



The last one standing

The case of *Petch v. Kiuvila*, 2012 ONSC 6131 (CanLII) revisits the question: what beneficiary designation applies?

The facts in the case are not complicated. On July 13, 2003, Richard Petch designates his sister, Mary Petch, as a revocable beneficiary on his group life insurance policy. Approximately a year later, on July 30, 2004, Richard makes a Will naming his sister Mary and Heather Kiuvila as trustees of his Will. In the Will, he explicitly designates Heather and his son Dustin Doyle as the beneficiaries of his group life insurance policy. He marries Heather on November 22, 2008. On April 7, 2010, Richard dies.

The court is left to consider who should receive the insurance proceeds considering the original designation, the Will and Richard's subsequent marriage. All these facts and timing had to be considered by the court to reach a conclusion.

The Ontario Insurance Act permits, by way of contract or declaration, the insured to make a beneficiary designation to receive insurance proceeds. Heather argued that the Will's 2004 provisions made a declaration which had the effect of changing Richard's original designation in favour of his sister. The court referenced a number of documents to determine when the designation made by declaration in the Will could become effective: provisions in the Succession Law Reform Act, Norwood on Insurance and Manulife's Tax & Estate Planning's Beneficiary Designation Tax Topic. The court concluded that the declaration in the will becomes effective from the date the will is signed by the testator. If a designation is made subsequent to the date the Will containing the declaration is executed, then the later designation will take priority.

In this case, the Will containing the declaration was executed after the original beneficiary designation form and therefore, to this point, it would take priority. This would mean that both Heather and Dustin would receive the insurance proceeds.

However, the court could not simply stop there in its analysis. The impact of the subsequent marriage would also have to be taken into consideration.

By operation of law in Ontario, a Will that is not made in contemplation of marriage is revoked. So now the court is back to square one because the Will has been revoked.

The issue then became whether the revocation of the Will caused the original designation in favour of Mary to be resurrected. In reviewing the matter, the court referenced the Insurance Act and noted that the insured can alter or revoke a beneficiary designation from time to time with a declaration which, in this case, occurred when the Will was executed. This effectively revoked the first beneficiary designation. A new designation would have to be made which in this case could not occur. The proceeds therefore became payable to the estate. Since no valid Will existed, distribution of the estate would occur according to Ontario's intestacy laws.

The case is another reminder to stay on top of beneficiary designations and overall planning with clients. The last designation is the one that generally stands unless there is some intervening factor, like in this case, where the Will was revoked due to the subsequent marriage of Richard and Heather. Clients need to be reminded that when life events, such as marriage, occur, they need to consider their overall estate plan and all beneficiary designations.

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