

[JOSEPHIDES, D. J.]
(January 24, 1956)

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IN THE MATTER
OF ANTONAKIS
G. ELIASSIDES,
INFANT.

IN THE MATTER OF THE GUARDIANSHIP OF
INFANTS AND PRODIGALS LAW, CAP. 102,

and

IN THE MATTER OF ANTONAKIS G. ELIASSIDES,
INFANT.

(District Court of Nicosia—Application No. 127/55).

Insurance—Infant child—Policy on life of father—Policy money payable to infant son—Death of Assured—Son not party to the contract—No trust in favour of son—Policy money part of assured's estate.

Infant—Guardianship of Infants and Prodigals Law, Cap. 102—Application by mother as lawful guardian of son.

A person who takes out a policy of assurance on his life for the benefit of an infant, a stranger to the contract, does not thereby constitute himself a trustee for the infant; and, unless the policy shows clearly that the assured intended to constitute himself a trustee for the infant and did so, the assured or his estate is entitled to the policy moneys. Whether such moneys are the property of the assured or, if he is dead, of his estate, or must be held in trust for the infant, depends in each case on the construction of the policy.

A father took out a policy of assurance on his life for the benefit of his infant son, if living at the date of the father's death. The father predeceased the son while he (the son) was still an infant, and the mother applied to the Court to authorize her as the lawful guardian of the infant to collect the policy moneys.

Held: That there was no trust in favour of the son, and that the policy moneys belonged, not to the infant, but to the estate of the assured, and must be paid to his personal representatives.

Applicant in person.

Judgment was delivered by:

JOSEPHIDES, D. J.: This is an application made under the Guardianship of Infants and Prodigals Law, Cap. 102, by Fotini Ioannidou, the mother of the infant Antonakis G. Eliassides, whereby she is requesting the Court to authorise her as the lawful guardian of the said infant to collect from the Prudential Assurance Co. Ltd. the following sums of money which are stated to be payable to the said infant on the death of his father George Antoniou Eliassides which took place on the 13th September, 1955, by virtue of the three Policies described below.

<i>Policy No.</i>	<i>Date</i>	<i>Sum</i>
4288388	1st January, 1943	£250.0.0
4288389	1st January, 1943	£250.0.0
4653439	1st December, 1947	£500.0.0

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From the affidavit dated the 26th September, 1955, filed in the probate proceedings before this Court (41/55) it appears that the said deceased was married to Fotini Ioannidou, the infant's mother, but that they divorced before his death. There are three children of the marriage namely, Antonakis, aged 15, Gloria, aged 13 and Monica, aged 9.

Letters of administration of the property of the deceased were duly granted on the 10th October, 1955 to Fotini Ioannidou, ex-wife of the deceased, and Rodis Ioannides, her present husband.

In accordance with Annexe No. 1 to Policy No. 4288388 (Exhibit 3) that Policy is payable as follows:

"Note: At the written request of the Assured named in the within Policy the provision setting out in the said Policy to whom payment thereunder is to be made that is as follows:

"The Assured's legal personal representatives or assigns"

is hereby cancelled and all moneys under the said Policy shall be paid in the following manner:

1. To Antonakis Georghiou Eliassides, son of the Assured, if living at the date of death of the Assured.
2. If the said Antonakis Georghiou Eliassides shall predecease the Assured, to Anastassia Antoniou Eliassides née Dionyssiou, mother of the Assured."
3. If the said Antonakis Georghiou Eliassides and the said Anastassia Antoniou Eliassides née Dionyssiou shall both predecease the Assured, to the legal personal representatives of the Assured."

In accordance with Annexe No. 2 to Policy No. 4288389 (Exhibit 4 (b)) that policy is payable as follows:

"1. If the Assured shall be alive on the First day of January, 1963, to the Assured.

2. In the event of the death of the Assured before the first day of January, 1963:

(a) To Antonakis Georghiou Eliassides, son of the Assured, if living at the date of death of the Assured.

(b) If the said Antonakis Georghiou Eliassides shall predecease the Assured, to the legal personal representatives of the Assured."

In accordance with Annexe No. 3 to Policy No. 4653439 (Exhibit 5 (c)) that Policy is payable as follows:

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- “1. If the Assured shall be alive on the First day of December, 1962, to the Assured.
2. In the event of the death of the Assured before the First day of December, 1962:
 - (a) To Antonakis Georghiou Eliassides, son of the Assured, if living at the date of death of the Assured.
 - (b) If the said Antonakis Georghiou Eliassides shall predecease the Assured, to the legal personal representatives of the Assured.”

It appears from Exhibit 2 (the opinion of the Company's legal advisers) that the Assurance Company has been advised that the mother of the infant Antonakis in her capacity as guardian should obtain an order of the Court (quite distinct and separate from the order granting letters of administration to her and her husband, Rodis Ioannides) specifically authorizing her to receive the policy monies, in respect of the three policies concerned which should be described specifically in the order, on behalf of the infant Antonakis and to give, on behalf of the infant, a good discharge to the Company for the same. Following that advice the infant's mother has applied to the Court for the necessary order.

This application raises the question whether the infant Antonakis or the personal representatives of the deceased are entitled to the moneys payable under the Insurance Policies. There is no doubt that the whole question in these cases depends upon the true construction of the particular Policy and there is ample authority that unless there is in the Policy something establishing reasonably clearly that the assured was in fact constituting and intending to constitute himself a trustee for the infant of the assurance moneys, the infant is not, and the personal representatives of the deceased are, entitled to the moneys payable. (In *Re Webb, Barclays Bank Ltd. v. Webb* (1941) 1 Ch. 225 at page 234.)

“If, on the true construction of the policy, the contractual obligation imposed on the company is to pay the sum assured to the payee as the agent of or trustee for the assured, or to pay the money to the payee or otherwise as the assured or his representative may direct, no gift to the payee is implied, and it is no part of the contract that a benefit should be conferred on him, and therefore the mandate to the company to pay the person named as payee may be revoked at any time by the assured or his representative, and if the payee receives the money he will hold it as agent or trustee at the disposal of the

assured or his representative." (Macgillivray on Insurance Law, 3rd Ed., page 681).

A person by merely taking out a policy for the benefit of a third party, a stranger to the contract, does not thereby constitute himself a trustee of the policy moneys in favour of the third party. See *Cleaver v. Mutual Reserve Fund Life Association* (1892) 1 Q.B. 147, 153; *Re Engelbach's Estate* (1924) 2 Ch. 348 and *Re Sinclair's Life Policy* (1938) Ch. 799. The special terms of the Policy may, however, be sufficient to establish such a trust: See *Re Webb* (1941) Ch. quoted above.

In *Re Engelbach's Estate* (1924) 2 Ch. p. 348 it was held that:

"An endowment policy taken out by a person in his own name for the benefit of his daughter to mature on her attaining a specified age, creates no legal estate in the daughter, and she cannot sue on the contract, nor does the assured thereby constitute himself a trustee for his daughter of the policy and of the moneys payable thereunder. If, therefore, the assured dies before the policy matures, the policy moneys belong, not to the daughter, but to the estate of the assured, and must be paid to his executors."

Relying on these authorities I find that no trust in favour of the infant Antonakis is created by any of the three policies, and I hold that the infant Antonakis is not entitled to payment of the policy moneys under the said three policies, and that the assured's personal representatives are entitled to such payment as an asset of the assured's estate.

In these circumstances the mother's application for an order authorising her, in her capacity as guardian of the said infant, to collect the aforesaid insurance moneys is dismissed.

For the purpose of facilitating the Insurance Company in connection with the payment of the policy moneys I would state that they are at liberty to lodge such moneys with the District Court of Nicosia to the credit of the estate of the deceased George Antoniou Eliassides, if they so wish.