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NO. 63462-3-I

IN THE COURT OF APPEALS, DIVISION ONE
OF THE STATE OF WASHINGTON

IN RE THE ESTATE OF WILLIAM ROSS TAYLOR

FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
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REPLY BRIEF OF APPELLANT CHARLES TAYLOR TO RESPONSE
OF RESPONDENT SUCCESSOR PERSONAL REPRESENTATIVE

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TABLE OF CONTENTS

	<u>Page</u>
I. ARGUMENT	1
A. Chapter 11.11 RCW Is Clear That William Could Not Change the Beneficiary Designation On His IRA Through His Will	1
B. The Beneficiary Designation On the IRA Remains Unchanged Because William Did Not Substantially Comply With the Charles Schwab Policy Provisions	1
1. William’s Intent Was Not Unequivocally Established by His Will	2
2. William Did Not Do Everything Reasonably Possible to Change Beneficiaries	3
C. The Court Should Decline to Award Attorney’s Fees	6
II. CONCLUSION	7

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<i>Allen v. Abrahamson</i> , 12 Wn. App. 103, 529 P.2d 469 (1974)	2
<i>In Re Estate of Freeberg</i> , 130 Wn. App. 202, 122 P.3d 741 (2005).....	2
<i>In Re Estate of Wright</i> , 147 Wn. App. 674, 688, 196 P.3d 1075 (2008), cert. denied, 166 Wn.2d 1005, 208 P.3d 1124 (2009).....	6
<i>Rice v. Life Insurance Co.</i> 25 Wn. App. 479, 609 P.2d 1387 (1980)	5,6
<i>Sun Life Assurance Co. v. Sutter</i> , 1 Wn.2d 285, 95 P.2d 1014 (1939)	4,5
 <u>Statutes</u>	
RCW 11.11	1
RCW 11.11.010(7)(a) (iv).....	1
RCW 11.96A.150(1)(a)	6

I. ARGUMENT

A. Chapter 11.11 RCW Is Clear That William Could Not Change the Beneficiary Designation On His IRA Through His Will.

None of the cases cited by either party address an attempted change of beneficiary on an IRA by means of a will provision. That is not surprising because Washington law prohibits a change in beneficiary of an IRA by means of a will provision. RCW 11.11.010(7)(a)(iv).

The Successor Personal Representative (“SPR”) refers to Chapter 11.11 RCW as a statute that helps testators control the disposition of nonprobate assets, but he does not address the fact that the statute does not allow a testator to name or change beneficiaries to an IRA in a will. The only evidence of William’s intent to change the beneficiary designation on the Schwab IRA is paragraph 2.5 of his will. As that paragraph is ineffective to make such a change because of RCW 11.11.010(7)(a)(iv), the court should reverse the trial court ruling on that basis alone.

B. The Beneficiary Designation For the IRA Remains Unchanged Because William Did Not Substantially Comply With The Charles Schwab Policy Provisions.

If the court does not find that Chapter 11.11 RCW resolves this issue, it must decide whether William substantially complied with the Charles Schwab IRA policy provisions for changing beneficiaries. The SPR recognizes that Washington law requires that a plaintiff in a “change

of beneficiary” case must meet the standard of substantial compliance, which means that “the insured has not only manifested an intent to change beneficiaries, but has done everything which was reasonably possible to make that change.” *In Re Estate of Freeberg*, 130 Wn. App. 202, 205-06, 122 P.3d 741 (2005) citing *Allan v. Abrahamson*, 12 Wn. App. 103, 529 P.2d 469 (1974). The SPR argues that the standard of substantial compliance has been met solely and completely through William’s will. However, the evidence shows that William’s intent regarding a beneficiary change is far from clear and, in addition, that he did not take basic actions to effectuate a change of beneficiary.

1. William’s Intent Was Not Unequivocally Established by His Will.

The SPR asserts that William’s intent to name the trust as beneficiary is established by paragraph 2.5 of his will. Appellant does not dispute that the will provision does show an intent, at the time the will was executed in 2004, to change the beneficiary designation. However, there is conflicting evidence of William’s intent at the time of his death in 2005. The will was drafted during a contentious divorce. After the divorce was finalized, William named his brother, and not his son or the trust, as beneficiary of a Fidelity rollover IRA and three life insurance policies. CP 78-79, 205-08, 122-27. Those actions are consistent with an intent to keep

his brother as a beneficiary of the Schwab IRA. It is simply not the case that the will unequivocally shows William's intent to change beneficiaries.

2. William Did Not Do Everything Reasonably Possible to Change Beneficiaries.

Even if the court were to conclude that the will provision was clear evidence of William's intent at the time of his death, such an intent, alone, is insufficient to effect such a change. The case law is clear that in addition to intent, the account holder must have undertaken all reasonable actions under the circumstances to effectuate the change. Those requirements eliminate doubt as to the account holder's intent and provide the financial institution with solid evidence of the intent.

The SPR argues that because the Disclosure Statement is not in the record, it cannot be proven exactly what steps were needed to make the beneficiary change, and as those steps are not known, the will provision alone meets the substantial compliance standard. However, it is the SPR's burden to establish that William met the substantial compliance standard by showing that he did everything reasonably possible to make the change – and this is a burden the SPR cannot meet with the will alone.

Schwab required a request for a change in beneficiary to be “tendered in writing as specified in [Schwab's] Disclosure Statement.”

CP 73. The application, signed by William, states that he received and read the Disclosure Statement. CP 73. There is no evidence that William tendered anything to Schwab in writing or that he contacted Schwab in any way in an attempt to change beneficiaries. Such lack of action defeats the SPR's claim of substantial compliance.

The SPR further argues that substantial compliance should be determined based upon the existence of a written statement of intent to change beneficiaries, rather than on a review of all efforts made by the insured in compliance with policy requirements. The SPR misstates the substantial compliance standard and misconstrues the cases he cites in support of his argument.

In *Sun Life Assurance Co. v. Sutter*, 1 Wn.2d 285, 95 P.2d 1014 (1939), the decedent had written a letter to the insurance company requesting that the company make a change in his beneficiary designation. The original beneficiary had died and the administrator of decedent's estate contested the change of beneficiary. *Id.* at 286-87. Decedent's letter to the insurance company was unsigned, but based upon the evidence presented at trial the court found that it was "beyond question" that the letter was written by the decedent. *Id.* at 290. That finding ended the court's inquiry, because the letter, once it was established that it was

written by the deceased, “constituted in fact a compliance with the requirement in the policies for a change of beneficiary.” *Id.* at 292.

The SPR asks the court to compare the will provision here with the unsigned letter in *Sun Life* and find the will “at least as compelling evidence” as the unsigned letter. Respondent’s Brief at p. 5. The SPR misses the point of *Sun Life*. There the court found that decedent had effectively changed his beneficiary, not simply because there was a writing expressing his intent, but because the letter met the requirements of the policy for changing beneficiaries. The *Sun Life* court specifically states that “[a] court of equity will order a change in beneficiary only if it appears that the insured, during his lifetime, did everything necessary to effectuate the change, nothing remaining for the insurer to do, save purely ministerial acts.” *Id.* at 291-92. In this case, it is clear that William did not meet the requirements of the Schwab policy as he did not tender anything in writing to Schwab regarding a beneficiary change.

In *Rice v. Life Insurance Co.*, 25 Wn. App. 479, 609 P.2d 1387 (1980), the decedent signed a change of beneficiary request form four days before his death in which he named his new fiancée as beneficiary of an insurance policy instead of his parents and brother. In a dispute between the fiancée and the parents and brother, the court found for the fiancée. The parents and brother challenged several findings of fact, claiming in

part that the change of beneficiary form was ambiguous. The court gave short shrift to this argument, noting that it was the only form the insurance company gave its employees to make a change of beneficiary and that the decedent had used the same form in prior years to change his beneficiary designation.¹

As in *Sun Life*, the *Rice* court found that a writing by the decedent met the requirements of the insurance policy for changing beneficiaries. That is not the case here.

C. The Court Should Decline to Award Attorney's Fees.

Attorney's fees on appeal in a TEDRA matter are awardable solely at the discretion of the court. RCW 11.96A.150(1)(a). The issue before the court is not frivolous. Neither party requested attorney fees below. Even if the SPR were to prevail on appeal, he has not articulated a convincing basis for an award of fees. The request for fees should therefore be denied. See *Estate of Wright*, 147 Wn. App. 674, 688, 196 P.3d 1075 (2008), *cert. denied*, 166 Wn.2d 1005, 208 P.3d 1124 (2009).

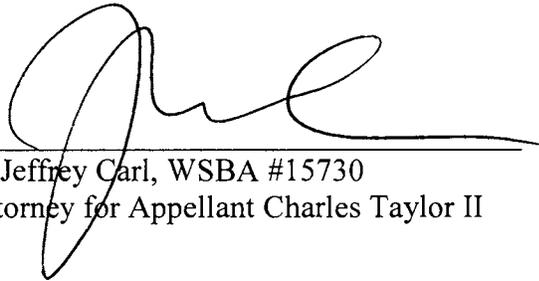
¹ The *Rice* court was more concerned with the argument on whether the testimony of the fiancée was properly allowed at trial. *Id.* at 482-83.

II. CONCLUSION

William Taylor's 1990 beneficiary designation on his Charles Schwab IRA was not changed by his 2004 will provision that purported to give that IRA to a trust. Washington statutes prohibit a testator from naming the beneficiary of an IRA in a will. As the will is the only evidence of William's intent to change beneficiaries, and as nothing in writing regarding a request for a change of beneficiary was tendered to Schwab, William did not substantially comply with Schwab's policy regarding a change of beneficiary. This court should reverse the trial court's partial summary judgment order of November 2, 2008.

DATED this 8 day of January, 2010.

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A handwritten signature in black ink, appearing to be 'B. Jeffrey Carl', written over a horizontal line.

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