

Same Material Facts . . . Opposite Results?

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The Western District of Virginia's *Hartford Life v. Herring* case outcome doesn't track with the Virginia Supreme Court's *Wood v. Martin* decision . . . or does it?

In a recent decision by the Roanoke Division of the United States District Court for the Western District of Virginia, *Hartford Life and Accident Insurance Co. v. Herring*, the parties disputed the rightful recipient of insurance policy proceeds but were at least able to agree that the separation and property settlement agreement at issue was governed by North Carolina law. In seemingly all material respects, the facts of the *Herring* case mirrored those of the Virginia Supreme Court's 2020 decision in *Wood v. Martin*. Yet, with the Court's application of North Carolina law, the outcome of the case is in direct conflict with the *Wood v. Martin* results. Or is it?

In *Wood v. Martin*, the Court held that by operation of Virginia law, Ms. Martin, as the ex-wife, was the rightful 50% beneficiary of her ex-husband's life insurance policy. The ex-husband's beneficiary re-designation days before taking his own life, by which he removed her from the policy, was in direct conflict with his contractual and consensually court-ordered obligation to her. The Court agreed with Ms. Martin that under Virginia law, the terms of the divorced couple's agreement (as incorporated into their consensual divorce decree) requiring that he designate her as the life insurance policy beneficiary effected a written assignment of his contractual right with the life insurance company to change his beneficiary designation, and, consequently, he remained bound to maintain Ms. Martin as the 50% beneficiary of the policy.

In *Hartford Life v. Herring*, the Western District applied North Carolina law to strikingly similar facts to reach the opposite result. The Roanoke federal court faced the situation in *Herring* where a divorced couple's post-nuptial agreement had stated that the ex-husband was to retain ownership of his life insurance policy, free and clear from any claim by his ex-wife, presumably bargained for to afford him *carte blanche* to designate anyone he wanted as his policy beneficiary. When the ex-husband died a few years later, it was discovered that he had never removed his ex-wife as the primary beneficiary of the policy.

The Western District acknowledged that under North Carolina law, the failure of a spouse to change the beneficiary ordinarily indicates that he or she did not intend to effect such a change. The Court found that the separation agreement did not sufficiently clearly express the policy owner's intention to alter beneficiary status (notwithstanding the language about the policy being consensually free and clear from any claim of ownership by his ex) and, therefore, did not constitute an assignment of such interest. Consequently, the Court refused to "blue pencil" the policy's beneficiary designation to match the stated intentions of the divorced couple's post-nuptial agreement.

With directly opposing outcomes, in such strikingly similar cases, one might simply presume the results were dictated by differing state assignment laws. On closer inspection, one or more other factors might have led to such seemingly contrary findings and conclusions.

One possibility is that, perhaps, both courts simply applied an "ends justifies the means" approach to decision-making to fashion a remedy and result favoring an otherwise aggrieved ex-spouse. While attractive at first, with both cases resulting in arguably otherwise aggrieved ex-spouses awarded the life insurance proceeds, this justification seems unlikely. From all outward appearances at least, the *Herring* policy designee stood to receive an apparent windfall contrary to the outcome for which she'd bargained in the couple's post-nuptial agreement.

Instead, perhaps the facts of the cases differ materially in a non-obvious way? Perhaps the results were driven by specific language in each of the agreements, highlighting more than an innocuous distinction. As it turns out, ownership of a policy is not synonymous with the right to dictate who receives the proceeds thereof. It is true that legally speaking, one with ownership of a policy generally maintains the right to designate beneficiaries of that policy. The *Woods v. Martin* court recognized an exception to this general rule when one contractually obligates oneself to maintain a particular designee. The *Hartford Life v. Herring* court was not asked to consider the same contractual obligation, but rather, the apparently unequivocal waiver by the would-be designee to claim an ownership interest in the policy. Considered from these differing perspectives, ownership of the policies in each case went unchallenged, whereas the obligation to designate a particular someone in the former case contrasted materially from the unfettered right of the owner in the latter case to designate anyone he wanted.

Then again, perhaps the differing outcomes can be explained factually but less legalistically. After all, simply stated, in the

former case, Ms. Martin was awarded with what her deceased former husband had contractually promised to do for her. In the latter situation in *Herring*, the court's decision let stand the decedent's beneficiary designation, which, despite having negotiated for himself the exclusive right to designate anyone he wanted as his beneficiary -- which right he then could have exercised any time he wanted! -- for reasons he apparently took to his grave, he never did. Perhaps it was merely an oversight by the deceased policy owner, or perhaps it was a conscious decision on his part. We'll clearly never know. We do know, however, that merely because he *could* change the policy beneficiary did not legally dictate that he must do so. Without language in the post-nuptial agreement expressly directing him to take particular action regarding the beneficiary designation, as in *Woods v. Martin*, perhaps this is a sufficiently material factual distinction justifying an opposite result without regard to the law of assignments in either North Carolina or Virginia.

Seen in this light, the *Woods v. Martin* and *Hartford Life v. Herring* decisions make perfect sense! So, when does it make sense that the same material facts lead to opposite results? Certainly, one option is that the law differs from state to state. In this situation, however, another option appears to be that no matter how strikingly similar the facts of the two cases, they differ materially in more ways than one -- sufficiently so much as to dictate opposite results and, consequently, leaving unresolved the issue as to the extent to which the law of assignments in this context actually differs between the two states. Thoughts?