

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-7451

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METROPOLITAN LIFE INS. CO.,

Plaintiff-Appellee,

versus

MARIA E. TREVINO, ET AL.,

Defendants,

MARIA E. TREVINO,

Defendant-Appellant.

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MARIA ELENA TREVINO,

Plaintiff-Appellant,

versus

DIANA LEEDS and METROPOLITAN LIFE  
INSURANCE CO.,

Defendants-Appellees.

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Appeal from the United States District Court for  
the Southern District of Texas  
(CA-C91-89 c/w C-91-177)

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(April 14, 1994)

Before REAVLEY, GARWOOD and HIGGINBOTHAM, Circuit Judges.

REAVLEY, Circuit Judge:\*

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\*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal

During his life Antonio Trevino designated a friend, Diana Leeds, as beneficiary of his Federal Employees Group Life Insurance ("FEGLI") policy. His widow, Maria, appeals from summary judgment denying proceeds of the policy to her even though she designated herself beneficiary while acting as Antonio's guardian. We affirm.

#### **BACKGROUND**

Maria Trevino ("Maria") is the widow of Antonio Trevino ("Antonio"), a former federal employee who was insured under a Federal Employees Group Life Insurance ("FEGLI") policy, underwritten by Metropolitan Life Insurance Company ("Met Life"). Implementation of the policy is governed by the Federal Employees' Group Life Insurance Act, 5 U.S.C. §§ 8701 et seq.

The Trevinos were married in 1968. While still married to Maria, Antonio moved in with appellee Diana Leeds ("Leeds") and executed a designation of beneficiary form in favor of Leeds under his FEGLI policy.

In 1987 Leeds' relationship with Antonio ended, and he returned home to resume a normal relationship with his wife and family. According to two of Antonio's daughters and his wife, Antonio planned to change the beneficiary of the insurance policy, but he suffered a series of incapacitating strokes and was unable to do so.

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profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

In 1990, Antonio was judicially declared mentally incompetent and Maria was legally appointed the guardian of Antonio's "person and estate" by the Texas probate court. Maria then executed a new FEGLI designation of beneficiary form and listed herself as beneficiary. The form was witnessed by two people, and was received by Antonio's place of employment with proof of the guardianship on March 19, 1990. On March 23, 1990, the United States Office of Personnel Management ("OPM") rejected Maria's designation, stating that "a designation of beneficiary completed and signed by an individual other than the employee/annuitant is not acceptable."

After Antonio died in 1991, both Leeds and Maria claimed that they were entitled to the benefits. Maria filed suit in state court against Leeds and Met Life, while Met Life filed a complaint for interpleader and declaratory judgment in federal court and subsequently removed the state suit. Met Life deposited the benefits into the registry of the Court and filed a motion for summary judgment arguing that Leeds, the last beneficiary designated by Antonio, was entitled to the FEGLI benefits.

Met Life relied on the language of 5 U.S.C. § 8705(a), which states that benefits will be paid "[f]irst, to the beneficiary. . . designated by the employee in a signed and witnessed writing received before death in the employing office. . . For this purpose, a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed

has no force or effect. . . ." The district court granted Met Life's motion for summary judgment and awarded the proceeds to Leeds. Maria appeals.

#### DISCUSSION

Met Life argues on appeal that even if Maria could have validly changed the designation of the beneficiary under Texas law, her claim is preempted by federal law. Met Life points out that under Ridgway v. Ridgway, 102 S. Ct. 49 (1981) and Wissner v. Wissner, 70 S. Ct. 398 (1950), the Supreme Court has mandated that state law must give way to clearly conflicting federal enactments in upholding an insured service member's right to freely designate a beneficiary in federal employee insurance policies.

Although we agree with Met Life that conflicting state law cannot override an employee's ability to designate a beneficiary in a FEGLI policy, looking to state law to determine what constitutes an employee designation *on behalf of an incompetent* does not necessarily present such a conflict. See Roecker v. United States, 379 F.2d 400 (5th Cir. 1967), cert. denied, 88 S. Ct. 563 (1967). But regardless of the preemption issue, under Texas law Maria could not change the beneficiary without obtaining specific authorization from the probate court. TEX. PROBATE CODE ANN. § 390(c), amended by TEX. PROBATE CODE ANN. § 857(h) (1993) (insurance policies or annuity contracts may not be changed or modified during the life of a ward except on application to the court). Where the insurance policy is

community property, under Texas law a competent spouse can change the beneficiary designated by the incompetent spouse without court approval. Salvato v. Volunteer State Life Ins. Co., 424 S.W.2d 1, 4 (Tex. Civ. App.--Houston [1st Dist.] 1968, no writ), See also TEX. PROBATE CODE ANN. § 157 (a competent spouse can manage the *community* estate on behalf of an incompetent spouse without a guardianship). But in the present case, the FEGLI policy at issue was not community property. See Ridgway, 102 S. Ct. at 57 (the asserted interests in SGLIA policy proceeds is not a shared asset subject to the community interests of another).

Maria needed to obtain court approval for the action that she took in changing the beneficiary. Filing papers with Antonio's employer without specific authority from a competent court to change the beneficiary did not satisfy the requirement of "court authorization" under Texas law. Accord South v. United States, 262 F. Supp. 321, 324 (N.D. Miss. 1966), Murray v. United States, 107 F. Supp. 290, 294 (E.D. Mich. 1950), aff'd., 188 F.2d 362 (6th Cir. 1951), cert. denied, 72 S. Ct. 30 (1951). Even if we were to determine that Maria's attempt to change the beneficiary was not blocked by preemption, Texas law does not support the changed designation.

AFFIRMED.