

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2007-CA-001050-MR

JOHN R. BELL ESTATE BY SUSAN  
K. BELL AS EXECUTOR AND SUSAN  
K. BELL, INDIVIDUALLY

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE KIMBERLY N. BUNNELL, JUDGE  
ACTION NO. 06-CI-02841

WANDA W. BELL

APPELLEE

OPINION AND ORDER  
REVERSING AND REMANDING

\*\* \*\* \* \*\* \* \*\* \*

BEFORE: LAMBERT AND TAYLOR, JUDGES; GRAVES,<sup>1</sup> SENIOR JUDGE.

LAMBERT, JUDGE: John R. Bell, Estate by Susan K. Bell as Executor, and

Susan K. Bell, individually, appeal the entry of summary judgment in favor of

---

<sup>1</sup> Senior Judge J. William Graves sitting as Special Judge by Assignment of the Chief Justice pursuant to Section 110 (5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

Wanda W. Bell by the Fayette Circuit Court. After careful review, we reverse and remand.

John R. Bell (hereinafter John) and Wanda Woods Bell (hereinafter Wanda) were married April 26, 1969, and two children were born of their marriage, Susan and Lauren, both of whom are now adults. John and Wanda separated in early 1984, and their divorce was finalized in May of that year. After the divorce, John continued to be very active in his children's lives and saw the girls on weekends and during holidays.

Both John and Wanda were employed by the United States Government at the Lexington Blue Grass Depot and remained federal employees after their separation until their retirements. On June 21, 1985, John designated his then ex-wife Wanda to be the sole beneficiary of his Federal Employee Group Life Insurance (FEGLI) policy. John named Wanda his beneficiary on a Standard Form 2823 (SF 2823), Designation of Beneficiary, Federal Employees' Group Life Insurance Program and filed the form with the Lexington Blue Grass Army Depot Personnel Division. Wanda designated John as her beneficiary on her FEGLI policy and filed the proper forms. Both parents communicated to each other that the surviving parent would receive the life insurance proceeds for the benefit of their daughters, Susan and Lauren.

In 1988 John began dating Sue Kolenda and moved in with Sue and her children in 1990. They became engaged in the early 1990's. Meanwhile, Wanda's federal job was transferred to Huntsville, Alabama, and she moved there

with Lauren in July 1993. In 1995, during her senior year, Lauren returned to live with John in Lexington to finish high school. John helped Lauren get a used car and continued to play a large role in both her and Susan's life.

In April 2002 John was hospitalized with pneumonia. While in the hospital, John was diagnosed with small cell cancer. Over the course of the next few months, John made arrangements to settle his affairs, spending extensive time researching the proper forms required to settle his estate upon his death. On August 26, 2002, John married his longtime girlfriend Sue Kolenda (now Sue K. Bell, hereinafter "Sue"). On September 16, 2002, John completed and filed a Designation of Beneficiary of Civil Service Retirement System (CSRS) form and sent his form to the United States Office of Personnel Management (OPM). This form is referred to as a standard form 2808 (SF 2808). The SF 2808 is used to designate a beneficiary for any leftover retirement funds that an employee may have in his retirement account payable to him. On this form, John designated his wife, Sue K. Bell, and his daughters Susan and Lauren as the beneficiaries of any unpaid retirement funds that had yet to be distributed. Sue was to receive 90% and Susan and Lauren were to receive 5% each. The opposite side of SF 2808 states that the form is not the FEGLI form that designates the beneficiary of the employee's life insurance, but it is clear from the testimony on record that John believed he was changing his FEGLI beneficiary from Wanda to Sue and his daughters.

John had also prepared packets with his important documents regarding his estate to be given to his daughters and Sue. Approximately two days before his death, John allowed Sue, Susan, and Lauren to open and view the documents he had assembled. The package contained a copy of his will, the SF 2808 CSRS beneficiary form, and materials related to end of life decisions. The package did not contain a SF 2823 form. John died on July 9, 2003, at the age of fifty-nine.

Upon John's death, Wanda remained the properly designated beneficiary of John's FEGLI benefits on the SF 2823 form, and Metropolitan Life Insurance Company's (MetLife) legal team concluded that Wanda was the proper beneficiary and awarded her the FEGLI benefits. Wanda placed approximately \$217,000 into a trust created for the benefit of Susan and Lauren as she and John had agreed long prior to his death. All other property and accounts were distributed to Sue, and Susan and Lauren did not receive any distributions from John's will or estate. As John's widow, Sue is qualified to receive his federal health benefits and his Civil Service Retirement System (CSRS) annuity. Sue currently receives federal health benefits and approximately \$1200 per month from those benefits.

At the trial level below, Sue claimed that John Bell mistakenly filled out the wrong form, resulting in an incorrect designation of beneficiary CSRS form, and that he intended to change his FEGLI beneficiaries to herself, Susan, and Lauren. She claims he believed that he was completing the SF 2823 when he

instead completed and filed the SF 2808. She asked the trial court to impose a constructive trust over the FEGLI benefits.

The trial court granted summary judgment in favor of Wanda Bell on April 18, 2007. The trial court found that FEGLI provisions contained a specific order of precedence for determining beneficiaries for FEGLI benefits and that federal law pre-empted state court action in this case. However, the trial court specifically stated that it was not happy about its decision and that it was inclined to lean toward equity in this case, but that because this was a matter of first impression in Kentucky courts, it felt inclined to seek out assistance from the higher courts in the Commonwealth. This appeal followed.

We review a trial court's entry of summary judgment *de novo*. The standard of review on appeal is "whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to a judgment as a matter of law." *Community Trust Bancorp, Inc. v. Mussetter*, 242 S.W.3d 690, 692 (Ky.App. 2007).

Congress enacted FEGLI in 1954 "to provide low-cost life insurance to Federal employees." H.R. Rep. No. 2579, 83d Cong.2d Sess. (1954) *reprinted in* 1954 U.S.C.C.A.N. 3052; *see also Metropolitan Life Insurance Company v. Christ*, 979 F.2d 575 (7<sup>th</sup> Cir. 1992). Under FEGLI, insurance benefits are provided under a master policy issued by MetLife to the United States Office of Personnel Management (OPM). *See* 5 U.S.C. 8709 (authorizing OPM to purchase group policy from private life insurance companies). OPM administers the FEGLI

program and has the authority to “prescribe regulations necessary to carry out” FEGLI’s purposes. 5 U.S.C. 8716. *See also Christ*, 979 F.2d at 575.

In 1966 Congress amended FEGLI and created an order of precedence within the statute to determine beneficiaries. This amendment was intended to prevent a backlog in the federal court system of challenges to the payment of life insurance benefits. “By amending FEGLI, Congress sought to make clear that for reasons of administrative convenience and avoidance of delay in payment of proceeds, ‘the order of precedence shall prevail over any extraneous document designating a beneficiary.’” *Christ*, 979 F.2d at 578, *citing O’Neal v. Gonzalez*, 839 F.2d 1437 (9<sup>th</sup> Cir. 1989). The order of precedence is set forth in 5 U.S.C. 8705 and states as follows:

(a) Except as provided in subsection (e), the amount of group life insurance and group accidental death insurance in force on an employee at the date of his death shall be paid, on the establishment of a valid claim, to the person or persons surviving at the date of his death, in the following order of precedence:

First, to the beneficiary or beneficiaries designated by the employee in a signed and witnessed writing received before death in the employing office or, if insured because of receipt of annuity or of benefits under subchapter I of chapter 81 of this title as provided by section 8706(b) of this title, in the Office of Personnel Management. 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.

Second, if there is no designated beneficiary, to the widow or widower of the employee.

Third, if none of the above, to the child or children of the employee and descendants of deceased children by representation.

Fourth, if none of the above, to the parents of the employee or the survivor of them.

Fifth, if none of the above, to the duly appointed executor or administrator of the estate of the employee.

Sixth, if none of the above, to other next of kin of the employee entitled under the laws of the domicile of the employee at the date of his death.

Wanda Bell argues on appeal that FEGLI clearly states in the order of precedence who shall receive life insurance benefits in the event of an employee's death, and that federal law mandates that state equitable remedies are not available in the FEGLI context. Furthermore, Wanda argues that federal law pre-empts state law and that any state law that conflicts with federal law is "without effect." *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 112 S.Ct. 2608, 120 L.Ed.2d 407 (1992). Thus, Wanda claims that under FEGLI she was the proper beneficiary, that she properly received John's life insurance proceeds and placed them in trust for her daughters.

Sue argues that Congress did not intend to keep state courts from taking action that might be necessary to prevent an undeserving claimant from being unjustly enriched at the expense of someone who is rightfully entitled to the proceeds of a federal employee's insurance money. According to Sue, in any other context, if conflicting insurance claims are submitted to the program's

administrator, the administrator files an interpleader action and lets the courts decide who is justly entitled to the money. This is the process MetLife followed until the 1966 FEGLI amendment, and Sue argues that this amendment negated the original intent Congress had in creating the life insurance program so that federal employees would have benefits similar to other corporate employees. Sue argues that if state courts are not allowed to impose equitable remedies after the benefits are paid by MetLife, Congress' original intent in creating FEGLI is in large part negated.

To a certain extent, we agree with Wanda. FEGLI clearly indicates that Wanda was the beneficiary listed on John's policy at the time of his death. Thus, MetLife was correct in following the order of precedence and paying Wanda the life insurance proceeds. However, we agree with Sue that the 1966 amendments left claimants who were not favored by the order of precedence without access to the federal court system, and in essence denied them due process under the law. We also agree that by not allowing state law action after the benefits are paid, the FEGLI system separates federal employees from regular corporate employees, which is exactly what FEGLI was created to prevent. Sue argues that once the benefits are paid to the designated FEGLI beneficiary, the purposes of the statute and order of precedence are fulfilled. Sue argues that state courts should be open to claimants once benefits are paid to the FEGLI determined beneficiary, to allow those denied due process under the federal statutory scheme to have their day in court. We agree.



Section 14 of the Kentucky Constitution states “[a]ll courts shall be open and every person for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial, or delay.” Furthermore, Kentucky law indicates that if an owner of a policy substantially complies with the requirements for designating a beneficiary, they will overlook any omissions or mistakes the policy owner may have made and will attempt to carry out the policy holder’s intentions. *See Grayson v. Gilley*, 443 S.W.2d 240 (Ky. 1969). In the instant case, there is a question of fact as to John’s intentions for his life insurance benefits. Sue should have access to Kentucky courts for resolution of this issue of fact.

Congress’ intent in amending the FEGLI was to prevent clogging of the federal courts for challenges to the designated beneficiary. Allowing a family member to sue in state court does not in anyway conflict with this intention, and in fact, it gives federal employees’ family members the same rights they would have were their loved ones not employed by the federal government.

Although non-binding on this Court, we find the reasoning of the Texas Court of Appeals’ opinion in a similar case, *Fagan v. Chaisson*, 179 S.W.3d 35, 43 (Tex. 2005), persuasive. In *Fagan* the Texas Court of Appeals held:

[Section] 8705 serves a valuable and worthwhile purpose by keeping the OPM and the insurance company out of legal entanglements. It fulfills the congressional intention by reducing their administrative and legal hassles. Regardless of what claims are brought to recover the proceeds once they are paid out to the designated beneficiary, the purpose of 8705 has been

served. Neither the insurance carrier nor the government can be burdened by participation in a state judicial proceeding to recover the proceeds. Nor will they be saddled with the unpleasant and cumbersome task of interpreting state statutes, divorce decrees, settlement agreements or wills. Under 8705 the insurer may simply pay the policy proceeds quickly and directly to the named beneficiary and be done with it. If the insured fails to designate a beneficiary, the statute provides direction to determine the person to pay. This does not bar equitable claims and equitable claims do not render 8705 meaningless.

We agree with the Texas Court of Appeals completely. We do not see how allowing state equitable remedies in any way renders 8705 meaningless, nor does it conflict with federal law, rendering pre-emption necessary. Furthermore, Texas is only one state of many to follow our line of reasoning and allow state court action in this context. *See Barden v. Metropolitan Life Ins. Co.*, 254 S.E.2d 271 (N.C.App.Ct. 1979) (wherein the court held that compliance with 8705(a) does not automatically entitle the person so designated to the proceeds); *In re Estate of Anderson*, 552 N.E.2d 429 (Ill.App.Ct. 1990) (where no beneficiary designation has been made, it does not preclude a third party from bringing an action against the payee to compel payment of the proceeds to another party properly entitled to the proceeds); *McCord v. Spradling*, 830 So.2d 1188 (Miss. 2002) (after exhaustive review of previous cases, court held that Congress did not intend to prohibit it from applying Mississippi's laws in the matters before it).

Wanda argues that a decision in favor of Sue encourages forum shopping, however, that issue was not addressed in the pre-hearing statement. CR

76.03(8) states that a party shall be limited on appeal to issues in the prehearing statement. CR 76.03(8) allows for exceptions when good cause is shown and upon a timely motion, however no such motion was filed in the instant case.

Accordingly, we decline to address this issue on appeal.

Furthermore, Sue filed a motion to strike Wanda's brief in its entirety, arguing that Wanda had addressed issues not before this court and had attempted to mislead this court regarding case law and prior trial court rulings and statements. We deny Sue's motion to strike Wanda's brief in its entirety. CR 76.12(8) states that the Court may strike a brief when it fails to comply with any substantial requirement of CR 76.12. Sue has not alleged any such deficiency made on Wanda's behalf and therefore we decline to strike the brief in its entirety. We agree, however, that the forum shopping issue was not preserved for appeal and therefore decline to address it.

Finally, Wanda has filed a motion to strike Sue's motion to strike Wanda's brief from the record, arguing that Sue has attempted to circumvent application of CR 76.12 and CR 11 and that she has essentially filed two briefs with the court. We disagree. This is a complicated case and it appears from the record that Sue was attempting to explain the facts of the case in her motion to strike Wanda's brief in its entirety. Furthermore, we have declined to strike Wanda's brief and have ruled on the merits. No further argument on the issue is

necessary and we deny Wanda's motion to strike Sue's motion to strike Wanda's brief in its entirety.

In the instant case, it appears that John Bell thought he was changing his beneficiary, or that at the least, a factual question exists on the issue. Sue Bell deserves to have her claims heard in court, and state court action is the only remedy she has available to her subsequent to the 1966 FEGLI amendments.

Accordingly, we reverse the Fayette Circuit Court's entry of summary judgment preventing state court action and remand back to the trial court for further proceedings consistent with this opinion.

ALL CONCUR.

ENTERED: February 13, 2009

/s/ James H. Lambert  
JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANT:

Max H. Schwartz  
Lexington, Kentucky

Robert E. Reeves  
Lexington, Kentucky

BRIEF FOR APPELLEE:

Fred E. Peters  
Lexington, Kentucky