

**[J-68A-2009; J-68B-2009]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT**

CASTILLE, C.J., SAYLOR, EAKIN, BAER, TODD, McCAFFERY, GREENSPAN, JJ.

IN RE: ESTATE OF RONALD SLOMSKI,	:	Nos. 5 & 6 WAP 2009
A/K/A RONALD J. SLOMSKI, DECEASED:	:	
	:	Appeal from the Order of the Superior
JENNIFER SMITH & JACILYN SNYDER,	:	Court entered July 29, 2008 at Nos. 1330
	:	& 1400 WDA 2007, affirming in part and
	:	reversing in part the Order of the Court of
	:	Common Pleas of Erie County entered
v.	:	June 15, 2007 at No. 32-2007.
	:	
	:	
THE THERMOCLAD COMPANY, RITA	:	
SLOMSKI, RONALEE CURTIS, AND	:	965 A.2d 438 (Pa. Super. 2008)
RANDALL SLOMSKI,	:	
	:	ARGUED: September 15, 2009
	:	
	:	
APPEAL OF RITA SLOMSKI, RONALEE	:	
CURTIS, AND RANDALL SLOMSKI	:	
	:	
	:	

OPINION

MADAME JUSTICE GREENSPAN

DECIDED: DECEMBER 28, 2009

This Court granted allocatur in order to determine whether Section 5603(q) of the Durable Power of Attorney Act, 20 Pa.C.S. §§ 5601-5611 (the Act), includes the power of the agent to change the beneficiary designation of a qualified retirement plan owned by the principal. For the reasons that follow, we hold that a principal’s Power of Attorney granting the agent the power to engage in retirement plan transactions authorized his agent to

change the beneficiary of the principal's retirement plan. We therefore reverse the order of the Superior Court.

On March 24, 2000, Ronald Slomski ("the decedent") executed a durable Power of Attorney ("POA") granting Rita Slomski ("Slomski"), his mother, authority to exercise control over his affairs as his agent. The POA specifically authorized Slomski to, among other things, "engage in retirement plan transactions." On May 4, 2005, the decedent completed a Beneficiary Designation Form for his retirement plan through The Thermoclad Company. The Beneficiary Designation Form also allowed the decedent to change the beneficiaries. The decedent named his wife as the primary beneficiary with his stepdaughters, Jennifer Smith and Jacilyn Snyder ("Appellees"), as contingent beneficiaries. The decedent's wife passed away on July 18, 2006.

On December 12, 2006, Slomski used the POA to change the beneficiaries of the retirement account to the decedent's siblings, Ronalee Curtis and Randall Slomski. The decedent passed away on December 28, 2006. At the time of the decedent's death, the retirement plan had a value of approximately \$190,000.00. The decedent died testate leaving the estate in equal shares to Appellees, with Jennifer Smith being appointed executrix on January 5, 2007.

On February 7, 2007, Appellees filed this action for Declaratory Judgment and Preliminary Injunction seeking, among other things, to invalidate Slomski's change of the beneficiaries of the decedent's retirement account. Slomski, along with the decedent's siblings, (collectively the "Appellants") filed a motion for judgment on the pleadings. Appellees filed a cross-motion for judgment on the pleadings.

On June 15, 2007, the trial court granted Appellants' motion and held that Slomski had the authority to change the beneficiary designation of the decedent's retirement account based on clear statutory language. More specifically, the trial court held that the POA "did, in fact, include broad general language, paralleling the language set forth at 20

Pa.C.S. § 5602, empowering Rita Slomski to deal with retirement plan matters, and to exercise all powers with respect to retirement plans that the principal could if present, pursuant to 20 Pa.C.S. § 5603(q).” Tr. Ct. Order at 2. The trial court also held that the change of the beneficiary was not a gift, but rather an expectancy interest. Tr. Ct. Op. at 16.

On July 29, 2008, the Superior Court reversed and ruled that Slomski did not have the authority to change the beneficiary designation of the decedent’s retirement account. Estate of Slomski v. Thermoclad Co., 956 A.2d 438 (Pa. Super. 2008). The Superior Court characterized the changing of a beneficiary as a gift, not a retirement plan transaction, and therefore concluded that it was an unlimited gift requiring a specific designation in the POA. Id. at 19. Because the POA granted Slomski the power to engage in retirement plan transactions, but did not specifically grant Slomski the authority to change the beneficiaries of the decedent’s retirement accounts, the Superior Court held that Slomski could not change the retirement account beneficiary. Id.

We granted allocatur to determine “whether the ‘all powers’ language in 20 Pa.C.S. § 5603(q) includes the power of the agent to change the beneficiary designation of a qualified retirement plan owned by the principal.” In re Estate of Slomski, 969 A.2d 1176 (Pa. 2009).

Appellants assert that the POA gave Slomski the “power to engage in retirement plan transactions.” Simply put, the “power to engage in retirement plan transactions” is statutorily defined and includes the power to “exercise all powers with respect to retirement plans that the principal could if present.” 20 Pa.C.S. § 5603(q). This includes the power to change the beneficiary designation on the retirement plan. If the legislature intended to limit this power, it would have done so as it limited the power of the agent to change the beneficiary designation for insurance policies. See 20 Pa.C.S. § 5603(p) (defining the “power to engage in insurance transactions”); see also footnote 2 infra. Lastly, Appellants

assert that the changing of the beneficiaries does not constitute a gift because it is only an expectation and not an actual gift.

Appellees argue that although Section 5603(q) of the Act includes the power to “exercise all powers with respect to retirement plans that the principal could if present,” this section must be read in conjunction with Section 5601.2, which governs gifts.¹ Unlimited gifts must be specifically defined in the POA pursuant to Section 5601.2(c). By changing the beneficiary designation of the retirement plan, Slomski bestowed decedent’s most valuable asset upon his siblings instead of his stepdaughters. Appellees assert that because this is a gift, not a retirement plan transaction, and the POA did not specifically authorize this gift, the change of the beneficiaries should be declared void.

The Act permits a principal to give authority to an agent to engage in retirement plan transactions. See 20 Pa.C.S. § 5602(a)(18); 20 Pa.C.S. § 5603(q). Specifically, a principal can give this power to an agent simply by including the language “to engage in

¹ Section 5601.2 provides, in pertinent part:

Special rules for gifts

(a) General rule.--A principal may empower an agent to make a gift in a power of attorney only as provided in this section.

(b) Limited gifts.--A principal may authorize an agent to make a limited gift as defined under section 5603(a)(2) (relating to implementation of power of attorney) by the inclusion of:

(1) the language quoted in section 5602(a)(1) (relating to form of power of attorney); or

(2) other language showing a similar intent on the part of the principal to empower the agent to make a limited gift.

(c) Unlimited gifts.--A principal may authorize an agent to make any other gift only by specifically providing for and defining the agent's authority in the power of attorney.

20 Pa.C.S. § 5601.2.

retirement plan transactions” in a POA. 20 Pa.C.S. § 5602(a)(18). This phrase is then further defined in Section 5603:

A power to “engage in retirement plan transactions” shall mean that the agent may contribute to, withdraw from and deposit funds in any type of retirement plan (including, but not limited to, any tax qualified or nonqualified pension, profit sharing, stock bonus, employee savings and retirement plan, deferred compensation plan or individual retirement account), select and change payment options for the principal, make roll-over contributions from any retirement plan to other retirement plans and, in general, *exercise all powers with respect to retirement plans that the principal could if present.*

20 Pa.C.S. § 5603(q) (emphasis added). While the power to engage in retirement plan transactions does not specifically include the ability to change the beneficiary designations, it does authorize the agent to “exercise all powers with respect to retirement plans that the principal could if present.” 20 Pa.C.S. § 5603(q).

Here, the decedent had the power under the Beneficiary Designation Form to change the beneficiary of the retirement plan. Because the POA included the exact statutory language “to engage in retirement plan transactions,” Slomksi was authorized to change the beneficiaries of the retirement plan to the decedent’s siblings as this clearly was a power the decedent also had.²

² Significantly, the statutory definition of the power to engage in insurance transactions in Section 5603(p) includes much of the same language as the statutory definition of the power to engage in retirement plan transactions in Section 5603(q), but does speak to, and specifically *limits* the power to change the beneficiaries. See 20 Pa.C.S. § 5603(p)(3); see also In re Weidner, 938 A.2d 354 (Pa. 2007) (holding that general language in the POA incorporating the powers set forth in 20 Pa.C.S. §§ 5601-5607 is sufficient to allow the principal to change the beneficiary of a life insurance policy pursuant to § 5603(p)(3)). In contrast, the statutory definition of the power to engage in retirement plan transactions permits an agent to exercise all the same powers as the principal without any limitation at all. Clearly if the legislature intended to limit the power of an agent to change the beneficiary of a retirement plan, it would have done so in Section 5603(q).

Appellees argue that the change of the retirement plan beneficiaries was a gift bestowed upon the decedent's siblings and this was beyond Slomski's powers because the POA did not include the power to make unlimited gifts. A principal may authorize an agent to make limited or unlimited gifts. Limited gifts can be made only to the "principal's spouse, issue and a spouse of the principal's issue." 20 Pa.C.S. § 5603(a)(2)(i). Unlimited gifts can be made by the agent only if the principal "specifically provid[es] for and defin[es] the agent's authority in the power of attorney." 20 Pa.C.S. § 5601.2(c). Specifically, Appellees argue that in order for Slomski to have the power to change the retirement plan beneficiaries, that power must be specifically included in the POA because it is an unlimited gift.

We reject Appellees' argument. By including the language "to engage in retirement plan transactions" in his POA, the decedent authorized Slomski to "exercise all powers with respect to retirement plans that the principal could if present." See 20 Pa.C.S. § 5602(a)(18); 20 Pa.C.S. § 5603(q). This power includes the ability to change the beneficiaries of the retirement plan.³

Accordingly, we reverse the Superior Court.

Messrs. Justice Eakin, Baer, and McCaffery join the opinion.
Mr. Justice Saylor files a dissenting opinion in which Mr. Chief Justice Castille and Madame Justice Todd join.

³ The Superior Court characterized the change of the beneficiaries as a gift without addressing the possible tax ramifications. The trial court determined that if the change of the beneficiaries was characterized as a gift, the beneficiaries would be required to file a gift tax return and because the decedent and Slomski had the power to change the beneficiary numerous times until the decedent's death, each time the beneficiary is changed, the newly named beneficiaries would be required to file a gift tax return. For the reasons stated above, however, the change in beneficiaries here was not a gift and accordingly any issue of gift tax ramifications is not involved.