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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

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.

APPELLANTS' INITIAL REPLY BRIEF

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I. DOES THE REVOCATION-OF-BENEFICIARY PROVISION OF ACT NO. 100 OF 2013 APPLY IN THE CASE OF A DIVORCE ENTERED BEFORE THE ACT WAS PASSED?

In her "Statement of Facts" Burnsed attempts to refute the Affidavits of three (3) disinterested witnesses with her own Affidavit. Respondent's Brief, pp. 1-3. These three (3) disinterested witnesses – a paralegal, Bill's best friend, and Bill's bride-to-be – each independently confirm that, upon his death, Bill did not want Burnsed to receive the proceeds of his life insurance policy. See Affidavits of Karen Cummins, David Carroll, and Martha Hatfield. These three (3) witnesses have absolutely no financial stake in the outcome of this litigation. Burnsed attempts to refute these Affidavits, however, by referencing her own Affidavit. Respondent's Brief, pp. ____. Burnsed's Affidavit, however, is not only self-serving and unsupported, but is inadmissible under South Carolina's "Dead Man Statute," S.C. Code Ann. §19-11-20 ("[N]o person who has a legal or equitable interest which may be affected by the event of the action or proceeding . . . shall be examined in regard to any transaction or communication between such witness and a person at the time of such examination deceased . . .."). The Trial Court did not consider Burnsed's Affidavit, and neither should this Court.

Referencing the express language of §62-2-507 the Respondent in her brief asked two (2) questions: To which policies does this statute apply and to which divorces does this statute apply. Respondent's Brief, pg. 8.

As to the question "Which policies?" the Appellants agree with Burnsed that the statute expressly applies to all life insurance policies.

With respect to the question "Which divorces?" Burnsed argues that the statute applies only to divorces filed after the effective date of the statute. Section 62-2-507, however, by its plain, unambiguous, and express language applies to all divorces. §62-2-507(c). If the

legislature had intended the statute to apply only to divorces filed after the effective date of the statute it would have been very easy, and very simple, for the General Assembly, instead of stating "the divorce or annulment of a marriage revokes any revocable . . . beneficiary designation," to have said "the divorce or annulment of a marriage **filed after the effective date of this Act** revokes any revocable . . . beneficiary designation." In short, if the legislature had intended to limit the statute's effect to only certain divorces, it would have been simple to have so stated. *Expressio Unius Est Exclusio Alterius.*

In her brief Burnsed fails to ask the critical question: **Which deaths?** The statute applies to deaths occurring after the effective date of the statute – January 1, 2014. Section 4(B)(1) of the Act. In plain, unambiguous, and ordinary language §62-2-507 expressly states that a divorce revokes a revocable designation of a beneficiary. The language could not be more clear. *Interpretatio Cessat In Clairs.*

Notably absent from Respondent's Brief is any mention of the legislature's intent and purpose in amending §62-2-507. As the Reporter's Comment notes, the legislature acted to effectuate a decedent's presumed intent and "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." Reporter's Comment to §62-2-507. The statute was enacted to prevent an injustice exactly of the type which Burnsed is attempting to now perpetuate.

In addition to the statute's remedial purpose, the statute's non-retroactivity is apparent from the fact that it is only when the decedent dies that a final determination as to the beneficiary of the decedent's life insurance policy can be determined. Under the express terms of §62-2-507 the revocation can be revived by the divorced individual's remarriage to the former spouse or by a nullification of the divorce. Section 62-2-507(f). Likewise, "a contrary indication by the

decedent" can override the presumption. See Reporter's Comment. Accordingly, the event which triggers the application, or non-application, of the revocation-upon-divorce mandate of §62-2-507 is the death of the decedent, an event which occurs **after** the effective date of the statute.

CONCLUSION

This case presents a classic example of the injustice that the South Carolina General Assembly designed to prevent when it amended §62-2-507. Bill and Burnsed were married and together for only a short period of time. She was simply one of his ex-wives. The only reason she was put on the policy in the first place, along with Bill's adult brother, was because Bill's only son Conrad was a minor at the time. The undisputed (admissible) evidence presented to the Trial Court was that Bill did not want Burnsed to receive his life insurance policy proceeds, and wanted it to go to his family, particularly for the benefit of his only son Conrad. As noted by Bill's best friend, Bill would "roll over in his grave," if he knew that one of his greedy ex-wives was trying to take advantage of his tragic, sudden, and unexpected death. Affidavit of David Carroll.

It is accordingly respectfully requested that the South Carolina Court of Appeals effectuate the intent of Bill, the intent of the South Carolina General Assembly, and the intent of legislatures of numerous other states when enacting similar legislation, and reverse the Order of the Beaufort County Court of Common Pleas and enter judgment 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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October 3, 2019

IN THE STATE OF SOUTH CAROLINA
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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,
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vs.

Mary J. Burnsed, Respondent.

CERTIFICATE OF SERVICE

Undersigned certifies that the **Appellants' Initial Reply Brief** 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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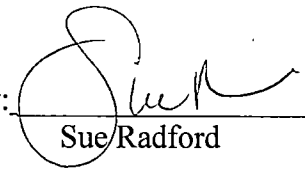
By: 
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October 3, 2019

Honorable Jenny Abbott Kitchings
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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
Appellate Court Case No.: 2019-00518

Dear Mrs. Kitchings:

Enclosed please find for filing the original Appellants' Initial Reply Brief and Certificate of Service regarding the above-referenced matter.

With kindest regards, I am

Very truly yours,

MOSS, KUHN & FLEMING, P.A.

H. Fred Kuhn, Jr.

H. Fred Kuhn, Jr.

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Enclosure

cc: James B. Richardson, Jr., Esquire
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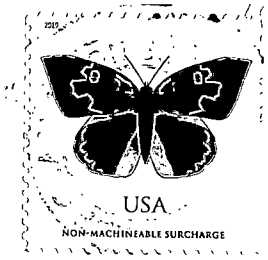

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