



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

**Estate of Stephen Gallagher, Deceased
O.C. No. 891 DE of 2011
Control No. 131216
Control No. 131225**

Introduction

The cross motions for summary judgment filed by Joseph Hallman, former domestic partner of Stephen Gallagher (“Stephen”), and by Michael Gallagher, administrator of the Estate of his deceased brother Stephen, raise the issue of whether Joseph Hallman was designated as a beneficiary of Stephen’s life insurance policy in accordance to its terms. If there was no such designation, those insurance policy benefits would then be distributed as set forth in the default provisions of the policy to Stephen’s parents. For the reasons set forth below, the life insurance benefits should be distributed according to the unambiguous terms of the Aetna policy to the default beneficiaries.

Background

Stephen Gallagher became an employee of the University of Pennsylvania (“Penn”) in September 2003. As an employee, he participated in Penn’s Health and Welfare Program and purchased two life insurance policies through the Penn Benefits Plan, GP-811778 with a value of \$354,000 payable upon Stephen’s death on May 27, 2011.¹ In June 2011, Michael J. Gallagher, Jr., as the Administrator of the Estate of Stephen T. Gallagher (“Gallagher Estate” or “Estate”), filed a petition seeking a citation against Joseph Hallman and Aetna Life Insurance Company to show cause why all of the life insurance benefits under Aetna policies taken out by Stephen should not be awarded to the administrator of Stephen’s estate. That 2011 petition alleged “upon information and belief” that sometime before November 2008, Joseph Hallman had been named the beneficiary on two life insurance policies issued to Stephen by Aetna with an approximate total of \$360,000. At the time Mr. Hallman was named as a beneficiary, the petition continued, he and Stephen had registered as same sex domestic partners with Stephen’s employer, the University of Pennsylvania. They lived together for most of 2008 and a prior

¹ 4/26/13 Hallman Summary Judgment Petition, ¶¶13-14; 4/25/13 Gallagher Estate Summary Judgment Petition, ¶¶1-8. In support of its summary judgment, the Gallagher Estate relies on the deposition of Geraldine Zima as well as exhibits 1-29 that were filed by the Gallaghers on May 1, 2012. For ease of reference, these documents will be cited as 3/12/12 Zima deposition and as Gallagher Exs. 1-29 – filed 5/2/12.

period. Around the end of 2008, Stephen and Mr. Hallman had an “irreconcilable separation” and thereafter “led lives separate and apart from each other.”²

Stephen subsequently suffered his last illness with hospitalization at the University of Pennsylvania from February 2011 to May 2011, followed by hospice care from May 25 to May 27, 2011. The Petition asserted that at no time during this period did Mr. Hallman visit Stephen. After his death, Stephen’s family held a public wake and then a public funeral neither of which Mr. Hallman attended. According to the petition, throughout his illness, Stephen had stated repeatedly that his mother, Joann Gallagher, was the beneficiary of his life insurance policies.³ As its theory for recovery, the 2011 petition invoked 20 Pa.C.S. § 6111.2 to assert that the proceeds from Stephen’s life insurance should go to his estate, and ultimately to his parents as his intestate heirs rather than to Mr. Hallman. Under this theory, the separation of Mr. Hallman and Stephen was tantamount to a divorce of a married couple which under section 6111.2 of the PEF code would render a beneficiary designation ineffective:

§ 6111.2 Effect of divorce or pending divorce on designation of beneficiaries

- (a) Applicability.** – This section is applicable if an individual:
- (1) is domiciled in this Commonwealth;
 - (2) designates the individual’s spouse as beneficiary of the individual’s life insurance policy, annuity contract, pension or profit-sharing plan or other contractual arrangement providing for payments to the spouse; and
 - (3) either:
 - (i) at the time of the individual’s death is divorced from the spouse; or
 - (ii) dies during the course of divorce proceedings, no decree of divorce has been entered pursuant to 23 Pa.C.S. §3323 (relating to decree of court) and grounds have been established as provided in 23 Pa.C.S. §3323(g).
- (b) General rule.**—Any designation described in subsection (a)(2) in favor of the individual’s spouse or former spouse that was revocable by the individual at the individual’s death shall become ineffective for all purposes and shall be construed as if the spouse or former spouse had predeceased the individual, unless it appears the designation was intended to survive the divorce based on:
- (1) the wording of the designation;
 - (2) a court order;
 - (3) a written contract between the individual and the spouse or former spouse; or

² 6/24/11 Gallagher Estate Petition, ¶¶1-9. In response, Hallman stated that he and Stephen had executed an Affidavit of Domestic Partnership on January 26, 2006. They began cohabitating in early 2005 but “at the end of 2008, or in early 2009, Hallman and Decedent separated, when Hallman moved out of their jointly owned house.” 10/24/11 Hallman Answer, ¶¶ 8-9. According to Hallman, they continued to communicate by telephone, e-mail and text message and “occasionally saw each other in person, from time to time, helped each other with personal matters.” Id. ¶ 9.

³ 6/24/11 Gallagher Estate Petition, ¶¶ 13-18.

- (4) a designation of a former spouse as a beneficiary after the divorce decree has been issued.

(c) Liability –

- (1) Unless restrained by court order, no insurance company, pension, or profit-sharing plan trustee or other obligor shall be liable for making payments to a spouse or former spouse which would have been proper in the absence of this section.
- (2) Any spouse or former spouse to whom payment is made shall be answerable to anyone prejudiced by the payment.⁴

Initially, this court denied the citation on the grounds that it sought to apply section 6111.2 to a dissolved same sex relationship which was not yet legally cognizable in Pennsylvania. After exceptions were filed, this decree was vacated and citations were issued directed to Aetna Life Insurance Company and Joseph Hallman, both of whom filed answers. In addition, Aetna filed an interpleader petition in mid-September 2011. The relief sought by Aetna was somewhat unclear except to the extent that it sought permission to deposit the insurance proceeds it was holding into the court. Characterizing itself as an “innocent stakeholder,” Aetna contended that it should not be considered a party to this dispute. Consequently, it asked the court to approve its Petition for Interpleader; receive \$354,000 plus interest from Aetna; completely discharge Aetna’s liability to the Gallagher Estate; stay the underlying proceeding until the rights of the Gallagher Estate were determined; and order that Aetna’s attorneys’ fees and costs be deducted from the proceeds paid into the court.”⁵

In response to Aetna’s interpleader motion, the Estate challenged Aetna’s averral that Stephen had designated Mr. Hallman as his life insurance beneficiary on or about July 1, 2010 based on the computer “Screen Prints” Aetna attached to its petition. These screen prints, the Gallagher Estate insisted, are largely unintelligible, are not traceable to Stephen and do not reflect his act or intent. Instead, the Gallagher Estate emphasized that Aetna’s “University of Pennsylvania Plan Documents” attached as an exhibit to its interpleader stated that in designating beneficiaries: “You may name or change your beneficiary by filing written request at your

⁴ 20 Pa.C.S. A. § 6111.2 (as retrieved from Westlaw). According to the notation, section 6111.2 was effective December 27, 2010. The Pennsylvania Supreme Court subsequently ruled in November 2011, that section 6111.2 was preempted by the federal Employee Retirement Income Security Act, 29, U.S.C. §§1001 et seq. (hereinafter ERISA). See Estate of Sauers, 613 Pa. 186, 192, 32 A.3d 1241, 1245 (2011).

⁵ 9/20/11 Aetna Interpleader Petition at 7.

Employer's headquarters or at Aetna's Home office.”⁶ Significantly, Aetna failed to produce such a written request by Stephen to name a beneficiary.

A. Joseph Hallman's Motion for Summary Judgment

In response to the various filings, this court issued an order on October 25, 2011 establishing a schedule for discovery and motions. At the end of March 2012, Joseph Hallman filed a motion for summary judgment. Generally, Hallman argued that the two theories of liability presented by the Estate fail as a matter of law.

Surprisingly, in the course of discovery, neither Aetna nor Penn were able to provide a signed, beneficiary designation form naming Hallman or any other beneficiary. The Gallagher Estate therefore responded to the summary judgment motion by seeking to file an amended petition to invoke the Employee Retirement Income Act, 29 U.S.C. §1001 et seq. (“ERISA”) and assert a claim on behalf of Stephen's parents as default beneficiaries. It asserted, inter alia, that discovery had established that “neither Penn nor Aetna has in its possession a written request to name Mr. Hallman as beneficiary under the plan.”⁷ Consequently, the Estate argued that under ERISA and the terms of the Plan, Stephen's parents were the default beneficiaries of the Aetna insurance proceeds. Alternatively, Stephen's mother, Joann, would be entitled to those benefits because she was the only beneficiary named for life insurance benefits in the “touch log” produced by Penn.”⁸ Based on this record, Hallman's summary judgment motion was denied by decree dated July 11, 2012 “due to the failure of the petitioner to establish the threshold issue as to the designation of a beneficiary under the two life insurance policies purchased by Stephen Gallagher, Deceased, through a benefits plan provided by his employer, University of Pennsylvania in accordance with the relevant Penn Benefits Plan.”

B. Gallagher Estate Amended Petition

The Gallagher Estate filed an amended petition on July 31, 2012 invoking ERISA to claim the life insurance benefits under the Aetna policy while naming Joseph Hallman and Aetna as respondents. This led to a flurry of pleadings and briefs by all parties. In his Answer to the

⁶ 11/8/11 Gallagher Estate Answer to Aetna Interpleader Petition, ¶¶ 12 & 24 (emphasis added). Significantly, in its Interpleader Petition, Aetna also emphasized the same policy language that “You may change your beneficiary by filing a written request at your Employer's headquarters or at Aetna's Home Office.” See 9/20/11 Aetna Interpleader Petition, ¶ 24.

⁷ 4/3/12 Gallagher Estate Petition, ¶ 7.

⁸ 4/3/12 Gallagher Estate Petition, ¶ 9.

Amended Petition, Joseph Hallman asserted a cross claim against Aetna.⁹ Several months later, Hallman filed a discovery petition to compel Aetna to file full and complete answers to its interrogatories, which was granted by decree dated November 18, 2012.

C. Cross Motions for Summary Judgment

In April 2013, cross motions for summary judgment were filed by Joseph Hallman and the Stephen Gallagher Estate. In its summary judgment motion, the Gallagher Estate states that on April 8, 2003 Penn contracted with Aetna to provide group life insurance to its employees. Around September 2, 2003, Stephen became an employee of Penn and thereby entitled to coverage under the Aetna life insurance policy. On February 1, 2006, Stephen and Joseph Hallman registered as a same sex domestic partnership with Penn. Aetna provided “Your Group Plan” (the “Plan”), which Hallman concedes is Plan Number GP-811778. This Plan, attached as exhibit 10 to the Gallagher Estates petition,¹⁰ sets forth the following requirements for designating beneficiaries:

Beneficiaries

You may name or change your beneficiary by filing written request at your Employer’s headquarters or at Aetna’s Home Office. Ask your Employer for the forms. The naming or any change will take effect as of the date you execute the request. Aetna will be fully discharged of its duties as to any payment made by it before your request is received at its Home Office.

Any amount payable to a beneficiary will be paid to those you name. Unless you state to the contrary, if more than one beneficiary is named, they will share on equal terms.

If a named beneficiary dies before you, his or her share will be payable in equal shares to any other named beneficiaries who survive you.

If no named beneficiary survives you or if no beneficiary has been named, payment will be made as follows to those who survive you:

- Your spouse, if any
- If there is no spouse, in equal shares to your children
- If there is no spouse or child, to your parents, equally or to the survivor.
- If there is no spouse, child, or parent, in equal shares to your brothers and sisters.
- If none of the above survives, to your executors or administrators.¹¹

⁹ See 8/21/12 Hallman Answer, New Matter and Cross Claim.

¹⁰ As noted in footnote 1, the Gallagher Estate cites the Zima deposition and exhibits it filed on May 1, 2012.

¹¹ See 4/25/13 Gallagher Estate Petition, ¶¶ 1-8 & Gallagher Ex. 10 at 17-18 or Aetna 000026-000027 - filed 5/1/12. The language in this Plan document is identical to the language in the plan document Aetna attached to its interpelader motion.

Despite this clear requirement for a written designation of a life insurance beneficiary, the Gallagher Estate notes that since “June 24, 2011 Aetna, Penn and Joseph Hallman have not produced a written request by Stephen designating Mr. Hallman as his beneficiary, signed in writing or electronically.”¹² Instead, Hallman and Aetna have submitted computer “screen shots” or Penn’s touch log. In her deposition testimony, moreover, Geraldine Zima, Penn’s Manager of Benefits Administration, admitted that no specific beneficiary designation by Stephen Gallagher had been located. When asked whether she had found a written designation of Joseph Hallman as Stephen’s life insurance beneficiary, Ms. Zima replied:

Q: Is there any writing signed by Stephen Gallagher designating Joseph Hallman as primary beneficiary that you have seen or have knowledge?

A: I haven’t seen any paper.

Q: Is there any document signed by Stephen Gallagher designating Joseph Hallman as primary beneficiary?

A: Not to my knowledge.¹³

Her testimony also suggests that Joseph Hallman’s name appeared as a life insurance beneficiary due to a “program modality by default” of the Enterprise system that ADP used to maintain those records. According to Ms. Zima, the Enterprise system was prone to employee mistake. She acknowledged, however, that she was not familiar with the system and that ADP had more data than Penn because of its responsibilities under the ADP-Penn Contract.¹⁴ The Gallagher Estate argues that the screen shots produced by Aetna conflict with the screen shots produced in discovery by Penn. While the Penn screen shots indicated that Hallman became a primary beneficiary effective December 3, 2008, the Aetna screen shot states that the effective date was July 1, 2010.¹⁵ The Gallagher Estate also asserts that the computer records were inconclusive based on a letter from Helen Logan, Senior Administrator of Legal Services for Penn. In a March 8, 2012 letter, Ms. Lyman suggests that the designation of Joseph Hallman as beneficiary of life insurance proceeds was entered in the computer system by “default” when he was granted coverage under Stephen’s medical insurance as a domestic partner:

8. Penn refers questions about the ADP process to ADP, but is Penn’s understanding that having just added Mr. Hallman to Mr. Gallagher’s medical insurance as a domestic

¹² 4/25/13 Gallagher Estate Petition, ¶14.

¹³ 4/25/13 Gallagher Estate Petition, Brief at 9 (quoting 3/12/12 Zima deposition at 118-19)

¹⁴ 4/25/13 Gallagher Estate Petition, ¶¶ 18-20 (quoting 3/12/12 Zima deposition at 144-45 & 181-82-filed 5/1/12). See also 3/12/12 Zima deposition at 45 (referring questions to ADP because not familiar enough with the screen shot).

¹⁵ 4/25/13 Gallagher Estate Petition, ¶¶ 22-25.

partner, Mr. Gallagher's screen defaulted to Mr. Hallman's name in the life insurance beneficiary field. One can simply erase the default name and type in another.¹⁶

For all these reasons, the Gallagher Estate concludes, these screen shots are unreliable and do not comply with the Plan requirements for designating a life insurance beneficiary. As a consequence, under the terms of the plan, the life insurance benefits should go to the default beneficiaries who would be Stephen's parents.

In response, Joseph Hallman asserts that he is the designated beneficiary under the University of Pennsylvania Employee Benefit Plan GP-811778 entitled to \$354,000 insurance benefits along with accrued interest. He also claims costs and attorney fees from Aetna based on his cross claim against it under ERISA for failing to pay his benefits. He maintains that when Aetna filed its Petition for Interpleader on September 19, 2011 seeking to pay the insurance proceeds into the court, it had taken the position that Hallman was the primary beneficiary under both policies. He asserts that under the Plan, Aetna was required to pay the benefits to Hallman upon Stephen's death and that it failed to do so only because of the pressure from the Gallagher family.¹⁷

In his motion for summary judgment, Hallman expands on these arguments, asserting that the Gallagher Estate has "never identified any document showing any other primary beneficiary, and have never produced any testimony by anyone at Penn or Aetna identifying anyone other than Joseph Hallman as primary beneficiary."¹⁸ In support of summary judgment, Hallman introduced three new documents: (1) a 2006 Amendment to the Master Services Agreement between Penn and ADP, the "data management vendor of GP-811778;" (2) a Contract between Aetna and Penn effective April 2006 concerning ADP's management of data, and; (3) University of Pennsylvania Summary Plan Descriptions for July 2006, 2007, 2008 and 2009. He argues that under the April 2006 agreement between Penn and Aetna, beneficiary designations could be made, changed and stored exclusively in an electronic format and as a consequence written designations of beneficiaries have not been required since at least 2006.¹⁹ He next invokes the 2006 amendment of the Master Services Agreement between Penn and ADP, the data management vendor for the Plan (GP-811778). This document provides for beneficiary

¹⁶ 4/25/13 Gallagher Estate Petition, Brief at 13 (citing Gallagher Ex. 25 – filed 5/1/12).

¹⁷ 4/26/13 Hallman Answer, ¶¶ 4-6, 10-11, 29-35 (citing Ex. G, Aetna 00013, 000026, 000027)

¹⁸ 4/26/13 Hallman Petition, Memorandum at 2.

¹⁹ 4/26/13 Hallman Petition, Memorandum at 8.

designation “via the web.”²⁰ Finally, Hallman attaches “Summary Plan Descriptions provided by Penn for the policy years 2006, 2007, 2008 and 2009, emphasizing the following language in those summaries regarding “Enrollment and Beneficiary Designation:

When you enroll for coverage you complete an enrollment form and name a beneficiary to receive benefits in case of your death. You may name anyone as your beneficiary and can change your beneficiary at any time via the online enrollment system at www.upenn.edu/u@penn.²¹

Although Hallman cites this language to rebut the argument that the 2010 Aetna Plan Summary requires a signed form to change an employee beneficiary designation,²² this overlooks the clear language requiring that “you complete an enrollment form and name a beneficiary....”

In addition to these documents, Hallman relies on the deposition testimony of Geraldine Zima, Penn’s Manager of Benefits Administration. In particular, he emphasizes that Geraldine Zima testified that Penn’s entire record for employee life insurance matters is in electronic form under the Enterprise System. The entire record for Stephen consists of three “screen shots” that identify Joseph Hallman as primary beneficiary under both life insurance policies with “Joan” Gallagher listed as a secondary beneficiary. Ms. Zima also identified the “touch log” Penn produced, which showed every instance that someone had entered the Enterprise System in connection with Stephen Gallagher’s benefits. All of these documents, Hallman maintains, give no indication that anyone other than Joseph Hallman had ever been named as primary beneficiary on Stephen Gallagher’s life insurance policies.²³ He concludes that under Pennsylvania and federal law electronic signatures must be given the same effect as written signatures, without acknowledging that no electronic signature has yet been produced.²⁴

Since these summary judgment motions raised issues of law, an oral argument was scheduled. The parties were directed to focus on three critical issues. First, whether the Plan that defined Stephen Gallagher’s life insurance benefits was the Group Plan “GP-811778” set forth as Gallagher Exhibit 10 or did it include the new documents submitted by Joseph Hallman in his summary judgment motion. Second, the parties were asked to identify any electronic signature or beneficiary designation by Stephen Gallagher. Finally, they were asked whether it was

²⁰ 4/26/13 Hallman Petition, Memorandum at 9.

²¹ 4/26/13 Hallman Petition, Memorandum at 7 (citing Ex. F).

²² 4/26/13 Hallman Petition, Memorandum at 7.

²³ 4/26/13 Hallman Petition, Memorandum at 11-13.

²⁴ 4/26/13 Hallman Petition, Memorandum at 20-21 (citing Uniform Electronic Transactions Act, 73 P.S. §2260.303(a); 15 U.S.C. §7001(a)(1)).

possible to determine based on the various proffered computer documents, the date when a beneficiary designation was made by Stephen Gallagher.

At the oral argument, counsel for the Estate invoked the language in Group Policy GP-811778 stating: “You may name or change your beneficiary by filing written request at your Employer’s headquarters or at Aetna’s Home Office.”²⁵ He argued that the plan summaries and other documents such as the ADP agreement offered by Hallman in his summary judgment motion were irrelevant as to the designation of a beneficiary. On the other hand, he maintained that the March 8, 2012 letter by Helen Logan, Senior Administrator of Legal Services for Penn, is relevant because she was responsible for responding to document requests. Significantly, when asked by letter whether the University had a designation of Joseph Hallman as beneficiary for Stephen’s Life Insurance, she responded: “Penn refers questions about the ADP process to ADP, but it is Penn’s understanding that having just added Mr. Hallman to Mr. Gallagher’s medical insurance as a domestic partner, Mr. Gallagher’s screen defaulted to Mr. Hallman’s name in the life insurance beneficiary field.”²⁶ Counsel for Joseph Hallman argued that Hallman was the only person named in any of the documents and is therefore the rightful recipient of the insurance proceeds. He admitted that none of the records reveal when that designation was made nor is it clear how that designation was made. While it is clear that Stephen named Hallman as the beneficiary of his medical benefits, counsel for Hallman admitted that Stephen withdrew that designation in 2008.²⁷

Counsel for Aetna was most forthcoming as to the weakness of beneficiary documentation in this case. She noted her surprise that after the deposition of Ms. Zima, more direct inquiry was not made into the information ADP might have on this issue. Aetna is the insurer of the benefits as well as the claims administrator. The “Your Group Plan” document was drafted by Aetna. Penn, as the plan sponsor, then created the plan summaries each year that could be accessed by logging onto the Enterprise computer system. Penn, as the plan sponsor, delegated to Aetna authority to decide claims, but it directs Aetna procedurally on how to decide claims. By contract, Penn has directed Aetna to accept the “file feed” from ADP, the vendor Penn has chosen to convey this information. It is not that Aetna does not keep historical data;

²⁵ 9/11/13 N.T. at 5-6 (Lyman)(citing Gallagher Ex. 10 – filed 5/1/12).

²⁶ 9/11/13 N.T. at 13 (Lyman)(citing Gallagher Exs. 25 & 24 – filed 5/1/12)..

²⁷ See 9/11/13 N.T. at 17-18.

The Court: It’s clear that Gallagher named Hallman as his beneficiary of medical benefits, no doubt.
Mr. Noyes: Yes, and then he withdrew that in December 2008.

rather it does not receive it. It is ADP, the entity the University of Pennsylvania contracted with to manage and administer the Enterprise System, that contains the historical information as Zima suggested in her deposition. Counsel also emphasized the distinction between “in writing” as opposed to on “paper.” In 2006, Penn changed its system when it contracted with ADP so that employees could make their written designations electronically. This was around the time when the E-System Act was adopted by Congress and Pennsylvania adopted its ESign version. Aetna has no paper designation of a beneficiary. If one had been submitted, “Aetna was obligated under its agreement with Penn to maintain that.”²⁸ In Aetna’s filed answer, it stated that the following documents Hallman referenced in his summary judgment were not incorporated in the Group Plan GP-811778: the Penn Summary Plan Descriptions; the 2006 Contract between Penn and Aetna; and the 2006 Amendment to the Master Services Agreement between Penn and ADP. It clarified that it had not received any electronic signature by Stephen Gallagher defined as “an electronic sound, symbol or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record.”²⁹ Finally, it stated that the computer documents do not show when a beneficiary designation was made but Aetna’s records show online designation as of 7/1/10 of Joseph Hallman.³⁰

Legal Analysis

The issue of whether Stephen Gallagher designated a beneficiary for the life insurance policy he obtained as an employee of the University of Pennsylvania is the central issue raised in the cross-motions for summary judgment. The standard for resolving these summary judgment motions is set forth in Pa.R.C.P. 1035.2 which states:

After the relevant pleadings are closed, but within such time as not to unreasonably delay trial, any party may move for summary judgment in whole or in part as a matter of law (1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or (2) if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.
Pa.R.C.P. 1035.2

²⁸ 9/11/13 N.T. at 31 (Weber). See also 9/11/13 N.T. at 25-31 (Weber).

²⁹ 9/6/13 Aetna Answer, ¶ 2, citing 73 P.S. §§2260-103.

³⁰ 9/6/13 Aetna Answer, ¶3.

According to the explanatory comments, this rule was amended to clarify that a motion for summary judgment could be granted where there is an “absence of evidence sufficient to permit a jury to find a fact essential to the cause of action or defense:”

The former rule was unclear as to whether it encompassed the type of motion which is based upon a record which is insufficient to sustain a prima facie case. New Rule 1035.2(2) is explicit in authorizing such a motion.
Pa.R.C.P. 1035.2, Explanatory Comment—1996

Pennsylvania case law likewise embraces the principle that “[s]ummary judgment is properly granted when, ‘an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action... which in a jury trial would require the issues to be submitted to a jury.’” Young v. Com., 560 Pa. 373, 375, 744 A.2d 1276, 1277 (2000). See also Pappas v. Unum Life. Ins. Co., 856 A.2d 183, 186 (Pa. Super. 2004)(where insured sought cost of living adjustments under his disability policy, summary judgment was proper where he could not satisfy a prerequisite for his claim as required by the language of his policy). As the Pennsylvania Supreme Court emphasized, “[w]e have a summary judgment rule in this Commonwealth in order to dispense with a trial of a case (or, in some matters, issues in a case) where the party lacks the beginnings of evidence to establish or contest a material issue.” Ertel v. The Patriot-News Company, 544 Pa. 93, 100, 674 A.2d 1038, 1042 (1996).

In the present case, the parties have been afforded generous opportunity for discovery, dating back as far as an October 25, 2011 order which gave them until March 16, 2012 to “commence and complete all discovery pertinent and relevant to any motion for summary judgment.” When Joseph Hallman in October 2012 subsequently filed a petition to compel Aetna to file full and complete answers to its discovery requests, that request was granted by decree dated November 16, 2012. The long, tortuous history of this dispute was outlined to underscore the ample time and opportunity for the parties to conduct all discovery necessary to establish the rightful beneficiary of Stephen Gallagher’s life insurance policy.

There is no dispute that the policy at issue falls within the purview of the federal Employee Retirement Income Security Act, 29 U.S.C. §§ 1001 *et seq.* (ERISA).³¹ In a recent opinion, the Pennsylvania Supreme Court reiterated the general principle that “[u]nder ERISA, plan administrators and fiduciaries are required ‘to discharge [their] duties with respect to a plan

³¹ See 7/31/12 Gallagher Estate Amended Petition, ¶13 and 8/21/12 Hallman Answer, ¶13.

solely in the interest of the participants and beneficiaries, ...*in accordance with the documents and instruments governing the plan.*” In re: Estate of Sauers, 613 Pa. 186, 205, 32 A.3d 1241, 1253 (2011), quoting 29 U.S.C. §1104(a)(1)(D).³²

Based on the record presented, and in particular the documents and instruments governing the plan, Joseph Hallman has failed to sustain his burden of establishing that he was designated by Stephen Gallagher as a beneficiary under the procedures established by Aetna Group Plan GP-811778. The relevant provisions of that “Your Group Plan” sponsored by the University of Pennsylvania require a specific designation of a beneficiary as follows:

Beneficiaries

You may name or change your beneficiary by filing written request at your Employer’s headquarters or at Aetna’s Home Office. Ask your employer for the forms. The naming or any change will take effect as of the date you execute the request. Aetna will be fully discharged of its duties as to any payment made by it before your request is received at its Home Office.

Any amount payable to a beneficiary will be paid to those you name. Unless you state to the contrary, if more than one beneficiary is named, they will share on equal terms....

If no named beneficiary survives you or if no beneficiary has been named, payment will be made as follows to those who survive you:

- Your spouse, if any.
- If there is no spouse, in equal shares to your children.
- If there is no spouse or child, to your parents, equally, or to the survivor.³³

Throughout the long pendency of this dispute, Joseph Hallman has failed to present any designation—written or electronic—of a beneficiary selected by Stephen Gallagher in compliance with the relevant procedures set forth in the Aetna policy. Instead, he relies on 2 sets of computer screen shots, one produced by Penn and the other by Aetna 000086-000088.³⁴

These documents, however, are merely post-mortem records reflecting Penn and Aetna’s

³² The Sauers opinion likewise dispenses with the Estate’s initial argument in its 2011 petition that section 6111.2 of the PEF code should be invoked by analogy to render any designation of Hallman invalid after he and Stephen “separated” since this could be analogized to a divorce that would nullify a previous designation as beneficiary of a life insurance policy. To attain a uniform application of policies subject to ERISA, plan administrators are required to adhere to the precise terms of the relevant policy in determining a beneficiary rather than state laws that might lead to a different determination. In re Estate of Sauers, 613 Pa. at 205-06, 213, 32 A.2d at 1253, 1257. The Sauers court likewise held that the administrator of an estate had the capacity (or standing) to bring a claim in Orphans’ Court on behalf of a contingent beneficiary of a life insurance policy. Id., 613 Pa. at 193, 32 A.2d at 1245.

³³ See Gallagher Ex. 10 at 17-18 or Aetna 000026 through 000027 - filed 5/1/12. Hallman attached these provisions (i.e. as Aetna 000026-000027) as an unnumbered exhibit to his 4/26/13 summary judgment petition. Likewise, Aetna’s interpleader petition identified these plan provisions for designating beneficiaries. See 9/19/11 Aetna Interpleader Petition, ¶ 24.

³⁴ See 4/25/13 Hallman Petition, ¶¶ 20-21 (citing unnumbered Ex. “H” Penn Screen Shots)

computer files, which, the record demonstrates, were dependent on information received from ADP. This is made clear in Aetna's response to Hallman's first set of interrogatories which he presents in support of his summary judgment petition. When asked if it maintains "a record of the primary beneficiary for life insurance policies and coverage provided to Stephen Gallagher under the Aetna Group Plan GP-811778," Aetna replied:

Aetna does not maintain (i.e. store) historical information or records of beneficiary designations made by Stephen Gallagher. Aetna has access only to current beneficiary designations which it receives through a file feed from ADP, the Plan Sponsor's contracted vendor for administration of the technical aspects of the Plan. See Aetna 86-88.³⁵

The deposition testimony Hallman relies on to support his summary judgment motion likewise admits a lack of knowledge and deferral to ADP. The deposition of Geraldine Zima, Manager of Benefits Administration for Penn, is illustrative. In her deposition, Ms. Zima repeatedly emphasizes her limited knowledge of the procedures and information stored by ADP for life insurance beneficiaries. For instance, when she was asked to interpret the three screenshots produced by Penn regarding Stephen's designation of life insurance beneficiaries and more specifically "what information does this screenshot tell you about the beneficiary designation of Stephen Gallagher's life insurance policy," Ms. Zima candidly replied: "You would have to talk to ADP about that. I don't use this screen that much. I'm not familiar enough with it."³⁶ To her knowledge, these 3 screen shots constitute the entire and only record of the beneficiaries of Stephen Gallagher's life insurance. They were stored electronically in ADP's Enterprise System and then directly to Aetna.³⁷

In addition to this dearth in background information about the Penn and Aetna screenshots, Hallman's summary judgment petition is undermined by the internal contradictions between these documents. While the Aetna screenshot gives an effective date for the beneficiary designation of Joseph Hallman of "7/1/10, Ex. Aetna 86-88, Ms. Zima was asked to explain the Penn screenshot's effective date of "12/3/08." At first she deferred, stating "You would have to ask ADP how to read that," but then offered her opinion that Joseph Hallman had been named a

³⁵ See 4/25/13 Hallman Petition, unnumbered Ex. (Aetna Life Insurance Company's Answer to Respondent Joseph Hallman's First Set of Interrogatories, III, ¶ 2).

³⁶ 4/26/13 Hallman Petition, unnumbered Ex. (3/12/12 Zima deposition. at 44-45).

³⁷ 4/26/13 Hallman Petition, ¶ 21 & unnumbered Ex. (3/12/12 Zima deposition at 46-48).

beneficiary before 12/3/08.³⁸ This conjecture, however, is unsupported by any hard evidence. When specifically asked whether there was “any writing signed by Stephen Gallagher designating Joseph Hallman as primary beneficiary that you have seen or have knowledge,” she replied: “I haven’t seen any paper” nor was she aware of “any document signed by Stephen Gallagher designating Joseph Hallman as primary beneficiary.”³⁹ Aetna likewise stated that it had never received any electronic signatures by Stephen Gallagher and the “computer documents do not show when a designation was made. Aetna’s records show online designation as of 7/01/10 of Joseph Hallman.”⁴⁰

There is no dispute that Stephen had named Joseph Hallman as beneficiary of his medical insurance or that he subsequently removed him in December 2008.⁴¹ In the dearth of a clear electronic or written beneficiary designation for Stephen’s life insurance, Ms. Zima was asked to speculate on how Joseph Hallman’s name came to appear as a beneficiary. In response, she suggests a computer default:

Q: Well, isn’t that in contradiction of your statement that Mr. Gallagher elected—isn’t this statement saying that he elected to give medical benefits to Mr. Hallman, and that the Enterprise system, through some programming—some programming modality by default named Mr. Hallman in the life insurance beneficiary field?

A: It did not name him. It populated the name field. There was no designation as to primary or contingent. It was up to the employee to make that election or change it.⁴²

This suggestion that Joseph Hallman’s name appears on the computer printouts by default contravenes the explicit terms of the insurance policy requiring a designation by the insured as to his life insurance beneficiary. The lack of any evidence of beneficiary designation is fatal to Joseph Hallman’s claim. Although he counters that the Gallagher Estate has never produced any documentation of a different beneficiary designation, to maintain its burden of proof, the Estate does not have to do this. Under the explicit terms of policy or plan, if the insured fails to designate a beneficiary, there is a default provision clearly mapped out. Under that default provision, the Estate prevails and the benefits should be awarded to the parents of Stephen Gallagher.

³⁸ Gallagher Ex. (3/12/12 Zima deposition, at 226-27 – filed 5/1/12).

³⁹ Gallaher Ex. (3/12/12 Zima deposition, at 118-119 – filed 5/1/12).

⁴⁰ 9/6/13 Aetna Answer, ¶¶ 2 & 3.

⁴¹ 11/11/13 N.T. at 18 (Noyes).

⁴² Gallagher Ex. (3/12/12 Zima deposition at 144 – filed 5/1/12).

The other documents offered by Hallman to support his claim are irrelevant. The 2006 Amendment to the Master Services agreement between Penn and ADP as well as the Contract between Aetna and Penn effective April 1, 2006 concerning ADP's management of data merely define the relationship among these parties but were not incorporated into the Plan applicable to Stephen Gallagher.⁴³ The plan summaries that Hallman presented likewise were irrelevant to determination of the designated beneficiary but ironically those summaries would not have found computer screen shots sufficient to designate a beneficiary. The Summary Plan Description as of July 2006, for instance, provides at page 38 as follows:

Enrollment and Beneficiary Designation

When you enroll for coverage you complete an enrollment form and name a beneficiary to receive benefits in case of your death. You may name anyone as your beneficiary and can change your beneficiary at any time via the online enrollment system at www.upenn.edu/u@penn.⁴⁴

No enrollment form, in paper or in electronic form, has been provided. The computer screen shots presented by Aetna as well as the screenshots and the touch logs produced by Penn as explained by Geraldine Zima in her deposition seriously contradict each other.

Alternatively, the Gallagher Estate has sustained its burden of showing that there was no designation of a beneficiary of Stephen's life insurance policy under the terms of the relevant insurance policy. Normally, the Estate would have faced a daunting task in trying to establish this "negative." It was assisted, ironically, by the failure of Hallman to present any documentation—electronic or otherwise—that he had been designated by Stephen as his life insurance beneficiary under the terms of the policy that the Estate presented as Ex. 10 in support of its summary judgment motion. The deposition testimony by Geraldine Zima, as previously analyzed, revealed that she was unaware of any designation of a beneficiary other than the three screen shots. At one point, in fact, she hypothesized that Hallman's name had appeared as a life insurance beneficiary by computer default. The letter exchange the Estate presented with Helen C. Logan, Sr. Administrator of Legal Services at Penn's office of the General Counsel likewise buttresses Ms. Zima's suppositions. When asked whether the University had a document

⁴³ See, e.g. 9/6/13 Aetna Answer, ¶ 1(a)-(c) (stating that the Penn Summary Plan descriptions, the 2006 contract between Penn and Aetna as well as the 2006 Amendment to the Master Services Agreement between Penn and ADP were not incorporated into the relevant "Plan" document).

⁴⁴ See 4/26/13 Hallman Petition, unnumbered Ex. (The University of Pennsylvania Health and Welfare Program. Summary Plan Description as of July 1, 2006) at 38.

designating Joseph Hallman as a beneficiary of Stephen Gallagher's life insurance—either on paper or electronically, Ms. Logan responded by letter dated March 8, 2012”

Penn refers questions about the ADP process to ADP, but it is Penn's understanding that having just added Mr. Hallman to Mr. Gallagher's medical insurance as a domestic partner, Mr. Gallagher's screen defaulted to Mr. Hallman's name in the life insurance beneficiary field. One can simply erase the default name and type in another.⁴⁵

Designation of a life insurance beneficiary by computer default is not an alternative to the personal selection of a life insurance beneficiary under Penn's Plan GP-811778 that the Estate relies upon in seeking summary judgment. While it is conceivable—though far from certain—that such a personal designation might be found among ADP's documents, Hallman failed to pursue that route. In fact, he does not seek to raise that argument in the present summary judgment. Moreover, the period for discovery is over. There is therefore no issue of fact nor one for trial. The Gallagher Estate has met its burden of proof that no designated beneficiary can be proven, so that the default provisions of the insurance policy intended for such instances should be invoked.

Based on this record, Hallman's cross-claim against Aetna for failing to pay him life insurance benefits under the policy of Stephen Gallagher is without merit and is denied. In light of the serious conflict and lack of clarity as to the appropriate beneficiary, Aetna behaved prudently in waiting for a judicial determination.

Conclusion

Based on the record presented, the motion for summary judgment by Joseph Hallman is denied and the motion for summary judgment by the Estate of Stephen Gallagher is granted. As set forth in a contemporaneously issued order, the life insurance benefits of Stephen Gallagher shall be paid to the default beneficiaries under his policy.

Date: March 5, 2014

BY THE COURT:


John W. Herron, J.

⁴⁵ Gallagher Ex. 25 (March 8, 2012 letter from Helen Logan to Cletus Lyman, Esquire – filed 5/1/12).