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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE BEAUFORT COUNTY
COURT OF COMMON PLEAS

HONORABLE MARVIN H. DUKES, III
BEAUFORT COUNTY MASTER-IN-EQUITY AND
SPECIAL CIRCUIT COURT JUDGE

APPELLATE CASE NO.: 2019-00518

Richard Walter Meier and the Estate of
William Carl Meier, by and through Conrad Meier,
its Personal Representative, Appellants,

vs.

Mary J. Burnsed, Petitioner.

APPELLANTS' RETURN TO RESPONDENT'S PETITION FOR REHEARING

In her Petition for Rehearing, the Petitioner phrases the question presented as whether South Carolina's revocation-upon-divorce statute, §62-2-507, originally known as Act No. 100 of 2013 "was intended to apply to divorces filed before the Act took effect." Petition for Rehearing, pg. 1. The question now presented to this Court, however, more accurately stated, is whether or the statute applies to life insurance policies of decedents who die after the Act went into effect. When talking about a life insurance policy the operative, key, material, or critical event that matters is not the divorce, it is the death of the insured. The application of the statute cannot be determined

until the insured dies without having changed or reaffirmed his life insurance policy's beneficiary designation.

The Petition for Rehearing attempts to create conflicts between cases that have examined this issue and attempts to distinguish cases that have decided the issue, but fails to cite one single case that reaches the conclusion that it wishes this Court to now take. The bottom line is that every single case that has dealt with the issue now before this Court has concluded that the revocation-upon-divorce statute applies to divorces that predated the statute, as long as the death of the insured occurred after the statute's effective date.

The Petitioner argues that the Court of Appeals wrongfully failed to apply the presumption that statutes are presumed to be prospective in their application. The Court, however, did not ignore this presumption. To the contrary, it expressly recognized it. The Court of Appeals concluded, however, that the presumption against statutory retroactivity did not prevent it from concluding that the statute applied to the facts before it because: (1) It was not being applied retroactively. (2) Retroactive application was expressly authorized by the express terms of the statute. (3) Retroactive application was impliedly authorized. (4) The statute was remedial.

The statute is based on the widely recognized presumption "that when spouses are sufficiently unhappy with each other that they obtain a divorce, neither is likely to want to transfer his or her property to the survivor on death. Revocation-upon-divorce statutes reflect the legislative judgment that when the transferor leaves unaltered a will or trust or insurance beneficiary designation in favor of an ex-spouse, this failure to designate substitute takers more likely than not represents inattention rather than intention." *Stillman v. Teachers Ins. & Annuity Ass'n College Retirement Equities Fund,* 343 F.3d 1311, 1315 (10th Cir. 2003). In the case *sub judice*, this presumption mirrors the reality – Bill Meier, from the day he first took out his life

insurance policy until the day of his unexpected death, wanted his only son to benefit from the proceeds, having named Petitioner as the beneficiary only because his son was a minor and he could not name him at the time. Bill Meier would be "rolling over in his grave" if he knew that one of his ex-wives was trying to deprive his son of the policy's benefits. Affidavits of Karen M. Cummins, Martha Hatfield, and David W. Carroll, ROA, pp. 127-132.

Addressing each of the points raised by Petitioner in her Petition for Rehearing in turn:[1]

I. The Court did not apply perhaps the strongest maxim of statutory construction – that the General Assembly is presumed to have intended prospective application of its laws.

The Petitioner argues that the Court of Appeals wrongfully failed to apply the "strongest maxim of statutory construction" that the General Assembly is presumed to have intended prospective application of its laws. The Petitioner overlooks the fact, however, that prospective application of a statute is nothing more than a presumption, it is not an absolute mandate. In its Opinion, the Court of Appeals expressly recognized this presumption, but for good reasons as outlined in its Opinion determined that it did not prevent the application of the statute to the facts of this case inasmuch as application of the statute to the facts of this case was not an impermissible retroactive application.

II. Neither section 4(B) nor section 62-2-507 contain anything suggesting that the General Assembly meant to apply the revocation provision backwards in time.

The foregoing statement by Petitioner misses the point and is misleading. There is nothing "backwards in time" about the application of the statute to the facts of this case, which involves the designation of a beneficiary in a life insurance policy. "A statute does not operate "retrospectively" merely because it is applied in a case arising from conduct antedating the

[1] For ease of reference, the headings used by Petitioner in her Petition are used herein, although Respondent certainly does not agree with them.

statute's enactment." *Landgraf v. USI Film Products,* 511 U.S. 244, 269, 114 S.Ct. 1483, 1499 (1994). Simply because Bill's divorce antedated the statute's enactment does not automatically mean that the statue is retroactive. It is the event that **triggers** the application of the statute that controls. In this case, which involves the designation of a beneficiary in a life insurance policy, the triggering event is the death of the insured. It was not until Bill's death that the statute applied and went into effect. It was only when Bill died, without either changing the beneficiary designation or reaffirming his designation of Petitioner as the beneficiary of his life insurance policy, that the statute went into effect. Bill's death, not the divorce, is the event that triggered the application of the statute.

This exact issue was confronted by the Court in *Stillman v. Teachers Ins. & Annuity Ass'n,* 343 F.3d 1311 (10th Cir. 2003), in which the life insurance policy was purchased during the marriage, the parties then divorced, the revocation-upon-divorce statute was then enacted, and the policyholder then died without changing the designation of his ex-spouse as the beneficiary. The Court, noting the presumption against retroactive legislation, stated:

> "The principal difficulty in applying the non-retroactivity presumption is in determining what constitutes retroactivity in a particular context. To determine whether a statute is being applied retroactively, it is necessary to compare two (2) dates: (1) The date the statute went into effect, and (2) The date of the activity to which the statute applies."

Id., 343 F.3d at 1315. Since the effective date of the statute is never in dispute, the key inquiry is about "what activity is targeted by the statute." *Id.* The Court concluded that it was the policyholder's death that triggered the application of the statute, as opposed to the divorce that had taken place years earlier. The Court concluded that only when the policyholder died could the application of the statute be determined since, up until he passed away, he could have changed the designation of the beneficiary on his policy or alternatively, he could have confirmed the

designation. Accordingly, the statute did not go into effect, nor did the statute have any applicability, until the policyholder died. *Id.*

The same result on similar facts was reached in *In Re Estate of Dewitt,* 54 P.3d 849 (S.Ct. Colo. 2002). The sequence of events – marriage, life insurance policy taken out, divorce, statute passed, death of policyholder, was the same as in the instant case. The Supreme Court of Colorado found that the statute acted to revoke the designation of the ex-wife as the beneficiary of the policy, even though she remained the named beneficiary at the time of the insured's death, stating:

> "We find that the plain language of the foregoing provision indicates the General Assembly's intent that the **death** of an insured-decedent on or after (the effective date of the amendment), triggers application of the statute, notwithstanding that the insurance contract may have been entered into, and the divorce may have occurred, before the effective date of the statute."

Id., 54 P.3d at 856 (emphasis in original).

Accordingly, the South Carolina Court of Appeals in its Opinion in this case simply concluded, as has almost[2] every other Court that has examined the issue, that the application of this statute to the facts of this case is prospective, not retroactive, inasmuch as the event that triggers the application of the statute is the death of the policyholder.

Additionally, the Petitioner's argument overlooks the simple fact that, as a plain matter of statutory construction, the statute expressly applies to the facts of this case. Stripped to its bare essentials, the statute mandates that "a Court Order . . . relating to . . . the divorce . . . of a marriage . . . revokes any revocable . . . beneficiary designation made by a divorced individual to the divorce individual's former spouse in a governing instrument." S.C. Code §62-2-507(c). Since Bill's life

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[2] The few exceptions were based on the erroneous conclusion that such an application would be an unconstitutional Contracts Clause violation. See, *Metropolitan Life Insurance Company v. Melin*, 853 F.3d 410, 414 (CA8, 2017). This misconception was firmly laid to rest in *Sveen v. Melin*, 138 S.Ct. 1815 (2018) in which the United States Supreme Court firmly held that these statutes do not violate the Contracts Clause of the Constitution. *Id.*, 138 S.Ct. at 1818.

insurance policy is a "governing instrument" within the meaning of §62-2-507(a)(4), and his designation of Burnsed as the primary beneficiary of his life insurance policy was and is "revocable" within the meaning of §62-2-507(a)(5), and a divorce is an act that revokes the designation of a spouse as the beneficiary of a life insurance policy in accordance with §62-2-507(c), then according to the plain, clear and unambiguous language of the statute, it applies to the circumstances of this case. When a statute's language is plain and unambiguous, and conveys a clear and definite meaning, the Court has no right to impose another meaning. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).

The clear meaning of Section 62-2-507 is reinforced by Section 4(B)(1) of Act No. 100[3] which expressly mandates that the statute applies to estates of decedents dying **after** January 1, 2014. Similarly, §4(B)(2) of Act No. 100 mandates that the statute applies to judicial proceedings concerning estates of decedents and trusts commenced on or **after** January 1, 2014. In her Petition, the Petitioner attempts to re-write the foregoing provisions to read "probate estates" as opposed to "estates" which would include both probate and non-probate estates. It is respectively submitted that if the General Assembly had meant to say "probate estates" it would have said so. Instead, it purposely chose the broader, all-encompassing reference to simply "estates". It is worth noting that the driving force behind the enactment of §62-2-507, which extended the revocation-upon-divorce principle from wills to nontestamentary dispositions such as life insurance policies, was to eliminate the distinction between testamentary and nontestamentary transfers. S.C. Code Ann. §62-2-507, Reporter's Comment.

Finally, any remaining doubt as to the application of the statute to the facts of this case should be removed by §4(B)(4) of Act No. 100, which expressly provides that "any rule of

[3] Section 62-2-507 came into being in 2013 when the South Carolina General Assembly passed Act No. 100, with an effective date of January 1, 2014.

construction or presumption provided in this Act (applies) to governing instruments executed before" January 1, 2014. As previously noted, a life insurance policy is a "governing instrument" as defined in the statute, and the life insurance policy in this case was executed before January 1, 2014.

All of this make sense when the purpose and legislative intent behind §62-2-507 is considered. Revocation-upon-divorce laws are designed to clarify and effectuate a decedent's intent, not change it, after he or she is dead and unable to clarify his or her intent. These statutes apply only if, after a divorce, the now deceased person has not taken the formal steps during his or her lifetime to clarify his or her intent. The underlying premise behind these revocation-upon-divorce laws is that former spouses would not intend to benefit each other in any way other than that required by their divorce decree. In this case, the divorce decree between Bill and the Petitioner expressly provided that neither would have any financial obligation to the other in any form or fashion. In the decree, "each party waives any claim he/she may have against the other party." ROA, pg. 126. With respect to life insurance, an insured retains the right and ability to amend his beneficiary designation and has the right to clarify his intent to include a former spouse as a beneficiary. It is only when the insured fails to confirm the beneficiary designation after his divorce and before his death that the revocation-upon-divorce law kicks in and deems that the decedent would not have wanted his ex-spouse to benefit under the life insurance policy.

This is not a new concept. It dates back to English common law. It grew out of the English common law Doctrine of Revocation By Implication and was originally applicable only to wills, but then over the years gradually expanded to include life insurance policies and other nontestamentary instruments such as trusts. When §62-2-507 was amended in 2013 the Reporter's Comment explains:

> "The 2013 amendment expands this section to cover life insurance and retirement plan beneficiary designations, transfer on death accounts, and other revocable dispositions to the former spouse that the divorced individual established before the divorce or annulment. This section effectuates a decedent's presumed intent: without a contrary indication by the decedent, a former spouse will not receive any probate or nonprobate transfer as a result of the decedent's death."

S.C. Code Ann. §62-2-507, Reporter's Comment.

Section 62-2-507 is modeled on the Uniform Probate Code, which has been adopted by many states. One of those states is Utah, which has a revocation-upon-divorce statute similar to South Carolina's. In discussing that statute, the Tenth Circuit Court of Appeals stated:

> "The statute attempts to effectuate the intention of the donor, the Uniform Probate Code provision on which (the statute) is modeled derives from the recognition that when spouses are sufficiently unhappy with each other that they obtain a divorce, neither is likely to want to transfer his or her property to the survivor on death. Revocation upon divorce statutes reflect the legislative judgment that when the transferor leaves unaltered a will or trust or insurance beneficiary designation in favor of an ex-spouse, this failure to designate substitute takers more likely than not represents inattention rather than intention."

Id., 343 F.3d at 1318.

In the instant case, the presumption that Bill did not want his ex-spouse to receive his life insurance policy proceeds is not simply a presumption, but is a fact. The affidavits of numerous witnesses establish that Bill always wanted his son to be the beneficiary of this policy. The only reason he named Petitioner as the beneficiary was because his son was a minor at the time and he could not name him. As one witness put it, Bill would "roll over in his grave" if he knew that his ex-wife was trying to deprive his family of this policy, which is the major asset of his estate. It's worth noting that Bill and the Petitioner were married only a few short years, had no children together, she was just one of his ex-wives, and he was getting ready to become engaged to his longtime live-in girlfriend. The presumption -- that he did not want Petitioner to have his life insurance proceeds -- is the reality in this case. ROA, pp. 127-132.

III. The decisions from other states relied upon by the Court were misleading.

Petitioner argues that the Court of Appeals was "misled" in relying upon several cases because these cases relied upon "Professor Waggoner's theory" and "Professor Waggoner's theory" was rejected by the United States Supreme Court in *Sveen v. Melin*, 201 L.Ed.2d 180, 138 S.Ct. 1815 (2018). Quite frankly, this argument is not true and makes no sense.

In *Sveen v. Melin*, the United States Supreme Court never mentions Professor Waggoner, much less what Petitioner now calls "Professor Waggoner's theory."

The United States Supreme Court in *Sveen v. Melin* ratified and approved, as opposed to rejected, the cases upon which the Court of Appeals relied in deciding this case. The Supreme Court granted certiorari to hear *Sveen v. Melin* "to resolve a split of authority of whether the Contracts Clause prevents a revocation-upon-divorce law from applying to a pre-existing agreement's beneficiary designation." *Sveen v. Melin*, supra. 138 S.Ct. at 1821 (2018). Prior to *Sveen,* a minority of jurisdictions had held that the Contracts Clause was violated by the revocation-upon-divorce statute, while the vast majority of jurisdictions had concluded that the Contracts Clause was not violated. Those jurisdictions in the majority included *Stillman v. Teachers Ins. & Annuity Ass'n College Retirement Equities Fund,* 353 F.3d 1311 (10th Cir. 2003) and *In Re Estate of DeWitt,* 54 P.3d 849 (Colo. 2002) which are two (2) of the cases relied upon by the Court of Appeals in this case. Contrary to what Petitioner argues, *Stillman* and *In Re Estate of DeWitt* were ratified and reaffirmed by the United States Supreme Court in *Sveen v. Melin*, not rejected.

In *Sveen v. Melin* the United States Supreme Court in holding that revocation-upon-divorce statutes do not violate the Contracts Clause, stated:

> "First, the statute is designed to reflect the policyholder's intent – and so to support, rather than impair, a contractual scheme. Second, the law is unlikely to disturb any

> policyholder's expectations because it does no more than a divorce court could always have done. And third, the statute supplies a mere default rule, which the policyholder can undo in a moment."

Sveen v. Melin, 138 S.Ct. at 1822.

The Petitioner in her Petition for Rehearing takes the Supreme Court's reference to the fact that "an insurance policy is a contract under the Contracts Clause, and a will is not," completely out of context. What the Supreme Court actually said was:

> "As earlier described, legislatures have long made judgments about a decedent's likely testamentary intent after large life changes – a marriage, a birth, or a divorce. And on that basis, they have long enacted statutes revoking earlier-made wills by operation of law. Legislative presumptions about divorce are now especially prevalent – probably because they accurately reflect the intent of most divorcing parties. Although there are exceptions, most divorcees do not aspire to enrich their former partners. The Minnesota (revocation-upon-divorce) statute, like the Model Code it tracked, applies that understanding to beneficiary designations in life insurance policies and other will substitutes. Melin rightly notes that this extension raises a brand-new constitutional question because "an insurance policy is a contract under the Contracts Clause, and a will is not." But on answering that question, it matters that the old legislative presumption equally fits the new context: A person would as little want his ex-spouse to benefit from his insurance as to collect under his will. Or said otherwise, the insured's failure to change the beneficiary after divorce is more likely the result of neglect than choice. And that means the Minnesota (revocation-upon-divorce) statute often honors, not undermines, the intent of the only contracting party to care about the beneficiary term."

Id.

In addition to *Stillman* and *In Re DeWitt* the other two (2) cases cited by Petitioner in her Petition for Rehearing, the *Thrivent* case and the *Buchholz* case, also support the Decision by the Court of Appeals. *Thrivent Financial for Lutherans v. Andronescu*, 368 Mont. 256, 300 P.3d 117 (2013); *Buchholz v. Storsve*, 2007 S.D. 101, 740 N.W.2d 107 (2007).

In *Thrivent* the sequence of events was exactly the same as in the case *sub judice* – policy taken out naming spouse as primary beneficiary, divorce, revocation upon divorce statute enacted, and insured dies without changing the beneficiary designation. The ex-wife made the same claims

as the ex-wife in this case, and those claims were soundly rejected by the Supreme Court of Montana. First, the Court held that applying the statute to a divorce that pre-dated the statute's effective date, was not an impermissible retroactive application of the statute, because the statute does not go into effect until the time of the insured's death. *Id.*, at 368 Mont. at 260, 300 P.3d at 120. The Court likewise held that prior to the insured's death, the ex-wife had no vested rights in the proceeds of his insurance policy, and therefore the operation of the revocation upon divorce statute did not impair any vested rights. *Id.*

In *Buchholz v. Storsve* the factual background was also similar to the facts in the case *sub judice*, except a retirement plan was involved instead of a life insurance policy. In holding that South Dakota's revocation-upon-divorce statute applied to revoke the beneficiary designation, even though the divorce occurred prior to the effective date of the statute, where the death of the plan holder occurred after the effective date, the Court emphasized the legislative intent behind the enactment of the statute, stating:

> "The Uniform Probate Code provision on which (the revocation-upon-divorce statute) is modeled derives from the recognition "that when spouses are sufficiently unhappy with each other that they obtain a divorce, neither is likely to want to transfer his or her property to the survivor on death." Revocation-upon-divorce statutes "reflect the legislative judgment that when the transferor leaves unaltered a will or trust or insurance beneficiary designation in favor of an ex-spouse, this failure to designate substitute takers more likely than not represents inattention rather than intention. Thus, (the revocation-upon-divorce statute) attributes an intent to the donor based on an assessment of the typical donor's intention. We also note that the statutory attribution is rebuttable."

Id., 740 N.W.2d at 111.

The Buchholz Court also expressly rejected one of the arguments raised by Petitioner in this case – that Bill must have wanted her to have his life insurance policy proceeds because he never removed her as the beneficiary of the policy. In rejecting this argument, the South Dakota Supreme Court stated:

> "Storsve also argues that Linda's inactions of not removing him as the beneficiary indicates her intent to leave Storve as the beneficiary despite the couple's divorce. However, we observe that Courts have considered and rejected this same argument raised by Storsve. . . . [T]he purpose of the revocation-upon-divorce or re-designation statute, as similar statutes have been termed by various Courts, would be eviscerated if a former spouse could circumvent the automatic revocation effected by the statute by submitting self-serving testimony that the decedent spouse's inaction reflected an intention to revive his or her designation of the ex-spouse as the beneficiary."

Buchholz v. Storsve, 740 N.W.2d at 112, citations omitted. See *Estate of Lamparella*, 210 Ariz. 246, 109 P.3d 959, 966 (Ct.App.Div. 1 2005); and *Mearns v. Scharbach*, 103 Wash.App. 498, 12 P.3d 1048, 1053 (Div.3 2000).

The Court also firmly rejected the argument that application of the statute constituted an impermissible retroactive application in violation of the Contracts Clause. *Id.*

V. The revocation-on-divorce statute is neither "remedial or procedural."

Appellant respectfully disagrees with this assertion. The whole purpose behind revocation-upon-divorce statutes is to remedy the injustice that otherwise would occur. The need for this remedy has existed for over 100 years.[4] The need for this remedy is so widespread that it was incorporated into the Uniform Probate Code and subsequently adopted by at least 26 states.[5] As previously noted, the presumption is that a person would not want his ex-spouse, whom he went to the trouble of divorcing, to benefit from his insurance policy, and the failure to change the beneficiary after a divorce is the result of neglect, as opposed to choice, or inattention as opposed to intention, and the purpose of this statute is to honor, not undermine, the intent of the only contracting party to care about the beneficiary term. *Sveen v. Melin,* 138 S.Ct. at 1823.

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[4] "The legal system has long used default rules to resolve estate litigation in a way that conforms to decedent's presumed intent." *Sveen v. Melin*, 138 S.Ct. at 1819, citing 4 J. Kent Commentaries on American Law 507, 512 (1830).

[5] *Id., Sveen v. Melin,* 138 S.Ct. at 1819, fn 1.

VI. The AFLAC decision of the Massachusetts court correctly construes the revocation statute of that state, identical to ours, and should be followed.

The decision of the Supreme Judicial Court of Massachusetts in *American Family Life Assurance Company of Columbus v. Parker,* 488 Mass. 801, 178 N.E.3d 859 (2022) ("AFLAC") fully supports and is consistent with the decision of the South Carolina Court of Appeals in this case. In AFLAC, Sean took out a policy of life insurance on his life naming his wife Dawn as the primary beneficiary. Sean and Dawn then divorced and Sean subsequently died without ever having changed the beneficiary designation. The trial court ruled that Massachusetts' revocation-upon-divorce statute applied and revoked Sean's designation of Dawn as the beneficiary of his life insurance policy. Dawn appealed and the Supreme Judicial Court of Massachusetts affirmed. In so doing, the Court expressly rejected Dawn's claim that the statute did not apply retroactively to Sean's policy. Citing *inter alia*, *Sveen v. Melin*, supra, the Massachusetts Court expressly held that retroactive application of Massachusetts' revocation-upon-divorce statute was constitutional. *Id.,* 488 Mass. At 807, 178 N.E.3d at 865.

Additionally, the Massachusetts Court noted that the Massachusetts Act, like the Uniform Probate Code upon which it was modeled, also contained "retroactivity provisions", one of which was the provision that "any rule of construction or presumption provided in this Act applies to governing instruments executed before the effective date unless there is a clear indication of a contrary intent." *Id.,* 488 Mass. at 806, 178 N.E.3d at 864. This is the exact same language found in South Carolina's Revocation-Upon-Divorce Act. 2013 Act 100 Section 4(B)(4).

In addition to the express "retroactivity provisions" found in the Act, the Massachusetts Court emphasized the remedial intent behind the Act, i.e., the legislative purpose to put in place a rule that "better reflected the intention of divorced spouses." *Id.,* 488 Mass. at 807-08, 178 N.E.3d at 865. Accordingly, the Supreme Judicial Court of Massachusetts concluded that, based both on

the language of the Act as well as the purpose behind the Act, that the legislature intended for the Massachusetts Revocation-Upon-Divorce Act to be retroactive. *Id.,* 488 Mass. at 808, 178 N.E.3d at 866. This is the exact same conclusion reached by the South Carolina Court of Appeals regarding South Carolina's revocation-upon-divorce statute.

VII. The two Federal District Court decisions do not support retroactive application of the statute.

Perhaps reflective of the extensive research and due diligence exercised by the South Carolina Court of Appeals prior to rendering its decision, the Court discusses in its Opinion two (2) unpublished[6] cases decided by the United States District Court for the District of South Carolina. These two (2) cases are *State Farm Insurance Company v. Murphy*, 2017 WL 4551489, Case Number 2:15-cv-04793-DCN (October 12, 2017) and *Protective Life Insurance Company v. LeClaire,* 2018 WL 3222796, Civil Action Number 7:17-cv-00628-AMQ (July 2, 2018).

After reciting the facts from Judge Norton's opinion in *State Farm Life Insurance Company v. Murphy,* supra, the South Carolina Court of Appeals in its Opinion simply moved on in its Opinion to the next case, apparently concluding, rightfully so, that Judge Norton's Opinion did not shed any light on the issue before the Court of Appeals, inasmuch as it is apparent from the Opinion that neither Judge Norton, nor the parties before him, briefed, discussed, or even considered the issue which was before the Court of Appeals. It is clear from Judge Norton's Opinion that the contingent beneficiary never even raised the question as to the statute's applicability to a divorce that pre-dated the effective date of the statute. The Court of Appeals, accordingly, rightfully concluded that the Opinion did not warrant further discussion.

The second unpublished Opinion is the Opinion of Judge Quattlebaum in *Protective Life*

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[6] It is worth noting that unpublished opinions in both South Carolina and the Fourth Circuit have no precedential value. *Lanham v. Blue Cross and Blue Shield of South Carolina, Inc.*, 338 S.C. 343, 526 S.E.2d 253 (Ct.App. 2000) and SCACR 220(a); *Hogan v. Carter*, 85 F.3d 1113 (4th Cir. 1996) and Fourth Circuit Local Rule 32.1.

Insurance Company v. LeClaire, supra. The facts before Judge Quattlebaum are similar to the facts now before this Court – the couple divorced in 2003, the Act went into effect in 2014, and the insured died in 2016 without changing the designation of his ex-wife as the benefit of a policy of life insurance he had taken out while they were married. In concluding that South Carolina's revocation-upon-divorce statute revoked the designation of the ex-spouse as the beneficiary of the subject life insurance policy, despite the fact that the divorce predated the effective date of the statute, Judge Quattlebaum cut to the chase.

First, after noting that the cardinal rule of statutory construction is a Court must ascertain and give effect to the intent of the legislature and the plain text of the statute is considered the best evidence of the legislative intent, Judge Quattlebaum concluded that the plain language of S.C. Code Ann. §62-2-507(c)(1)(i) expressly directs that the statute be applied "retroactively." *Id.,* pg. 3.

Second, in response to the ex-spouse's argument that "retroactive" application of the statute would violate the Contracts Clauses of the State and Federal Constitutions, Judge Quattlebaum noted that this question had been "squarely" decided by the United States Supreme Court in *Sveen v. Melin* and there was no constitutional violation. Judge Quattlebaum emphasized that the United States Supreme Court in *Sveen v. Melin* specifically referenced South Carolina as one of twenty-six (26) states having adopted a revocation-upon-divorce law substantially similar to the one at issue before the Supreme Court. Judge Quattlebaum noted that "this binding precedent controls" and therefore rejected the ex-spouse's argument. *Id.,* pg. 4.

VIII. The court failed to recognize and apply the principle that a statute should be construed if possible to avoid a serious constitutional question.

The short answer is that there is no serious constitutional question involved in this case. Any constitutional challenges were firmly laid to rest by the United States Supreme Court in *Sveen*

v. Melin, supra. No vested right of an insured is stripped away by the statute. If an insured wishes for his ex-spouse to remain his beneficiary, he simply needs to reaffirm that fact after the divorce. The statute is based upon the presumption that Bill would not have wanted his ex-wife to benefit from the life insurance policy which he took out for his son's benefit. As previously noted, that presumption is the reality in this case.

IX. The Court overlooked the statute's grandfather clause.

This argument has been thoroughly examined, exhaustively discussed, and rejected many times. The named beneficiary has no vested right in the insurance policy because she can be removed at any time for any reason. Likewise, the statute does not impair any vested right of the insured because a Court, such as divorce court, could require him to maintain his ex-spouse as a beneficiary, and he always has the right under the revocation-upon-divorce statute to reaffirm his designation of his ex-spouse as the beneficiary, or to change the beneficiary to another party all together. No one's "rights" are taken away by the statute. See, e.g., *Sveen v. Melin,* supra, *Stillman v. Teachers Ins. & Annuity Ass'n College Retirement Equities Fund*, supra, and *In Re Estate of DeWitt*, supra, *Thrivent Financial for Lutherans v. Andronescu,* supra, and *Buchholz v. Storsve,* supra.

The Petitioner fails to cite any case which supports this proposition, for the simple reason that there does not exist any case that supports this proposition.

X. The implications of retroactivity.

Under this argument, the Petitioner postulates hypotheticals that have no basis in reality. It is much more realistic to assume that Bill relied upon the Petitioner's agreement, which was then incorporated into their decree of divorce, that she was waiving any and all claims to anything that was his. The average citizen would assume this would include her right to claim the proceeds of

his life insurance policy.

It is also more realistic to assume that Bill is one of those countless individuals for whom the revocation-upon-divorce statute was enacted to protect, that is, the failure to remove his ex-spouse as a beneficiary was the result of inattention as opposed to intention, compounded by a belief that there would always be time to do it later which, unfortunately, proved not to be the case.

CONCLUSION

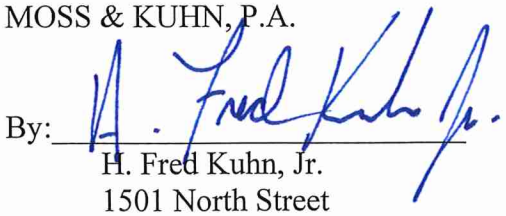
With its decision, the South Carolina Court of Appeals united South Carolina with the now unanimous majority of jurisdictions which have considered this issue and would apply the revocation-upon-divorce statute to the facts of this case. The Petitioner seeks for South Carolina to become the only State in the Union that would not apply the statute to the facts of this case. The decision by the Court of Appeals is supported by the express wording of the statute, the public policy underlying the statute, and the legislative intent which drove the General Assembly to enact the statute. The statute was enacted precisely for the purpose of avoiding the injustice which Petitioner now seeks.

It is accordingly respectfully requested that this Court follow the plain wording of the statute, effectuate the legislative intent and purpose behind the statute and deny the Petition for Rehearing, thereby fulfilling Bill's final wish.

[signature on following page]

Respectfully submitted,

MOSS & KUHN, P.A.

By: 

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Attorneys for the Appellants

Beaufort, South Carolina
December 19, 2022

RECEIVED
Dec 19 2022
SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE BEAUFORT COUNTY
COURT OF COMMON PLEAS
HONORABLE MARVIN H. DUKES, III
BEAUFORT COUNTY MASTER-IN-EQUITY AND
SPECIAL CIRCUIT COURT JUDGE

CASE NO.: 2018-CP-07-00211
APPELLATE CASE NO.: 2019-00518

Richard Walter Meier and the Estate of
William Carl Meier, by and through Conrad Meier,
its Personal Representative, Appellants,

vs.

Mary J. Burnsed, Respondent.

CERTIFICATE OF SERVICE

Undersigned certifies that the **Appellants' Return to Respondent's Petition for Rehearing** to which this certificate is affixed, was served upon the party (s) to this action by hand delivery or by depositing a copy of same, enclosed in a first class, postpaid wrapper properly addressed to the attorney(s) of record:

James B. Richardson, Esquire
1229 Lincoln Street
Columbia, South Carolina 29201

Paul H. Infinger, Esquire
Post Office Box 1537
Beaufort, South Carolina 29901

Peggy McMillan Infinger
Belk, Cobb, Infinger & Goldstein
Post Office Box 71121
Charleston, South Carolina 29415

in a post office or official depository under the exclusive care and custody of the United States Postal Service, on December 19, 2022.

By: Sue Radford
Sue Radford

MOSS & KUHN, P.A.
ATTORNEYS AT LAW

JAMES H. MOSS
jim@mossandkuhn.com

H. FRED KUHN, JR.
fred@mossandkuhn.com

December 19, 2022

The Honorable Jenny A. Kitchings
Clerk of the S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Richard Walter Meier and the Estate of William Carl Meier, by and through Conrad Meier its Personal Representative v. Mary J. Burnsed
Court of Appeals Case No.: 2019-000518

Dear Ms. Kitchings:

Please find enclosed the Appellants' Return to Respondent's Petition for Rehearing and Certificate of Service.

With kindest regards, I am

Very truly yours,

MOSS & KUHN, P.A.

H. Fred Kuhn, Jr.

HFKjr:sr
Enclosure

cc: James B. Richardson, Jr., Esquire
Paul H. Infinger, Esquire
Peggy McMillan Infinger, Esquire