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Original Beneficiary's Rights on Fraudulent Change of Beneficiary in Insurance Policy

John B. Frisch

NOTES

ORIGINAL BENEFICIARY'S RIGHTS ON FRAUDULENT CHANGE OF BENEFICIARY IN INSURANCE POLICY

It is well established that when the beneficiary in a life policy or benefit certificate can be changed at the will of the insured, the interest of the beneficiary is contingent and becomes vested only upon the death of the insured.[1] Thus, when a change is made, the original beneficiary can not make a claim based on the policy or certificate before or after the death of the insured.[2] However, when the original beneficiary discovers that the insured was mentally incompetent at the time of the change of beneficiaries or that the substitution of certificates was the result of fraud or undue influence, his right to bring such information before the court has not been so clearly determined.

The problems to be considered in the discussion of the beneficiary's rights to sue under these circumstances are as follows: possible distinctions in cases of fraud, undue influence and mental incompetency as affecting the right to sue, the different reasoning in fraud and mental incompetency cases, and the effect of a contract between the original beneficiary and the insured.

The most cited case involving claims of fraudulent change of beneficiary is *Hoeft* v. *Supreme Lodge Knights of Honor*[3] wherein it was held that the original beneficiary has not a sufficient interest to sue the substituted beneficiary on the basis of fraud. The insured had procured a certificate to be issued in the name of his first wife. Upon her death, a certificate was issued in favor of the children. Later, this certificate was surrendered and another was issued in favor of the second wife. The children claimed the substitution was a result of fraud on the part of the second wife. The court denied an action could be maintained, "unless either by contract or in law they had some vested interest or right in the certificate which formerly had been taken out in their favor. They claim no such vested interest by contract. If it exists at all, then, it exists by operation of law. But, such rights are either constitutional or statutory, and we are referred to no law which secured to them a right of action for such a cause. If they had a vested right in the certificate as such, then, the insured himself, of his own volition, and without fraudulent contrivance of a third person, could not substitute a new beneficiary. But this is not and cannot be claimed, for the contract is between the order and the insured . . . Having no vested

[1] Malancy v. Malancy, 165 Wis. 642, 163 N.W. 186 (1917).

[2] Estate of Breiting, 78 Wis. 33, 47 N.W. 17 (1890). "Benefit certificates give no vested interest before death. Payment of premiums by beneficiary is immaterial."

[3] 113 Cal. 91, 45 Pac. 185, 33 L.R.A. 174 (1896).

interest, nothing which the law protects or recognizes, it is legal solecism to say that the beneficiary can be defrauded." The emphasis appears to be upon the fact that the interest which was only contingent was never realized. A later California case, *New York Life Insurance Co.* v. *Dunn*[4] follows the Hoeft case. The original beneficiary in her cross-complaint alleged fraud and undue influence, but testimony of these facts was not admitted and the cross-complaint discharged because the court held no cause of action existed in favor of the original beneficiary.

In *Cade* v. *Head Camp Pacific Jurisdiction Woodmen of the World*,[5] there was a suit in equity against the association, alleging undue influence. The original beneficiary did not learn of the change until she applied for the benefits when she discovered that her husband had substituted his father and mother as beneficiaries. A demurrer to the bill was sustained. Upon appeal the court affirmed this ruling and emphasized the fact that the original beneficiary would not acquire a vested interest sufficient to claim the benefits of the certificate until the insured died. The change, even though it might be fraudulent, was made before the death of the insured, so that the very possibility of acquiring a sufficient interest had disappeared.

Other cases, in which fraud is the basis of the claim, the right to sue is not recognized because of this absence of a vested interest. In *Slaughter* v. *Grand Lodge*[6] the aid of the court was denied in an attempt to annul the change and the court stated that in the matter of benefit certificates, the contract is between the insurer and the insured, so that when fraud is present, the imposition, if any, is upon the insurer who alone can complain of it. There was a similar holding in *Metropolitan Life Insurance Co.* v. *Bramlett*[7] which further pointed out that if mental incompetency had been involved, the court would have recognized the claim. However, the court disregarded all the cases in support of the plaintiff's right to a cause of action because they were all cases involving the problem of mental incompetency. This attempt to distinguish between right to sue on the basis of mental incapacity and the inability to sue because of a fraudulent change is not evident

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[4] 46 Cal. App. 203, 188 Pac. 1028 (1920). Claims were made by the original beneficiary and two subsequent beneficiaries. The insurance company presented a bill of interpleader. The original beneficiary did not claim a contract existed with the insured nor did she claim any special equities which would deprive him of the right to make a change.

[5] 27 Wash. 218, 67 Pac. 603 (1902). "If there was no vested right in the wife, no fraud could be perpetrated upon her by changing the beneficiary."

[6] 192 Ala. 301, 68 So. 366 (1915). Allegations of fraud by the original beneficiary based on a failure of second beneficiary to support the insured and the original beneficiary as he agreed to do was properly demurred to. Summers v. Summers, 218 Ala. 420, 118 So. 912 (1938).

[7] 224 Ala. 473, 140 So. 752 (1932).

in any other case. But it is interesting to note that cases of fraud are argued from the standpoint of interest of the beneficiary while the cases of mental incompetency are considered from the standpoint of the existence of only one contract, the original one.

Decisions in support of the original beneficiary's right to sue because of a fraudulent change of beneficiaries are very limited in number. In *Conner* v. *Conner*[8] the original beneficiary advanced money to the insured, her husband, and paid nearly all of the assessments and dues on the certificate upon the belief that she was to receive the benefits of the certificate. Upon the death of the insured, there was a bill of interpleader by the fraternal benefit society and the rival claimants were brought in. The court decided that this was really a contract whereby the original beneficiary acquired a beneficial interest in the benefit certificate which is enforceable in a court of equity. It appears that the equitable interest is based on at least an implied contractual relationship between the insured and the original beneficiary. In *Wherry* v. *Latimer*[9] there was a bill in equity by the original beneficiaries alleging among other facts that the deceased was an invalid for two or three years, suffering constant pain and that he used narcotics, becoming incapable of transacting business. While in such condition, it was claimed that he was induced to make a change of beneficiaries. No undue influence was found but the court held that the allegations were such as to require an answer and the demurrer was properly overruled. The court further stated that there was no disability on the part of the complainants as beneficiaries in the original certificates to maintain the suit on the ground stated in the complaint.

Although there is a division of authority concerning the right to sue on the ground of fraudulent change of beneficiaries, the cases involving mental incompetency are consistent in recognizing claims of original beneficiaries. A leading case is *Grand Lodge A. O. U. W.* v. *Frank.*[10] Here, a benefit certificate was issued to the insured with his wife as beneficiary. The certificate was later surrendered and a new one issued, payable to the mother of the insured. But, the insured was found to be insane at the time the change was made. The court admitted that the original beneficiary had no vested interest prior to the death of the insured, but added, "she had a contingent interest which vested at his death and, unless there is some imperative rule of law which precludes her from raising the question of his mental capacity, it should be held that she had a right to intervene in this matter." The attempt to change the beneficiary had failed because of a want of mental capacity on the

[8] 163 Ill. App. 436 (1911).
[9] 103 Miss. 524, 60 So. 563 (1913).
[10] 133 Mich. 232, 94 N.W. 731 (1903).

part of the insured. This leaves the original certificate in force and the interest that the original beneficiary had in that certificate became vested upon the death of the insured. In *Grand Lodge A. O. U. W.* v. *McGrath*[11] there was a similar fact situation and it was held that the original beneficiary was in a position to raise the question of mental incompetency.

The mental incompetency decisions stress the contract between the insurer and the insured.[12] An attempted change constitutes a new contract which like all contracts is not enforceable when one of the contracting parties is mentally incapable of contracting. In *McMurtray* v. *McMurtray*[13] after overruling the demurrer to the complaint, the court stated that the only valid contract that existed was the one of which the complainant, the original beneficiary, was to receive the benefit. The case of *Shuder* v. *National Americans*[14] after a similar contract argument, contains this statement, "If the insured died without making an effectual change of contract, the rights of the plaintiff accrued and she became entitled to the benefits specified in the certificate, the same as if no attempt had been made to change it. That which was only an inchoate interest became a contract right in case of no effectual change, and therefore, a right to challenge the validity of the substituted certificate."

The consistency of the courts in the recognition of mental incompetency claims made by the original beneficiary in contract, the uncertainty in the recognition of claims of fraudulent change in insurance problems shows the importance of the fact situation in the cases on this subject. Its importance is further evident from the fact that the existence of a contract between the original beneficiary and the insured will result in recovery by the original beneficiary of the benefits of the certificate not because of a fraudulent change nor because of a change while insured was mentally incompetent, but rather because the existence of a contract invalidated any change.

In *Wandel* v. *Mystic Tailers*,[15] the insured had obtained a life certificate payable to his wife, under an agreement with her that she should help pay the assessments. Shortly before his death, he surrendered the certificate and received another certificate, payable to his sister who was a mere voluntary beneficiary. It was held that the wife

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[11] 133 Mich. 626, 95 N.W. 739 (1903).

[12] Offill v. Supreme Lodge Knights of Honor, 101 Tenn. 16, 46 S.W. 758 (1898); Carson v. Owen, 100 Ga. 142, 28 S.E. 75 (1897); Turner v. Turner (Tex. Civ. App.) 95 S.W. 326 (1917); State Life Ins. Co. v. Coffrini, 285 Fed. 560 (C.C.A. 4th 1922); Gayl v. National Council, Knights & Ladies of Security, 178 Ill. App. 377 (1913).

[13] 67 Okla. 50, 168 Pac. 422 (1917).

[14] 101 Kan. 320, 166 Pac. 482 (1917).

[15] 130 Iowa 639, 105 N.W. 448 (1905).

had an equitable interest superior to the rights of the sister.[16] A beneficiary, however, who merely volunteers to pay the premiums is not in any better position than an ordinary beneficiary.[17] Therefore, when the original beneficiary pays dues and assessments on certificates, as a result of an agreement with the insured, the interest is more than merely inchoate and allegations of fraud, undue influence, or mental incompetency are not the basis of recovery.

The position of the Wisconsin Supreme Court in the matter of the ability of the original beneficiary to claim a fraudulent change or that one was made while the insured was mentally incompetent has not as yet been determined. There are, however, Wisconsin decisions which hold that the beneficiary of a benefit certificate has only a contingent interest which does not serve as a basis for an action on the certificate before the death of the insured even though the insurer has wrongfully cancelled the policy.[18] Likewise the Wisconsin Supreme Court recognizes the right of the original beneficiary to insist that in order to be valid the change of beneficiary must be made in conformity with the stipulations of the policy and the rules of the association.[19]

The latter case would seem to indicate that the Wisconsin Supreme Court will recognize a sufficient interest in the original beneficiary to bring an action for wrongful changes of beneficiaries, whether it is due to non-compliance with regulations of the association or insurance company or due to fraud, undue influence or mental incapacity. The fact that in all cases of mental incompetency claims the courts have considered the original beneficiary the proper party to present the claim is reason enough to believe that when the matter comes up for decision that the Wisconsin Supreme Court would make a similar ruling.

It is submitted that in cases involving change of beneficiaries or of changes due to undue influence that the rule of *Conner* v. *Conner*[20] appears to be the most just rule to follow.

JOHN B. FRISCH.

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[16] McKeon v. Ehringer, 48 Ind. App. 226, 95 N.E. 604 (1911); Strange v. Supreme Lodge K. P., 189 N.Y. 346, 82 N.E. 433, 12 L.R.A. (N.S.) 1206 (1907).

[17] Preusser v. Supreme Hive of the Ladies of the Maccabees, 123 Wis. 164, 101 N.W. 358 (1904). In Supreme Council Catholic Benev. Legion v. Murphy, 65 N.J. Eq. 60, 55 Atl. 497 (1903) a beneficiary voluntarily paid the dues and assessments and it was held that the wife's equity was so strong that a change could not be valid even if made of free will.

[18] Suelflow v. Supreme Lodge, Knights and Ladies of Honor, 165 Wis. 291, 162 N.W. 346 (1917). Rates of certificate were increased, but the insured refused to pay the increased rates. The policy was cancelled and the beneficiary was not allowed to bring an action for wrongful cancellation.

[19] Faubel v. Eckhart, 151 Wis. 155, 138 N.W. 615 (1912).

[20] *Supra*, note 8.