

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

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

Appellants,

vs.

Mary J. Burnsed,

Respondent.

APPELLANTS' INITIAL BRIEF

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STATEMENT OF THE CASE

A. INTRODUCTION

This is an action to determine who is entitled to receive the proceeds of a life insurance policy (hereinafter the "Policy") issued by the Defendant Transamerica Premier Life Insurance Company, Inc. (hereinafter "Transamerica") in the amount of \$250,000.00 on the life of William Carl "Bill" Meier (hereinafter "Bill"), who died on December 26, 2017. The Respondent Mary J. Burnsed (hereinafter "Burnsed") contends that she is entitled to the proceeds of the life insurance policy because she was the named beneficiary at the time of Meier's death. The Appellants contend that the designation of Burnsed as the beneficiary of the life insurance policy was revoked by operation of §62-2-507 of the South Carolina Code of Laws, which automatically revokes, upon divorce, the designation of an ex-spouse as the beneficiary of a life insurance policy.

B. PROCEDURAL HISTORY

This action was commenced by the filing of a Summons and Complaint in the Beaufort County Court of Common Pleas on February 5, 2018. In their Complaint, the Appellants alleged that the Final Decree of Divorce granted to Bill and the Respondent Burnsed revoked the designation of the Respondent Burnsed as the beneficiary of the Policy in accordance with §62-2-507 of the South Carolina Code of Laws and request that the Court declare the Appellant Richard Walter Meier as the primary beneficiary of the Policy and the Estate of William Carl Meier as the contingent beneficiary of the Policy, directing Transamerica to pay the proceeds of the Policy to the Appellant Richard Walter Meier as the primary beneficiary.

On April 12, 2018 the Respondent Burnsed filed her Answer, Counterclaim and Cross-Claim, in which she denies the material allegations of the Complaint and requests that the Court declare her to be the beneficiary of the Policy.

On April 20, 2018 the Appellants filed their Reply to the Counterclaim of the Respondent Burnsed, denying the material allegations thereof.

On April 23, 2018 Transamerica filed its Answer, Counterclaim and Interpleader, and Cross-Claim and Interpleader, requesting that it be authorized to pay the life insurance policy proceeds into the Court and be discharged from any further liability under the Policy. On April 20, 2018 the Appellants, and May 30, 2018 the Respondent Burnsed, respectively, filed Motions for Summary Judgment.

On June 18, 2018 a Consent Order was issued authorizing Transamerica to pay the life insurance policy proceeds of \$250,000.00, plus any applicable interest, into the registry of the Beaufort County Court of Common Pleas. Transamerica subsequently made this deposit and on August 16, 2018 an Order was issued dismissing Transamerica from this case.

On August 10, 2018 the Appellants' Motion for Summary Judgment was denied.

On March 21, 2019 an Order was entered granting the Respondent's Burnsed's Motion for Summary Judgment.

On March 25, 2019 the Appellants' filed their Notice of Appeal to the South Carolina Court of Appeals.

C. FACTUAL BACKGROUND

Bill and Burnsed were married on July 19, 1997. On June 16, 1998, Bill took out a policy of life insurance on his life with Transamerica. He named Burnsed as the primary beneficiary of the policy. Bill's son from a prior marriage, Conrad Meier (the current Personal

Representative of Meier's Estate), was a minor at the time, so Bill named his brother, the Appellant Richard Walter Meier, as the contingent beneficiary.

On November 26, 2002 Bill and Burnsed divorced. Following their divorce, Bill maintained ownership of the Policy, paid the premiums as they fell due, and maintained the Policy on his life in full force and effect.

In 2013, the South Carolina General Assembly amended §62-2-507, expressly providing that a divorce decree automatically revoked the designation of a spouse as the beneficiary of a life insurance policy.

On December 26, 2017 Bill suddenly and unexpectedly died. Prior to his death, he did not change the beneficiary designation on his life insurance policy.

D. STANDARD OF REVIEW

The Appellate Court reviews the grant of a summary judgment motion under the same standard applied by the Trial Court pursuant to Rule 56(c) of the South Carolina Rules of Civil Procedure. *Huffman v. Sunshine Recycling, LLC*, 426 S.C. 262, 270, 826 S.E.2d 609, 615 (2019). Summary judgment is properly granted when, viewing the evidence and inferences to be drawn therefrom in a light most favorable to the non-moving party, the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRPC; *Woodson v. DLI Properties, LLC*, 406 S.C. 517, 528, 753 S.E.2d 428, 434 (2014).

In determining whether any triable issues of fact exists for summary judgment purposes, the evidence and all the inferences that can be reasonably drawn from the evidence must be viewed in the light most favorable to the non-moving party who is only required to submit a

mere scintilla of evidence in order to withstand a motion for summary judgment. *Hancock v. Mid-South Management Company, Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801, 802 (2009).

When reviewing a grant of summary judgment, the Appellate Court reviews questions of law *de novo*. *Ziegler v. Dorchester County*, ___ S.C. ___, 828 S.E.2d 218, 220 (2019).

“In determining whether any triable issues of fact exists, the Trial Court must view the evidence and all reasonable inferences that may be drawn therefrom in the light most favorable to the party opposing summary judgment.” *Pallares v. Seinar*, 407 S.C. 359, 365, 756 S.E.2d 128, 131 (2014).

“Because summary judgment is a drastic remedy, it should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial.” *In Re Estate of Brown*, 424 S.C. 589, 596, 818 S.E.2d 770, 774 (Ct.App. 2018).

I. THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT TO BURNSED BY CONCLUDING AS A MATTER OF LAW THAT THE 2013 AMENDMENT OF S.C. CODE ANN. §62-2-507 DID NOT REVOKE THE DESIGNATION OF BURNSED AS THE BENEFICIARY OF THE POLICY.

In granting summary judgment to Burnsed, the Trial Judge concluded that applying the 2013 amendment of S.C. Code Ann. §62-2-507 to the facts of this case would be a retroactive application, and that such retroactive application would be wrong because retroactive application was neither expressly nor impliedly authorized. Order, pp. 3 – 7.

The Appellants respectfully submits that the Trial Judge erred in reaching his above conclusions, inasmuch as: (1) Application of the amendment to the facts of this case is not a retroactive application; (2) “Retroactive” application of the amendment is expressly authorized; and (3) “Retroactive” application is impliedly authorized.

Each of these points is addressed in turn below, but first, a closer examination of the facts of this particular case is warranted, inasmuch as the facts of this particular case present a classic illustration of the motivation and legislative intent behind the amendment to §62-2-507.

A. FACTUAL BACKGROUND

William Carl “Bill” Meier died on December 26, 2017. His death was “completely unexpected.” Up until the moment he died “he appeared to be in good health, with a long life ahead of him.” Hatfield Affidavit, ¶5. On that date, Bill and his best friend were playing golf. After Bill took his second shot on the sixth hole, he “collapsed and was unresponsive,” passing away a few moments later. Up until that moment Bill appeared to be “hail, hearty and in good general health.” Carroll Affidavit, ¶3

Bill and Burnsed were married on July 19, 1997. They did not stay together very long, and a Final Decree of Divorce was issued on November 26, 2002. Burnsed Answer and Counterclaim, ¶3. The Decree of Divorce, which was granted on the grounds that the parties had

lived separate and apart since June 15, 2001, gives neither party any interest in the assets of the other party, and expressly recites that each party waives any claim he or she may have against the other party. Decree of Divorce, pg. 2, Exhibit 7 to Answer, Counterclaim and Crossclaim of Transamerica.

On July 16, 1998, while he was married to Burnsed, Bill took out the subject life insurance policy with Transamerica. Bill wanted to name his son Conrad as the beneficiary, but could not since Conrad was still a minor. Cummins Affidavit, ¶4. Accordingly, he named his then wife Burnsed as the primary beneficiary, and his brother, the Respondent Richard Walter Meier, as the contingent beneficiary. Exhibit 8 to Answer, Counterclaim and Crossclaim of Transamerica.

After their divorce, Burnsed and Bill remained friends, but they were not particularly close. According to his best friend, it was “simply Bill’s nature” to maintain a “friendly and cordial relationship with Ms. Burnsed.” Carroll Affidavit, pg. 6. In his words, Burnsed “was just one of his (Bill’s) many friends.” *Id.* Burnsed “was just one of Bill’s ex-wives,” and Bill “had many friends with whom he was much closer than (Burnsed).” Hatfield Affidavit, ¶6.

At the time of his death, Bill and his girlfriend, Martha Hatfield, lived together. They had begun dating in or around May of 2016 and were romantically involved with each other. Hatfield Affidavit, ¶3 and ¶4. At the time of his death, Bill “was making plans for the future.” As his best friend David Carroll put it: “(Bill) had discussed with me buying jewelry and a ring for his longtime girlfriend, Martha Hatfield, after the holidays. He was looking forward to continuing and deepening his relationship with her.” Carroll Affidavit, ¶4. Martha Hatfield confirmed that “Bill and I discussed the future, including spending the rest of our lives together.” Hatfield Affidavit, pg. 7.

Most importantly, it is undisputed that it was Bill's desire and intent that his family, particularly his son Conrad, be the beneficiary of the subject life insurance policy. Martha Hatfield stated:

"Bill was close to his family, particularly his son Conrad. Bill discussed with me his life insurance policy, which he indicated was significant. He faithfully paid the premium every month. It was Bill's desire and intent that, in the event of his passing, the proceeds from his life insurance policy would go to his family, particularly for the benefit of his son Conrad.

The bulk of Bill's estate is the proceeds of his life insurance policy. Bill would never have "disinherited" his son Conrad for the benefit of (Burnsed). Bill would roll over in his grave if he knew that "(Burnsed) was trying to take these benefits away from his family.

From comments Bill made to me over the years it is clear that it was Bill's belief that he had totally and completely severed all financial ties with (Burnsed) and that she would have no claim to anything of his, including his life insurance policy."

Hatfield Affidavit, pp. 7, 8 and 9. This was confirmed by Bill's best friend, David Carroll, who stated:

"Although we did not get into specifics, prior to his passing Bill had discussed with me his desire and intent that, when he eventually did pass, "everything" go to his son, Conrad.

Over the years, I had met one of Bill's ex-wives, Mary Burnsed. Bill had maintained a friendly and cordial relationship with Ms. Burnsed. This was simply Bill's nature. Although Ms. Burnsed was a friend of Bill's, she was just one of his many friends. Bill had other friends, as well as family, with whom he was close. Bill would never have left the bulk of his estate to Ms. Burnsed to the exclusion of his family. Ever since I have known him, Bill considered himself and Ms. Burnsed to be financially independent of each other, with no financial ties between them."

Carroll Affidavit, ¶¶ 5 and 6.

Finally, approximately a year prior to his death, Bill had a discussion concerning this life insurance policy with a friend of his who is a paralegal. He was apparently under the mistaken

impression that he needed to prepare a Will to change the beneficiary. The paralegal explained that a Will was not necessary for this purpose. The paralegal stated:

“Bill went on to explain that he had taken this policy out many years ago, when Conrad was a child, and he could not name Conrad as the beneficiary since he was a minor. During the course of our conversation, Bill never told me the identity of the current beneficiary of his policy, but he made it clear that it was his intent and desire that the beneficiary of his life insurance policy had to be changed to someone other than who was designated at that time.”

Cummins Affidavit, pg. 3. As he was leaving, Bill told the paralegal that it was his intent to change the currently designated beneficiary. *Id.*, ¶4.

Unfortunately, he unexpectedly passed away before doing so.

B. APPLICATION OF THE AMENDMENT TO THE FACTS OF THIS CASE IS NOT A RETROACTIVE APPLICATION

The language and meaning of §62-2-507 is clear, plain and unambiguous. First, Meier’s life insurance policy is a “governing instrument” within the meaning of §62-2-507(a)(4) of the South Carolina Code of Laws.

Second, Meier’s 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) of the South Carolina Code of Laws.

Finally, the Decree of Divorce entered into between Meier and Burnsed 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) of the South Carolina Code of Laws.

According to the plain, clear and unambiguous language of the statute the Trial Court erred in granting summary judgment to Burnsed.

C. STATUTORY CONSTRUCTION

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 cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Id.* The best evidence of legislative intent is the text of the statute. *Wade v. State*, 348 S.C. 255, 259, 559 S.E.2d 843, 844 (2002). "All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute." *Broadhurst v. City of Myrtle Beach Election Commission*, 342 S.C. 373, 380, 537 S.E.2d 543, 546 (2000). "Statutes, as a whole, must receive practical, reasonable, and fair interpretation, consonant with the purpose, design, and policy of lawmakers." *TMS Mills, Inc. v. South Carolina Department of Revenue*, 331 S.C. 611, 624, 503 S.E.2d 471, 478 (1998). "In some cases, legislative history may be probative in determining the legislature's intent." *Palmetto Company v. McMahon*, 395 S.C. 1, 5, 716 S.E.2d 329, 331 (Ct.App. 2011).

Accordingly, an overview of the legislative history of an act may be instructive. See, e.g., *Doe v. State*, 421 S.C. 490, 499-500, 808 S.E.2d 807, 811-12 (2017).

D. LEGISLATIVE HISTORY

In general, revocation-upon-divorce laws are rules of construction designed to clarify a decedent's intent, not change it, after he or she is dead and is unable to clarify his or her intent. *Waggoner, Lawrence W., Rights in Our Multiple-Marriage Society: The Revised Uniform Probate Code*, 26 Real Property Probate and Trust Journal, 683, 699-700 (1992). They are

rules that apply in default only if, after a divorce, the now deceased person had not taken the formal steps during his or her lifetime to clarify his or her intent.

The underlying premise of the 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. Obviously, this is an assumption, but it is one steeped in common sense and every day observation and experience. See *Spitko, E. Gary, The Expressive Function of Succession Law and The Merits of Non-Marital Inclusion*, 41 *Ariz. Law Review* 1063, 1084 and footnote 112 (1999).

These revocation-upon-divorce laws recognize and yield to the modifiable nature of both Wills and Will substitutes, and do not impede a decedent's ability to amend a Will, Trust, or beneficiary designation any time before death. With respect to life insurance, the insured retains the right and ability to amend his or her beneficiary designation to clarify his or her intent to include a former spouse as a beneficiary. However, if the insured does not so provide and fails to confirm the beneficiary designation after divorce and before death, the revocation-upon-divorce law kicks in and deems that the decedent would not have wanted his or her ex-spouse to benefit under the Will, Trust, or life insurance policy.

Revocation-upon-divorce is not a new concept. Revocation-upon-divorce was originally an English common law principal that grew out of the Doctrine of Revocation By Implication. See *Wilmit, Alan S. Applying the Doctrine of Revocation by Divorce to Life Insurance Policies*, 73 *Cornell L. Rev.*, 653, 655 (1988). Eventually, revocation-upon-divorce became untethered from the Doctrine of Revocation By Implication, and it became its own common law doctrine in the early twentieth century. *Id.*, at 656. See also *Durfee, Revocation of Wills by Subsequent Change in the Condition or Circumstances of the Testator*, 40 *Mich. L. Rev.* 406, 406 (1942)

“Among the oldest rules in the Law of Wills are those by which a Will is held to be revoked by implication by certain changes in circumstances of the testator.”); and *Stein, Implied Revocation of Wills After Divorce and Property Settlement*, 4 Duke Bar Journal 122, 126 (1954) (“In the vast majority of cases the testator’s failure to revoke his Will subsequent to divorce is due to neglect, and that to find an implied revocation usually gives effect to a testator’s real intentions.”).

In 1946 the American Bar Association adopted a model probate code which provided “If after making a Will the testator is divorced, all provisions in the Will in favor of the testator’s spouse so divorced are thereby revoked.” Model Probate Code, Section 53 (1946).

In 1962, the Counsel of the American Bar Association Section of Real Property Probate and Trust Law appointed a special committee to consider updating the model code to promote greater national uniformity. This project culminated with the model code being replaced in 1969 by the Uniform Probate Code. Amado, *Uniform Probate Code Section 6-20i: A Proposal to Include Stocks and Mutual Funds*, 72 Cornell L. Rev., 397, 406, Footnote 74 (1987). The 1969 Uniform Probate Code retained the revocation-upon-divorce provision for devises by Will to the testator’s former spouse. Uniform Probate Code, §2-508 (1969).

In 1990 the Uniform Probate Code was amended to revoke upon divorce both probate and non-probate transfers “including revocable *inter-vivos* trusts, life insurance and retirement plan beneficiary designations, payable on death accounts, and other revocable pre-divorce dispositions made by a divorced individual to the former spouse.” Uniform Probate Code, §2-804; *Waggoner, Rights in our Multiple Marriage Society: The Revised Uniform Probate Code*, 26 Real Property Probate and Trust Journal, 683, 693 (1992). This inclusion of life insurance policies and other non-testamentary instruments to the revocation-upon-divorce statute was

motivated by several factors. The drafters of the Uniform Probate Code enumerated these factors as follows:

In the twenty or so years between the original promulgation of the Code (in 1969) and the 1990 revisions, several developments occurred that prompted the systematic round of review. Three themes were sounded: (1) The decline of formalism in favor of intent-serving policies; (2) The recognition that Will substitutes and other *inter vivos* transfer have so proliferated that they now constitute a major, if not the major, form of wealth transmission; (3) The advent of the multiple-marriage society, resulting in a significant fraction of the population being married more than once and having stepchildren and children by previous marriages and in the acceptance of a partnership or marital-sharing theory of marriage.

Uniform Probate Code, Article II, Prefatory Note (1990).

In short, the drafters of the Code recognized that the rationale for the revocation-upon-divorce provision applied equally to probate and non-probate transfers.

South Carolina's Probate Code is modeled after the Uniform Probate Code. See, e.g., *Wilson v. Dallas*, 403 S.C. 411, 429, 743 S.E.2d 746, 756 (2013). Following the 1990 amendment to the Uniform Probate Code, the South Carolina General Assembly amended §62-2-507 pursuant to 2013 South Carolina Laws Act 100 (SB 143). This amendment, which went into effect on January 1, 2014 added non-probate transfers to those effected by the revocation-upon-divorce statute. The Reporter's Comment to §62-2-507 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 non-probate transfer as a result of the decedent's death."

S.C. Code Ann. §62-2-507, Reporters Comment.

E. APPLICATION OF 62-2-507 TO THE FACTS OF THIS CASE IS NOT A
RETROACTIVE APPLICATION

The Trial Judge granted summary judgment to Burnsed based upon his conclusion that applying §62-2-507 to the facts of this case would constitute an impermissible retroactive application.

It is respectfully submitted that the Trial Court erred in concluding that applying §62-2-507 to the facts of this case constitutes a retroactive application of the statute.

The sequence of events in this case is undisputed. Bill and Burnsed were married on July 19, 1997, Bill took out the Transamerica Life Insurance Policy on July 16, 1998. Bill and Burnsed divorced on November 26, 2002. The effective date of the amendment to §62-2-507, expanding its scope to include life insurance beneficiaries, was January 1, 2014. Bill died on December 26, 2017.

The Trial Court concluded that because the divorce took place prior to the statute's effective date, applying the statute to the facts of this case would be a retroactive application. This was error. This is because the event triggering the application of the statute was Bill's death, not his divorce, and his death took place after the statute's effective date.

"A statute does not operate "retrospectively" merely because it is applied in a case arising from conduct antedating the statute's enactment." *Landgraf v. USI Film Products*, 511 U.S. 244, 269, 114 S.Ct. 1483, 1499 (1994). In other words, simply because the divorce antedated the statute's enactment, does not automatically mean that the statute is retroactive. Instead it is the event that triggers the application of the statute that controls, and in this case that event is the death of the insured. In short, it was not until Bill's death that the statute either applied or went into effect.

This precise issue has been addressed by the Appellate Courts of other States.

For example, in *Stillman v. Teacher's Insurance and Annuity Association*, 343 F.3d 1311 (10th Cir. 2003). Dale purchased two (2) insurance annuities in 1965 that allowed him to designate a beneficiary who would receive death benefits upon his death. At that time, Dale was married to Marilyn and he named Marilyn as the primary beneficiary. In 1970 Dale and Marilyn divorced. In 1998 the Legislature of Utah (where Dale and Marilyn lived) amended Utah's revocation-upon-divorce statute to expand its scope to include life insurance policies. In 1999 Dale died. Marilyn claimed that she was entitled to the life insurance benefits inasmuch as Dale never changed her designation as the beneficiary. Dale's children who were the contingent beneficiaries, claimed that the amended statute revoked Dale's designation of Marilyn as the beneficiary as a result of their divorce. The Tenth Circuit Court of Appeals ruled with Dale's children, concluding that the statute applied to revoke Dale's designation of Marilyn as the beneficiary even though the amended statute went into effect after their divorce. The Court, after 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 dates: (1) the date the statutes went into effect, and (2) the date of the activity to which the statute applies.

Id., 343 F.3d at 1315. Noting that the effective date of the statute is rarely an issue, the Court noted that the key inquiry is about “what activity is targeted by the statute.” *Id.* In concluding that it was Dale's death that triggered the application of the statute, as opposed to the divorce that had taken place years earlier, the Tenth Circuit Court of Appeals looked at the purpose of the statute and its application.

“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 (quoting Statement of the Joint Editorial Board for Uniform Probate Code Regarding the Constitutionality of Changes in Default Rules as Applied to Pre-Existing Documents, pg. 4 (1991)). The Court concluded that it was only when Dale died that the application of the statute could be determined. Up until he passed away, he could have changed Marilyn’s designation as the beneficiary of his policy, or alternatively, he could have confirmed Marilyn’s designation as the beneficiary of his policy. *Id.* Accordingly, the statute did not go into effect, nor did the statute have any applicability, until Dale died.

The same result was reached in *In Re Estate of DeWitt*, 54 P.3d 849 (S.Ct. of Colo. 2002). As in the case *sub judice*, the life insurance policy was taken out while the parties were married and the parties subsequently divorced. The revocation-upon-death statute was amended to include life insurance beneficiaries after the divorce, and the insured died after the statute’s amendment. The Supreme Court of Colorado found that the statute acted to revoke the designation of the 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).

F. THE AMENDMENT OF §62-2-507 IS EXPRESSLY RETROACTIVE

As the Trial Court correctly noted, the South Carolina General Assembly may expressly provide that a statute be applied retroactively. In concluding that the General Assembly did not

expressly provide for the statute to be applied retroactively, the Trial Court overlooked §4(b)(4) of the Act, which provides as follows:

“[S]ubject to item (5) and subsection (C) of this section, any rule of construction or presumption provided in this act applies to **governing instruments** executed **before** the effective date of the act unless there is a clear indication of a contrary intent in the terms of the **governing instrument**.”

Act No. 100 of 2013, Section 4(b)(4) (emphasis added).

The General Assembly expressly defined a “governing instrument” to include “life insurance beneficiary designations.” S.C. Code §62-2-507(a)(4).

Accordingly, the South Carolina General Assembly plainly and clearly mandated that the Act apply to “governing instruments,” i.e., a life insurance beneficiary designation, “executed before the effective date of the act unless there is a clear indication of a contrary intent” in the terms of the life insurance beneficiary designation.

The Act is expressly retroactive with respect to a life insurance beneficiary designation.

G. NON-EXPRESS RETROACTIVE APPLICATION

“There are three circumstances where retroactive application of a statute may be justified: (1) Where legislative intent expressly or impliedly indicates retroactive application is desirable; (2) Where the statute is ameliorative or curative in nature; or (3) Where fulfillment of the parties’ reasonable expectations may require the statute’s retroactive application.” *Sutherland Statutes and Statutory Construction*, §41:4 (Seventh Edition, November 2018 Update) (numerous footnoted citations omitted); see, e.g., *State v. Mark Warkwart*, 182 Wash. App. 335, 352-53, 329 P.3d 108, 117 (2014) (“Washington Courts disfavor retroactive application of a statute. Nevertheless, Courts may apply an amendment retroactively is (1) the legislative intended to apply the amendment retroactively, (2) the amendment is curative and clarifies or technically corrects ambiguous statutory language, or (3) the amendment is remedial in nature.”).

“A statute or amendment is not made retroactive merely because it draws upon antecedent facts for its operation.” 2 *Sutherland Statutory Construction* §41:4 (Seventh Edition, November 2018 Update).

Additionally, “when a statute is addressed to remedies or procedures and does not alter substantive rights, it will be applied to pending cases.” *United States v. Real Property In Section 9*, 241 F.3d 796, 799 (Sixth Cir. 2001).

These principals have been expressly recognized in South Carolina, to-wit:

“Generally, statutes are applied prospectively. However, they may be applied retroactively if (1) a specific provision or clear legislative intent requires retroactive application or (2) no clear expression of legislative intent is present but the statute is remedial or procedural in nature.”

State v. Hilton, 406 S.C. 580, 586-87, 752 S.E.2d 549, 552 (Ct.App. 2013). In the instant case, the amendment to §62-2-507, treating the designation of the beneficiary of a life insurance policy the same as the designation of the beneficiary of a Will, is clearly both remedial and procedural. The statute simply creates a rebuttable presumption that revocation of the beneficiary designation is what the insured desired. See, e.g., *Corban v. Chesapeake Expiration, LLC*, 149 Ohio State 3d 512, 521, 76 N.E.3d 1089, 1099 (2016) (Evidentiary rules, including conclusive statutory presumptions, are procedural in nature).

In the instant case, the statute simply creates a presumption. This presumption could have been rebutted by Bill at any time by simply confirming his prior designation as Burnsed as the beneficiary of his life insurance policy.

The amendment to §62-2-507 operates to provide a rule of construction or presumption establishing a decedent’s probable intent. Such rules of construction or presumptions are common and abound throughout South Carolina’s Probate Code, for example, in the area of pretermitted spouses, pretermitted children, simultaneous death provisions, and anti-lapse,

statutes. See, e.g., S.C. Code 62-2-301; 62-2-302; 62-1-500, et seq.; and 62-2-603. In amending §62-2-507 the South Carolina General Assembly simply made the revocation upon divorce presumption equally applicable to both probate and non-probate transfers. The amendment attempts to effectuate the intention of the decedent. If a decedent does not want the statutory presumption applied, all he or she has to do is specifically provide otherwise. A decedent is not forced to live with the presumption. The amendment avoids the often inequitable result arising from procrastination, lapsed memory, or the common belief that there will always be time to do it late. The amendment speaks for the decedent once death has sealed his lips.

H. SOUTH CAROLINA PRECEDENT

Although there is no South Carolina State Appellate Court decision on point, this issue has been presented recently to the United States District for the District of South Carolina. *Protective Life Insurance Company v. LeClaire*, 2018 WL 3222796 (DSC, July 2, 2018). The facts in that case are identical to the ones in the case *sub judice*. Robert and LeClaire were married in 2000 and Robert took out a policy of insurance in 2001 naming LeClaire as the beneficiary. Robert and LeClaire divorced in 2003. Robert died in 2016. Like Bill and Burnsed, Robert and LeClaire were married for a relatively short period of time and, like Bill, Robert lived for a substantial period time following the divorce without removing his ex-wife as the beneficiary of his life insurance policy.

The United States District Court for the District of South Carolina, applying South Carolina Law, concluded that the amendment of §62-2-507 applied to the facts before it.¹ The District Court noted that “in the construction of statutes there is a presumption that statutory enactments are to be considered prospective rather than retrospective in their operation unless the

¹ The Court, however, did not enter summary judgment on behalf of the estate, since LeClaire contended that her designation as a beneficiary was irrevocable and thereby presented a factual issue. *Id.*, pg. 6.

intention to make them retrospective is clearly apparent from the terms thereof.” *Id.*, pg. 4, quoting *Neel v. Shealy*, 261 S.C. 266, 273, 199 S.E.2d 542, 545 (1973). In construing a statute the “statute should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute.” *Id.*, citing *Georgia-Carolina Bail Bonds Company, Inc. v. County of Aiken*, 354 S.C. 18, 22, 579 S.E.2d 334, 336 (Ct.App. 2003). The District Court, after considering the language and intent of the amendment to §62-2-507, held:

“In this Court’s view, the statute and the associated legislative notes show that the South Carolina Legislature intended for a divorce or annulment to revoke the disposition or appointment of property, including beneficiary interests to a former spouse, unless expressly provided otherwise. The statute applies to all judicial proceedings concerning estates of decedents and trusts commenced or after the effective date of January 1, 2014. **As the decedent passed away after the effective date**, the instant matter must be considered within the purview of the statute.”

Id., pg. 4 (emphasis added). The District Court, accordingly, held that the statute and its amendment applied to the beneficiary designation of LeClaire and the term life insurance policy before it. *Id.*

The District Court also rejected LeClaire’s argument that “retroactive” application of the amendment improperly impaired contractual obligations. In so holding, the District Court noted that the United States Supreme Court had, a few days earlier, conclusively laid this issue to rest, stating:

“On June 11, 2018 the Supreme Court of the United States decided *Sveen v. Melin*, and addressed this question squarely in an opinion in an interpleader action between an ex-wife and children concerning policy proceeds. That opinion specifically reference South Carolina as one of 26 states having adopted a “revocation on divorce” law substantially similar to the one at issue in that case. In that case, the Supreme Court “resolved a split of authority over whether the contract’s clause prevents a revocation on divorce law from apply to a pre-existing agreement’s beneficiary designation. The high court concluded that such a statute does not substantially impair pre-existing contractual arrangements even where the designation under the policy was made before the statute was enacted. The Court further found that such a law merely puts in place a presumption about

what an insured wants after divorcing, which, as is the case here, may be changed by the insured with “the stroke of a pen.” This binding precedent controls and calls for the rejection of LeClaire’s argument.”

Id., pg. 4, citing *Sveen v. Melin*, ____ U.S. ____, 138 S.Ct. 1815, 201 L.Ed.2d 180 (2018).

It is respectfully submitted that the United States District Court for the District of South Carolina has correctly forecast the law in South Carolina on this issue.

I. OTHER JURISDICTIONS

Although, as previously noted, there is no South Carolina State Court Appellate Court decision on point, the exact arguments raised by Burnsed have been addressed multiple times by the Appellate Courts in other jurisdictions, and in almost² every case these arguments have been rejected.

The Uniform Probate Code is a uniform act drafted by the National Conference of Commissioners on Uniform State Laws governing inheritance and decedent’s estates in the United States. The primary purposes of the Act are to streamline the probate process and to standardize and modernize the various State laws governing Wills, Trusts and Intestacy. The original version of the Uniform Probate Code was adopted in 1969, and South Carolina was one of the first States to adopt the Uniform Probate Code as the South Carolina Probate Code. Over the years, the Uniform Probate Code has been amended, and South Carolina has amended its Probate Code to conform to the Uniform Probate Code. Almost all the other States have done the same. Accordingly, numerous States amended their Probate Codes with provisions identical to South Carolina’s §62-2-507, and as a result the Appellate Courts of numerous States have been faced with the exact same circumstances, and the exact same arguments, now faced by this Court.

² There is one exception, *Whirlpool Corporation v. Ritter*, 929 F.2d 1318 (8th Cir. 1991), which is addressed herein, pg. 7.

For example, in *In Re Estate of DeWitt*, 54 P.3d 849 (Colo. 2002) the Colorado Court consolidated two (2) cases factually identical to the case *sub judice* for decision. In one case, the husband purchased a life insurance policy on his life in 1988 naming his wife as the beneficiary. The parties divorced in 1992 and husband continued to pay the insurance premiums but never changed the designation of his beneficiary. In 1995 Colorado adopted a statute identical to §62-2-507, also based on the Uniform Probate Code. In 1997, the husband died and his ex-wife sued to obtain the life insurance policy proceeds, claiming to be the beneficiary. In the second case faced by the DeWitt Court, husband and wife married in 1983. In 1987 husband obtained a life insurance policy naming wife as the beneficiary. The parties divorced in 1994. Again, the statute identical to §62-2-507 was adopted by Colorado in 1995. Husband died in 1997 with wife still named as the beneficiary, and wife attempted to obtain the proceeds.

In both cases, the statute went in effect after the divorce but before the death of the policy holder and the Court upheld the application of the statute, rejecting the ex-spouse's arguments that the statute impaired vested rights, was being improperly applied retroactively, or was unconstitutional.

With the respect to the vested rights argument, the Court noted that a vested right is "something more than a mere expectation based upon an anticipated continuance of the existing law." *In Re Estate of DeWitt*, 54 P.3d at 856. "Our case law makes clear that a beneficiary to a life insurance contract does not possess a vested interest in the contract. Instead, a beneficiary merely possesses an expectant, or contingent, interest." *Id.*

The Court likewise rejected the argument that the statute impermissibly retroactively applied. The Court simply noted that the statute applies when the decedent dies, not when the divorce took place, so there was no impermissible retroactive application.

Finally, the Colorado Supreme Court rejected the argument that the statute unconstitutionally impaired a contractual right. The Court noted that “none of the contractual obligations is implicated by application of (the statute). The insurance contract remains in effect and enforceable notwithstanding the application of (the statute): during his life, each decedent was required to pay the premiums and upon the decedent’s death the insurer was obligated to pay the proceeds of the policy. (The statute) merely changed the identity of the presumptive beneficiary. As a result, the essential elements of a bargained-for exchange remain intact.” *Id.*, 54 P.3d at 860.

Another on-point case was presented to the United States Court of Appeals for the Tenth Circuit in *Stillman v. Teachers Insurance*, 343 F.3d 1311 (10th Cir. 2003). In that case, husband took out an annuity on his life naming wife as the primary beneficiary. In 1970 the parties divorced. In 1998 Utah enacted a statute essentially identical to §62-2-507. In 1999 husband died without having changed wife as the beneficiary. Wife filed suit claiming entitlement to the proceeds, and the Tenth Circuit Court of Appeals rejected her arguments that the application of the statute would be impermissibly retroactive or unconstitutional. In so holding the Court of Appeals emphasized, among other things, that the statute simply reflects the legislature’s intent to effectuate the decedent’s probable wishes, as follows:

“The statute attempts to effectuate the intention of the donor. The Uniform Probate Code provisions on which (the statute) is modeled derive 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.

The Court also noted the theoretical possibility that the decedent was aware of the statute, and accordingly did not remove his ex-wife as beneficiary in reliance upon the statute's automatic revocation. *Id.*

The same results were reached in *Matter of Estate of Dobert*, 192 Ariz. 248, 963 P.2d 327 (Ct. App. 1998). The Appellate Court emphasized the fact that Arizona's statute, which is identical to §62-2-507, was based upon the Uniform Probate Code, noting:

“When a statute is based on a uniform act, we assume that the legislature “intended to adopt the construction placed on the act by its drafter.” Thus, commentary to such a uniform act is “highly persuasive unless erroneous or contrary to the settled policy in this state.” The drafters’ comment to (the statute) states that the section covers “life-insurance ... and other revocable dispositions to the former spouse that the divorced individual established before the divorce.”

Id., 192 Ariz. at 252, 963 P.2 at 331. In rejecting the argument that the statute unconstitutionally impaired rights and obligations when applied retroactively to a life insurance contract that was executed before the effective date of the statute, the Court stated:

“The statute anticipates that, upon undergoing a fundamental change in family composition such as divorce the insured would most likely intend to provide for their new family members, and/or revoke prior provisions made for their ex-spouses. The statutes also anticipate that the insured will often fail so to provide and revoke, not of conscious intent, but simply from a lack of attentiveness. By automatically revoking prior beneficiary-designations upon a change in family composition, and by substituting statutory beneficiaries in their place, the statutes are designed to protect the insured from such inattentiveness.”

Id., 192 Ariz. at 254, 963 P.2d at 333 (ellipses and hyphens omitted).

In *Allstate Life Insurance Company v. Hanson*, 200 F.Supp.2d 1012 (E.D. Wis. 2002) the parties were married in 1989 and then purchased life insurance policies naming each other as the beneficiary but reserving the power to change the beneficiary designation. In 1997 they divorced. In 1998 Wisconsin adopted a statute based upon the Uniform Probate Code and identical to South Carolina's §62-2-507. After husband's death, wife claimed entitlement to the

life insurance policy proceeds since she was still named as the beneficiary. The United States District Court for the Eastern District of Wisconsin applied the statute, rejecting her argument that application of the statute retroactively violated the contract clauses of the federal and state constitutions. In so holding, the District Court noted that even if the statute were applied retroactively, it would still be valid and constitutional, inasmuch as the ex-spouse possessed no “vested” interest, but possessed “merely an expectation.” The Court emphasized that the statute served “a significant and legitimate public purpose” *Id.*, 200 F.Supp.2d at 1018. Not only did the statute “closely effectuate the transferor’s intent,” but it created “uniformity between the State’s treatment of probate and nonprobate transfers.” *Id.*, 200 F.Supp.2d at 1020.

In short, the overwhelming majority of cases have upheld the application of the statute where the divorce occurred prior to the statute’s effective date, but the decedent passed away after the statute’s effective date.

As noted in the prior footnote, the lone case in the minority is *Whirlpool Corporation v. Ritter*, 929 F.2d 1318 (8th Cir. 1991). This case “has been persuasively criticized by other distinguished authorities.” *Stillman v. Teachers Insurance*, 343 F.2d 1321, 1321 (10th Cir. 2003). Following the Whirlpool decision, the Joint Editorial Board for the Uniform Probate Code issued a statement asserting that the opinion was “manifestly wrong.” Statement of Joint Editorial Board for the Uniform Probate Code Regarding the Constitutionality of Changes and Default Rules as Applied to Pre-existing Documents, pg. 1 (1991). See also, *Stillman v. Teachers Insurance*, 343 F.3d at 1321. See also, *Edward C. Holbach, Jr. and Lawrence W. Waggoner*, the Uniform Probate Code’s New Survivorship and Antilapse Provision, 55 Albany Law Review 1091,1129-30 (1992).

II. THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT TO BURNSED BY CONCLUDING THAT APPLYING THE 2013 AMENDMENT OF S.C. CODE ANN. §62-2-507 TO REVOKE THE DESIGNATION OF BURNSED AS THE BENEFICIARY OF THE POLICY WOULD RAISE A SERIOUS CONSTITUTIONAL QUESTION.

In granting summary judgment to Burnsed the Trial Court expressed concern that applying the amendment retroactively would raise “a serious constitutional question.” Order, pg.

9. The Trial Court reasoned that retroactive application of the statute would destroy the vested right of the owner of an insurance policy to maintain his chosen beneficiary. Order, pg. 10.³

In *Sveen v. Milin*, ___ U.S. ___, 138 S.Ct 1815, 201 L.Ed.2d 180 (2018) the United States Supreme Court laid this issue to rest. In that case, the United States Supreme Court held that the retroactive application of Minnesota’s revocation on divorce law (which is identical to South Carolina’s) does not violate the contract’s clause. The Court noted that there is a two-step test for determining when such a law crosses the constitutional line. The first step asks whether the State law has “operated as a substantial impairment of a contractual relationship.” In answering that question, the Court considers the extent to which the law undermines the contractual bargain, interferes with a parties’ reasonable expectations, and prevents the party from safeguarding or restating his rights. If such factors show a substantial impairment, the inquiry then turns to whether the State law is drawn in an “appropriate” and “reasonable” way to advance “a significant and legitimate public purpose.” The United States Supreme Court stopped after the first step, emphasizing three (3) aspects of the revocation-upon-divorce law which, taken together, show that the law does not substantially impair pre-existing contractual arrangements. First, the law is designed to reflect a policyholder’s intent - and so the law

³ The Trial Court correctly noted that the beneficiary, Burnsed, possessed no vested rights. *Id.*, pg. 10. See, e.g., *Allstate Life Insurance Company v. Hanson*, 200 F.Supp.2d 1012, 109 (D.Wisc. 2002) (Holding that the life insurance beneficiary does not have a vested interest in being the beneficiary, but merely a “revocable expectancy.”); and *In Re Estate of DeWitt*, 54 P.3d 849, 859 (S.Ct. Colo. 2002) (Holding that the named beneficiary in an insurance policy fails to satisfy the threshold requirement of a contract caused claimed because they are not even a party to the contract, and simply have “contingent interest.”).

supports, rather than impairs, the contractual scheme. It applies a prevalent legislative presumption that a divorcee would not want his former partner to benefit from his life insurance policy and other Will substitutes. Thus, the law often honors, not undermines, the intent of the only contracting party to care about the beneficiary term.

Second, the law is unlikely to disturb any policyholder's expectations at the time of contracting, because an insured cannot reasonably rely on a beneficiary designation staying in place after a divorce. The Court noted that divorce courts have wide discretion to divide property upon dissolution of a marriage, including by revoking spousal beneficiary designations in life insurance policies or by mandating that such designations remain. Since a life insurance purchaser cannot know what will happen to that policy in the event of a divorce, any reliance interests are next to nil.

Third and last, the United States Supreme Court noted that the revocation-upon-divorce law supplies a mere default rule, which that policyholder can undue in a moment. If the statute's presumption about what an insured wants after divorcing is wrong, the insured may overthrow it simply by sending a change of beneficiary form to his insurer.

As a final point, the Supreme Court noted that if an insured wants his ex-spouse to stay as beneficiary but fails to rebut the presumption of the revocation-upon-divorce statute, the result is only that the insurance money is redirected to his contingent beneficiaries, not that his contractual rights are extinguished. *Sveen v. Milin*, supra, paraphrasing syllabus, 138 S.Ct. at 1817-1819.

The Trial Court in this case attempted to distinguish *Sveen v. Milin* from the facts of this case inasmuch as the Minnesota statute was enacted before, as opposed to after, the divorce. This is a difference, however, without a distinction. The reasoning of the United States Supreme

Court in *Sveen v. Milin* is equally as applicable in both situations. The retroactive application references not the time of the divorce, but the time of making the insurance policy beneficiary designation. The statute does not revoke the divorce, rather, the statute revokes the insurance policy beneficiary designation. The Supreme Court in *Sveen v. Milin*, held, point blank, that the retroactive application of the revocation-upon-divorce statute does not violate or impair any constitutional provision.

It is respectfully submitted that the United States District Court for the District of South Carolina correctly held that *Sveen v. Milin* “addressed this question squarely” with respect to the application of the amendment to South Carolina Code Ann. §62-2-507. *Protective Life Insurance Company v. LeClaire*, 2018 W.L. 3222796, pg. 4 (DSC, July 2, 2018).

CONCLUSION

The drafters of the Uniform Probate Code were motivated to amend and expand the scope of the revocation-upon-divorce statute from its long standing application to Wills to include non-probate “governing instruments” as result of two increasingly prevalent societal trends. First, divorce rates have steadily increased and remarriage is prevalent, with some marriages being of relatively short duration. See, *Lawrence W. Waggoner, Spousal Rights In Our Multiple-Marriage Society: The Revised Uniform Probate Code*, Vol. 26, Real, Probate and Trust Journal, #4, pg. 683, 685-86 (Winter 1992). The second trend prompting the amendment is the growing prevalence of “Will substitutes” such as revocable *inter-vivos* trusts, 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. As a result of the growing demand for probate avoidance Will “substitutes” are often the more financially substantial portion of an estate plan. See, e.g., *John H. Langbein, The Non-Probate*

Revolutions and the Future of the Law of Succession, 97 Harvard L.Rev. 1108, 1110-1111 (1984) (“In view of the numbers of people involved, the life insurance beneficiary designation is the principal “Last Will and Testament” of our legal system.”).

The legislative intent behind the revocation-upon-divorce statute is to create a simple presumption based upon two (2) reasonably held beliefs.

First, the revocation-upon-divorce statute recognizes that people have difficulty accepting their death. If the only deadline for an action is that it must be taken prior to our death, then there is always time to do it later. See, *Sigmund Freud, Thoughts for the Times on War and Death, Part II (Our Attitude Towards Death)*, pg. 1 (1915). (“It is indeed impossible to imagine our own death; and whenever we attempt to do so we can perceive that we are in fact still present as spectators. . . . [A]t bottom no one believes in his own death, or, to put the same thing in another way, that in the unconscious every one of us is convinced of his own immortality.”).

Second, the revocation-upon-divorce statute reflects the view that the decedent’s failure to change a beneficiary designation after divorce is a delay in expressing a changed intent rather than a continued expression of that intent. See, *Alan S. Wilmit, Applying the Doctrine of Revocation by Divorce to Life Insurance Policies*, 73 Cornell L.Rev. 653, 654 (Issue 3, March 1988); Revocation-upon-divorce statutes “reflect the legislative judgment that when the transferor leaves unaltered a Will and 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 an intention. Statement of Joint Editorial Board, For Uniform Probate Code, pg. 4 (1991).

In short, the statute seeks to prevent the often inequitable result that arises from either procrastination or a belief in our own longevity, which otherwise cannot be corrected once death has occurred.

The facts of this case vividly demonstrate the legislature's wisdom in enacting the 2013 amendment to §62-2-507. The only reason Burnsed was put on the policy in the first place, along with Bill's brother as the contingent beneficiary, is because he could not name his only son Conrad as the beneficiary because Conrad was minor at the time. Cummins Affidavit, ¶3. It is clear that it was Bill's desire that the proceeds of his life insurance policy should not go to Burnsed. *Id.* It is undisputed that he desired the proceeds of his life insurance policy to go to his family, particularly for the benefit of his son Conrad. Hatfield Affidavit, ¶7. In the words of one of his closest friends, Bill "would rollover in his grave" if he knew that Burnsed was trying to take these benefits away from his family. Hatfield Affidavit, ¶8. Burnsed was nothing more than "just one of Bill's ex-wives and just one of Bill's many friends." *Id.*, ¶6. This life insurance policy is the bulk of Bill's estate and Bill never would have "disinherited" his son Conrad for the benefit of Burnsed. *Id.*, ¶8.

Finally, it is worth emphasizing that this is not a situation where Bill was aware that his death was imminent and that he needed to "get his affairs in order." His passing was totally unexpected, and he was gone in an instant. This is precisely the injustice that the statute is designed to prevent. Bill's last known express words on the subject were "I'm going to change it (the designation of Burnsed as the beneficiary)." Cummins Affidavit, ¶4. As a result of his tragic passing he is no longer able to do so. It is accordingly respectfully requested that this Court following the plain wording of the statute and effectuate not only the legislative intent and purpose behind the statute, but fulfill Bill's final wish.

It is accordingly respectfully requested that the Order of the Beaufort County Master-In-Equity be reversed and judgment rendered in favor of the Appellants, or alternatively, that this case be remanded to the Beaufort County Court of Common Pleas for further proceedings consistent with this Court's Order.

Respectfully submitted,
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Beaufort, South Carolina
July 23, 2019

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

RECEIVED

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SC Court of Appeals

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 **Appellant's Initial Brief and Designation of Matter to be Included in Record on Appeal**, 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:

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in a post office or official depository under the exclusive care and custody of the United States Postal Service, on July 23, 2019.

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July 23, 2019

Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

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AUG 02 2019

SC Court of Appeals

RE: Richard Walter Meier and the Estate of William Carl Meier, by and through
Conrad Meier its Personal Representative v. Mary J. Burnsed
Case No.: 2019-00518

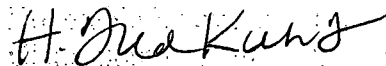
Dear Mrs. Kitchings:

Enclosed please find for filing the original Appellant's Initial Brief regarding the above-referenced matter, together with the original Designation of Matter and Certificate of Service.

With kindest regards, I am

Very truly yours,

MOSS, KUHN & FLEMING, P.A.



H. Fred Kuhn, Jr.

HFKjr:sr

Enclosure

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



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To:

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SC Court of Appeals