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IT IS SO ORDERED.

Dated: December 12, 2025



Beth A. Buchanan

Beth A. Buchanan
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

In re:

DEANAMARIE DIGIACOMO

Debtor

Case No. 25-10305

Chapter 7

Judge Buchanan

**ORDER SUSTAINING TRUSTEE'S OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTION IN GERBER LIFE INSURANCE POLICY
[Docket Numbers 13 and 22]**

[This order is not intended for publication.]

This matter is before this Court on Chapter 7 Trustee Eileen Field ("Trustee")'s *Objection to Debtor's Exemptions in Gerber Life Insurance Policy* [Docket Number 13]; Debtor Deanamarie DiGiacomo ("Debtor")'s *Response* [Docket Number 16]; and *Trustee's Second Objection to Debtor's Exemption in Gerber Life Insurance* [Docket Number 22] filed after the filing of the Debtor's amended Schedules B and C. During a status conference, the parties agreed that the facts were not in dispute and the matter could be

decided on the filings of the parties, along with fact stipulations and supplemental briefs to be filed. Following that status conference, the parties filed their stipulation [Docket Number 28] and supplemental briefs [Docket Numbers 29-31] that this Court has reviewed.

After considering the fact stipulations, briefing of the parties, and Ohio law regarding changing beneficiaries of a life insurance policy, this Court concludes that, as of the bankruptcy filing date, the Debtor had not changed the beneficiary of her life insurance policy to her daughter. Accordingly, the Debtor is not entitled to an exemption in the life insurance policy and the Trustee's objection to the claimed exemption is sustained.

I. FACTUAL AND PROCEDURAL BACKGROUND

On February 13, 2025, Debtor Deanamarie DiGiacomo filed a chapter 7 petition.¹ At the time of the bankruptcy filing, she owned a Gerber life insurance policy with a cash value of \$3,455.52 (the "Gerber policy").

Prior to filing her bankruptcy petition, the Debtor completed a change of beneficiary form to change the Gerber policy beneficiary to her daughter and sent the application to the Gerber Life Insurance Company ("Gerber"). The Debtor was under the impression that the beneficiary had been changed when she filed her bankruptcy petition.

However, after the bankruptcy petition was filed, the Debtor received a letter from Gerber dated February 6, 2025 stating that, because the form was not legible, the form could not be accepted, and she would have to start over with a form that Gerber enclosed. The letter further noted that the form must be notarized or that proper documentation verifying the Debtor's signature would have to be received with the form to process the request.

¹ The facts are derived from the parties' Stipulation [Docket Number 28] except where expressly stated.

The Debtor resubmitted the form after the bankruptcy filing. Gerber then sent the Debtor a letter dated March 26, 2025 stating that her daughter was now the beneficiary of the Gerber policy.

On April 16, 2025, the Trustee filed her objection to the Debtor's claim of exemption in the Gerber policy and, subsequently, filed a second objection after the Debtor amended her schedules [Docket Numbers 13 and 22]. The Trustee argued that the Debtor had not successfully changed the beneficiary of the Gerber policy to her daughter as of the date of the bankruptcy filing and, consequently, the Debtor could not claim an exemption in the insurance policy.

II. LEGAL ANALYSIS

In bankruptcy, a debtor may claim exemptions in certain property considered necessary for the survival of the debtor and the debtor's dependents thereby moving that property beyond the reach of most creditors. 11 U.S.C. § 522; *Menninger v. Schramm (In re Schramm)*, 431 B.R. 397, 400 (B.A.P. 6th Cir. 2010). A state may choose to adopt the federal exemptions found in the Bankruptcy Code or may create its own exemption framework. 11 U.S.C. § 522; *Schramm*, 431 B.R. at 400. Ohio is a state that has opted out of the federal exemptions, *see* Ohio Rev. Code § 2329.662, and consequently, this Court looks to the state's exemption framework to determine the extent to which an Ohio-domiciled debtor could claim an exemption in a life insurance policy. Because exemptions further the principal goal of the Bankruptcy Code to grant a "fresh start" to an honest but unfortunate debtor, exemptions are to be construed liberally in favor of the debtor. *Schramm*, 431 B.R. at 400.

The Debtor claims an exemption in the cash value of the Gerber life insurance policy under Ohio Rev. Code § 2329.66(A)(6)(b) and § 3911.10. Section 2329.66(A)(6)(b) provides an exemption for “[t]he person’s interest in contracts of life or endowment insurance or annuities, as exempted by section 3911.10 of the Revised Code.” Ohio Rev. Code § 2329.66(A)(6)(b). In turn, § 3911.10 states in pertinent part:

All contracts of life or endowment insurance or annuities upon the life of any person, or any interest therein, which may hereafter mature and which have been taken out for the benefit of, or made payable by change of beneficiary, transfer, or assignment to, the spouse or children, or any persons dependent upon such person . . . shall be held, together with the proceeds or avails of such contracts . . . free from all claims of the creditors of such insured person or annuitant.

Ohio Rev. Code § 3911.10. In combination, these statutes provide that a person may claim an exemption in a life insurance policy she owns if the named beneficiary is “the spouse or children, or any persons dependent upon such person.” Ohio Rev. Code § 2329.66(A)(6)(b) and § 3911.10.

The dispute in this case arises because the Debtor attempted to change the beneficiary of the Gerber life insurance policy to her daughter prior to the bankruptcy filing but was unsuccessful. Following the submission, Gerber sent a letter to the Debtor explaining that it could not accept her form to change the beneficiary because it was not legible. It was only upon resubmitting her change of beneficiary form post-petition that the Debtor accomplished the change to the policy. The Trustee argues that because the policy did not include a designation that the Debtor’s daughter was the beneficiary as of the date of the bankruptcy filing, the Debtor is not entitled to claim an exemption in the policy.

The Trustee is correct that a debtor’s entitlement to claim exemptions in bankruptcy is determined as of the date the debtor files her bankruptcy petition. *In re Wengerd*, 453

B.R. 243, 250 (6th Cir. B.A.P. 2011). Because the beneficiary of the policy was not the Debtor's daughter as of the petition filing date, the Debtor does not qualify for the exemption under Ohio Rev. Code § 2329.66(A)(6)(b) and § 3911.10.

Nonetheless, the Debtor argues that Ohio courts would recognize her pre-petition attempt to change the beneficiary as effectuating that change because she "substantially complied" with Gerber's procedures citing *Rindlaub v. Travelers Ins. Co.*, 194 N.E.2d 577 (Ohio 1963); *Atkinson v. Metro. Life Ins. Co.*, 150 N.E. 748 (Ohio 1926); *Arnold v. Newcomb*, 136 N.E. 206 (Ohio 1922); and *Benton v. United Ins. Co. of Amer.*, 159 N.E.2d 912 (Ohio Ct. App. 1959).

This Court begins with a review of *Arnold v. Newcomb*. Mr. Arnold, the owner of a life insurance policy, went before a notary public to change the beneficiary of the policy from his sisters to his wife in accordance with the contractual provisions of the policy. 136 N.E. at 206. He then provided the policy with the change of beneficiary endorsed on it to his wife and he continued to pay the premiums until his death. *Id.* She, however, failed to send the policy change to the insurer until after Mr. Arnold passed away in an employment-related accident ten months later. *Id.* Upon review of the insurer's contractual procedures for changing a beneficiary, the Supreme Court of Ohio concluded that Mr. Arnold did everything he could do in accordance with the terms of the contract to effect a change of beneficiary. *Id.* at 208-09. While the procedures required that the policy be forwarded to the insurer's general secretary or treasurer to be effective, the procedures contained no provision for when the notification to the insurer had to occur. *Id.* at 209. The court concluded that the provisions of the insurance contract were "substantially complied with" and accordingly recognized the change of beneficiary to the wife. *Id.*

In *Atkinson v. Metro. Life Ins. Co.*, Mr. Atkinson, the insured, had agreed to change the beneficiary of his insurance policy from his mother back to his wife after he and his wife reconciled following marital troubles. 150 N.E. at 748-49. Pursuant to this agreement, Mr. Paisley, an agent of the insurance company was called to the Atkinson home and was told by Mr. Atkinson that he desired to change the policy beneficiary back to his wife. *Id.* Mr. Paisley informed the insured, in the presence of his wife, that the policy would have to be sent to the home office to get the proper indorsement on it and then sent back to the agent who could then obtain Mr. Atkinson's signature. *Id.* The Atkinsons delivered the policy to Mr. Paisley who mailed it to the insurance company along with a request for the proper indorsement. *Id.* The proper indorsement was prepared and sent back to Mr. Paisley but, for reasons that were not explained, Mr. Atkinson's signature on the indorsement was never secured and nothing else was done before Mr. Atkinson's death. *Id.* A lawsuit followed regarding whether the mother or the wife was the proper beneficiary. *Id.* Upon review, the Supreme Court of Ohio concluded that the policy's procedures for changing a beneficiary only required that written notice of the desired change be transmitted to the home office, accompanied by the policy for suitable indorsement. *Id.* at 750. The court held that "[t]he facts of this case clearly indicate the desire of the insured to change the beneficiary, and the insured has done everything required to be done by him to effect the change." *Id.* at 752. That, along with the fact that the insurance company filed an interpleader indicating that it had no interest in the outcome, was sufficient for the Court to recognize the change of beneficiary to the wife. *Id.*

In *Benton v. United Ins. Co. of Amer.*, the First District Court of Appeals concluded that strict compliance with an insurance company's policies for changing a beneficiary

would not be required if the insured was found to have done everything possible to establish his intention and effectuate that intention. 159 N.E.2d at 913. In this case, Mr. Benton, the insured, signed a change in beneficiary form to make his wife the beneficiary of his life insurance policy the day before he died and his signature was witnessed by his daughter. *Id.* While the change in beneficiary form was mailed the same day it was signed, it was not postmarked until several hours after the insured's death. *Id.* While not in strict compliance with the contract provisions for changing a beneficiary, the court concluded that these actions had complied with the most essential requirement, which was the sending of, and receipt of, the application for a change of beneficiary because these actions clearly established the intent of the insured. *Id.* at 914. Because Mr. Benton made clear his intention to apply for a change of beneficiary in favor of his wife and did all he could do, under the circumstances, to comply with the insurance contract's provisions, the change of beneficiary was recognized. *Id.* at 917.

Lastly, this Court considers the most recent case cited by the Debtor which is *Rindlaub v. Travelers Ins. Co.* While in military service and stationed in Japan, Bruce Rindlaub wrote a letter to his life insurance company to substitute Margaret Walker as the primary beneficiary of his policies in place Alice Rindlaub who Mr. Rindlaub was in the process of divorcing. 194 N.E.2d at 578. Mr. Rindlaub received a responsive letter from the insurance company requesting the current status of his relationship to Alice Rindlaub and Margaret Walker because the insurance company wanted to ensure compliance with the community property laws of California, which give a spouse an interest in community property that is not removable except by release of the spouse or court action. *Id.* It was not clear whether Mr. Rindlaub ever received the responsive letter from the insurance

company and nothing was done by either the company or the insured to change the beneficiary. *Id.* Mr. Rindlaub later married Margaret Walker and they remained married at the time of his death some years later. *Id.* In determining the rightful beneficiary of the insurance policy's proceeds, the Supreme Court of Ohio held that "[w]here an insured during his lifetime communicated to the insurer his clearly expressed intent to name certain new beneficiaries and the insurer has interpleaded and deposited the policy proceeds in court, such expressed intention of the insured will be determinative of the right of contesting claimants to the policy proceeds, notwithstanding the absence of the written approval by the insurer required by the provisions of the policy." *Id.* The court concluded that Mr. Rindlaub's letter sent to the insurance company clearly indicated his intention to change his beneficiary to Ms. Walker and that it was reasonable to infer that Mr. Rindlaub believed he had done all that was necessary to change the beneficiary. *Id.* at 579-80. Accordingly, the change in beneficiary was recognized as being effective. *Id.*

The cases cited by the Debtor are not factually similar to the Debtor's circumstances because they involve a dispute between competing beneficiaries of the policies' proceeds, not a dispute between a debtor in bankruptcy and a bankruptcy trustee. Nor do these cases involve an illegible change of beneficiary form. Nonetheless, the cases, most particularly those of the Supreme Court of Ohio, stand for the proposition that a person's attempt to change the beneficiary of a life insurance policy will be recognized as effective if: 1) the person substantially complies with the insurance company's procedures to change the beneficiary; and 2) the person clearly expresses her intent to name a specific new beneficiary.

In this instance, the parties' stipulations do not clearly address Gerber's requirements for changing a beneficiary designation. While the February 6, 2025 letter to the Debtor from Gerber includes some general instructions regarding notarizing or providing other proper documentation of the Debtor's signature and also references instructions for completing an enclosed beneficiary designation form, neither the form nor the instructions were attached to the stipulations. Nor is it clear from the record that the limited instructions in the letter encompass the full scope of the policy requirements to change a beneficiary.

However, an insurer's requirements for regulating the mode and manner of making a change of beneficiary are for the benefit of the insurer. *Rindlaub*, 194 N.E.2d at 579. If the insurer is not contesting the change of beneficiary, such as when an insurer interpleads and deposits the policy proceeds in court in a dispute between parties claiming to be beneficiaries, the clearly expressed intention of the insured to change the beneficiary is the material consideration. *Id.* As the present dispute is one between the Debtor and the Trustee, this Court will focus on the second consideration—whether the Debtor clearly expressed her intent to change her designation of beneficiary.

In this regard, the stipulated record before this Court does not support such a finding. The change in beneficiary form that the Debtor submitted to Gerber prior to filing her bankruptcy petition has not been made a part of the parties' stipulations or this Court's record. While the parties stipulated that the Debtor completed a change of beneficiary form prepetition listing her daughter as the beneficiary on the form, the only evidence in the record is that the form was illegible. Without more, this Court cannot conclude that the

Debtor clearly expressed her intent to change the beneficiary of the Gerber life insurance policy to her daughter as of the critical bankruptcy petition filing date.

Because the Debtor's daughter was not the named beneficiary of the Gerber life insurance policy at the time of the bankruptcy filing, the Trustee's objection to the Debtor's exemption is SUSTAINED.

SO ORDERED.

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