

THE FLORIDA SUPREME COURT

S. Ct. Case No. SC09-1969
CASE No.: 3D08-2251

LINDA CRAWFORD,

Petitioner.

vs.

JANNIE BARKER, as Personal
Representative of the Estate of
Manuel R. Crawford,

Respondent.

_____ /

PETITIONER'S BRIEF ON THE MERITS

Respectfully submitted,

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TABLE OF CONTENTS

TABLE OF CONTENTS..... iii

TABLE OF AUTHORITIES iii

PREFACE..... 1

STATEMENT OF THE CASE AND FACTS 2

QUESTION PRESENTED..... 4

EVEN IF THE LANGUAGE IN THE (SHORT FORM) FAMILY
MEDIATION UNIT AGREEMENT WAS SUFFICIENT TO
WAIVE LINDA CRAWFORD’S RIGHT TO THE PROCEEDS OF
THE DEFERRED COMPENSATION FUND, DOES THAT
SUPERCEDE MANUEL CRAWFORD’S PRIOR DESIGNATION
OF HER AS THE BENEFICIARY OF THESE PROCEEDS?..... 4

SUMMARY OF THE ARGUMENT 4

STANDARD OF REVIEW 5

ARGUMENT 6

THE PLAIN LANGUAGE OF THE DEFERRED
COMPENSATION FUND DESIGNATING LINDA CRAWFORD
AS THE DESIGNATED BENEFICIARY OF THIS ACCOUNT
DETERMINES AS A MATTER OF LAW THAT SHE IS
ENTITLED TO RECEIVE THE PROCEEDS THERE FROM..... 6

CONCLUSION..... 11

CERTIFICATE OF SERVICE..... 13

CERTIFICATE OF COMPLIANCE..... 13

TABLE OF AUTHORITIES

Cases

Aetna Life Insurance Co. v. White, 242 So.2d 771 (Fla. 4th DCA 1970) ... 1, 7
Armstrong v. Harris, 773 So.2d 7 (Fla. 2000)..... 5
Cooper v. Muccitelli, 661 So.2d 52, 53 (Fla. 2d DCA 1995)..... 1, 6, 7
Cooper v. Mucittelli, 682 So.2d 77 (Fla. 1996)..... 3, 4, 6, 8, 10, 11
Davis v. Davis, 301 So.2d 154 (Fla. 3rd DCA 1974) 1, 7
Major League Baseball v. Morsani, 790 So.2d 1071 (Fla. 2001)..... 5
Raggio v. Richardson, 218 So.2d 501 (Fla. 3rd DCA 1969)..... 1, 7
Smith v. Smith, 919 So.2d 525 (Fla. 5th DCA 2005)..... 1, 3, 10

PREFACE

The Petitioner, Linda Crawford, was the Defendant before the trial court and the Appellee before the Third District Court of Appeal.

The Respondent, Jannie Barker, as Personal Representative of the Estate of Manuel R. Crawford, was the Plaintiff before the trial court and the Appellant before the Third District Court of Appeal.

In this brief, the parties will be referred to by name.

This case involves a question of law that was thoroughly analyzed and resolved by this Court when it reviewed and approved the Second District Court of Appeal's decision in *Cooper v. Muccitelli*, 661 So.2d 52 (Fla. 2d DCA 1995) and several decisions that conflicted with the same out of the Third District Court of Appeal (*Davis v. Davis*, 301 So.2d 154 (Fla. 3rd DCA 1974); *Aetna Life Insurance Co. v. White*, 242 So.2d 771 (Fla. 4th DCA 1970); and *Raggio v. Richardson*, 218 So.2d 501 (Fla. 3rd DCA), cert. denied, 225 So.2d 917 (Fla. 1969).

In addition, the decision in this case directly conflicts with a more recent decision out of the Fifth District Court of Appeal in *Smith v. Smith*, 919 So.2d 525 (Fla. 5th DCA 2006).

STATEMENT OF THE CASE AND FACTS

While married, Manuel Crawford designated his ex-wife, Linda Crawford, as the designated beneficiary of his Deferred Compensation Fund. (App. 2).

Prior to the dissolution of their marriage, the Crawfords entered into an Amended Family Mediation Unit Agreement that was adopted by the trial court and incorporated into a final judgment of dissolution. (App. 2).

The agreement contained a provision stating that “Husband shall retain retirement money with the Town of Surfside *and [the] Deferred Compensation Fund* f/k/a Pepso”. (Emphasis added). (App. 2).

Manuel Crawford died without ever changing Linda Crawford as the designated beneficiary of the aforesaid Deferred Compensation Fund.

Both Jannie Barker, as the Personal Representative of Manuel Crawford’s estate, and Linda Crawford claimed that they were entitled to the proceeds of the Deferred Compensation Fund.

The general master that initially reviewed this matter agreed with Jannie Barker and stated in his report and recommendations that:

“During the course of the marriage, ‘Linda Crawford – wife’ was named as the designated beneficiary of the Deferred Compensation Fund. However, Linda Crawford and Manuel R. Crawford agreed at the time of the signing of the amended mediated settlement agreement that Manuel R. Crawford should get the money from this fund and that he should be the

beneficiary. Manuel R. Crawford could have reaffirmed the designation of Linda Crawford had he chosen to do so following the dissolution of marriage. The fact that he did not reaffirm Linda Crawford as the beneficiary of this account confirms his intent that he was the beneficiary and that the money from the fund remained his at all times following the dissolution.” (App. 2).

Linda Crawford filed [her] Exceptions to the General Master’s Report and Recommendations. (App. 2).

The trial court entered an order sustaining Linda Crawford’s exceptions finding that no reference was made in the Amended Family Mediation Unit Agreement to Linda Crawford’s rights as a beneficiary to the proceeds of the Deferred Compensation Fund. (App. 2).

The Third District summarily reversed the trial court finding that the statement in the Amended Family Mediation Unit Agreement that “Husband shall retain retirement money with the Town of Surfside and Deferred Compensation Fund f/k/a Pepso” was sufficient to waive Manuel Crawford’s pre-dissolution designation of Linda Crawford as a beneficiary. (App. 2).

The Third District indicated that it based its ruling on this Court’s decision in *Cooper v. Muccitelli*, 682 So. 2d 77 (Fla. 1996) and the Fifth District’s decision in *Smith v. Smith*, 919 So. 2d 525 (Fla. 5th DCA 2005). (App. 3).

QUESTION PRESENTED

EVEN IF THE LANGUAGE IN THE (SHORT FORM) FAMILY MEDIATION UNIT AGREEMENT WAS SUFFICIENT TO WAIVE LINDA CRAWFORD'S RIGHT TO THE PROCEEDS OF THE DEFERRED COMPENSATION FUND, DOES THAT SUPERCEDE MANUEL CRAWFORD'S PRIOR DESIGNATION OF HER AS THE BENEFICIARY OF THESE PROCEEDS?

SUMMARY OF THE ARGUMENT

The law in Florida concerning the resolution of this matter is clear.

To determine whom Manuel Crawford intended as the beneficiary of his Deferred Compensation Fund, this Court should look no further than the plain language of the Deferred Compensation Fund. *Cooper v. Muccitelli*, 682 So.2d 77 (Fla. 1996).

That person is Linda Crawford.

Ironically, the Third District here has cited two cases, one of which is the abovementioned ruling of this Court, that directly conflict with its decision in that (1) the General Master was correct in attempting to ascertain whether Manuel Crawford intended Linda Crawford to be the designated beneficiary of his account, and (2) the language in the (Short Form) Family Mediation Unit Agreement that "Husband shall retain retirement money with the Town of Surfside and the Deferred Compensation Fund f/k/a Pepsco,"

supersedes his pre-dissolution designation of Linda Crawford as the beneficiary of this account.

Based upon this Court's above mentioned precedent, the trier of fact in a dispute of this kind is only supposed to look at the plain language of the insurance policy, or, in this case, the Deferred Compensation Fund, in order to determine who is the designated beneficiary and therefore entitled to receive the proceeds there from.

Even if Linda Crawford was able to waive, and did in fact waive, her rights as the beneficiary of the subject proceeds via the (Short Form) Family Mediation Unit Agreement, Manuel Crawford's failure to change Linda Crawford as the designated beneficiary of his Deferred Compensation Fund following the dissolution of their marriage determines as a matter of law that she is entitled to the proceeds from this account.

For the foregoing reason, the Third District's decision should be reversed.

STANDARD OF REVIEW

The standard of review for a pure question of law is de novo. *Major League Baseball v. Morsani*, 790 So.2d 1071 (Fla. 2001); *Armstrong v. Harris*, 773 So.2d 7 (Fla. 2000).

ARGUMENT

THE PLAIN LANGUAGE OF THE DEFERRED COMPENSATION FUND DESIGNATING LINDA CRAWFORD AS THE DESIGNATED BENEFICIARY OF THIS ACCOUNT DETERMINES AS A MATTER OF LAW THAT SHE IS ENTITLED TO RECEIVE THE PROCEEDS THERE FROM.

The Florida Supreme Court's decision in *Cooper v. Muccitelli*, 682 So.2d 77 (Fla. 1996) (hereinafter "*Cooper II*") is controlling.

In *Cooper II*, this Court resolved the same legal conflict as the one here that arose between the Second District *and* the Third and Fourth District Courts of Appeal.

In the underlying Second District case, *Cooper v. Muccitelli*, 661 So.2d 52 (hereinafter "*Cooper I*"), a life insurer brought an interpleader action to determine whether an ex-spouse or sister of the deceased was entitled to the proceeds of a term life insurance policy.

The deceased husband named his ex-wife as the designated beneficiary of the term life insurance policy prior to their divorce. The final judgment of dissolution incorporated a separation agreement between the deceased husband and ex-wife that contained a mutual release of all claims either party might have against the other but made no specific mention of life insurance. The husband died without ever changing the beneficiary of

the policy in question. Both the ex-wife and deceased's sister claimed the proceeds. *Cooper v. Muccitelli*, 661 So.2d 52, 53 (Fla. 2d DCA 1995).

The Second District held that “without specific reference in a property settlement agreement to life insurance proceeds, the beneficiary of the proceeds is determined by looking only to the insurance contract.” *Cooper v. Muccitelli*, 661 So.2d 52, 54 (Fla. 2d DCA 1995).

Several years before the Second District's decision in *Cooper I*, the Third and Fourth Districts each held that the named beneficiary ex-spouse was entitled to the life insurance proceeds. However, each of those cases reached this decision by looking beyond the life insurance policies to the express language contained in the subject settlement agreements to determine if the parties intended to release the life insurance benefit expectancy. *Davis v. Davis*, 301 So.2d 154 (Fla. 3rd DCA 1974); *Aetna Life Insurance Co. v. White*, 242 So.2d 771 (Fla. 4th DCA 1970); and *Raggio v. Richardson*, 218 So.2d 501 (Fla. 3rd DCA 1969).

In *Cooper II*, this Court disagreed with the aforesaid analysis and resolved the conflict between the Second *and* the Third and Fourth District Courts of Appeal by affirming the holding in *Cooper I*, and in so doing, further held:

“We conclude that the plain language of the above documents controls. To the extent that Karin [the ex-wife] may have

claimed a right to remain primary beneficiary under the Academy policy as a condition of the dissolution of marriage, she waived any such claim when she signed the above agreement. The agreement clearly states: “[E]ach party hereby waives...all claims...which he or she...might have...against the other. Thomas was free to designate whomever he wished as beneficiary. To determine whom Thomas [the deceased ex-husband] intended as beneficiary, we need look no further than the plain language of the policy itself: The primary beneficiary is Karin Pasquino’. After signing the separation agreement, Thomas did just what he needed to do to ensure that the proceeds would go to Karin-*he did nothing.*” (Emphasis added) (*Cooper II* at pgs. 78 and 79).

Though the Third District relies on *Cooper II*, its decision directly conflicts with the same because it is based upon the General Master’s opinion as to what Manuel Crawford’s intent was with regard to his disposition of his Deferred Compensation Fund as opposed to adhering to the plain language set forth in the Deferred Compensation Plan designating Linda Crawford as the beneficiary of these proceeds. (App. 2).

Even if the statement in the Amended (Short Form) Family Mediation Unit Agreement that “Husband shall retain retirement money with the Town of Surfside and the Deferred Compensation Fund f/k/a Pepsco,” was sufficient to waive the former husband’s pre-dissolution designation of the former wife as a beneficiary, it is irrelevant in light of the fact that Manuel Crawford did not change Linda Crawford as the designated beneficiary of this account.

If Linda Crawford waived her right to remain primary beneficiary under the Deferred Compensation Fund via the aforesaid language in the (Short Form) Family Mediation Unit Agreement, Manuel Crawford was thereafter free to designate whomever he wished as the beneficiary of this account.

By his inaction, that is precisely what he did.

In this case, there is no dispute that the designated beneficiary of the Deferred Compensation Fund was Linda Crawford and that should have been the basis for the Third District's decision in this case.

The impact of the Third District's decision to ignore the plain language of the Deferred Compensation Fund (i.e., that Linda Crawford is the designated beneficiary of these proceeds) cannot be minimized because (1) it puts insurance companies and managers of financial institutions in an impossible position as they can no longer be certain whom to pay without going to court, in spite of what the subject policy or financial account says, or how clearly it may be worded, and (2) it takes away an account holder's rightful authority to designate the beneficiary of their own account.

In addition, if affirmed, the Third District's decision will undoubtedly reopen a veritable Pandora's box of litigation, such as the litigation that has taken place here, that would then be required to determine a decedent's

intent as to who should be the beneficiary of each and every one of his or her insurance policies and or financial accounts.

Public policy mandates that an insurance carrier or financial institution must be certain as to whom to pay the proceeds of any such policies.

In *Cooper II*, this Court, after a careful and thorough review, correctly decided the issue herein, and there is simply no basis or rationale set forth in the Third District's opinion that would compel a change of the same.

The Fifth District's more recent decision in *Smith v. Smith*, 919 So.2d 525 (Fla. 5th DCA 2006) lends further support to Linda Crawford's appeal.

In *Smith*, the Fifth District found that the same result reached in *Cooper II* "obtains with respect to [an] IRA and retirement plan proceeds," that would include a financial instrument such as the Deferred Compensation Fund here. *Smith v. Smith*, 919 So.2d 525, 527 (Fla. 5th DCA 2006).

CONCLUSION

Even if it is possible for one to waive their rights as a beneficiary, any such determination would be irrelevant to the issue in the instant appeal.

Instead, this appeal is about taking away an account holder's right to designate the beneficiary of his account.

Ironically, if this Court affirms the Third District's decision to take away the proceeds from the Deferred Compensation Fund from Linda Crawford, it will be jeopardizing an account holder's right to decide the designated beneficiary of their accounts.

All the (Short Form) Family Mediation Unit Agreement did was to make Manuel Crawford the owner of the proceeds of the Deferred Compensation Fund, and therefore, the sole arbiter of the disposition of these proceeds.

This he did by doing nothing.

Based upon this Court's legal precedent in *Cooper II* and the aforementioned public policy considerations, this Court should reverse the decision of the Third District Court of Appeal and finally see to it that Linda Crawford, the person that Manuel Crawford chose as the designated

beneficiary of his Deferred Compensation Fund, receives the proceeds there
from.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief is written in “Times New Roman 14-point” font.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via U.S. Mail and facsimile on this 21st day of May, 2010 to:

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