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**TOPIC: Decedent’s Spouse Not Entitled to Share of Life Insurance Death Proceeds**

**CITATION:** [Bays v. Kiphart](#), No. 2014–SC–000324–DG (S. Ct. KY, May 5, 2016).

**SUMMARY:** Carole Kiphart married John Bays in 2000. After getting married, Carole purchased two insurance policies on her life with a combined face amount of \$875,000. John was initially named beneficiary of all but \$150,000 of the death benefits.

After Carole became sick with cancer in 2006, she changed the beneficiaries on the life insurance policies to trusts she had created—trusts which largely excluded John as a trust beneficiary.

After Carole’s death in 2007, John filed several actions seeking to undo the changes Carole made to her estate plan, including the life insurance beneficiary changes. The circuit court ruled that John had a valid statutory claim to a portion of the life insurance death proceeds. A Kentucky appeals court reversed that decision, finding that the statutory right to a spousal share does not extend to life insurance death proceeds. The state supreme court affirmed.

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**RELEVANCE:** The life insurance professional faces lots of issues when helping a client navigate through a time of terminal illness. The complexity of those issues increases when the client is in a strained marriage relationship.

In this case, the wife sought to mostly disinherit her husband from her estate within the last several weeks of her life. Many states allow a spouse to renounce a deceased spouse's will, "elect against the will," and claim a statutory share of the probate estate – and some states provide for an "enhanced estate" which would *include* life insurance. Most states, however, do not include life insurance (unless payable to the insured's estate) in the calculation of what a spouse can "elect against." Based on the facts of this case and Kentucky law, the wife accomplished her objective of preventing her husband from getting the life insurance proceeds, i.e. the surviving husband's right under state law to a statutorily determined share of the probate estate does not extend to life insurance death proceeds. In a different jurisdiction or with a slightly altered fact pattern, the result might have been different.

Life insurance professionals should always carefully document their clients' intentions with regard to planning decisions. This is especially important when a client is going through a time of stress—such as divorce or terminal illness. The documentation would serve several purposes:

- Remind the client of the factors that were relevant at the time a decision was made;
- Inform those left behind of the client's intentions after the client's death; and
- Help manage potential professional liability issues.

**FACTS:** John Bays and Carole Kiphart married in 2000. They had one child, Bryce Bays.

In 2000, Carole obtained a life insurance policy through Prudential Insurance Company for \$125,000. John was initially named as a beneficiary of this policy.

In January 2002, Carole also obtained a \$750,000 policy from American General Life Insurance Company, with the benefits payable 80% to her husband and 20% to Bryce.

Carole was diagnosed with cancer in December 2006. In September 2007, without John's knowledge, she executed a new will that largely disinherited her husband. She had relatively liquid assets and other valuable personal property with a combined value of over \$150,000. She mostly left John only personal and household effects in the new will.

Around the same time, Carole also created two trusts, an irrevocable trust for Bryce and her own living trust. At that time, she removed John and Bryce as beneficiaries on the life insurance policies, and instead named the trusts as the beneficiaries.

Carole died in October of 2007. After her death, the American General policy's proceeds were to be paid into Bryce's trust, and the Prudential policy's proceeds were to be paid into the living trust.

In November 2007, Carole's September 2007 will was admitted to probate, and her sister Kristie was appointed executrix. Kristie was also trustee of both trusts.

John began challenging what had occurred. In December, he renounced the will and instead elected to take his spousal share under Kansas law. He also filed a court action with respect to the will, seeking to recover the portion of his spousal share that may have been delivered to other people—including the insurance proceeds. His primary theory was that there was fraud on his statutory spousal interest because the beneficiaries of the insurance policies had been changed and the trusts established without his knowledge or consent, and the life insurance proceeds were part of Carole's estate.

The circuit court held in John's favor with respect to the will, declaring it void. The court also found in John's favor with respect to the claimed fraud on his statutory spousal interest. Specifically, the court found that because John did not know or consent to the changes of insurance policy beneficiaries or the creation of the trusts to be funded with the proceeds of the policies, the court concluded that those transfers were fraudulent. It held that the insurance policies were to be considered in calculating John's share of his wife's estate. Based on that holding, the court entered judgment in John's favor for about \$450,000.

Kristie appealed and the state court of appeals reversed the circuit court's decision. The appeals court concluded that a surviving husband's statutory spousal interest does not attach to the proceeds of life insurance because the death proceeds are never part of the decedent's probate estate. (In Kentucky, the law does not artificially "expand" the probate estate to include life insurance.)

John appealed to the Kentucky Supreme Court. In considering the question, the high court differentiated between policy ownership and the beneficiary-spouse's expectations with regard to a policy's death benefit:

The trial court's approach in this case confused the life-insurance policies, which were owned by Carole, with their proceeds, which were never owned by Carole and would never have become part of her estate. Indeed, the trial court's reasoning in this respect depended on the conclusion that "[t]he insurance policies ... are personalty of the estate." That may be true, in a sense, but we are concerned not with the policies themselves, but with their proceeds.

The supreme court concluded that the right to change the beneficiary is absolute:

Are the proceeds of a life-insurance policy payable to a third-party beneficiary part of the decedent's property and thus subject to the surviving spouse's statutory interest and, by extension, recoverable by a claim of fraud on the surviving spouse's statutory share? The answer is no.

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