

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Greenwood County
Donald B. Hocker, Circuit Court Judge

Opinion No. 2024-UP-293 (S.C. Ct. App. filed August 14, 2024)
Lower Court Case No. 2017-CP-24-01343

KAREN PETIT,

PETITIONER,

-v-

PHYLLIS JEAN VAN SWOL, USAA FEDERAL SAVINGS BANK,
and USAA INVESTMENT MANAGEMENT, CO.,

RESPONDENTS

APPELLATE CASE NO. 2024-001759

RETURN TO PETITION FOR A WRIT OF
CERTIORARI TO THE COURT OF APPEALS

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INDEX

	Page:
Index	i
Question Presented.....	1
Statement of the Case.....	1
Argument	4
The Court of Appeals properly affirmed the Circuit Court’s grant of summary judgment because, even when viewed in the light most favorable to the Petitioner, the record is devoid of any facts supporting any of the Petitioner’s causes of action	4
Conclusion	8

QUESTION PRESENTED

Did the Court of Appeals correctly affirm the Circuit Court's granting of summary judgment when the Petitioner could not produce even a scintilla of evidence supporting her claims?

STATEMENT OF THE CASE

On January 8, 2012, the Respondent Phyllis Krohn¹ and the Decedent Dr. Edward Petit boarded a cruise ship departing from Miami. (R. pp. 652:5-7; 538:10-15). That evening, the eighty-seven-year-old Decedent lost consciousness and was rushed ashore in Key West. (R. pp. 535:25-536:9; 563:25-564:9). The Decedent would subsequently be transferred to a hospital in Miami, where he would undergo several serious medical procedures, including heart catheterization and the implanting of a pacemaker. (R. pp. 536:10-537:21; 662:22-24) After a brief convalescence in the Miami Hospital, the Decedent returned to Greenwood, South Carolina. (R. p. 538:3-21)

Once home, the Decedent completed a Individual Retirement Account Designation of Beneficiary form (hereinafter "CBD") on January 23, 2012, and returned it to Respondent USAA Investment Management Co., thereby changing the beneficiaries of his IRA to his granddaughters. (R. pp. 150-52; 605-606; 554:14-23). This was the final step in a process begun by the Decedent in the fall of the previous year. (R. pp. 552:5-19; 555:2-6). The forms had been personally delivered to the Decedent by a representative of USAA and had been filled out by the Respondent at the request of the Decedent. (R. pp. 552:5-553:14; 553:15-554:25). There is no dispute that the signature on this form belonged to anyone other than the Decedent. (R. pp. 698:7-11; 699:21-700:9). Previously, the Decedent

¹ Since the initiation of the underlying lawsuit, the Respondent has married and is now Phyllis van Swol.

had designated his daughters, i.e., the Petitioner and her sister Kathy, as beneficiaries until 2007, when he substituted Kathy for a trust established for her care. (R. pp. 214-15).

The very next month, on February 27, 2012, the Decedent executed a Durable General Power of Attorney naming Henry Dorn as his attorney in fact. (R. p. 611-617). The decedent also designated his daughter Kathy as his healthcare power of attorney. (R. p. 666:15-16). Previously, the Decedent had designated the Respondent as his healthcare power of attorney and as a power of attorney for several financial institutions, including with USAA. (R. p. 815-825). Nevertheless, while the Decedent was in hospital in Miami, the Respondent made it clear that she no longer wished to be the Decedent's power of attorney for any purpose, (R. p. 666:3-8), a decision that the Decedent appears to have honored.

After returning to South Carolina, the Decedent's health continued a "sharp decline," (R. p. 664:9), resulting in his being moved into an assisted living facility. (R. 665:1-13). In 2013, the Petitioner and her sister Kathy brought incapacity proceedings in the Greenwood County Probate Court. (R. p. 661:16-21). By order of that Court dated May 5, 2013, the Petitioner and her sister were appointed as co-guardians for the Decedent. (R. pp. 162-65). The same order upheld the February 27, 2012 durable power of attorney but, seemingly at the request of Mr. Dorn, only to the extent that it covered the Decedent's financial affairs. *Id.* The Greenwood probate court entered a subsequent Protective Order authorizing Mr. Dorn as "duly appointed and acting attorney-in-fact for Edward L. Petit" to transfer funds held by USAA to another banking or investment institution in his discretion. (R. p. 224). Pursuant to this order, Mr. Dorn obtained account information from USAA, which included the designation of beneficiaries made by the Decedent on January

23, 2012. (R. pp. 119:9-15; 150-52). Using this information, Mr. Dorn transferred the funds held by USAA into an account with Wells Fargo. The newly established Wells Fargo IRA listed the Decedent's granddaughters as the primary beneficiaries. (R. pp. 119:9-15; 150-52). When the Decedent passed away on March 18, 2017, these funds (approximately \$450,000) were distributed as intended by the Decedent. (R. pp. 38, ¶¶ 4, 10; 119:9-15; 567:20-21).

The impetus behind the filing of this lawsuit involves a chance encounter between the Respondent and the Petitioner at the Greenwood farmers market not long after the Decedent's death. (R. p. 742:21-24). In her deposition, the Petitioner would claim that the Respondent approached her at the farmers market and essentially confessed to changing the Decedent's designation of beneficiaries. (R. pp. 742:14-44:23). The Respondent would flatly deny this version of events. (R. p. 568:1-569:21). As a result of this encounter, the Petitioner filed the underlying action on November 8, 2017. (R. p. 35-45). In her complaint, the Petitioner alleged causes of action for tortious interference with contractual relations, breach of fiduciary duty, negligence, and undue influence. *Id.* In the same lawsuit, the Petitioner brought related causes action against Respondents USAA Federal Savings Bank and USAA Investment Management Co. *Id.*

On August 5, 2019, the Respondent filed her motion for summary judgment, which was heard before the Honorable Donald B. Hocker on September 4, 2019. (R. p. 69-70). The Court of Common Pleas granted summary judgment in favor of the Respondent on all causes of action in its order dated and entered on January 15, 2020. (R. pp. 1-12). The Respondent moved for reconsideration by the Court on January 27, 2020, which was ultimately denied on May 20, 2020. (R. p. 23-27). The Petitioner appealed the Circuit

Court's decision to the South Carolina Court of Appeals with the filing of her notice of intent to appeal the lower Court's orders on June 17, 2020. The matter was briefed and oral arguments before the Court of Appeals were heard on April 12, 2023. The Court of Appeals affirmed the Circuit Court's decision in an unpublished opinion on August 14, 2024. The Petitioner submitted a Petition for Rehearing at the Court of Appeals on August 29, 2024, which was denied on September 16, 2024. The Petition for Writ of Certiorari was filed with this Court on November 5, 2024.

ARGUMENT

The Court of Appeals properly affirmed the Circuit Court's grant of summary judgment because, even when viewed in the light most favorable to the Petitioner, the record is devoid of any facts supporting any of the Petitioner's causes of action

In her Petition, the Petitioner asserts that “this Court of Appeals has left the Petitioner without a cause of action.” This is curious insofar as neither lower court failed to recognize any of the Petitioner's causes of action as valid. Rather, both courts merely—and correctly—observed that the Petitioner failed to provide any evidence supporting any of her claims. This is still the case now.

The Petitioner mentions almost in passing the “Court of Appeals’ weighing the evidence that was presented regarding Respondent Phyllis Krohn’s undue influence rather than viewing the evidence in the light most favorable to the Petitioner.” Despite this blanket assertion, the Petitioner still fails to offer any proof—even a scintilla of evidence—to support this claim. Nothing in the record demonstrates that the Decedent was incapacitated or that the Respondent exhibited “mental coercion which destroys the free agency of the [Decedent].” See *Dixon v. Dixon*, 362 S.C. 388, 398-99 (2005)(citing *Russell v. Wachovia*

Bank, N.A., 353 S.C. 208, 217-19 (2003); *Calhoun v. Calhoun*, 277 S.C. 527, 531 (1982)). Rather, and as the Court of Appeals recognized, the Petitioner rests her case on her own self-serving recollection of the Respondent’s “apology.” In so doing, the Petitioner side-steps the very fact that the Decedent’s execution of the CBD was the final step in a process begun before the Decedent’s heart attack. It also overlooks the fact that the Respondent’s only involvement was that she filled the form out at the request of the Decedent and that it was ultimately the Decedent who signed the form. Finally, the Petitioner’s argument does not account for the fact that the Decedent executed a number of other legal documents during the same time period which would later be upheld by the Greenwood County Probate Court. The Petitioner offers no evidence at all that any of these events were anything other than the product of the Decedent’s own free will.

The Petitioner takes significant issue with the Court of Appeals’ analysis of her intentional interference with contractual relationship claim.² In order to prevail, the Petitioner had to show “1) the existence of a contract; 2) knowledge of the contract; 3) intentional procurement of its breach; 4) the absence of justification; and 5) resulting damages.” *Edeco, Inc. v. Charleston Cnty. School Dist.*, 372 S.C. 470, 479, 642 S.E.2d 726, 731(2007)(citing *Kinard v. Crosby*, 315 S.C. 237, 240, 433 S.E.2d 835, 837 (1993)). Critical to the decisions of both lower courts was the fact that the Petitioner was not a party to the contract in question.³ Both courts relied on the Court of Appeals’ earlier decision in *Stribling v. Stribling*, 369 S.C. 400 (Ct. App. 2006), *superseded on other grounds by*

² In her brief, the Petitioner argues the elements underpinning the tort of intentional interference with prospective contractual relations. Petition for a Writ of Certiorari at 9-10. In her pleadings, the Petitioner alleged tortious interference with a contractual relationship. (R. pp. 40-41).

³ Of almost equal importance to the Court of Appeals was the indisputable fact that the USAA IRA no longer existed at the time of the Decedent’s death. *Petit*, 2024 WL 3813067, at *3.

statute, S.C. Code Ann. § 62-2-507, which analogized IRA beneficiaries to those of life insurance policies in order to find that the Petitioner had only a mere expectancy in her father's USAA IRA. *Stribling*, 369 S.C. at 406 (citing *Luszcz v. Lavoie*, 787 So. 2d 245, 248 (Fla. 2d Dist. Ct. App. 2001); *Rishel v. Estate of Rishel*, 781 N.E. 2d 735, 742 (Ind. Ct. App. 2003)). To support this finding, the Court of Appeals correctly observed that the language of the January 15, 2007 CDB makes clear that the Petitioner had no vested rights:

I understand this Change of Designation of Beneficiary will be effective on the date of receipt by the Custodian and that upon any change of beneficiary, the right of all previously designated beneficiaries to receive benefits under this Plan shall cease.

I retain the right to revoke this designation of beneficiary and to designate a new beneficiary at any time by communicating to the Custodian in writing.

Petit v. Krohn et al., No. 2020-000917, 2024 WL 3813067, at *1 (Ct. App. Aug. 14, 2024).

From the jump, the Petitioner argues that *Stribling* is inapplicable to the case at bar. On this point, the analysis in *Stribling* is not “*mere dicta*” as suggested by the Petitioner. Rather, the determination of the former spouse's interest in the decedent's IRAs in *Stribling* was a critical element to the Court of Appeals' analysis. The decedent in *Stribling* had designated his then-spouse as a beneficiary for two IRAs. 369 S.C. at 402-03. When the parties divorced, they executed a marital settlement agreement which contained a general waiver provision. *Id.* The family court approved the parties' agreement and the decedent subsequently died without removing his former spouse as beneficiary. *Id.* This being so, the Court of Appeals' finding that the spouse had only an expectancy issue was central to its ultimate decision and thus its reasoning was not “*mere dicta.*” *Id.* at 405-407 (finding, under a section heading entitled “Expectancy Interest” that spans two-thirds of the court's analysis, that the wife only had a mere expectancy interest in the decedent's IRAs).

Moreover, even if “*mere dicta*,” the principle set forth in *Stribling* is consonant with this Court’s precedent regarding beneficiaries of life insurance premiums. This Court has long held that an existing beneficiary of an insurance policy has no vested rights when the insured reserves the right to change beneficiaries. *See Horne v. Gulf Life Ins. Co.*, 277 S.C. 336, 338 (1982)(citing *Davis v. Southern Life Ins. Co.*, 249 S.C. 194 (1967); *Swygert v. Durham Life Ins. Co.*, 229 S.C. 199 (1956); *Davis v. Acacia Mut. Life Ins. Co.*, 177 S.C. 321 (1935)) (“Where the insured has reserved the right in his policy to change the beneficiary, the named beneficiary does not have a vested right during the insured’s lifetime. Instead, the named beneficiary has a mere expectancy; the complete control of the policy remains in the insured.”). The Court of Appeals’ decision is consistent with this body of precedent: “[l]ike the beneficiary in a life insurance policy, the IRA beneficiary merely has an expectancy interest in the IRA until the owner’s death.” *Stribling*, 369 S.C. at 406 (citing *Luszcz, supra*; *Rishel, supra*). Aside from hyperbole, the Petitioner offers no valid justification for applying one legal standard to the beneficiaries of IRAs and another to the beneficiaries of life insurance policies. The application of such a double standard would effectively nullify the language of the CBD cited above, wherein the Decedent explicitly reserved the right to revoke any beneficiary designation he made. This would effectively create an interest in the IRA that arguably the Decedent never intended to make.

Dispensing with *Stribling*, the Petitioner relies heavily on another Court of Appeals case, *Mayer v. M.S. Bailey & Son*, 347 S.C. 353 (Ct. App. 2001). This case, however, is completely inapposite to the facts before the Court now. The unambiguous distinction between *Mayer* and *Stribling* is that the contingent remaindermen in *Mayer* were statutorily defined as being “interested parties” pursuant to S.C. Code Ann. §§ 62-1-201(2) and S.C.

Code Ann. § 62-7-201(a). *Mayer*, 347 S.C. at 359. In this regard, the Petitioner cannot explain why it would make any sense to apply the South Carolina Trust Code to an IRA, especially given the case law cited *supra*.⁴

Finally, the Petitioner threads her arguments before this Court with the claim that the Respondent improperly used her USAA power of attorney. The record has is devoid any evidence whatsoever that the Respondent ever used any of the powers of attorney granted to her by the Decedent for any purpose not least to change any of the Decedent's USAA IRA. (R. p. 786:18-23). The undeniable evidence is that, while the Petitioner did fill out the CBD for the Decedent, it is the Decedent's signature at the bottom of the page. In the end, these arguments do not present any material issues of fact.

CONCLUSION

The Petitioner has not demonstrated a compelling reason pursuant to Rule 242(b), SCACR, for this Court to grant Certiorari to the Court of Appeals. For this and the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

December 3, 2024

/s/ Joshua S. Nasrollahi
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Phyllis Jean Van Swol

⁴ The Appellant argues that, despite the existence of *Stribling*, that this is a matter of first impression. In her Petition, she claims that the Respondent "stipulated" at the hearing on Respondent's motion for summary judgment that this case was a matter of first impression for South Carolina courts. The Respondent made no such stipulation. Rather, counsel for the Respondent was unaware of *Stribling* and, instead, relied on precedent involving insurance beneficiaries to advance the same legal premise delivered in *Stribling*. (R. p. 863:3-24). At the exact same hearing, Counsel for USAA brought *Stribling* to the trial court's attention. (R. pp. 870:6-22).