

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PROTECTIVE LIFE INSURANCE CO.,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	NO. 97-3246
	:	
JULIA C. CONWAY, ANGELA	:	
CONWAY, and ROSIE RUCKER	:	
CONWAY,	:	
Defendants.	:	

MEMORANDUM

KELLY, R.F.

FEBRUARY 20, 1998

Protective Life Insurance Company ("Plaintiff"), received conflicting claims to the proceeds of a life insurance policy issued to Anthony Conway (the "insured"). Plaintiff instituted this interpleader action to determine the correct distribution of these funds pursuant to 28 U.S.C. § 1335. The proceeds were deposited with the Registry of the Court and Plaintiff was dismissed from this action. The Defendants, Julia Conway, Angela Conway and Rosie Rucker Conway, the decedent's mother, daughter and wife respectively, each claim an interest in the deposited funds.

Counsel for Defendant Rosie Rucker Conway has filed a Motion for Summary Judgment. Defendants Angela and Julia Conway, proceeding pro se, have failed to respond to the Motion for Summary Judgment. For reasons that follow, Defendant Rosie Rucker Conway's Motion for Summary Judgment is granted.

I. FACTS.

On July 2, 1992, Protective Life Insurance Company

issued a policy of life insurance to Anthony Conway in the amount of \$10,000.00. The insurance application automatically designated as beneficiary the "Insured's spouse, if living; otherwise Insured's surviving child or children, if any, equally; otherwise Insured's estate." Anthony Conway died on April 2, 1995. Thereafter, Plaintiff received conflicting claims to the policy proceeds from Julia, Angela and Rosie Rucker Conway. This action was brought to determine who is entitled to the policy proceeds.

II. STANDARD.

Summary Judgment is proper "if there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c); Anderson v. Liberty Lobby Inc., 477 U.S. 242, 247 (1986). Defendant, Rosie Rucker Conway, as the moving party, has the initial burden of identifying those portions of the record that demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). Then, the nonmoving party should go beyond the pleadings and present "specific facts showing that there is a genuine issue for trial." FED. R. CIV. P. 56(c). If the court, in viewing all reasonable inferences in favor of the nonmoving party, determines that there is no genuine issue of material fact, then summary judgment is proper. Celotex, 477 U.S. at 322; Wisniewski v. Johns-Manville Corp., 812 F.2d 81,83 (3d Cir. 1987).

In this case, the nonmoving parties have failed to

respond to the Motion for Summary Judgment, however, this does not entitle the movant to judgment automatically. Anchorage Assocs. v. Bd. of Tax Review, 922 F.2d 168, 175 (3d. Cir. 1990). Rather, the Motion must be evaluated on the merits, and judgment entered in favor of the movant only if "appropriate." Id.; FED. R. CIV. PRO. 56(e). In other words, the Motion may be granted only if movant is entitled to "judgment as a matter of law." Anchorage Assocs., 922 F.2d at 175.

III. DISCUSSION.

Pennsylvania law applies to determine which of the Defendants is entitled to the insurance policy proceeds. Federal Ins. Co. v. Areias, 680 F.2d 962, 963 (3d Cir. 1982)(citing Erie R.R. v. Tompkins, 304 U.S. 64 (1938)). Under Pennsylvania law, the designation of a beneficiary in a life insurance policy can be revoked two ways. Manufacturers Life Ins. Co. v. Dougherty, No. 96-4053, 1997 WL 778585, at *2 (E.D. Pa. Dec. 11, 1997). First, the insured can designate a new beneficiary by complying with the terms of the insurance policy. Id. Second, the insured and the named beneficiary can enter into an agreement "by which the named beneficiary explicitly waives his or her interest in the insurance proceeds." Id.

The terms of the Protective Life insurance policy allowed the insured to change the designated beneficiary in two ways. First, the application for insurance provided the insured with an opportunity to change the designated beneficiary from the start of the policy term, however, there is no indication that

the insured changed the designated beneficiary on the insurance application. Alternatively, the insured could request a change in writing at any time during the term of the policy, however, there is no indication that a change of beneficiary was requested at any time during the term of the policy.

Apart from the terms of the insurance policy, the insured could have changed the designated beneficiary by agreement with Rosie Rucker. Neither party contends that such an agreement exists.

It is established that at the time of his death, the insured was legally married to Rosie Rucker Conway. The law of Pennsylvania presumes that a valid marriage "continues until the death of one of the parties (actual or presumptive after seven years) or a divorce is proven." In re Estate of George R. Watt, 185 A.2d 781, 785 (Pa. 1962). It is undisputed that the insured was not divorced. Rather, Defendants Angela and Julia Conway contend that the insured believed that his marriage was "void." The validity of the insured's marriage can be collaterally attacked by Defendants Angela and Julia Conway but only on the grounds of bigamy, incest, or incapacity to consent. 23 Pa.C.S.A. § 3304. Because none of these grounds are alleged, the presumption of a valid marriage stands and Defendant Rosie Rucker Conway is entitled to judgment as a matter of law on her claim to the proceeds of the life insurance policy. An appropriate Order follows.

