Michigan Law Review

Volume 38 | Issue 6

1940

INSURANCE - GIFT OF LIFE INSURANCE POLICY

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INSURANCE — GIFT OF LIFE INSURANCE POLICY — The employer insured his employees under a group insurance plan. Each employee was given a certificate evidencing his personal insurance. The master policy contained a provision that no assignment should be binding until the original or duplicate

of the certificate was filed at the insurer's home office. It was established by the evidence that there had been a manual delivery of one of the certificates by an employee. The insurance company paid the amount of that particular certificate into court. *Held*, in an action by the plaintiff, the alleged donee, against the estate of the insured, the named beneficiary, that the lower court properly refused defendant's motion for judgment notwithstanding the verdict for plaintiff. *Peel v. Reibel*, 205 Minn. 474, 286 N. W. 345 (1939).

In spite of the earlier law,[1] it is now well established that insurance policies, like other tangible choses in action, can be made the subject of a valid inter vivos gift.[2] A written assignment from the donor to the donee is not an essential element of the gift.[3] In order to sustain the gift there must be (1) a delivery of the policy to the donee,[4] and (2) an intent to create an irrevocable gift.[5] Manual transfer of an insurance policy satisfies the delivery element, at least where an ordinary life policy is made the subject of the gift.[6] Nor does there seem to be any legal justification for distinguishing between an ordinary life policy and a certificate representing the insured's interest in a group policy, and the decision of the court in the instant case in refusing to draw such a distinction is sound.[7] A certificate of the type involved in the principal case would seem to satisfy the standard of delivery set forth in the *Restatement of the Law of Contracts* [8] as well as the more liberal view advocated by Professor Bruton.[9] Admitting that manual delivery of the insurance policy or certificate satisfies the delivery element, a real question arises as to whether anything less than that will suffice. Most courts answer the question in the negative,[10] but a few have held a written assignment without delivery to be enough [11] while at least one

[1] Ames, "The Disseisin of Chattels," 3 HARV. L. REV. 23, 313, 337 (1890), reprinted in 3 SELECT ESSAYS IN ANGLO-AMERICAN LEGAL HISTORY 541 at 580 (1909).

[2] 47 A. L. R. 738 (1927). See also Metropolitan Life Ins. Co. v. Dunne, (D. C. N. Y. 1931) 2 F. Supp. 165; Guardian Life Ins. Co. of America v. Mareczko, 114 N. J. Eq. 369, 168 A. 642 (1933).

[3] This is the general rule. 8 COUCH, CYCLOPEDIA OF INSURANCE LAW, § 2214 (1929). But the Illinois court in Weaver v. Weaver, 182 Ill. 287, 55 N. E. 338 (1899), required a written assignment and the Georgia court in Steele v. Gatlin, 115 Ga. 929, 42 S. E. 253 (1902), held that delivery without written assignment was insufficient under the Georgia Code.

[4] 8 COUCH, CYCLOPEDIA OF INSURANCE LAW, § 2214 (1929).

[5] Lo Presti v. Manning, 125 Cal. App. 442, 13 P. (2d) 1002 (1932).

[6] Metropolitan Life Ins. Co. v. Haggerty, 109 N. J. Eq. 663, 158 A. 524 (1931).

[7] Koch v. Aetna Life Ins. Co., 165 Wash. 329, 5 P. (2d) 313 (1931).

[8] 1 CONTRACTS RESTATEMENT, § 158(1) (b) (1932). The Restatement reflects the view, advocated by Professor Williston, that when the delivery of the chose in action divests the donor of all dominion and control, then it can be made the subject of a valid inter vivos gift.

[9] Bruton, "The Requirement of Delivery as Applied to Gifts of Choses in Action," 39 YALE L. J. 837 (1930). Professor Bruton believes that whenever the chose in action is the best evidence of the debt, manual delivery of the chose plus donative intent should result in a valid inter vivos gift.

[10] 47 A. L. R. 738 (1927).

[11] Northwestern Mut. Life Ins. Co. v. Wright, 153 Wis. 252, 140 N. W. 1078 (1913); Hurlbut v. Hurlbut, 49 Hun. 189, 1 N. Y. S. 854 (1888).

other has indicated that a declaration of donative intent is sufficient.[12] It is doubtful whether either of these views can be supported by legal or policy reasons, although such authority may be evidence of the fact that in the future courts will hold that a clear manifestation of donative intent without delivery will result in a valid inter vivos gift.[13] However, the whole theory of the common law is predicated upon the view that certain formalities are necessary to the transfer of property,[14] and it would controvert this basic principle of law to sustain a transfer by way of gift without the element of delivery.[15] It should be noted, however, that the insured may set up a valid trust in favor of a third person without delivery to the beneficiary,[16] but that a defective gift cannot be sustained as a trust in favor of the donee.[17] Usually if there has been a manual delivery of the policy or certificate, little additional evidence need be introduced to show the existence of donative intent.[18] Although the courts do not distinguish in the quantum of proof necessary to establish donative intent, upon policy considerations a court might very well differentiate the case where the alleged gift is to the beneficiary from the case where the gift is to a third person.[19] In the latter case a further distinction might be drawn between the case where the policy which is the subject of the gift is payable to the estate as beneficiary from the case where a living third person is the beneficiary.[20] However, the insured could not transfer to the donee of the policy the proceeds of the policy

[12] Taylor v. Coburn, 202 N. C. 324, 162 S. E. 748 (1932).

[13] Roberts, "The Necessity of Delivery in Making Gifts," 32 W. VA. L. Q. 313 at 319 (1926).

[14] The existence of legal formalities sets up standards. If the parties conform to these formalities, they can be assured that certain legal consequences will result. Likewise, it prevents the imposition of legal consequences when the parties do not intend that their transactions should be legally binding.

[15] Mechem, "The Requirement of Delivery in Gifts of Chattels and of Choses in Action Evidenced by Commercial Instruments," 21 ILL. L. REV. 341, 457, 568 at 607 (1926).

[16] Scott, "The Progress of the Law, 1918-1919, Trusts," 33 HARV. L. REV. 688 at 690 (1920).

[17] Ashman's Estate, 223 Pa. 543, 72 A. 899 (1909). In practical effect to sustain a trust without delivery to the beneficiary is inconsistent with the requirement of delivery in respect to gifts. In legal theory the two are distinguishable.

[18] 47 A. L. R. 738 (1927).

[19] Where the alleged gift is to the beneficiary, if the gift is sustained the legal effect is only to confer a vested right in the beneficiary. It does not have the effect of cutting off the legal rights of any other person except the donor. Because of this, manual delivery to the beneficiary, per se, at least as against a third person, should be enough to establish donative intent.

[20] It would seem wise to require more clear and convincing evidence to show that the insured intended the donee to take the beneficiary's interest when the policy is payable to a third person beneficiary, because in such a case from the mere physical delivery it could be inferred that the insured intended to transfer only his own interest in the policy and not the interest of the third party beneficiary, while in the case where the estate is the beneficiary it would be more reasonable to infer from the act itself that the insured intended to vest all rights in the donee. But in either case some additional evidence should be required.

by way of gift if the beneficiary's rights were vested,[21] nor in some states even if the insured had the power to change the beneficiary.[22] A rather interesting point is developed in the principal case as to the legal effect of a provision in the policy requiring that a duplicate certificate be filed at the home office before any assignment is binding. It is conceivable that some courts might hold that such a provision prevented a valid inter vivos gift on the theory that the donor had not divested himself of complete legal control.[23] The court in the principal case rejected this view and sustained the gift. It was of the opinion that such a provision was inserted only for the benefit of the company. The real reason would seem to be that such an act is not essential to show an executed intent to make a gift. The principal case does not conflict with any recent decisions, and is illustrative of the tendency of the courts to regard insurance policies as similar to tangible personal property, and to sustain transfers of them by way of gift.

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[21] VANCE, INSURANCE LAW, 2d ed., 543 (1930).

[22] Courts are split on the legal effect of a provision in a life insurance policy reserving to the insured the power to change the beneficiary. Most courts hold that it creates a mere expectancy in the beneficiary. Others hold that it creates a vested interest in the named beneficiary subject to a power of appointment in the insured to divest. If the latter view is followed, even though the intent of the insured is to vest in the donee the beneficiary's rights, absent express authorization to do so in the policy, the donee will acquire only the rights of the insured. However, if the former view is followed, by a parol assignment with intent to vest in the donee the beneficiary's rights, the donee will in legal effect become a substituted beneficiary and entitled to the proceeds of the policy. See 60 A. L. R. 191 (1929) for cases involving these conflicting theories. In particular, see Mutual Benefit Life Ins. Co. v. Clark, 81 Cal. App. 546, 254 P. 306 (1927).

[23] BROWN, PERSONAL PROPERTY, § 60 (1936).