

47278-3-II
IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

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DIVISION II
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STATE OF WASHINGTON
BY
DEPUTY

In re the Estate of CAROL COLLISTER,

Deceased.

ROCKY A. FELLER, Individually and as Personal Representative of the
Estate of Carol Collister,

Appellant,

v.

DONNA COLLISTER and BARBARA GUPTA,

Respondents.

BRIEF OF RESPONDENTS

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TABLE OF CONTENTS

I. INTRODUCTION.....1

II. STATEMENT OF ISSUES ON APPEAL.....2

III. STATEMENT OF THE CASE.....2

IV. ARGUMENT.....3

A. Standard of Review3

B. The Trial Court Correctly Ordered the Life Insurance
Proceeds Payable to Respondents.....4

C. Respondents Should be Awarded Attorneys’ Fees
On Appeal.....9

V. CONCLUSION.....9

TABLE OF AUTHORITIES

STATE CASES

In re Estate of Black, 153 Wash.2d 152,
102 P.3d 796 (2004).....3

In re Estate of Black, 116 Wash. App. 479,
66 P.3d 670 (2003).....3

In re Estate of Bowers, 132 W. App. 334,
131 P.3d 916 (2006).....3

In re Estate of Ehlers, 80 Wash. App. 751,
911 P.2d 1017 (1996).....4

In re Estate of Ney, 183 Wash. 503,
48 P.2d 924 (1935).....3

In re Estate of Milton, 48 Wash.2d 389,
294 P.2d 412 (1956).....5, 7

Woodard v. Gramlow, 123 Wash. App. 522,
95 P.3d 1244 (2004).....5, 7, 8

STATUTES

RCW 11.02.005(10).....4

RCW 11.11.....4

RCW 11.11.003(3).....4

RCW 11.12.230.....6

RCW 11.96A.150.....9

RULES

RAP 14.2.....9
RAP 14.3.....9
RAP 18.1.....9

I. INTRODUCTION

Carol Collister died on May 23, 2014, and leaving a Last Will with specific bequests to her sisters Donna Collister and Barbara Gupta, and the remainder of her estate to her ex-husband, Rocky Feller. Rocky Feller was named as Personal Representative in her Will. He was also the named beneficiary of two life insurance policies which were the subject of specific bequests in her Will.

In her Will, Carol Collister specifically stated that she had two life insurance policies, directing that the proceeds of one of those policies be divided between Donna Collister and Barbara Gupta, and the other be given to Rocky Feller.

Mr. Feller received the proceeds of both policies as the named beneficiary, and refused to pay the proceeds of the designated policy to the Respondents despite the clear direction in Carol Collister's Last Will.

Donna Collister and Barbara Gupta petitioned the probate court for an order directing Mr. Feller to pay the designated policy proceeds to them.

In honoring the clear intent of the testator, the trial court ordered that Mr. Feller pay the proceeds of the designated life insurance policy to the Respondents. This Court should uphold the entry of the February 6, 2015 Order, and award Respondents their attorneys' fees on appeal.

II. STATEMENT OF ISSUES ON APPEAL

Whether this Court should reverse the February 6, 2015 Order requiring Mr. Feller to disburse the \$25,000 life insurance policy proceeds to Donna Collister and Barbara Gupta. CP 27.

III. STATEMENT OF THE CASE

On October 3, 2013, Carol Collister executed her Last Will and Testament. In this Will, she named Rocky Feller, Barbara Gupta and Donna Collister as beneficiaries, and appointed Rocky Feller as her personal representative. CP 3. In 2009, prior to executing her will, Carol Collister designated Mr. Feller as beneficiary of two life insurance policies. CP 19.

Carol Collister died on May 23, 2014. CP 3. Mr. Feller was appointed personal representative when her Will was admitted to probate on June 11, 2014. *Id.*

A Declaration of Completion of Probate was filed on December 5, 2014, and Notice of Filing Declaration of Completion of Probate was given, without payment of the life insurance policy proceeds to Respondents. CP 4. Respondents then filed a Petition for Judicial Proceedings for an Accounting on Specific Bequest (RCW 11.96A) on December 31, 2014. CP 2.

On February 6, 2015, the trial court entered an order granting Respondents' Petition, and requiring Mr. Feller to disburse the proceeds of the \$25,000 life insurance policy to Respondents. CP 7-8.

IV. ARGUMENT

A. Standard of Review.

“Decisions based on declarations, affidavits and written documents are reviewed de novo.” *In re Estate of Bowers*, 132 Wn. App. 334, 339, 131 P.3d 916, 918-19 (2006). “Courts have also recognized that probate proceedings are equitable in nature and reviewed de novo on the entire record.” *Id.*, citing *In re Estate of Black*, 153 Wash.2d 152, 161, 102 P.3d 796 (2004); *In re Estate of Ney*, 183 Wash. 503, 505, 48 P.2d 924 (1935); *In re Estate of Black*, 116 Wash. App. 479, 483, 66 P.3d 670 (2003).

There are no factual disputes in this matter. The undisputed record shows that Carol Collister executed a Will with a specific bequest of certain life insurance proceeds to Respondents, that Mr. Feller was appointed personal representative and received those policy proceeds, and thereafter refused to pay those policy proceeds to Respondents. The record in this matter is fairly short, and the Court should review the entire record de novo. The issues are equitable and legal, not factual in nature.

B. The Trial Court Correctly Ordered the Life Insurance Proceeds Payable to Respondents.

Appellant has argued that this matter should be determined by RCW 11.11 (the “super will” statute). A life insurance policy would not be included as “nonprobate asset” subject to disposition by Will, as it is specifically exempted. RCW 11.02.005(10) provides that “a ‘Nonprobate asset’ does not include: A payable-on-death provision of a life insurance policy, annuity, or other similar contract”

However, Respondents are not arguing that the life insurance proceeds at issue here come within the nonprobate assets governed by this statute. Respondents agree that life insurance proceeds are to be paid to the named policy beneficiary, fulfilling the intent of the statute “to protect any financial institution or other third party having possession of or control over such an asset and transferring it to a beneficiary duly designated by the testator.” RCW 11.11.003(3).

Respondents are arguing that when the beneficiary of the life insurance policy is the personal representative named in the Will, the testator may impose a further duty on such beneficiary as to the ultimate disposition of the life insurance proceeds. A personal representative owes a fiduciary duty to the heirs of the estate, and must conform to the laws governing trustees. *In re Estate of Ehlers*, 80 Wash. App. 751, 762, 911

P.2d 1017 (1996).

Our courts have adopted the rule that insurance proceeds may be the corpus of a testamentary trust, so long as the intent to do so is clear in the language of the will or trust. *Woodard v. Gramlow*, 123 Wash. App. 522, 95 P.3d 1244 (2004) quoting *In re Estate of Milton*, 48 Wash.2d 389, 294 P.2d 412 (1956).

Both cases involve the proceeds from an insurance policy, which carries with it the presumption of exemption from creditor's claims. Ms. Gramlow asks us to follow the holding of *Milton* since our Supreme Court ultimately decided no trust was created by the terms of the will and the insurance beneficiary was allowed to keep the proceeds without having to pay the estate's bills. However, it is not the holding but the rules of law set forth in the *Milton* case that apply directly to the case before us. As stated above, Attachment 1 created a testamentary trust that was incorporated into Ms. Young's estate by the wording on page 2 of the will.⁴ Attachment 1 specifically required the life insurance proceeds to pay "[a]ll just debts, funeral expenses and expenses of last illness."⁵ It then stated, "[a]fter the above expenses are taken care [sic]. Take the rest of the proceeds and invest them in CD's."⁶ Clearly, the insurance proceeds were the corpus of the testamentary trust. The rule from *Milton* allows exempt property, such as insurance proceeds, to pay the debts of the estate as long as the testator's intent to do so is clear in the language of the will or trust.

The language before us in Carol Collister's Will is as clear. The provision in question reads as follows:

ARTICLE FOUR: SPECIFIC BEQUEST; LIFE INSURANCE

Having in mind that I have certain life insurance policies, one in the amount of \$25,000.00 and one in the amount of \$60,000.00, I give, devise and bequeath the proceeds of said insurance as follows:

A. The \$25,000.00 policy proceeds shall go unto BARBARA GUPTA and DONNA COLLISTER, share and share alike. In the event either should predecease me, then her share shall go unto ROCKY FELLER.

Carol Collister expressly mentions two life insurance policies in her Will. She knew at the time she executed her Will that Mr. Feller was the named beneficiary of both policies. Had she intended that Mr. Feller retain the proceeds of both policies, there would have been no need for mentioning the policies at all.

The only plausible reason for mentioning both policies and directing their disposition in her Will is that she intended to impress a trust upon those proceeds, knowing that Mr. Feller as her personal representative had a fiduciary duty to carry out her direction.

RCW 11.12.230 provides that “All courts and others concerned in the execution of last wills shall have due regard to the direction of the will, and the true intent and meaning of the testator, in all matters brought before them.”

“To impose a testamentary trust as to the use to be made of insurance proceeds, something more than a wish, desire, or expectation must be expressed by the testator as to the activities of the beneficiary as trustee.” *In re Estate of Milton*, 48 Wash.2d 389, 294 P.2d 412 (1956). That language is found in Carol Collister’s Will: “The \$25,000.00 policy proceeds *shall go* unto BARBARA GUPTZ and DONNA COLLISTER” (emphasis added).

Appellant argues that the rule in *Milton* is limited to the use of insurance proceeds for the benefit of creditors. However, there is no language in either *Milton* or *Woodard v. Gramlow*, which would limit their rationale to such circumstance. The decision in *Milton* primarily turned on the strength of the testator’s direction as to the use of the life insurance policy proceeds, “the Will itself does not direct the uses to be made of the proceeds of the testator’s insurance.” *Milton* 48 Wash.2d at 393.

Woodard v. Gramlow used the rationale set forth in *Milton* to reach a contrary result, finding that there was indeed sufficient direction by the testator to create a testamentary trust. Quoting the language in the Will, the Court reasoned, “it then stated, “[a]fter the above expenses are taken care [sic]. Take the rest of the proceeds and invest them in CD’s.” Clearly, the insurance proceeds were the corpus of the testamentary trust.”

Woodard v. Gramlow, 123 Wash.App. at 525. And just as clearly, although not an issue in that case, there was no limitation to the use of the proceeds for payment of debts. The Court decided that the insurance proceeds, by appropriate direction of the testator in the Will, could form the corpus of a testamentary trust and not the property of the named beneficiary.

In the Will of Carol Collister, we find very clear direction as to the use of those insurance proceeds. The Will forms the instructions to the personal representative. Carol Collister appointed Mr. Feller as her personal representative after naming him as beneficiary on the life insurance policies, and clearly stated her intentions as to the disposition of those proceeds. Accordingly, the Court should find that in doing so, she impressed a trust on those insurance proceeds, obligating Mr. Feller as both her personal representative and the beneficiary of the policy to then pay the proceeds as she had directed.

This construction would serve to uphold the intent of the super will statute in protecting the insurance company who paid the policy proceeds to the named beneficiary, and properly move the matter into the probate court where the personal representative operates with a fiduciary duty to carry out the terms of the decedent's will.

C. Respondents Should be Awarded Attorneys' Fees on Appeal.

Donna Collister and Barbara Gupta request attorneys' fees and costs pursuant to RAPs 14.2, 14.3, and 18.1. Further, this matter was originally brought under RCW 11.96A.150 which authorizes costs, including reasonable attorneys' fees, to be awarded by the Court. Accordingly, Respondents should be awarded their attorneys' fees on appeal.

V. CONCLUSION

Carol Collister named Rocky Feller as her personal representative knowing that she had previously designated him as the beneficiary on both of her life insurance policies. She made specific bequests of the life insurance proceeds in her Will, knowing that those proceeds would be in the hands of her personal representative. The Court should confirm that this treatment constitutes a testamentary trust, and that the personal representative then has a fiduciary duty to carry out the terms of the will as written. The intent of Carol Collister should be honored, and Rocky Feller should be ordered to pay the insurance proceeds to Donna Collister and Barbara Gupta. Further, Respondents should be awarded their attorneys' fees and costs below and on appeal.

Dated this 8th day of September, 2015.

Respectfully Submitted,

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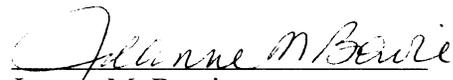
Certificate of Service

Pursuant to the laws of the State of Washington, the undersigned certifies under penalty of perjury that a true and correct copy of the foregoing document was sent with first class postage affixed to the following:

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