

# Commonwealth of Kentucky

## Court of Appeals

NO. 2006-CA-002103-MR

DELIA ANN KELLY

APPELLANT

v. APPEAL FROM PULASKI CIRCUIT COURT  
HONORABLE DAVID A. TAPP, JUDGE  
ACTION NO. 03-CI-01274

KENNETH KELLY II; CHRIS KELLY; VIVIAN  
LANDRUM; DARIN KELLY; AND ZENA THOMAS,  
EXECUTRIX OF THE LAST WILL & TESTAMENT  
OF KENNETH KELLY

APPELLEES

OPINION  
AFFIRMING

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BEFORE: COMBS, CHIEF JUDGE; ACREE AND KELLER, JUDGES.

COMBS, CHIEF JUDGE: This appeal is taken from a summary judgment entered in favor of the surviving children of the decedent, Kenneth Kelly; and Zena Thomas, the executrix of Kelly's estate (the appellees); against Delia Ann Kelly, Kelly's widow (the appellant). Delia contended that she was entitled to the proceeds of a life insurance

policy under the terms of Kelly's will. The Pulaski Circuit Court disagreed and entered summary judgment in favor of the appellees. We affirm.

The material facts of the case are not in dispute. Zena Thomas, the executrix of Kelly's estate, is Kelly's former spouse. The remaining appellees are Kelly's children born of his marriage to Zena.

Kelly married Delia in November 1997. In contemplation of their marriage, the couple executed an ante-nuptial agreement that provided, in part, as follows:

It is the intention of the parties hereto that all property held by the . . . parties. . . shall pass within the family line (blood line) of said parties, insofar as the same shall represent property accumulated by the parties prior to this marriage. . . .

In September 1999, on the eve of his hospitalization for open-heart surgery, Kelly corresponded with AON Insurance Services to request a change of beneficiary for a certain life insurance policy. Kelly identified a policy having a face value of \$100,000.00. He directed that the beneficiary be changed from Zena Thomas to “Community Trust Bank of Somerset, Kentucky and my Estate as beneficiary of any amount of my insurance policy which exceeds the indebtedness upon my house and real property which exceeds the amount owed to Community Trust Bank.”

Kelly died testate on December 20, 2002. His will, executed in September 2002, provided in part, as follows:

I hereby give, devise and bequeath my home and contents of said home, my car, my truck and my motor home, to my

beloved wife, Delia Ann Kelly, of Somerset Kentucky, to be hers absolutely.

The remainder of Kelly's property was devised to his surviving children in equal shares.

In a separately enumerated item, however, Kelly's will provided as follows:

It is my intention that my wife, Delia Ann Kelly, be named as the beneficiary of my life insurance policy with AON Insurance Services in the amount of \$120,000.00.

At the time of his death, Kelly did not own a life insurance policy in the amount of \$120,000.00 with AON Insurance Services. However, there was a policy with Prudential Financial Group Life, an affiliate of AON, with a value of slightly more than \$100,000.00. The beneficiary of this policy was a bank that had previously held a mortgage on a home that Kelly owned. Since the bank no longer held the mortgage, the proceeds of this policy were ultimately paid to Kelly's estate pursuant to the internal policy of the insurance company. The proceeds of this policy totaled \$100,255.14.

Delia had never been named as the beneficiary of this insurance policy. However, after Kelly's will was probated, Delia filed a petition for declaratory judgment in which she claimed that she was entitled to receive the insurance proceeds. Since it had been Kelly's intention to pay off the mortgage on the house which he had left to her under the initial provision of his will, she sought these proceeds as a means of effectuating that intent. She acknowledged that she had not engaged in any conversation with Kelly regarding her assumption. Kelly's surviving children and Zena contested her claim and denied that Delia was entitled to any part of the insurance proceeds.

Following a period of discovery, Zena filed a properly supported motion for summary judgment. Delia did not file a response to the motion but generally objected to the motion in oral argument before the trial court. On September 8, 2006, the trial court entered summary judgment in favor of the executrix and Kelly's surviving children. This appeal followed.

Delia contends that the trial court erred by granting summary judgment in favor of the appellees, arguing that there is an issue of fact concerning the proper interpretation of the will. We disagree.

Summary judgment is appropriate where there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law. *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476 (Ky. 1991). The single question to be resolved in this case is whether Delia is entitled to the life insurance proceeds under the terms of Kelly's will. There are no issues of fact at all governing this inquiry; the dispute is entirely one of law. Consequently, we conclude that the summary judgment was appropriate.

As to changing a beneficiary on an insurance policy, Kentucky has long adhered to the view that substantial compliance with the formalities or terms of the provisions in the policy is sufficient. *Hart v. Hart*, 201 S.W.3d 457 (Ky. 2006).

[T]he substantial compliance deemed sufficient has been 'when the insured had done all he could do under the circumstances'; 'all he believed necessary to effect the change' or 'what the ordinary layman would believe was all that was necessary to accomplish the change.'

*Hill v. Union Central Life Ins. Co.*, 513 S.W.2d 808 (Ky. 1974).

It is clear from the facts that Kelly understood the steps necessary to effect a change of beneficiary of his life insurance policy. He had successfully undertaken this process in September 1999; there is no indication that he was unable to repeat the process between the time that he executed his will in September 2002 and his death some three months later. The enumerated provision of Kelly's will expressing a generalized wish or preference was not a sufficient manifestation of his intent to comply with company procedures in changing the beneficiary designation on the insurance policy. A will does not pre-empt the contractual relationship between an insured and his insurer as to the procedures governing a change in beneficiary of an insurance policy. A will is not a substitute for execution of a change of beneficiary form (or at least with substantial compliance in undertaking that change).

Under these circumstances, we cannot conclude that Kelly substantially complied with the terms of the insurance contract with respect to a change of beneficiary. As a result, the insurer properly concluded that the default provision of the insurance contract governed, and the policy proceeds were properly paid to Kelly's estate.

Accordingly, the judgment of the Pulaski Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Gordon T. Germain  
Monticello, Kentucky

BRIEF FOR APPELLEES:

Melissa A. Stewart  
Somerset, Kentucky