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COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

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IN RE THE ESTATE OF WILLIAM ROSS TAYLOR

RESPONDENT PATRICIA CAIARELLI'S RESPONSE
TO APPELLANT'S OPENING BRIEF

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I. STATEMENT OF THE ISSUE

In 1990, William Taylor named his brother and sister as beneficiaries of an IRA. In 2004, William Taylor executed a Last Will that purported to give the IRA proceeds to a testamentary trust. Was the execution of the Last Will sufficient to change the beneficiary of the IRA from the original beneficiaries to the trust?

II. STATEMENT OF THE CASE

William R. Taylor, a computer science engineer who had worked for Microsoft for 10 years, CP 81, 129, died as a result of a boating accident on Lake Washington on September 1, 2005. CP 18. He left an estate in Washington subject to probate and a probate was started on September 20, 2005. CP 21-22.

Prior to his death, in 1990, when William was 22 years old and unmarried, he started an IRA at Charles Schwab, naming his brother, Charles Taylor and his sister, Betsy (Elizabeth) Taylor, as beneficiaries. CP 73. The GAL subpoenaed all documents pertaining to the Schwab IRA. The application form received from Schwab did not include the Disclosure Statement. CP 10. The application document consisted of three pages and contained these words:

“I reserve the right to revoke or change this beneficiary designation. I understand that such change or revocation must be tendered in writing as specified in the Disclosure Statement.” CP 73.

The words are written below the actual designations, as part of Section 5 of the application. Id.

The total paragraph, which was originally written in approximately small type, in two columns together measuring 6.5” wide X 1” tall, reads as follows:

I elect that at my death the interest in my CHARLES SCHWAB & CO. INC. INDIVIDUAL RETIREMENT ACCOUNT PLAN (“the Plan”) shall become the property of the primary beneficiary. If I have named more than one primary beneficiary, each such beneficiary surviving at my death will receive a share of the benefits determined by multiplying the total benefit to be distributed by a fraction, the numerator of which is the percentage to be distributed to such beneficiary as indicated above, and the denominator of which is the total stated percentages to be distributed to all such surviving primary beneficiaries. If no primary beneficiary survives me, surviving contingent beneficiaries shall share in the benefit in the same fashion as described above for primary beneficiaries. If no designated beneficiary survives, or if the Custodian cannot locate the beneficiary, then the Custodian shall distribute the amounts payable to my estate. I reserve the right to revoke or change this beneficiary designation. I understand that such change or revocation must be tendered in writing as specified in the Disclosure Statement. All prior designations (if any) or primary beneficiaries and contingent beneficiaries are hereby revoked. If no indication of benefits is made, funds will be divided equally. If no designation is made, the funds will be paid to my estate.

William Taylor was married to Patricia Caiarelli on November 24, 2001. CP 5. They had one son, (ACT), born May 5, 2002. CP 4. ACT is William Taylor's only surviving child. CP 4, 10. Subsequently, Patricia Caiarelli filed for divorce. This is the Last Will that was admitted to probate. CP 107-10. The Last Will makes certain specific bequests and then gives the residue of his estate to ACT:

2.3 Remainder of Estate. I give the rest, residue, and remainder of my estate, including any real and personal property, to my son (ACT). CP 107.

The Last Will lists assets to be distributed to a trust ("Trust") for his son, ACT, in paragraph 2.5:

2.5 The trust shall consist of The Sablewood house located at 4711 117th Place NE, Kirkland, WA, 98033-8749, or its proceeds after sale. In addition, the Trust shall include all my monies and properties of Tailorized Industries, Inc. and Tailorized Properties, LLC., and from my Charles Schwab accounts (Schwab IRA's, Schwab One, etc.), my Fidelity accounts (401K, ESPP, etc.) and all other checking and savings accounts under my name. CP 107.

William and Patricia's marriage was dissolved in February 2005 after a bitterly contested dissolution action. CP 75. In the summer of 2005, William started work at a new job. CP 78. At that time, he rolled funds into an IRA at Fidelity on which he named his brother Charles as beneficiary. CP 78-79, 122-27. There is no evidence showing that William Taylor checked on his own beneficiary designations at Schwab after they

were originally made. William also took out three AIG insurance policies provided through his employment, on which he named his brother Charles as beneficiary. CP 78-79, CP 208.

On September 20, 2005, pursuant to William's Last Will, Charles Taylor was appointed as William's personal representative with nonintervention powers. CP 22. In the course of the probate, the personal representative identified both probate and nonprobate assets. Among the nonprobate assets listed in the probate Inventory were the Charles Schwab IRA, and the Fidelity IRA, and one of the three the AIG insurance. CP 204-08.

On March 20, 2006, Patricia Caiarelli filed a TEDRA action seeking an order that declared ACT entitled to receive all proceeds from 401(k) Accounts, Individual Retirement Accounts, Investment Accounts, Option Accounts, and other nonprobate assets indentified in decedent's Last Will and owned by the decedent at death. CP 5-6.

After Patricia Caiarelli's attorneys withdrew from representation in the TEDRA action, a stipulation was entered in both the probate action and the TEDRA action, appointing a guardian ad litem ("GAL") for ACT. CP 62-64.

On August 11, 2008, the GAL brought a partial summary judgment motion seeking to have the Trust for ACT declared the beneficiary of the Charles Schwab IRA, CP 1-14, contrary to the beneficiary designation of Charles Taylor and Elizabeth Taylor. The GAL noted that after payment of administrative expenses, ACT would receive 10% of his father's assets, contrary to the intent indicated in William's Last Will. CP 7 # 19. Charles Taylor, acting in his capacity as the personal representative, defended the designation to himself and his sister, and opposed the motion, relying upon the Estate's attorney in the action. CP 132-42. Both parties agreed that there were no genuine issues of material fact, and that the determination of the motion was strictly a matter of law. CP 225.

On November 2, 2008, Judge Jim Rogers granted the GAL's motion, holding that the funds in the Schwab IRA should be distributed to Charles Taylor as trustee of the testamentary trust for ACT, stating in part that:

The Motion for Partial Summary Judgment is Granted. The Court concludes that the common law preexisting before TEDRA regarding the passing of nonprobate assets (such as the IRA account in dispute here) remains good law in this case.

The court further concludes, acting in equity, that the decedent's will, executed after the establishment of the Schwab IRA, provides evidence of his intent to change the beneficiary of his Charles Schwab account in favor of decedent's minor son. CP 225.

III. ARGUMENT

The Court's ruling that the proceeds of the Schwab IRA account should be distributed to the Trust was correct.

A. Standard of Review.

The standard of review on summary judgment is the de novo standard, with the reviewing court performing the same inquiry as the trial Court. *Herron v. Tribune Pbl'g. Co.* 108, 169 Wash.2d. 162, 169 P.2d 249 (1987).

B. The Funds From The IRA Belong to the Trust Pursuant to the Disposition Provisions of William Taylor's Last Will.

This case involves the conflict between a 1990 beneficiary designation of the Schwab account to a brother and sister of William Taylor, while he was unmarried and childless, in contrast to the 2005 Last Will written by William Taylor, giving the same account to a trust for his son, ACT. The beneficiary designation is part of an application form for the Schwab retirement account, composed of three pages.

There is no statute in Washington which controls this conflict. Washington's "Super Will" statute, RCW 11.11, controls the designation of some non-probate assets, allowing the designation in the Last Will to overcome the designation made with the provider. The statute specifically excludes retirement accounts. RCW 11.11.010(7)(a)(iv). Thus, the beneficiary designation form is not directly overcome by the writing of a Last Will, per that statute. No such argument was made by the GAL and none is made here. However, even though RCW 11.11 does not apply, that is not the end of the question. The Court can allow the distribution through the Last Will, relying upon common law rather than the statute, and thus overcoming the written designation. In this case, the Last Will of William Taylor should govern the distribution of the Schwab account, not through the statute, but instead, through the common law.

C. The Funds Properly Belong to the Trust Pursuant to Washington Common Law.

Generally, IRAs are distributed to the named beneficiaries pursuant to the procedures given by the Custodian of the account. In determining whether a decedent's change in beneficiaries is valid, Courts look to both substantial compliance with the IRA or insurance policy

procedures and at the Decedent's intent. *Allen v. Abrahamson*, 12Wn.App. 103, 105, 529 P.2d 469, 469 (1974). Substantial compliance with the terms of the policy means that the insured has not only manifested intent to change beneficiaries, but has done everything which was reasonably possible to make that change. *Id.* Where no formalities are required, a change of beneficiaries can be made in any way indicating the intention of the decedent by the mere direction of the insured. *Koch v. Aetna Life Ins. Co.*, 165 Wash. 329, 341, 5 P.2d 313 (1931). In addition, even when formalities are specified by written policy, Washington permits courts to enforce attempted changes in beneficiaries, which do not comply with the specific requirements of the policies in effect. See *Estate of Freeberg*, 180 Wn. App 202, 205-206, 122 P.3rd 741 (2005). Here, Schwab did not provide an adequate policy for changing the beneficiary designations. Thus the Court must look to the intent of William Taylor. The trial court properly granted the account to the Estate, in equity.

1. Schwab failed to given an adequate policy for changing the beneficiary designations.

Schwab's policy for making a change to the beneficiary designation is referenced in two places. First, the application form

includes the beneficiary designation, which William Taylor signed, with its pertinent statement:

“I reserve the right to revoke or change this beneficiary designation. I understand that such change or revocation must be tendered in writing as specified in the Disclosure Statement.”

CP 73.

Second, that statement refers to a Disclosure Statement, which apparently gives specific directions about the manner of making the changes. The GAL sent a subpoena for the entire Schwab file. The Disclosure Statement was not included in the responsive materials, and has never been produced by the Taylors. We do not know whether William Taylor ever saw a Disclosure Statement telling him what the requirements were. We do not know what the requirements were, or if the Disclosure Statement and the requirements it proposes have changed since William’s application in 1990. The GAL properly argued that William Taylor should not be subject to any Disclosure Statement because it was not a part of the contract, we do not know that William ever saw it, and there is no proof that it even exists.

Pursuant to RAP 2.5 (a), we raise an additional ground for affirming the trial court’s decision, regarding the application form for the Schwab account. RAP 2.5 (a) states:

Errors Raised for First Time on Review.

...A party or the court may present a ground for affirming a trial court decision which was not presented to the trial court if the record has been sufficiently developed to fairly consider the ground.

The Schwab application form is so defective in presenting the requirements in changing designations and referencing the Disclosure Statement, that we cannot conclude that William Taylor understood and agreed to the terms. Again, the pertinent statement is found on the third page of the application, in Section 5:

“I reserve the right to revoke or change this beneficiary designation. I understand that such change or revocation must be tendered in writing as specified in the Disclosure Statement.”

CP 73.

The words are a small part at the end of a larger two columned paragraph, only 6.5” wide X 1” tall in total size, and the two paragraphs are placed below William Taylor’s written designation. The words are printed in very small type set, smaller than the rest of Section 5 and smaller than the type set in the next Section, 6. Then, Section 6 follows, discussing a different topic, with a signature line at the end of Section 6. There is no signature line near the quoted statement. It is impossible to

know if William approved it at all. It is not included as a significant portion of either Section, it is much smaller in type, and has no independent signature or initial line. The statement is hidden in a maze of fine print, indicating to the reader that his attention to this small detail is not required. We cannot be sure that William Taylor even noticed this section, or that he was made aware that there was a Disclosure Statement somewhere else that was associated with this statement, or that he understood that a writing was required to change his designations, or even that a writing in the form of a Last Will would not be sufficient. The failure to give adequate opportunity to see or approve the requirements for making a change in beneficiary designation or adequate notice that a Disclosure Statement even existed should be viewed as not having given the notice of the requirements at all. It is reasonable to say that William did not approve the statement. The very act of naming the Schwab account in the Last Will, tells us that William did not believe that he had any other obligation when making a change of the beneficiary designation. Despite many contacts with Schwab agents, there is no evidence that he ever spoke with anyone about changing the designation.

The statement should be disregarded for two reasons: first, the mentioned Disclosure Statement is not a part of the designation, and has not been produced, and second, the statement is buried in small print

which is not noticeable. Schwab did not present an adequate policy for changing beneficiary designations to William Taylor.

2. Where the provider does not give a definite method of changing the beneficiary, then the courts look to the intent of the testator.

If William Taylor did not receive adequate opportunity to see or understand the requirements, then we must turn to his intent. The facts show that William created a trust for the benefit of ACT. Under the terms of the Last Will, all of William's residuary estate would be used for the benefit of ACT. He specifically named the Schwab retirement account as a part of that distribution. William's Last Will reflected a clear intent to benefit only one person: his son, ACT. The facts show that William loved and had great concern for his son's future welfare. He worked diligently with an estate attorney to secure an overall estate plan for his son. It is hard to comprehend that he wanted to leave his brother and sister the funds in the Schwab account when he so clearly laid the groundwork to assure that his son's trust received it. The Last Will was very explicit, naming the Schwab account as part of his probate estate, to be contributed to the trust for his son.

The general rule in Washington is that the courts of equity will give effect to the intention of the insured when the insured has substantially complied with the provision of the policy regarding that change (citing *Allen v. Abrahamson*, 12 Wn. App 103, 105, 529 P.2d 469 (1974)). In this case, where William Taylor had not been given an adequate statement of the requirements of changing his beneficiary designations, it appears that he did all that he could to make the change.

In *Rice v. Live Insurance Company of North America*, 25 Wn.App. 479, 480, 609 P.2d 1387, 1388 (1980), a decedent's family brought suit alleging that they were the proper beneficiaries of the decedent's life insurance policy. The decedent had divorced his first wife and then named his mother, brother and sister as beneficiaries of the policy. *Id.*, Wn. App. at 480, 609 P.2d at 1388. Prior to his death, the decedent became engaged and used a form supplied by the insurance company to make his fiancé the new beneficiary. *Id.* The decedent's family alleged that that they were the proper beneficiaries because the form that the decedent used did not show intent to revoke prior beneficiaries. The decedent's intent was the major issue in the trial. Both trial and appellate courts found, from the extrinsic evidence, not just the designation forms, that the decedent's intent was to leave the proceeds to his fiancé.

In *Estate of Freeberg*, 180 Wn. App. 202, 205, 122 P.3rd 741 (2005) the decedent changed his beneficiary designation on his IRA from his children to his new wife by orally requesting the change. The Court held the change to be valid, six years after his death.

In both cases, the Washington Court looked to the intent of the drafter, including extrinsic evidence, to determine whether or not to enforce the written designation. William Taylor made his intent very clear, by specifically naming the Schwab account as an asset of his son's trust.

3. The Trial Court's decision to award the Schwab account to the Estate, for inclusion in the Trust for ACT, done as an equitable remedy, should be affirmed.

The GAL noted the equitable issues in this case, in his Motion for Summary Judgment:

- a. Charles Taylor and his father, Reuben Taylor, filed claims against the Estate totaling almost \$300,000.
- b. Charles Taylor, as personal representative, approved those claims.

- c. Reuben Taylor, through his Living Trust, was paid \$125,000 from the Estate for a deed of trust.
- d. Charles Taylor held the jobs of personal representative, trustee of the trust, creditor, and beneficiary of the majority of the non-probate assets.
- e. If allowed to collect on the Schwab policy, Charles Taylor would receive about 70% of the probate and non-probate assets known at that time, which did not include the two additional AIG life insurance policies discovered since then.

In the case of *Levas' Estate*, 33 Wash. 2d 530, 106 P.2d 482 (1949), the Court was faced with a similar issue of equity. In that case, the father wrote a Last Will leaving his real estate to his son, and his remaining cash to his brother. The only real estate that the father owned was an executory contract in land, not the actual deed. The brother attempted to claim the contract as his property, because the deed had not been issued. The trial court found that the executory contract was personal property and thus awarded it to the brother. The Supreme Court disagreed, and looked to the intent of the decedent, saying,

“Under appellant’s contention, respondent would receive nothing under his father’s Last Will. That this was the father’s intention is inconceivable to use. Respondent was the principal object of his bounty. The father trusted his ability and integrity sufficiently to name him co-executor under a non-intervention will. It is perfectly clear to us that the testator intended, by his will, to leave to respondent all real estate, including any interest in any real estate contract, which he might have at the time of his death.” *Id.* At 537.

Those words are certainly applicable to this case. Since Charles Taylor was named as the trustee, and given that the Last Will was explicit in including the Schwab account in the trust, the trial court ruled properly in deciding that, in equity, the retirement account should be granted to the Estate, for inclusion in trust. Charles Taylor was clearly intended to be the trustee for his nephew, thus the designation was merely a constructive trust arrangement.

IV. CONCLUSION

There is no statute governing the procedural disposition of retirement accounts. RCW 11.11 specifically excludes the transfer of

retirement assets through a Last Will; however, this does not exclude the disposition of the assets through means other than the beneficiary designations. The specific requirements of the financial provider determine the policy for which the designations may be changed. Where there is no policy existing, or, as in this case, where it should be treated as non-existent because it was not clearly communicated, then we look to the intent of the decedent. William Taylor clearly indicated that he wanted all of his assets, specifically including the Schwab account, to be put into trust for his child, ACT. In reviewing all the facts, the trial court correctly ruled that, in equity, the Schwab account should be given to the Estate, thus treating the original designation to Charles Taylor as a constructive trust. This Court should affirm that decision.

Respectfully submitted,

A handwritten signature in cursive script, reading "Madeline Gauthier". The signature is written in black ink and is positioned below the text "Respectfully submitted,".

Madeline Gauthier, WSBA# 17857

Attorney for Patricia Caiarelli