

COURT OF APPEALS  
MUSKINGUM COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

JASON W. HARDCASTLE, ET AL.

## Plaintiffs-Appellees

-VS-

JAMES C. MCLENDON, ET AL.

## Defendants-Appellants

JUDGES:

Hon. Sheila G. Farmer, P.J.

Hon. W. Scott Gwin, J.

Hon. William B. Hoffman, J.

Case No. CT2015-0034

## OPINION

CHARACTER OF PROCEEDING:

Appeal from the Court of Common  
Pleas, Case No. CH2014-0104

**JUDGMENT:**

Affirmed

DATE OF JUDGMENT:

January 28, 2016

APPEARANCES:

## For Plaintiffs-Appellees

For Defendant-Appellant

BRENT A. STUBBINS

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*Farmer, P.J.*

{¶1} Connie McLendon passed away on October 20, 2013 (hereinafter "the decedent"). She had three sons, Jason, James, and Justin Hardcastle, appellees herein. At the time of her death, the decedent was married to appellant, James McLendon, appellees' stepfather.

{¶2} The decedent had worked for the United States Social Security Administration and was covered under a federal policy of life insurance through the Federal Employees' Group Life Insurance Program ("hereinafter "FEGLI"). The policy proceeds were \$103,000. Appellant and appellees submitted claims for the proceeds. Appellees' claim was rejected.

{¶3} On March 14, 2014, appellees filed a verified complaint, seeking a declaration as to who was entitled to receive the proceeds. They named appellant, The Office of Federal Employees' Group Life Insurance, and MetLife as defendants. The funds were interpleaded and deposited with the court via notice filed November 19, 2014, and the latter two defendants were dismissed on March 18, 2015.

{¶4} Appellant and appellees filed motions for summary judgment. By order filed May 21, 2015, the trial court granted appellees' motion and denied appellant's, finding the decedent's intention to designate appellees as the beneficiaries to the federal life insurance policy was clearly set forth in a number of documents; therefore, appellees were entitled to the proceeds.

{¶5} Appellant filed an appeal and this matter is now before this court for consideration. Assignment of error is as follows:

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{¶6} "THE TRIAL COURT FAILED TO APPLY THE GOVERNING FEDERAL LAW TO DETERMINE ENTITLEMENT TO PROCEEDS OF LIFE INSURANCE PROVIDED PURSUANT TO FEDERAL EMPLOYEES GROUP LIFE INSURANCE ACT."

I

{¶7} Appellant claims the trial court erred in granting summary judgment to appellees and finding they had the right to the proceeds of the federal life insurance policy. We disagree.

{¶8} Summary Judgment motions are to be resolved in light of the dictates of Civ.R. 56. Said rule was reaffirmed by the Supreme Court of Ohio in *State ex rel. Zimmerman v. Tompkins*, 75 Ohio St.3d 447, 448, 1996-Ohio-211:

Civ.R. 56(C) provides that before summary judgment may be granted, it must be determined that (1) no genuine issue as to any material fact remains to be litigated, (2) the moving party is entitled to judgment as a matter of law, and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the nonmoving party, that conclusion is adverse to the party against whom the motion for summary judgment is made. *State ex. rel. Parsons v. Fleming* (1994), 68 Ohio St.3d 509, 511, 628 N.E.2d 1377, 1379, citing *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 327, 4 O.O3d 466, 472, 364 N.E.2d 267, 274.

{¶9} As an appellate court reviewing summary judgment motions, we must stand in the shoes of the trial court and review summary judgments on the same standard and evidence as the trial court. *Smiddy v. The Wedding Party, Inc.*, 30 Ohio St.3d 35 (1987). Therefore, our review is de novo. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 1996-Ohio-336.

{¶10} Appellant agrees "there are no genuine issues of material fact here." Appellant's Brief at 4. In his memorandum contra to plaintiffs' motion for summary judgment and his own motion for summary judgment, appellant argued the decedent did not properly designate a beneficiary to her federal life insurance policy pursuant to federal law, citing 5 U.S.C. 8705(a) and 8709(d)(1) in support. We agree with appellant's position that the evidence does not establish that the decedent met the requirements for designating a beneficiary; however, "by filing an interpleader action, an insurance company waives all of the insurance policy's requirements." *Motorists Life Insurance v. Sherbourne*, 3rd Dist. Allen No. 1-14-17, 2014-Ohio-5205, citing *Rindlaub v. Traveler's Insurance Co.*, 175 Ohio St. 303 (1963). In *Rindlaub* at paragraph two of the syllabus, the Supreme Court of Ohio held:

Where an insured during his lifetime communicated to the insurer his clearly expressed intent to name certain new beneficiaries and the insurer has interpleaded and deposited the policy proceeds in court, such expressed intention of the insured will be determinative of the right of contesting claimants to the policy proceeds, notwithstanding the absence of the written approval by the insurer required by the provisions of the policy.

{¶11} In *LeBlanc v. Wells Fargo Advisors, L.L.C.*, 134 Ohio St.3d 250, 2012-Ohio-5458, syllabus, the Supreme Court of Ohio reaffirmed its decision in *Rindlaub*, and held the following:

When the custodian of an individual retirement account files an interpleader action against the parties claiming to be the beneficiaries of the account, the custodian waives its contractual change-of-beneficiary procedures, and a person who proves that the owner clearly intended to designate him or her as the beneficiary does not need to also prove that the owner substantially complied with the change-of-beneficiary procedures in order to recover. Instead, the account owner's clearly expressed intent controls.

{¶12} Based upon the Supreme Court of Ohio's holdings in *Rindlaub* and *LeBlanc*, we will review the facts of this case under the "clearly expressed intent" test enumerated in said cases. See also *Veach v. Chuchanis*, 5th Dist. Stark No. 2014CA00026, 2014-CA-2949.

{¶13} Attached to appellees' April 1, 2015 motion for summary judgment is an affidavit signed by all three of the decedent's sons. For purposes of authentication, the affidavit identifies several documents attached to the motion for summary judgment, and avers they reviewed the documents in the days after the decedent's death as they were among the decedent's belongings at appellant's home. The documents "were in the same

condition, to the best of our knowledge and belief" when appellees reviewed them at appellant's home and when they received them into their possession a few days later.

{¶14} Exhibit 3 is an Open Season Election Form for her federal life insurance policy, executed by the decedent on September 2, 2004. In section 6 and dated "1/11/06," the decedent handwrote: "In the event of my death, J.P., Jason, and Justin are beneficiaries," followed by her signature.

{¶15} Exhibit 5 is an email sent by the decedent to the Federal Office of Personnel Management, dated September 14, 2012, inquiring about the value of the "benefits payable" under her federal life insurance policy, as she had been diagnosed with malignant cancer. In the email, she expressly stated: "My three sons are correctly shown as beneficiaries." The exhibit contains handwritten notations of the amount, \$103,000, and a "death notification" telephone number, dated September 18, 2012.

{¶16} The affiants aver that the handwritten notations on these two exhibits are those of the decedent, as the decedent was their mother and "we have become very familiar with her handwriting over the past 30+ years."

{¶17} Exhibit 6 is a typewritten letter from the decedent to appellees, dated May 22, 2013, expressly stating: "JP, Jason, and Justin are beneficiaries to all my assets (copies of designation forms are in this book).\*\*\*My life insurance is worth \$103,000. I confirmed this with OPM last month."

{¶18} Exhibit 8 is a Designation of Beneficiary form for unpaid compensation, executed by the decedent on November 20, 2002. The decedent listed appellees as the beneficiaries.

{¶19} In her Last Will and Testament dated November 6, 2002 at Article II, the decedent expressly left all of her property to appellees, to be divided equally.

{¶20} Although Exhibit 8 and the Will provision do not specifically pertain to the federal life insurance policy, they do evidence the decedent's intention to leave her assets to appellees.

{¶21} On April 10, 2015, appellant had filed a motion to strike appellees' motion for summary judgment, or in the alternative, strike the aforementioned exhibits. The trial court denied the motion on May 21, 2015, and referred to the exhibits in its order granting summary judgment to appellees.

{¶22} Upon review of the materials presented, we find the trial court did not err in finding the decedent clearly expressed her intent to designate appellees as the beneficiaries to her federal life insurance policy and in granting summary judgment accordingly.

{¶23} The sole assignment of error is denied.

{¶24} The judgment of the Court of Common Pleas of Muskingum County, Ohio  
is hereby affirmed.

By Farmer, P.J.

Gwin, J. and

Hoffman, J. concur.

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