

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

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

DISSENTING OPINION

MR. JUSTICE SAYLOR

DECIDED: DECEMBER 28, 2009

As a threshold matter, I agree with the majority's conclusion that the change of beneficiary accomplished by Rita Slomski was a "retirement plan transaction" for purposes of Section 5602(a) of the Probate, Estates and Fiduciaries Code. See 20 Pa.C.S. §5602(a)(18). Nevertheless, I do not believe this conclusion alone warrants a reversal of the Superior Court's order. Furthermore, given the limited nature of the allocatur grant, if the Court is to proceed to address the questions which I believe are dispositive, I believe it should issue a supplemental grant order. My reasoning follows.

By way of background, this Court traditionally took a fairly liberal approach to the use of general language in powers of attorney to authorize special powers, such as

those which might encompass acts that at least facially amount to self-dealing.¹ See, e.g., In re Estate of Reifsneider, 531 Pa. 19, 25, 610 A.2d 958, 961 (1992) (describing the common law as embodying the principle that “general language can serve to grant specific powers”) (emphasis in original).² In 1999, however, the Legislature reacted by supplementing the Code with Section 5601.2, which implemented “special rules” applicable to gift-giving by an attorney-in-fact. See, e.g., 20 Pa.C.S. §5601.2(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.”). Indeed, the Joint State Government Commission Comment accompanying the pertinent statutory amendments explains that it was the General Assembly’s intention to “overrule Estate of Reifsneider” to the extent it “would permit an agent to make a gift under the power of attorney which does not specifically provide for that power.” 20 Pa.C.S. §5601.2 (Jt. St. Gov’t Comm’n Cmt.--1999).

In this case, the majority appears to reason that these relatively new, special rules for gifts do not apply, because the relevant power of attorney form met the requirements specified in a preexisting provision of the statutory scheme, Section 5602(a)(18). See Majority Opinion, slip op. at 5 & n.2. I respectfully differ with this analysis.

¹ I use the term “self-dealing” to include gift-giving at the personal discretion and leisure of an attorney-in-fact.

² I have discussed my differences with the Reifsneider decision elsewhere. See In re Weidner, 595 Pa. 263, 273-74, 938 A.2d 354, 361 (2007) (Saylor, J., concurring). Notably, the special rules for gifts, which are at the center of my reasoning below, were not addressed in the Weidner decision, since the amendment effectuating those rules was not effective in the relevant time period. See id. at 271 n.4, 938 A.2d at 359 n.4.

Section 5602, upon which the majority relies, sets forth a series of special powers which may be included within a power of attorney through the use of statutorily-prescribed language or an equivalent, including the salient power “[t]o engage in retirement plan transactions.” 20 Pa.C.S. §5602(a)(18). Significantly, various statutory powers facially encompass acts of gift-giving. For example, one of the special powers identified in Section 5602 is “[t]o engage in tangible personal property transactions.” 20 Pa.C.S. §5602(a)(11). This language clearly subsumes a present, completed inter vivos gift of personal property. Yet, such a disposition of property just as clearly implicates the express terms of the “special rules” applicable to gifts under Section 5601.2.

Given that there is material overlap between Sections 5602 (“Form of power of attorney”) and 5601.2 (“Special rules for gifts”), it is necessary to consider how the Legislature intended to address areas of overlap. In this regard, since the restrictions on gift-giving by an attorney-in-fact are particularly couched as “Special rules for gifts,” see 20 Pa.C.S. §5601.2,³ it seems evident to me that they operate to supplement the requirements otherwise provided in the Code. I find the Superior Court’s reasoning persuasive:

the purpose of [Section 5601.2] is to ensure that if the principal desires to authorize the agent to make a gift, that authorization must be specifically stated in the power of attorney and it cannot be incorporated by reference to the general powers offered to agents in the statutory provision of [S]ection 5602. It was intended to prevent the potential for

³ Captions, although not dispositive, may be used in statutory construction. See 1 Pa.C.S. §1924. Moreover, the body of Section 5601.2 mirrors its caption in specifying that “[a] principal may empower an agent to make a gift in a power of attorney only as provided in this section.” 20 Pa.C.S. §5601.2(a).

abuse of the power to make gifts by agents acting under a power of attorney.

Estate of Slomski v. Thermoclad Co., 956 A.2d 438, 447 (Pa. Super. 2008) (per curiam).⁴

In light of the above reasoning, I do not believe that a reversal is justified upon merely answering the question presented as framed in this Court's Order allowing the appeal: "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." Estate of Slomski v. Thermoclad Co., 600 Pa. 626, 969 A.2d 1176 (2009) (per curiam). Although I agree with the majority's resolution of that issue -- namely, that "all powers" includes the power to change a beneficiary -- I do not believe this conclusion by itself excludes the possibility that designating a beneficiary is also a gift subject to Section 5601.2's special rules for gifts. In my view, an additional assessment of the nature of a change of beneficiary is required.⁵

As such, and to the degree that the Court is to confine itself to the question on which the appeal was allowed, I would simply affirm. Alternatively, I would issue a supplemental grant order and permit additional briefing on the question of whether a

⁴ My only difference with the Superior Court's reasoning on this point is that it appears to have regarded "gifts," pursuant to Section 5601.2, as being mutually exclusive of "transactions" under Section 5602. See Slomski, 956 A.2d at 445-47.

⁵ A "gift" is not defined in the Code. See 20 Pa.C.S. §§5601-5611. Given the Legislature's overarching goal to limit self-dealing in the context of a power of attorney, and the history behind Section 5601.2, a reasonable argument can be advanced that the General Assembly intended to define a "gift" in the broadest sense of the term. Cf. Sexton v. Cornett, 623 S.E.2d 898, 900 (Va. 2006) ("The designation of a person as beneficiary under a life insurance policy is a gift from the insured, even though the gift is revocable and its enjoyment is postponed. The same reasoning applies to a designation of a person as beneficiary of vested retirement benefits." (citation omitted)).

change of beneficiary also represents a gift for purposes of Section 5601.2's special rules, and whether the Superior Court erred in its interpretation of what is required to be included in a power of attorney to satisfy Section 5601.2's requirements. Notably, such matters were raised by Appellants in their petition for allowance of appeal, albeit they did not make their way into the existing allocatur grant order.

Mr. Chief Justice Castille and Madame Justice Todd join this dissenting opinion.