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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM BEAUFORT COUNTY
COURT OF COMMON PLEAS

Marvin H. Dukes, III, Special Circuit Judge

Case No. 2023-000385
Court of Appeals Opinion No. 5947

On Writ of Certiorari
to the South Carolina Court of Appeals

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

v.

Mary J. Burnsed, ... Petitioner.

REPLY BRIEF OF PETITIONER

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RESPONDENTS' STATEMENT OF FACTS

Knowing that the material facts are undisputed and that the issue here is one of law, the insured's alternate beneficiary nonetheless initiated a battle of affidavits in an effort to influence the outcome. Almost everything said by respondents' allies in these affidavits about what William Meier is supposed to have thought, or was ignorant of, or meant to do, or forgot to do is inadmissible hearsay, of course.[1] Admissible, however, is the averment that Mr. Meier was reminded a year before his death how easily he could change his beneficiary if he wished to do so. He made no change.

Eleven months after marrying Mary Burnsed, William Meier purchased from a professional insurance agent this major life insurance policy.[2] Respondents' allies claim that Mr. Meier, a successful engineer/businessman, did not know that he could name his minor son as beneficiary. Even if this were true, they offer no explanation for why Mr. Meier did not designate his son when he reached majority, *twelve years* before Mr. Meier's death. The respondents' allies portray Mr. Meier as having wanted his son to receive the policy proceeds, but it is his brother's estate, not his son, which will receive the proceeds if the court of appeals decision stands.[3]

The respondents tell the Court that Mary Burnsed "was just one of Bill's ex-wives," Brief at 4 and 14, implying that he had a bevy of them. Mr. Meier's marriage to Mary Burnsed was his second and last before his death, nineteen years later.

If the hearsay contained in these affidavits were admissible and material, the most compelling would be the averment of Mary Burnsed that William repeatedly told

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[1] "[A]ffidavits shall be made on personal knowledge [and] shall set forth such facts as would be admissible in evidence . . . ." Rule 56(e), SCRCivP.

[2] In 2023 dollars, this was roughly a $475,000 straight life policy with a monthly premium of about $380.

[3] While this reply brief was in preparation, respondents' attorney informed the petitioner that Richard Meier, the contingent beneficiary, has died.

her that she remained his life insurance beneficiary.

As the respondent assured the circuit court, none of this is material. The operative facts are undisputed. Unless Section 62-2-507(c)(1)(i) applies in the case of a divorce occurring before the statute was enacted, Mary Burnsed is beneficiary.

I.

The terms *estate* and *probate estate* are used interchangeably in the Probate Code. They mean the decedent's property passing by testacy and intestacy.

The respondents maintain, Brief at 12, that Act No. 100 applies not only to property passing by testacy or intestacy but to "estates" — said to be a "broader, all-encompassing" entity. The decedent's "estate" is said to include property called the "non-probate estate," a term not found in the Probate Code.

On the contrary, the word ***estate*** — or sometimes ***entire estate*** — is used throughout the Probate Code to mean the decedent's property passing by testacy and intestacy — ***the probate estate***.[4] Life insurance benefits are not part of the

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[4]

Section 62-2-101: "Any part of ***the estate*** of a decedent not effectively disposed of by his will passes to his heirs as prescribed in the [intestacy] sections of this Code." (Emphasis added, here and throughout this note.) Thus, ***the estate*** consists of property passing by testacy and intestacy.

Section 62-2-103: "The part of ***the intestate estate*** not passing to the surviving spouse under Section 62-2-102, or ***the entire estate*** if there is no surviving spouse, passes as follows . . . ." Thus, the ***entire estate*** means the decedent's testate and intestate estate. In subsections 4 and 5, ***half of the estate*** means half of the combined testate and intestate estate.

Section 62-2-106: In this inheritance-by-representation provision, ***estate*** means the combined testate and intestate estate.

Section 62-2-301: In this omitted spouse provision, ***estate*** means the combined testate and intestate estate.

Section 62-2-304: In this pretermitted child provision, ***estate*** means the (continued...)

decedent's estate.

II.

Nothing about William Meier's intent needed clarification.

The respondent maintains that section 62-2-507 is "designed to *clarify* . . . a decedent's intent, not change it, after he or she is dead and unable to *clarify* . . . ." Brief at 12 (emphasis added).

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[4](...continued)
combined testate and the intestate estate.

Section 62-2-401: In the exempt property provisions beginning here, ***other assets of the estate*** means ***other assets of the probate estate***.

Section 62-2-504: In this "interested witness" provision, ***estate*** means ***probate estate***.

Section 62-2-506(b)(1): "[I]f [a] subsequent will makes a complete disposition of ***the testator's estate*** . . .," it is presumed to replace an earlier will. Since the testator can only dispose completely of ***the probate estate*** by a will, ***the testator's estate*** can only mean ***the probate estate***.

Section 62-2-510: Life insurance proceeds are denominated ***death benefits***, not part of the insured's ***estate***.

Section 62-2-606: In the nonademption provisions beginning here, ***estate*** means ***probate estate***.

In **subsection 62-2-803(a)**, a murderer is barred from taking any part of the victim's ***estate***. In **subsection 62-2-803(c)**, a murderer is barred from taking life insurance ***death benefits***. Thus, in separate provisions — subsections (a) and (c) — a murderer is barred from taking any part of the insured's ***estate*** in one subsection and any life insurance ***death benefits*** in another. Life insurance is not part of ***the estate***.

Section 62-2-803(h): This appears to be the only place in the Probate Code where the General Assembly chose to expand the word "estate" to include more than property passing by testacy or intestacy. The expanded term applies exclusively to a killer's estate. A killer's estate is explicitly expanded to include every kind of property**:** ". . . the killer's estate, *including, but not limited to,* property passing by intestacy, the killer's will, any trust of which the killer is a grantor, joint tenancy with right of survivorship and benefits payable under a life insurance policy, retirement plan, annuity or other contractual arrangement." Thus, the General Assembly knew how to include non-probate property in the term "estate" when it meant to do so — defining the estate of a killer and no one else.

To *clarify* means to resolve ambiguity. There is nothing ambiguous about an insured's designation of beneficiary. The respondents' idea is that this statute benevolently requires a divorcing insured to "clarify" whether he or she really *does* want to keep the ex-spouse as beneficiary. And the one and only way for the insured to "clarify" this intention is to re-designate the beneficiary, when no revocation statute exists and may never exist.

The requirement that a divorcing insured must re-designate in this fashion, years or decades before such a statute as 62-2-507 is enacted, *if ever,* would apply timelessly. In order to "clarify" this intent, every insured divorcing in a jurisdiction with no such statute would have to *re-designate* in anticipation that such a law might one day be passed and might be applied retroactively.

Applied retroactively, section 62-2-507 "clarifies" nothing. Retroactive application would nullify the intent of every insured who failed to guess that such a statute might one day be passed and be applied retroactively.

III.

The constitutional issue resolved in *Sveen v. Melin* is nothing like the constitutional issue nascent in the court of appeals decision.

The respondents maintain that the constitutional issue carried by the court of appeals decision was "firmly laid to rest" in the U.S. Supreme Court's *Sveen* decision. Nothing of the sort is true.

The Minnesota revocation statute involved in *Sveen* had been on the books for years when Sveen and Melin divorced. It was part of the fabric of Minnesota's family court law, the same as child support and equitable division. The issue was whether the State, in the exercise of its power to grant a divorce, could cancel a beneficiary designation made in an insurance contract purchased pre-statute without violating the

Contracts Clause.

The Court held that the statute *did* abridge the insurance contract, but not unconstitutionally — principally for two reasons. Since the insured was bound to know of this law (and both his lawyer and the divorce court judge surely *did* know of it), abridgement could easily be prevented. A non-concellation provision could be placed in the divorce decree, or the insured could reinstate the ex-spouse as beneficiary with the stroke of a pen the moment after the decree was filed. With those two simple ways to avoid revocation, the abridging statute was not unconstitutional.

Neither of those mechanisms is available to a divorcing spouse when no such statute exists. Why would a family court judge approve a divorce decree purporting to avoid canceling a beneficiary designation when the designation would not be canceled by the decree? And what would the insurer make of its insured attempting to "reinstate" a person as beneficiary when that person was already the beneficiary?

IV.

The laws which a person is obliged to know are those which exist.

The respondents rely upon the principle that ignorance of the law is no excuse.

What the respondents contend is that there is no excuse for failing to foresee a law which does not then exist.

Or do the respondents suggest that a divorcing insured must retain an attorney in the divorce jurisdiction for the rest of his life to maintain a vigil for the passage of such a law — and then, if one is enacted, predict retroactive application?

A revocation-on-divorce statute like ours is a reasonable policy choice of the legislature when applied to divorces *after enactment*, when everyone in the divorce courtroom knows or should know of it and can defeat its application easily. When applied retroactively to events long past, it can only be defended, as the respondents

attempt to do here, as a compulsory "clarification" of something already clear.

That is a feeble justifiction for applying a statute backwards when everything in the statute points to the usual and opposite intent.

CONCLUSION

Your petitioner again urges the Court to reverse.

Respectfully submitted,

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