

[J-45A-B-2012]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

FATIN ALKHAFAJI, ADMINISTRATOR : No. 38 WAP 2011
C.T.A. OF THE ESTATE OF ABBASS :
ALKHAFJI, DECEASED, INDIVIDUALLY : Appeal from the Order of the Superior
AND AS NATURAL GUARDIAN OF HER : Court entered February 14, 2011 at No.
MINOR CHILDREN, : 287 WDA 2010, reversing the order of the
: Court of Common Pleas of Lawrence
Appellant : County, entered January 15, 2010 at No. 5
: of 2008 O.C. and remanding.

v.

TIAA-CREF INDIVIDUAL AND :
INSTITUTIONAL SERVICES, LLC, :
AHMED ALKHAFAJI, ALLIAH ALKHAFAJI :
AND SHEAMEH ALKHAFAJI-ALDUAISI, :
Appellees :
: ARGUED: April 11, 2012

FATIN ALKHAFAJI, ADMINISTRATOR : No. 39 WAP 2011
C.T.A. OF THE ESTATE OF ABBASS :
ALKHAFAJI, DECEASED, INDIVIDUALLY : Appeal from the Order of the Superior
AND AS NATURAL GUARDIAN OF HER : Court entered February 14, 2011 at No.
MINOR CHILDREN, : 363 WDA 2010, reversing the Order of the
: Court of Common Pleas of Lawrence
Appellant : County, entered January 15, 2010 at No. 5
: of 2008 O.C, and remanding.

v.

TIAA-CREF INDIVIDUAL AND :
INSTITUTIONAL SERVICES, LLC, :
AHMED ALKHAFAJI, ALLIAH ALKHAFAJI :
AND SHEAMEH ALKHAFAJI-ALDUAISI, :
Appellees :
: ARGUED: April 11, 2012

OPINION IN SUPPORT OF REVERSAL

MR. JUSTICE BAER

DECIDED: JUNE 17, 2013

I join the Opinion in Support of Reversal (OISR) of Madame Justice Todd and its finding that Pennsylvania law imposes no barrier to the use of wills and other testamentary instruments as vehicles through which changes in beneficiaries to annuities, life insurance policies, and the like may be accomplished. I write separately to express my opinion that the will executed by the Decedent, Abbass Alkhafaji, two months prior to his death, was valid under the facts of this case.

Paragraph 30 of the annuity policies at issue provide, in relevant part, as follows:

You . . . having the right to do so, may elect or change, in accordance with the terms of your contract, any of the following by written notice satisfactory to TIAA sent to its home office in NY:

* * *

D) A beneficiary or any person named to receive payments remaining due.

No such notice will take effect unless it is received by TIAA. When received, it will take effect as of the date it was signed, whether or not the signer is living at the time we receive it. Any action taken by TIAA in good faith before receiving the notice will not subject TIAA to liability because our acts were contrary to what was stated in the notice.

TIAA Annuity Contract of July 1, 1994 at ¶ 30, found at Reproduced Record (R.R.) 261a.¹

As noted by Justice Todd’s OISR, it is well-established in this Commonwealth that, generally, “in order to affect a change of beneficiary [in an insurance or annuity contract], the mode prescribed by the policy must be followed.” Sproat v. Traveler’s Ins. Co., 137

¹ The remaining TIAA and CREF contracts contain identical provisions.

A. 621, 622 (Pa. 1927). Strict compliance is not required in all circumstances, however, and changes of beneficiaries will still be effective so long as the insured “has done all he could to comply with the provisions of the policy.” Id. (quoting Gannon v. Gannon, 88 Pa. Super. 239, 243, 1926 WL 2193 (Pa. Super. 1926)). In furtherance of these precepts, this Court has opined:

where the provisions of a life insurance policy require that a written change of beneficiary be filed with the company in order to be effective, and such is executed, and every reasonable effort is made to comply with the requirements of the policy, the change of beneficiary is valid and binding, even though it is not filed with the insurer before the death of the insured.

Breckline v. Metro. Life Ins. Co., 178 A.2d 748, 750 (Pa. 1962).

In accord with Justice Todd’s finding that testamentary documents are proper instruments to effectuate changes in beneficiaries, it is clear to me that Decedent not only “substantially complied” with the terms of Paragraph 30 of the annuity contracts, but, indeed, completely complied with the procedure for altering the beneficiaries to his pension. Decedent’s will, which was executed while he was still of sound mind, witnessed by three individuals, and notarized, unequivocally stated that the beneficiaries of his pension “are all my biological children and my current wife Fatin” Will of Decedent, executed Jul. 16, 2007 at ¶ 4, found at R.R. 10a.

After Decedent passed away, the executor of his estate sent the will to TIAA-CREF to provide it with notice of the change in beneficiaries. This action fully adhered to the explicit terms of Paragraphs 30, given that written notice (i.e., the will), which was

satisfactory to TIAA-CREF, was sent to its home office in New York;² was received by TIAA-CREF; and was signed and dated. Moreover, it is significant that Paragraphs 30 expressly indicate that any satisfactory notice of change of beneficiaries would be retroactively effective to the date of the notice “whether or not the signer is living at the time we receive it.” In other words, the TIAA-CREF contracts specifically contemplate the receipt of a notice post-death, and Decedent and the executor of his estate fully abided by these provisions in effectuating the post-death change in beneficiaries. Sproat, 137 A. at 622 (“in order to affect a change of beneficiary, the mode prescribed by the policy must be followed.”); see also Breckline, 178 A.2d at 750 (change in beneficiary will be effective so long as the procedure set by the policy has been substantially complied with, “even though [the notice of change] is not filed with the insurer before the death of the insured.”).

For these reasons, I would hold not only that there is no impediment, as a matter of Pennsylvania law, to the use of testamentary documents as the notice for changing beneficiaries, but also that the will in this case fully complied with the terms of the TIAA-CREF contracts and effectively altered the beneficiaries. Accordingly, I would reverse the order of the Superior Court.

² TIAA-CREF has not challenged that the will is not “satisfactory” under the terms of the contract.