

**COURT OF COMMON PLEAS OF PHILADELPHIA  
ORPHANS' COURT DIVISION**

Estate of Albert R. Pepe, Deceased  
O.C. No. 112 DE of 2018  
Control No. 185288

**OPINION**

Carol Linda Pepe Rowan (“Petitioner”), daughter and administrator of the Estate of Albert R. Pepe, Deceased (“Decedent”), seeks a declaratory judgment recognizing her as the primary beneficiary of Decedent’s annuity. Catherine Trignani (“Respondent”), is the named primary beneficiary of Decedent’s annuity. The issue in this case is whether Decedent substantially complied with the terms of his annuity such that his intent to change the primary beneficiary of his annuity from Respondent to Petitioner should be given effect. For reasons stated below, the Court holds Decedent did not substantially comply with the terms of his annuity and finds Respondent, as the primary beneficiary of the annuity, entitled to the annuity’s proceeds.

**I. Procedural History**

On January 30, 2018, Petitioner filed a Petition for Citation to show cause why a declaratory judgment recognizing her as the primary beneficiary of the Decedent’s annuity should not be entered. Citations were awarded and directed to the interested parties: Respondent; Washington National Insurance Company (“WNIC”); and Jackson National Life Insurance Company (“Jackson National”).

WNIC and Jackson National were served with the Citation and Petition and subsequently filed a Joint Petition for Interpleader on March 22, 2018. WNIC and Jackson National then filed their Joint Answer with New Matter on March 23, 2018. Petitioner filed her Answer with New

Matter on April 12, 2018. WNIC and Jackson National filed a Reply to New Matter on May 2, 2018.

Unable to locate Respondent to serve a copy of the Petition and Citation, Petitioner filed a Petition for Alias Citation. This Court awarded the Alias Citation on May 14, 2018. Respondent's counsel accepted service, and Respondent filed an Answer with New Matter and Counterclaim on May 30, 2018.

On June 5, 2018, upon consideration of the Joint Petition for Interpleader filed by WNIC and Jackson National, this Court issued a Decree directing Jackson National to pay the annuity's death benefit to the Court Registry. The Decree discharged WNIC and Jackson National from further participation in the action and from any and all liability in connection with, arising out of, or related to the death benefit of Decedent's annuity. The Decree also enjoined Petitioner and Respondent from further prosecuting any other proceedings in any state or federal court against WNIC or Jackson National on account of the death benefit until the present action concludes. WNIC and Jackson National deposited the \$64,890.13 annuity death benefit with the Court Registry.

On June 12, 2018, this Court issued a Decree ordering Petitioner and Respondent to submit memoranda of law within sixty days addressing the following issue: whether the Decedent's attempt to execute a change of beneficiary was sufficient to invoke the substantial compliance exception to the general requirement that the insured comply with formal procedure in order to effectuate a change of beneficiary.

In the wake of the June 12 Decree, Petitioner filed a Reply to New Matter and Answer to Counterclaim with New Matter on June 19, 2018. On June 28, 2018, Respondent filed a Reply to New Matter.

## II. Facts

The following facts are undisputed. On April 14, 1994, Decedent executed an application for an annuity through American Life and Casualty Insurance Company (“American Life”). Decedent named Respondent as the primary beneficiary. American Life issued the annuity to Decedent with the policy number ON915773 (the “Original Annuity”). Subsequently, WNIC assumed the Original Annuity. On September 3, 2013, WNIC sent Decedent a letter advising him the Original Annuity was scheduled to mature less than a month later on October 1, 2013. WNIC offered Decedent the option of extending the maturity date for the Original Annuity and enclosed the necessary forms to request such an extension. WNIC never received a request from Decedent for an extension of the maturity date.

Sometime in September 2013, Decedent contacted WNIC, requesting information on how to change the beneficiary of the Original Annuity. In a letter dated September 26, 2013, WNIC acknowledged Decedent had contacted it and provided Decedent with instructions and the necessary form to change the beneficiary of the Original Annuity. On October 11, 2013, Decedent took the change of beneficiary form to his broker through whom he purchased the Original Annuity in 1994. In his broker’s office and presence, Decedent completed, signed, and dated the change of beneficiary form, naming Petitioner as the primary beneficiary of the Original Annuity. Decedent mailed the form back to WNIC on November 16, 2013.

Nevertheless, on October 1, 2013, the Original Annuity had matured and terminated. Since WNIC did not receive a request for extension of the maturity date, WNIC issued an irrevocable supplemental contract with the policy number SC915733 (the “Supplemental Annuity”) on October 17, 2013. The Supplemental Annuity was administered and co-insured by

Jackson National. Respondent was retained as the primary beneficiary for the Supplemental Annuity.

The Supplemental Annuity stated the Original Annuity matured and terminated with no further benefits. Further, the Original Annuity had value due and payable to Decedent. WNIC and Jackson National agreed to use the Supplemental Annuity to pay the value due from the Original Annuity to Decedent in the manner specified by him—i.e., monthly installments of \$936.20 to begin on October 17, 2013 and continue for 10 years. The Supplemental Annuity also contained the following language:

In the event of the death of the Contract Owner before all installments for the Guaranteed Period have been paid, the Principal Amount remaining unpaid will be commuted to the Contract Owner's date of death at 3.5% interest ("Death Benefit"), and paid in one lump sum to the Primary Beneficiary(ies).

In other words, in the event of the Decedent's death before the expiration of the 10 year guaranteed period, the remaining balance of the Supplemental Annuity would be paid in a lump sum to the primary beneficiary—i.e., Respondent.

WNIC received Decedent's change of beneficiary form listing the Original Annuity's policy number of ON915733 on November 19, 2013. The envelope containing the form was postmarked November 16, 2013. The key language on the change of beneficiary form states:

The effective date of this revocation and change, upon being filed and recorded with the Company, will take effect as of the date the form was signed unless the policy has been terminated, surrendered or had a claim filed and/or processed against it before this revocation change is received by the Company.

Consequently, WNIC notified Decedent via letter dated November 21, 2013, it had received the change of beneficiary form but were "unable to process [his] request" as the policy was "inactive." The letter further stated: "If you have any questions, please call the Client Services Center at (866) 553-5958, Monday through Friday from 8:00 AM to 5:00 PM Central Standard

Time.” WNIC received no further inquiries from Decedent regarding his Supplemental Annuity or requests to either confirm or change the beneficiary of same.

Decedent died intestate on June 21, 2017, in Philadelphia, Pennsylvania. At the time of his death, Decedent’s Supplemental Annuity had a death benefit valued at \$64,890.13. Petitioner and Respondent each assert they are entitled to receive the death benefit of the Supplemental Annuity.

## **II. Discussion**

The Court has carefully considered the record in this matter, the parties’ briefs, and the arguments advanced. This Opinion is the product of those deliberations. This Discussion proceeds in two parts. The first articulates the declaratory judgment standard. The second explores the substantial compliance doctrine.

### A. Declaratory Judgment Standard

A declaratory judgment is a remedy whose purpose is to “settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations.” 42 Pa.C.S. § 7541. In particular, section 7533 of the Declaratory Judgment Act states “[a]ny person interested under a . . . written contract . . . may have determined any question of construction or validity arising under the . . . contract . . . , and obtain a declaration of rights, status, or other legal relations thereunder.” *Id.* § 7533. A declaratory judgment is not a vehicle to “determine rights in anticipation of events that may not occur or for consideration of moot issues or for an advisory opinion that may prove to be purely academic.” *Gulnac v. S. Butler Cty. Sch. Dist.*, 587 A.2d 699, 701 (Pa. 1991). A party may obtain a declaratory judgment only where there is a “real controversy.” *Id.* “The presence of antagonistic claims indicating imminent and inevitable litigation coupled with a clear manifestation that the declaration sought will be of practical help

in ending the controversy are essential to the granting of relief by way of declaratory judgment.”  
*Gulnac*, 587 A.2d at 701.

Further, the decision to grant or deny a declaratory judgment lies within the sound discretion of the court with original jurisdiction. *Id.* The Orphans’ Court Division of the Court of Common Pleas is a court of limited jurisdiction and exercises only those powers expressly granted to the court by statute. *In re Mains’ Estate*, 185 A. 222, 223 (Pa. 1936). Specifically, the Probate, Estates, and Fiduciary Code states the Orphans’ Court has mandatory and exclusive jurisdiction over the administration of decedents’ estates. 20 Pa.C.S. § 711(1).

Here, Petitioner seeks a declaratory judgment recognizing her as the primary beneficiary of Decedent’s annuity. An annuity is a form of insurance, and insurance is a species of contract. *See Rittenhouse Found., Inc. v. Lloyds London*, 277 A.2d 785, 789 (Pa. 1971). Ergo, an annuity can be the subject of a declaration judgment action. Moreover, the annuity at issue in this case is the center of antagonistic claims from Petitioner and Respondent indicating imminent and inevitable litigation. Petitioner and Respondent cannot both be the sole primary beneficiary of Decedent’s annuity. A declaratory judgment in this matter is essential to establish the parties’ rights, or lack thereof, arising under the annuity and end the controversy. Since this controversy implicates Decedent’s estate, this Court has original jurisdiction and has the ability to grant or deny the requested declaratory judgment.

#### B. Substantial Compliance Doctrine

As previously stated, Petitioner argues Decedent substantially complied with the terms of his annuity such that his intent to change the primary beneficiary of his annuity from Respondent to Petitioner should be given effect. The general rule states an insured must comply with the terms of their policy in order to effectuate a change of beneficiary. *In re Estate of Golas*, 751

A.2d 229, 231 (Pa. Super. Ct. 2000). Thus, if an insured fails to abide by the terms of their policy in changing a beneficiary, the change is invalid. In an ideal world, insureds would never make mistakes when completing change of beneficiary forms, but to err is human.

Acknowledging the harshness of strict compliance, courts tempered it with the doctrine of “substantial compliance.” If an insured intended to change the beneficiary of their policy but did not meet all the conditions to do so as required by their policy, the insured’s intent will be given effect if the insured “does all that he reasonably can under the circumstances to comply with the terms of the policy which permit a change of beneficiary.” *Carruthers v. \$21,000*, 434 A.2d 125, 127 (Pa. Super. Ct. 1981); *see also Sproat v. Travelers’ Ins. Co.*, 137 A. 621, 622 (Pa. 1927) (“A mere unexecuted intention to change the beneficiary is not sufficient.”). Like any reasonableness-based standard, substantial compliance is fact-specific, and it is not always clear who has the superior right to the policy’s proceeds—the original or intended beneficiary.

Here, the change of beneficiary form explicitly states the terms governing a change of beneficiary. “The effective date of this revocation and change . . . will take effect as of the date the form was signed, **unless the policy has been terminated** . . . before this revocation and change is received by the Company.” Thus, when Decedent signed the change of beneficiary form for his Original Annuity on October 11, 2013, that change was ineffective as the Original Annuity had terminated ten days earlier.<sup>1</sup> It goes without saying, but one cannot change the beneficiary of an annuity that no longer exists. Therefore, Decedent was not in strict compliance with the terms of his policy.

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<sup>1</sup> WNIC informed Decedent of this fact in its November 21 letter. Also, WNIC in its earlier September 3 letter notified Decedent of the Original Annuity’s maturation date of October 1, 2013. Further, WNIC in its October 17 letter informed Decedent the Original Annuity had matured and rolled over into the Supplemental Annuity, providing him with the new policy number and other information related to the annuity. This letter was sent nearly a month before Decedent actually mailed his change of beneficiary form to WNIC on November 16, 2013.

It is abundantly clear Decedent took affirmative steps during his life to change the beneficiary of his Original Annuity. Decedent requested a change of beneficiary form from WNIC, took the form to his broker of record, informed his broker of his intent to name Petitioner as the new primary beneficiary of his Original Annuity, signed the form in his broker's office and in his broker's presence, and (belatedly) mailed the form back to WNIC. These uncontroverted facts strongly suggest the Decedent not only attempted to comply with the terms of his policy but intended a change of beneficiary. However, to focus on these facts alone, in isolation, is not what the substantial compliance doctrine demands. Substantial compliance asks whether the insured did **all** they reasonably could have done under the circumstances to comply with the terms of their policy. That is simply not the case here.

Decedent's inaction following WNIC's November 21 letter suggests Decedent failed to make every reasonable effort under the circumstances to comply with the terms of his policy in order to effect a change of beneficiary. The November 21 letter from WNIC denying the beneficiary change explicitly stated the Original Annuity was inactive and thus ineligible for a change of beneficiary. Additionally, in its October 17 letter, WNIC notified Decedent the Original Annuity was now a Supplemental Annuity with a new policy number, but the change of beneficiary procedure remained the same. While WNIC did not follow up with Decedent after its November 21 letter, Decedent likewise failed to make any subsequent inquiries either confirming or changing the beneficiary of the Supplemental Annuity.

As noted earlier, WNIC's November 21 letter concludes as follows: "If you have any questions, please call the Client Services Center at (866) 553-5958, Monday through Friday from 8:00 AM to 5:00 PM Central Standard Time." Strangely, Decedent did not take advantage of this service. One would think a reasonable insured learning their change of beneficiary request

was denied—and wanting some clarification or guidance—would contact their insurer and follow the necessary steps in order to verify their desired beneficiary was named on the policy. Even giving Decedent the benefit of the doubt and assuming WNIC’s various correspondence to Decedent ended up in the Dead Letter Office, again one would expect an insured—not knowing whether their change of beneficiary request was received, processed, and successful—to contact their insurer and inquire after the status of their request. Decedent made no such inquiries.

Petitioner’s brief relies heavily on *Golas*, arguing Decedent substantially complied with the terms of his policy to effectuate a change of beneficiary. Petitioner’s reliance on *Golas*, however, is misplaced. *Golas* is distinguishable from the present matter. In *Golas*, the insured, while dying of cancer, substantially complied with the terms of his policy by twice requesting a change of beneficiary form for his life insurance policy but failing to receive one. 751 A.2d at 230. Decedent’s situation was markedly different. Whereas the insured’s efforts in *Golas* constituted substantial compliance because he was confined to his deathbed, pressed for time, and dealing with a broker who was incommunicado, *id.*, Decedent managed to do even less with more under circumstances nowhere near as dire. Decedent was ostensibly in good health (certainly alive and capable of conducting business), his insurer had been in contact with him regarding the changes to his annuity, and he had ample opportunity (more than three and a half years) to inquire in writing, by phone, or electronically into the status of his annuity’s beneficiary designation but, for whatever reason, did not.

Thus, the Decedent’s failure to act is akin to *Carruthers*, not *Golas*. In *Carruthers*, the insured changed the beneficiary of his life insurance policy via a holographic will drafted three and a half months before his death. 434 A.2d at 127. The insured then did nothing afterwards in order to comply with his policy’s terms specifying the protocol for a change of beneficiary. *Id.*

Accordingly, the court held the insured had not substantially complied with the terms of his policy as he had not done all reasonably could under the circumstances to comply with the terms of his policy. *Id.* at 128.

Presented with a period of inaction lengthier than *Carruthers*, and lacking the extenuating circumstances of *Golas*, the facts of this case weigh against application of the substantial compliance doctrine.

### III. Conclusion

For the reasons stated above, this Courts holds Respondent, not Petitioner, is the primary beneficiary of Decedent's Supplemental Annuity as Decedent failed to do all he reasonably could have done under the circumstances to comply with the terms of his policy permitting a change of beneficiary.

BY THE COURT:

  
JOHN W. HERRON, J.

Dated this 10<sup>th</sup> day of September, 2018

Judith Rodden, Esquire, counsel for the Petitioner  
Sharon Steingard, Esquire, counsel for the Respondent