Thurman Offord, Sr.,<sup>1</sup> with whom she had one child, Kimberlee Katrina Offord, born in September 2006.

Following her marriage to Thurman, Tanya submitted a change of beneficiary form to Allstate, wherein she listed Thurman and her three children as the primary beneficiaries of her life insurance policy. She further listed her mother as the sole contingent beneficiary and listed Thurman and her mother as the adult custodians to receive payment of any proceeds from the policy that might become payable to her children during their minority.

In response to Tanya's beneficiary change request, Allstate sent a letter dated March 31, 2009, to Tanya at the address she listed on the beneficiary change form she submitted on March 28, 2009. In that letter, Allstate acknowledged receipt of Tanya's beneficiary change request, but informed her that the request could not be processed at that time because only one custodian per child could be

---

<sup>1</sup> No evidence of Tanya's divorce from Robert Darr appears in the record; however, in a pre-trial memorandum filed by the appellants, it is indicated that Tanya and Robert separated and divorced in 2000.

named<sup>2</sup> and because she had signed the change form with a surname that was different from what the company had on file.<sup>3</sup> Thus, Allstate requested that Tanya “choose one custodian, and if [she wished], designate the second as successor custodian and resubmit the request.” Allstate included a new beneficiary change request form with the letter for Tanya to complete and return. Tanya did not resubmit the change of beneficiary request form with the requested information.

On May 2, 2014, Tanya died after suffering an ischemic stroke. Subsequently, Tanya’s mother, Alfreda, submitted a claim to Allstate for the life insurance proceeds from the policy issued to Tanya. Upon becoming aware of competing claims for the proceeds, Allstate notified Alfreda in a letter dated July 2, 2014, of the following, in pertinent part:

Although you were provided claim forms to complete, we are now contacting you regarding your daughter’s attempt to change the beneficiary designation from you to her husband and children. Once you have had an opportunity to review this information, please contact [the Allstate claims representative] to discuss further. If you agree that this was your daughter’s intent, we will request that you sign a disclaimer acknowledging your agreement to the change of beneficiary.

Failing to receive the requested acknowledgement from Alfreda, Allstate filed a petition to initiate concursus proceedings on September 25, 2014, wherein it named Alfreda, Thurman, and Tanya’s three children<sup>4</sup> as defendants. Allstate then

---

<sup>2</sup> According to the Illinois Uniform Transfers to Minors Act (UTMA), the default law provided for on the change form, only one person could be designated as a custodian per minor. See 760 Ill. Comp. Stat. 20/11. The Illinois statute expressly provides: “A transfer may be made only for one minor, and only one person may be the custodian. All custodial property held under this Act by the same custodian for the benefit of the same minor constitutes a single custodianship.” Louisiana’s UTMA contains a similar provision. See La. R.S. 9:760.

<sup>3</sup> In the March 31, 2009 letter, Allstate stated that it required “legal documentation for the name change” before it could process Tanya’s beneficiary change request and listed a marriage license as an example of the legal documentation that could be submitted. However, the record reveals that Tanya submitted a copy of her certificate of marriage to Thurman with the March 28, 2009 change of beneficiary form.

<sup>4</sup> Kimberlee and Kevin were minors at the time the concursus proceedings were instituted. Thus, Thurman was named as a defendant individually and on behalf of Kimberlee. As Kevin was due to turn 18 about a month after the concursus proceedings were instituted, Allstate requested the trial court to appoint a legal and/or provisional tutor for Kevin until he turned 18, and it named Kevin as a defendant “through a court-appointed tutor.”

deposited the life insurance proceeds plus accrued interest in the registry of the court and requested that all persons having competing claims to the proceeds assert their claims contradictorily against all other parties with the court to determine the proper payee of the funds deposited.

The named defendants filed answers to the petition asserting their respective claims to the deposited funds, and by agreement of the parties, on January 7, 2016, the matter was submitted to the trial court to decide the merits based on the memoranda of the parties and the documentary evidence introduced. After taking the matter under advisement, the trial court issued written reasons for judgment finding the following:

While the evidence suggests that Mrs. Offord may have desired or even had the intent to change the beneficiary on her life insurance policy when she submitted specific instructions and documents to Allstate on March 28, 2009, the evidence does not explain why she failed to respond to the request for clarification from Allstate in [its] letter to her dated March 31, 2009. Contractually, the policy's beneficiary designation never changed after Allstate accepted the change of beneficiary request from Mrs. Tanya Darr naming Alfreda S. Smith as the beneficiary in 2002. Allstate never accepted the change request from her in 2009 even though she made a written request to do so on March 28, 2009.

Who knows what the decedent's intent was after March 28, 2009 and there is no evidence to show that her desire or intent to make the changes remained after her receipt of the letter from Allstate on March 31, 2009 requesting clarification and attaching a new form for her to complete. Therefore, the evidence, and the inferences drawn therefrom, leads the court to reasonably conclude that she may have no longer desired to make the changes since the evidence shows that she took no action to perfect her desire to make the changes in the beneficiaries for the next five years until her death on May 2, 2014.

In so finding, the trial court signed a written judgment on April 18, 2016, in favor of Alfreda, awarding her the sum of \$151,192.88, plus accumulated interest, from the funds deposited in the registry of the court. After the denial of their motion for new trial, Thurman and Tanya's three children (collectively "appellants") suspensively appealed.

## DISCUSSION

In the second of the two assignments of error asserted by the appellants, they contend that this court should review this matter *de novo* because the trial court committed legal error in finding as fact that Tanya had received the March 31, 2009 letter from Allstate stating that it did not process her beneficiary change request. In reviewing the record before us, we observe that the appellants never raised the question of Tanya's receipt of the March 31, 2009 letter in their pre-trial memorandum or at trial; nor is receipt mentioned as an issue in the trial court's pre-trial order. As a general rule, appellate courts will not consider issues that were not raised in the pleadings, were not addressed by the trial court, or are raised for the first time on appeal. Uniform Rules-Courts of Appeal, Rule 1-3; Stewart v. Livingston Parish School Board, 07-1881, p. 7 (La. App. 1st Cir. 5/2/08), 991 So. 2d 469, 474. Because Tanya's receipt of the letter was never raised as an issue before the trial court, we decline to consider this assignment of error.<sup>5</sup>

As for the appellants' remaining assignment of error regarding the trial court's ultimate determination that the March 28, 2009 beneficiary change request was without effect, we find the record before the trial court was insufficient for it to render a decision.

An insurance policy constitutes the law between the parties and governs the nature of their relationship. It is well settled that an insurer has the right to limit liability and impose conditions or restrictions under a policy provided such limitations do not conflict with statutory provisions or public policy. To effect a change of beneficiary, strict compliance with the terms of the insurance policy regarding such change is required. Standard Insurance Company v. Spottsville, 16-0020, p. 6 (La. App. 1st Cir. 9/16/16), 204 So. 3d 253, 258.

---

<sup>5</sup> Additionally, we observe that one of the "established facts" listed in the pre-trial order agreed to by the parties is the following: "On March 31, 2009, Allstate informed Ms. Darr Offord that it was unable to process the requested change in beneficiary for two reasons."

In support of her claim to the insurance proceeds, Alfreda filed a memorandum in which she quoted provisions from the Allstate life insurance policy and argued that because there was no compliance with the quoted provisions, Tanya's March 28, 2009 beneficiary change request was without effect. The actual policy, however, was never offered into evidence.

In their pre-trial memorandum, the appellants first noted that they would "make a general objection to any reference to any exhibit or other evidence that does not comply with the Pretrial Order." The Allstate life insurance policy is not listed among the exhibits listed in the pretrial order. Further, at the trial in this matter, counsel for the appellants again re-urged their objection to any document not listed in the pretrial order, as well as any reference to such documents. Appellants' counsel then pointed out that in Alfreda's brief to the court, "there's some references to portions of the Allstate policy that apply and that's not part of the evidence, indicating what Allstate's requirements are and change of beneficiary." Curiously, counsel for Alfreda appeared to agree to the appellants' objection, while observing "[t]he argument in this case is strict versus substantial compliance, your honor. Without a policy entered into the record, there is no argument as to what compliance that [appellants] would be ... trying to change the beneficiary."

In this case, it appears the parties believed that consideration of the actual policy was unnecessary to the determination of whether any effect could be given to Tanya's March 28, 2009 beneficiary change request, as their arguments primarily centered on whether Tanya's March 28, 2009 submission<sup>6</sup> substantially complied with the information requested on the change of beneficiary form and Allstate's March 31, 2009 letter. We observe, however, that in its reasons for

---

<sup>6</sup> Tanya included two additional pages along with the change form supplied by Allstate. The first page indicates that the information listed thereon is a continuation of information requested in steps 2 and 4 of the form supplied by Allstate. The second page displays a copy of Tanya's Louisiana driver's license and a copy of her certificate of marriage to Thurman.

judgment, the trial court expressly found that “[c]ontractually, the policy’s beneficiary designation never changed,” despite the fact that it did not have the actual insurance policy before it. And as previously discussed, although references to the provisions of the Allstate life insurance policy were made by Alfreda in the proceedings below, such references were expressly objected to by the appellants. Compare Cichirillo v. Avondale Industries, Inc., 04-2894, pp. 4-8 (La. 11/29/05), 917 So. 2d 424, 427-30; Abshire v. Belmont Homes, Inc., 04-1200, p. 3 (La. App. 3d Cir. 3/2/05), 896 So. 2d 277, 280, writ denied, 05-0862 (La. 6/3/05), 903 So. 2d 458 (wherein documents attached to the parties’ pre-hearing memoranda and treated by the parties as formally introduced into evidence, although they were not, were considered by the appellate court, which treated the parties acknowledgement of the documents as a judicial confession of the existence of the documents as evidence).

We observe that the change form provided by Allstate does not expressly state when it is to be deemed effective, but does state that “[t]his change is subject to the provisions and limitations found in the policy.” More importantly, we find that the jurisprudence dictates the actual language of the insurance policy be considered in determining whether an attempt to change a beneficiary has properly been invoked. See Sun Life Assurance of Canada (U.S.) v. Barnard, 94-0402, pp. 3-6 (La. App. 1st Cir. 3/3/95), 652 So. 2d 681, 683-84; Louisiana Savings Association, Inc. v. Bluebonnet Holding Partnership, 546 So. 2d 869, 872-73 (La. App. 1st Cir.), writ denied, 550 So. 2d 655 (La. 1989); Commercial Life Insurance Company v. Robinson, 95-186, pp. 4-5, 10 (La. App. 5th Cir. 7/25/95), 662 So. 2d 486, 488, 490; Woodmen of the World Life Insurance Society v. Hymel, 544 So. 2d 664, 666-69 (La. App. 3d Cir.), writ denied, 551 So. 2d 629 (La. 1989); Philadelphia Life Insurance Company v. Whitman, 484 So. 2d 266, 268 (La. App. 3d Cir. 1986).

As the actual Allstate life insurance policy was not formally introduced into evidence, the evidence before the trial court was insufficient for the trial court to render judgment in this matter, and accordingly, the judgment must be vacated. See Scheuermann v. Cadillac of Metairie, Inc., 11-1149, p. 7 (La. App. 5th Cir. 5/31/12), 97 So. 3d 423, 427. As an appellate court, we can remand an action for proper consideration when the record is so incomplete that the court is unable to pronounce definitively on issues or where the parties have failed, for whatever reason, to produce available evidence material to a proper decision. See Genina Marine Services, Inc. v. Arco Oil & Gas Company, 499 So. 2d 257, 262 (La. App. 1st Cir. 1986). Hence, we will remand this matter for introduction of the insurance policy. Once formally introduced, the trial court is directed to determine the effectiveness of Tanya's March 28, 2009 change of beneficiary request submission in light of the applicable policy language and to decide this matter anew.

#### **CONCLUSION**

For the foregoing reasons, we vacate the trial court's April 18, 2016 judgment and remand this matter to the trial court to conduct further proceedings consistent with this opinion. One-half of the costs of this appeal are assessed to the appellee, Alfreda Smith, and the other half is assessed to the appellants, Thurman Offord, Sr., individually and on behalf of his minor child, Kimberlee Katrina Offord, Kevin Edward Darr, and Kenneth John Darr.

**VACATED AND REMANDED.**

**ALLSTATE LIFE INSURANCE  
COMPANY**

**STATE OF LOUISIANA**

**VERSUS**

**COURT OF APPEAL**

**ALFRED S. SMITH, THURMAN  
S. OFFORD, SR., KIMBERLEE  
KATRINA OFFORD, KEVIN  
EDWARD DARR, AND KENNETH  
JOHN DARR**

**FIRST CIRCUIT**

**NUMBER 2016 CA 1225**

**WHIPPLE, C.J., dissenting.**

*UGW by LTB*  
Based on a finding of error by the trial court (as purportedly demonstrated in the trial court's reasons for judgment), the majority concludes that the judgment herein should be vacated. However, the majority further concludes that the matter should be remanded for introduction of the policy, even though Allstate did not actually indicate a desire to do so, and for reconsideration of the decedent's mother's competing claims to the insurance proceeds.

While I agree that the trial court's judgment is erroneous and should not stand, I disagree with the majority's decision to remand, rather than render judgment on the record as presently constituted.

Specifically, to the extent that the majority concludes that the judgment should be vacated to allow the policy to be considered, I respectfully disagree, as such a remand is tantamount to allowing Alfreda, the decedent's mother, a "second bite at the apple." Accordingly, I would reverse and render.

Considering the issue presented and the evidence that is in the record before us, I find the trial court erred in concluding that Tanya, the decedent and policyholder, did not comply with Allstate's requirements for effecting a change of beneficiary. Although the March 31, 2009 letter from Allstate recited that Tanya's change request was not effective because the designation of a custodian for her minor children was improper and that she needed to provide legal documentation of her name change, a review of the documentation submitted by Tanya on March

28, 2009, shows that her request fully complied with the requirements stated in Allstate's change of beneficiary form and in its March 31, 2009 letter.

First, Tanya submitted the change form via fax and by mail. According to the fax cover sheet, which was produced by Allstate, Tanya stated the following regarding the change of beneficiary request she was submitting:

This fax is being returned after our telephone conversation on 3/23/09. I need to make the following changes to my policy # 763 464 668:

- Change the beneficiaries
- Add custodian(s) for minor children (2) in the event the 1 dies
- Also requesting that you change my name to include my new Married Name (Tanya Darr Offord)

The following items are enclosed with this fax:

- 2 page change of beneficiary (pg 2-3)
- 1 page change of beneficiary (Con't) (pg 4)
- 1 page with a copy of my Marriage Certificate (pg 5)

Moreover, by attachment to the beneficiary change request form, Tanya did provide a copy of her marriage certificate displaying her married name of Offord, which was one of the items expressly mentioned by Allstate in the March 31, 2009 letter as being sufficient legal documentation of her name change.

As far as naming a custodian for her minor children, in the March 31, 2009 letter, Allstate stated:

The [Illinois] Uniform Transfer to Minors Act allows the policy owner to name only one Custodian per child. However, the policy owner may designate a successor custodian in the event of the death of the original custodian, or in the event the original custodian is incapacitated or refuses to act. Please choose one custodian, and if you wish, designate the second as successor custodian and resubmit the request ... to us.

In the section of the change of beneficiary form for designating a custodian for minor children, Tanya wrote "See Attachment." Attached was a separate, typewritten page on which Tanya provided the following information:

Thurman J. Offord, Sr., 605 S. 16<sup>th</sup> Street, Baton Rouge, LA 70802  
Custodian #1

Reading Tanya's designation of Thurman as Custodian #1 and Alfreda as Custodian #2 in conjunction with the statement on the fax cover sheet that she was adding "custodian(s) for minor children (2) in the event the 1 dies," it is evident that Tanya chose her husband, Thurman, designated as Custodian #1, as the original custodian, and Alfreda, her mother, designated as Custodian #2, as the successor custodian. As such, the record evidence that is before us demonstrates Tanya fully complied with Allstate's requirements as stated in its change of beneficiary form and in the March 31, 2009 letter.

In Philadelphia Life Insurance v. Whitman, 484 So. 2d 266 (La. App. 3d Cir. 1986), the insurer sent the insured a form letter requesting answers to several questions, including a question that identified the existing beneficiary named under the policy, but then asked "[i]f there is a change in your beneficiary designation, please let us know." In response to that question, the insured named a new person as his beneficiary. On receiving the completed questionnaire from the insured, the insurer, pursuant to its internal procedures, forwarded a change of beneficiary card to the insured for completion and signature, but the card was never executed because the insured died before it was received. Philadelphia Life Insurance, 484 So. 2d at 267.

The trial court therein found the questionnaire completed by the insured was insufficient to effect a change of beneficiary and that the change of beneficiary form provided by the insurer was required to be completed to make such a change. The appellate court disagreed and observed that "[i]t is equally well settled that the internal procedures established by the insurer in connection with applications for a change of beneficiary are mainly for the benefit of the insurer and do not operate to provide an exclusive method for a change of beneficiary." Philadelphia Life

Insurance Company, 484 So. 2d at 268. In so observing, the appellate court noted that no particular form for a change of beneficiary was required other than the insured giving written notice to the company at its home office and found that the completed questionnaire signed by the insured satisfied the insurer's requirement for revoking a previous designation of beneficiary and designating a new one. Thus, the appellate court reversed and found that the insured effectively changed the beneficiary of his insurance policy. Philadelphia Life Insurance Company, 484 So. 2d at 268. See also Woodmen of the World Life Insurance Society v. Hymel, 544 So. 2d 664, 669-70 (La. App. 3d Cir. 1989)(wherein the court held that the insured's designation of a new beneficiary on an application to increase the face amount of his policy was sufficient to effect a change in beneficiary, as no specific form was required other than a written request to the insurer).

Likewise, according to Allstate's change of beneficiary form and the instructions set forth in the March 31, 2009 letter, all that was needed to make Tanya's change of beneficiary request effective was for her to provide legal documentation of her name change and to designate one original and one successor custodian. As the information submitted by Tanya to Allstate on March 28, 2009 fully complied with these requirements, I find that the change of beneficiary request she submitted was effective. In sum, she did what she was asked to do to accomplish the designation of her children as her beneficiaries, and this court should affirm such designation and the rights of the decedent's children to receive the benefits owed them.

Accordingly, I dissent and would render judgment finding that Thurman and Tanya's three children are entitled to the proceeds of the Allstate life insurance policy and dismissing Alfreda's claims in the concursus proceeding.