

AFFIRM; and Opinion Filed July 27, 2016.



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-15-00811-CV

**PATRICIA SWITZER, INDIVIDUALLY, AND AS THE INDEPENDENT EXECUTRIX
OF THE ESTATE OF DAVID ERIC SWITZER, Appellant**

V.

KAY VAUGHAN, Appellee

**On Appeal from the 417th Judicial District Court
Collin County, Texas
Trial Court Cause No. 417-02656-2014**

MEMORANDUM OPINION

Before Justices Francis, Lang-Miers, and Myers
Opinion by Justice Lang-Miers

Appellant Patricia Switzer, individually and as the independent executrix of the estate of David Eric Switzer, her husband, sued appellee Kay Vaughan over claims arising from Eric's life insurance policy.¹ Both parties filed motions for summary judgment. The trial court granted Vaughan's motion and denied Patricia's. On appeal, Patricia contends that the trial court erred by denying her motion and by granting Vaughan's motion. We affirm the trial court's judgment. Because the issues of law are well settled, we issue this memorandum opinion. TEX. R. APP. P. 47.4.

¹ Solely to avoid confusion and meaning no disrespect, we refer to Patricia Switzer and David Eric Switzer as Patricia and Eric.

BACKGROUND

Eric and Vaughan were employees of the United States Postal Service and began dating sometime around 2007 or 2008. According to Vaughan, Eric did not want his ex-wife or her family to receive the benefits of his life insurance policy through the Federal Employees' Group Life Insurance (FEGLI) program if something should happen to him, so in February 2008 Eric made Vaughan the beneficiary on several of his accounts, including his FEGLI policy. He completed a FEGLI form changing his beneficiary from his ex-wife to Vaughan and sent it to the postal service. The postal service acknowledged receipt of the form.

By February 2009, Eric and Vaughan were no longer dating, and Eric and Patricia had begun dating.² Eric and Patricia married a couple of months later. Five years later, Eric passed away. When Patricia filed a claim with Metropolitan Life Insurance Company, the administrator of Eric's FEGLI policy, she learned that Vaughan was named as his beneficiary. Patricia sued MetLife for breach of contract and Vaughan for fraud, constructive fraud, and unilateral mistake, alleging that Eric had changed the beneficiary on his FEGLI policy from Vaughan to her in February 2009.

MetLife tendered the proceeds of the policy into the registry of the court, and the court dismissed MetLife from the lawsuit with prejudice.

Patricia claimed that she saw Eric and two witnesses sign the FEGLI form changing Eric's beneficiary to her and heard Eric talking to his employer and referring to her as his beneficiary. She testified that Eric added \$200,000 in benefits in late 2013 so she would have funds to pay off the mortgage if he passed away.³ However, as Patricia was going through her

² The record showed that Eric and Patricia had been engaged to each other as young adults, but they did not marry and went their separate ways until being reacquainted in 2009.

³ The record showed that Eric had basic life insurance of \$69,000 and additional coverage of \$201,000, for a total of \$270,000 in life insurance benefits.

husband's papers to prepare for her deposition in this case, she found the original FEGLI form that changed the beneficiary on Eric's life insurance policy from Vaughan to her. The form listed Patricia as the 100% beneficiary and was signed by Eric and two witnesses. The form was stamped "received," but the box in part "C" confirming that the life insurance policy had not been assigned was not checked, and the instruction to "Please check all three" was highlighted in yellow. Additionally, the postal service had not completed the form acknowledging its receipt of the form:

(Do not put a total if you designated types of insurance. See example 4 on back of Part 1.)

C. Statement of Insured or Assignee (type or print)			
Your name and address (Including ZIP code) <u>DAVID ERIC SWITZER</u> <hr/> <u>5409 N. BRIAR RIDGE CR.</u> <hr/> <u>MCKINNEY TX 75070</u>	Please check one: I am: <input checked="" type="checkbox"/> the Insured <input type="checkbox"/> an Assignee See Back of Part 2 for definitions	<div style="background-color: yellow; padding: 2px; text-align: center; font-weight: bold;">Please check all three.</div> <input type="checkbox"/> I have not assigned the insurance. <input checked="" type="checkbox"/> Two people who witnessed my signature signed below. <input checked="" type="checkbox"/> I did not name either witness as a beneficiary.	
I understand that if there is a valid assignment on file, only the assignee has the right to designate a beneficiary. If a valid assignment is not on file, but there is a valid court order on file with the agency or the U.S. Office of Personnel Management, as appropriate, any designation I complete for the same benefits is not valid.		I understand that if this Designation is invalid for any reason, the Office of Federal Employees' Group Life Insurance will pay benefits according to the next most recent valid designation. If there isn't one, it will pay according to the order listed on the Back of Part 2.	
I understand that if this Designation is valid, it will stay in effect unless it is canceled. (See "When Is A Designation Canceled?" on the Back of Part 2).		I am canceling any and all previous Designations of Beneficiary under the Federal Employees' Group Life Insurance Program and am now designating the beneficiary(ies) named above.	
Signature of Insured/Assignee (Only the Insured/Assignee may sign. Signatures by guardians, conservators or through a power of attorney are not acceptable.) This form is not valid unless the Insured/Assignee signs in this box.			Date (mm/dd/yyyy)
D. Witnesses To Signature (A witness is not eligible to receive a payment as a beneficiary.)			
Signature of witness 	Address (Including ZIP code) <u>6816 Nala Valley Frisco TX 75035</u>		
Signature of witness 	Address (Including ZIP code) <u>8367 Lanners Dr McKinney TX 75070-6711</u>		
E. For Agency Use Only			
Receiving agency	Date of receipt (mm/dd/yyyy)	Signature of authorized agency official	Title

U.S. Office of Personnel Management
 FEGLI Handbook (RI 76 26)

Part 1 - Original
 NSN 7540-01-231 6228 2823-103 Previous editions are not usable SF 2823 Revised April 2001

Patricia contended that this form was conclusive evidence that Eric intended to name her the 100% beneficiary of his life insurance benefits. She amended her petition to allege a claim for declaratory judgment based on Eric's substantial compliance with the requirements for changing his beneficiary. She pointed out the "received" stamp on the form and alleged that Eric had done "everything required of him to change the beneficiary designation by filling out and submitting the FEGLI Form to the proper agency." Alternatively, she sought a declaratory

judgment that it was against public policy. Patricia moved for summary judgment on her declaratory judgment claim that Eric substantially complied with the FEGLI requirements to change his beneficiary designation to her.

Vaughan opposed Patricia's motion. She argued that Patricia did not satisfy her summary judgment burden because strict compliance, not substantial compliance, was the standard that applied to this case. Citing the provision of the United States Code that applied to the payment of FEGLI benefits, Vaughan argued that payment of benefits went first to the person named in a valid beneficiary designation and, if there was none, then second to the widow or widower. She also cited federal regulations that required a FEGLI form to be filed with the employing agency before the insured's death. Vaughan argued that because Eric did not complete the FEGLI form properly and because the postal service did not receive the form changing his beneficiary to Patricia before Eric's death, MetLife was required to pay the benefits to the person on the last-filed valid beneficiary designation form, which was Vaughan.

Vaughan also filed a motion for no-evidence and traditional summary judgment on all of Patricia's claims. Vaughan argued that she was entitled to Eric's life insurance benefits as a matter of law because she was the last-named valid designated beneficiary of the policy on file with the postal service before Eric's death; that Patricia had no evidence to support her claim that the beneficiary designation naming Vaughan was against public policy; and that Patricia had no evidence to support her claims for fraud, constructive fraud, and unilateral mistake.

Patricia did not respond to Vaughan's motion with regard to her claims for fraud, constructive fraud, and unilateral mistake, and those claims are not before us on appeal. With regard to her claim for declaratory judgment that the beneficiary designation of Vaughan was against public policy, Patricia argued that Vaughan was in a superior position to Eric at the postal service and federal regulations prohibited a superior from receiving a gift from a

subordinate employee or an employee who received less pay. She presented evidence that Vaughan admitted “that she was [Eric’s] direct supervisor for a period of time beginning after April 11, 2009.”

After a hearing, the trial court granted Vaughan’s no-evidence and traditional motion for summary judgment and ruled that Vaughan was entitled to the life insurance benefits as Eric’s “last named beneficiary on file with program administrator, Metropolitan Life Insurance Company.” Patricia moved for a new trial, which the trial court denied.

On appeal, Patricia asserts two issues:

1. Did the trial court err when it denied Appellants’ Motion for Summary Judgment and Appellant’s [Response to Appellee’s] Traditional and No-Evidence Motion for Summary Judgment because Appellant proved she was entitled to summary judgment as a matter of law on the reasoning that Mr. David Eric Switzer (“Mr. Switzer”) complied with the Federal Employee Group Life Insurance Act (“FEGLIA”) when submitting his designation of beneficiary form?
2. Did the trial court err when it granted Appellee’s Motion for Summary Judgment on the reasoning that the beneficiary designation of Appellee is not void as a matter of public policy?

STANDARD OF REVIEW

We review a trial court’s summary judgment de novo. *Buck v. Palmer*, 381 S.W.3d 525, 527 (Tex. 2012). When both parties move for summary judgment and the trial court grants one motion and denies the other, the non-prevailing party may appeal both of those rulings. *See Certain Underwriters at Lloyd’s v. LM Ericsson Telefon, AB*, 272 S.W.3d 691, 694 (Tex. App.—Dallas 2008, pet. denied). To determine if a genuine issue of material fact precludes summary judgment, we must consider whether reasonable and fair-minded jurors could differ in their conclusions in light of all the evidence presented. *See Goodyear Tire & Rubber Co. v. Mayes*, 236 S.W.3d 754, 755 (Tex. 2007) (per curiam). With respect to each side’s motion, we consider

all the evidence in the light most favorable to the nonmovant, indulging all reasonable inferences in favor of the nonmovant and resolving any doubts against the movant. *Id.* at 756.

APPLICABLE LAW

The payment of benefits under a FEGLI policy follows an “order of precedence” established by Congress. 5 U.S.C. § 8705(a). The benefits are payable “[f]irst, to the beneficiary or beneficiaries designated by the employee in a signed and witnessed writing received before death in the employing office.” *Id.* If there is no such designation, the next person in the order of precedence is the widow or widower of the insured. *Id.* If there is no widow or widower, the benefits are paid to children and other next of kin. *See id.*

If an insured wants his benefits paid “differently from the order of precedence, he/she must file a designation of beneficiary.” 5 C.F.R. § 870.802(a). The designation “must be in writing, signed by the insured individual, and witnessed and signed by 2 people.” *Id.* § 870.802(b). The completed designation of beneficiary form must be submitted to the employing office pursuant to the methods approved by that office, and “[t]he appropriate office must receive the designation before the death of the insured.” *Id.* In addition, an insured “may change his/her beneficiary at any time and without the knowledge or consent of the previous beneficiary.” *Id.* § 870.802(f). And this right to change beneficiary “cannot be waived or restricted.” *Id.*

Federal regulations prohibit gifts to “official superiors.”⁴ 5 C.F.R. § 2635.302. “Official superior means any other employee . . . including but not limited to an immediate supervisor, whose official responsibilities include directing or evaluating the performance of the employee’s official duties or those of any other official superior of the employee.” *Id.* § 2635.303. Additionally, a gift from one employee to a higher paid employee is prohibited unless “[t]he two

⁴ The statute contains exceptions that do not apply here. *See* 5 C.F.R. § 2635.304.

employees are not in a subordinate–official superior relationship” and “[t]here is a personal relationship between the two employees that would justify the gift.” *Id.* § 2635.302(b).

DISCUSSION

In issue one, Patricia argues that the trial court erred by denying her motion for summary judgment and her response to Vaughan’s motion for summary judgment. Patricia contends that she proved she was entitled to Eric’s life insurance benefits as a matter of law because Eric substantially complied with the FEGLI requirements to change his beneficiary from Vaughan to her.

To effectuate a change in beneficiary from Vaughan to Patricia, Eric had to ensure that the postal service received his properly completed FEGLI form before his death. *See* 5 C.F.R. § 870.802(b). The summary judgment evidence, however, showed that Eric still possessed the original FEGLI form at his death. The evidence also showed that the postal service and MetLife did not have a copy of the form in their files, and the form was never signed by the postal service acknowledging its receipt of the form before Eric’s death. *See id.*

Patricia agreed that the postal service may have returned the original form to Eric “for correction of a minor error in the completion of the form,” but argued that Eric substantially complied with the statute’s requirements. The statute, however, does not contain language permitting substantial compliance with its requirements.⁵ *See id.* The statute is clear that Congress intended a federal employee to have complete freedom to designate the beneficiary of his choice and any state law that interfered with the insured’s choice must be preempted. *Hillman v. Maretta*, 133 S. Ct. 1943, 1952–53 (2013) (explaining statutory procedure for payment of FEGLI benefits). Under these federal statutory beneficiary designation rules,

⁵ The reason Eric did not complete the form and send it to the postal service in the five years between the date he first signed it and his death is unknown.

Vaughan had priority over Patricia, even though Patricia was Eric's widow. *See id.*; *see also* 5 U.S.C. § 8705(a); *United States v. Windsor*, 133 S. Ct. 2675, 2690 (2013) (citing *Hillman*, 133 S. Ct. 1943).

Because Eric had a valid beneficiary designation form on file with his employing office, and he did not comply with the statutory requirements to change that designation, we conclude that Patricia did not establish she was entitled to summary judgment on this claim and the trial court did not err by denying her motion. We resolve issue one against her.

In issue two, Patricia argues that the trial court erred by granting Vaughan's motion for summary judgment on Patricia's claim that designating Vaughan as Eric's beneficiary was against public policy. Patricia contended that Eric's designation of Vaughan as his beneficiary constituted a gift and that federal regulations prohibited it. She argued that Vaughan was Eric's direct supervisor and was prohibited from receiving a gift from him. 5 C.F.R. § 2635.302(a) (gifts to superiors prohibited). To support this contention, Patricia referred to Vaughan's discovery responses, specifically, Vaughan's admission that she was Eric's "direct supervisor for a period of time beginning after April 11, 2009." But Eric designated Vaughan as his beneficiary in February 2008, and the undisputed evidence showed that Vaughan was not Eric's official superior at that time. Consequently, even if designating Vaughan as his beneficiary constituted a gift, which we do not decide, this evidence does not support Patricia's contention that Vaughan was Eric's official superior at the time of the gift.

Additionally, Patricia argued that Vaughan was prohibited from receiving a gift from Eric because Vaughan was a higher paid employee. *Id.* § 2635.302(b) (gifts from employees receiving less pay prohibited unless not in subordinate–official superior relationship and personal relationship exists justifying gift). Patricia again relied on Vaughan's discovery responses to support this contention. But those responses do not state the respective pay Vaughan and Eric

received from the postal service in February 2008 when Eric designated Vaughan as his beneficiary. And there is no other summary judgment evidence in our record from which we may reasonably infer their respective salaries at the relevant time. Consequently, this evidence does not support the contention that Vaughan was a higher paid employee than Eric at the time he designated her as his beneficiary.

We conclude that Patricia did not establish that these federal regulations applied in this case. Accordingly, the trial court did not err by granting Vaughan's motion for summary judgment on this claim. We resolve issue two against Patricia.

CONCLUSION

We affirm the trial court's judgment.

/Elizabeth Lang-Miers/
ELIZABETH LANG-MIERS
JUSTICE

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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

PATRICIA SWITZER, INDIVIDUALLY,
AND AS THE INDEPENDENT
EXECUTRIX OF THE ESTATE OF
DAVID ERIC SWITZER, Appellant

On Appeal from the 417th Judicial District
Court, Collin County, Texas
Trial Court Cause No. 417-02656-2014.
Opinion delivered by Justice Lang-Miers.
Justices Francis and Myers participating.

No. 05-15-00811-CV V.

KAY VAUGHAN, Appellee

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that appellee Kay Vaughan recover her costs of this appeal from appellant Patricia Switzer, Individually, and as the Independent Executrix of the Estate of David Eric Switzer.

Judgment entered this 27th day of July, 2016.