

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Thrivent Financial for Lutherans,
Plaintiff,
v.
Karen Bressler, et al.,
Defendants.

No. CV-16-08135-PCT-BSB
ORDER

In this interpleader action, Plaintiff Thrivent Financial for Lutherans (Thrivent) alleges that Defendants Karen Bressler, Sandra Sue Miller, and Michael Bressler have asserted conflicting claims to the proceeds of several contracts. (Doc. 1.) Defendant Karen Bressler has moved for partial summary judgment arguing that she is entitled to the interpleaded funds because she is the named beneficiary of the contracts. (Doc. 30.) Defendant Sandra Sue Miller has filed a response in opposition to the motion. (Docs. 60, 61, 62.) Defendant Michael Bressler has not filed a response to the motion and the time to do so has passed. (See Doc. 34.) As set forth below, the Court grants the motion.

I. Background

On June 27, 2016, Thrivent filed a Complaint in interpleader pursuant to 28 U.S.C. § 1332 and Rule 22 of the Federal Rules of Civil Procedure, asking the Court to require Defendants to appear and interplead their conflicting rights and claims as beneficiaries to the contracts at issue in this action. (Doc. 1.) Thrivent states that it issued three contracts on behalf of Rosemary A. Bressler (the Decendent): (1) contract no. 07368694, life

1 insurance; (2) contract no. 03910601, a deferred annuity; and (3) contract no. 09150679,
2 a settlement agreement. (Doc. 1 at 2.) Thrivent further states that the contract benefits
3 are payable because of Rosemary Bressler's death, and that \$270,414.77 is the total
4 amount of the remaining benefits. (*Id.*) Thrivent further alleges that Defendants, who are
5 the Decedent's surviving children, have made conflicting claims to the proceeds of the
6 contracts. (Doc. 1 at 6.) Thrivent alleges that Karen Bressler is named as the sole
7 primary beneficiary on the contracts, and Sandra Sue Miller and Michael Bressler contest
8 Karen Bressler's claim to the proceeds. (*Id.* at 4-6.)

9 Pursuant to the Court's October 24, 2016 Order (Doc. 25), as amended on
10 November 29, 2016 (Doc. 33), and Local Rule of Civil Procedure 67.1, on December 8,
11 2016, Thrivent deposited with the Clerk of Court the proceeds of the three contracts, with
12 accrued interest, in the total amount of \$277,101.97. (Doc. 37.) On January 30, 2017,
13 the Court granted Thrivent's motion for attorneys' fees and cost and dismissal with
14 prejudice. (Doc. 58.) The Court found that Thrivent was "a disinterested stakeholder
15 who brought the present action in good faith to avoid multiple liability based on
16 conflicting claims to contract proceeds." (*Id.* at 2.) The Court also found that Thrivent
17 incurred reasonable attorneys' fees and costs, and that Defendants Karen Bressler and
18 Sandra Sue Miller had consented to Thrivent's motion for attorneys' fees and costs and
19 for dismissal with prejudice, and that Defendant Michael Bressler had not responded to
20 Thrivent's motion and, therefore, had not contested the motion. (*Id.*) The Court awarded
21 Thrivent \$7,521.00 in attorneys' fees and \$1,625.25 in costs payable from the contract
22 proceeds on deposit with the Clerk of Court. (Doc. 58, *amended by* Doc. 64.) The Court
23 dismissed Thrivent from this action with prejudice and discharged it of all liability with
24 respect to the contract proceeds. (Doc. 58 at 3.)

25 In the pending motion for partial summary judgment, Karen Bressler argues that
26 she is the primary beneficiary to the contracts and, therefore, she is entitled to receive the
27 interpleaded contract proceeds. (Doc. 30 at 2.) Because the Court has already granted
28 Thrivent's motion for attorneys' fees and costs and dismissed it from this action

1 (Doc. 58), the only claim before the Court is which Defendant is entitled to the
2 interpleaded funds that are on deposit with the Clerk of Court.

3 **II. Standard for Summary Judgment**

4 A party seeking summary judgment “bears the initial responsibility of informing
5 the district court of the basis for its motion, and identifying those portions of [the record]
6 which it believes demonstrate the absence of a genuine issue of material fact.” *Celotex*
7 *Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Summary judgment is appropriate if the
8 evidence, viewed in the light most favorable to the nonmoving party, shows “that there is
9 no genuine dispute as to any material fact and that the movant is entitled to judgment as a
10 matter of law.” Fed. R. Civ. P. 56(a). Only disputes over facts that might affect the
11 outcome of the suit will preclude the entry of summary judgment, and the disputed
12 evidence must be “such that a reasonable jury could return a verdict for the nonmoving
13 party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

14 The nonmoving party may not rely on the mere allegations in the pleadings, but
15 must set forth by affidavit, or other appropriate evidence, specific facts showing there is a
16 genuine issue for trial *Liberty Lobby*, 477 U.S. at 249. The nonmoving party must
17 produce at least some “significant probative evidence tending to support” its position.
18 *Smolen v. Deloitte, Haskins, & Sells*, 921 F.2d 959, 963 (9th Cir. 1990). The issue is not
19 whether the “evidence unmistakably favors one side or the other but whether a fair-
20 minded jury could return a verdict for the [nonmoving party] on the evidence presented.”
21 *United States ex rel. Anderson v. N. Telecom, Inc.*, 52 F.3d 810, 815 (9th Cir. 1995)
22 (quoting *Liberty Lobby*, 477 U.S. at 252). This requires more than the “mere existence of
23 a scintilla of evidence in support of the [nonmoving party’s] position[;]” there must be
24 “evidence on which the jury could reasonably find for the [nonmoving party].” *Liberty*
25 *Lobby*, 477 U.S. at 252. “If a moving party fails to carry its initial burden of production,
26 the nonmoving party has no obligation to produce anything, even if the nonmoving party
27 would have the ultimate burden of persuasion at trial.” *Nissan Fire & Marine Ins. Co. v.*

28

1 *Fritz Cos.*, 210 F.3d 1099, 1102-03 (9th Cir. 2000). The Court considers Karen
2 Bressler’s motion for partial summary judgment under this standard.

3 **III. Undisputed Facts**

4 At the time of her death, the Decedent was the owner of the Thrivent contracts.
5 (Doc. 31 at ¶ 4; Doc. 1 at ¶ 15; Doc. 26 at ¶15; Doc. 27 at ¶ 15.) The contracts contained
6 provisions authorizing the Decedent to make changes to the beneficiary designation.
7 (Doc. 1-1 (Thrivent Contract No. 07368694 at Section 9.5); Doc. 102 (Thrivent Contract
8 No. 03910601 at Section 5.3); Doc. 1-3 (Thrivent Contract No. 09150679 at Section
9 6.3).) On October 28, 2013, the Decedent completed a beneficiary designation form
10 naming “Karen Bressler – Daughter” as the sole, primary beneficiary of the contracts.
11 (Doc. 1-6; Doc. 1 at ¶ 18; Doc. 26 at ¶ 18; Doc. 27 at ¶ 18.) Decedent named Sandra Sue
12 Miller as the contingent beneficiary of the contracts. (Doc. 1-6.) Thrivent approved the
13 beneficiary designation on November 19, 2013. (Doc. 31 at ¶ 5; Docs. 1-7, 1-8.) There
14 is no dispute that the contracts identify Karen Bressler as the primary beneficiary of the
15 contracts. (Doc. 31 at ¶ 7; Doc. 1 at ¶ 18; Doc. 26 at ¶ 18; Doc. 27 at ¶ 18; Doc. 59 at 1.)

16 **IV. Challenge to the Beneficiary Designation**

17 Although Sandra Sue Miller’s answer to the Complaint and her response to the
18 motion for summary judgment admit that Karen Bressler is named as the primary
19 beneficiary to the contracts, she challenges the October 28, 2013 beneficiary
20 designation.¹ (Doc. 1 at ¶ 18; Doc. 26 at ¶ 18; Doc. 59 at 1.) Specifically, she asserts
21 that the Decedent was mistaken, ill and “had some trouble understanding” when she
22 made the beneficiary designation. (Doc. 26 at ¶ 18.) Sandra Sue Miller asserts that at the
23 time of the beneficiary designation, the Decedent had just completed rigorous
24 chemotherapy and that medications and chemotherapy created side effects, including
25 “lapses in judgment and memory.” (Doc. 61 at 1.) Sandra Sue Miller admits that the

26
27 ¹ Sandra Sue Miller does not cite any legal authority to support her challenge to
28 the beneficiary designation. (Docs. 59, 60, 61.) Instead, she asserts that “as a child of
[Decedent]” she “should also be included in the distribution of funds that is in the
contracts.” (Doc. 59 at 1.) She further argues that each of the three Defendants should
receive one-third of the contract proceeds. (*Id.*)

1 Decedent “was not declared incompetent at the time of the beneficiary designation,” but
2 asserts that “she had moments of confusion due to the lasting side effects of chemo.” (*Id.*
3 at 2.) Therefore, Sandra Sue Miller argues that the beneficiary designation is called into
4 “reasonable doubt.” (*Id.*)

5 Sandra Sue Miller also argues that Bill Brookes, an insurance agent with Thrivent,
6 influenced the Decedent to designate Karen Bressler as the primary beneficiary. (Doc. 60
7 at 2; Doc. 61 at 2.) Sandra Sue Miller asserts that Brookes “loathed and detested” her
8 and Michael Bressler. (*Id.*) She further argues that the Decedent’s friend Sally Fine
9 unduly influenced the Decedent. (Doc. 61 at 2.) However, Sandra Sue Miller clarifies
10 that she has not “indicated” that the Decedent “signed the beneficiary designation form
11 under duress.” (Doc. 61 at 2.) As discussed below, the Court concludes that there is no
12 genuine dispute of material fact regarding the beneficiary designation and, therefore,
13 Karen Bressler is entitled to summary judgment.²

14 **A. Competency**

15 This interpleader action is brought pursuant to Rule 22 and the Court’s jurisdiction
16 is premised on diversity of citizenship pursuant to 28 U.S.C. § 1332. (Doc. 1.)
17 Therefore, state substantive law applies. *See Am. States Ins. Co. v. Borbor*, 826 F.2d 888,
18 890 n. 2 (9th Cir. 1987). A contract for insurance requires the following elements:
19 (1) parties competent to contract, (2) a subject matter, (3) legal consideration,
20 (4) mutuality of agreement, and (5) mutuality of obligation. *Employers’ L.A. Corp. v.*
21 *Indus. Comm. v. Frost*, 62 P.2d 320, 322 (Ariz. 1936). Arizona law presumes that a
22 person has the requisite mental capacity to exercise their contractual rights, including the
23 right to make beneficiary designation changes. *See Sowell v. Freescale Semiconductor,*
24 *Inc.*, 2008 WL 2941269, at *6 (D. Ariz. July 25, 2008).

25
26
27 ² Sandra Sue Miller suggests that Keith Miller, Deandra Miller, and Amanda
28 Miller may have witnessed events that are relevant to the beneficiary designation.
(Doc. 61 at 3.) However, she has not submitted any evidence from these alleged
witnesses. Additionally, she has not submitted any alleged “documentation” of the
Decedent’s intent. (*Id.*)

1 There is no evidence that the Decedent was incompetent to make the beneficiary
2 changes she requested on October 28, 2013. Sandra Sue Miller agrees that the Decedent
3 was “not deemed as incompetent at the time of the beneficiary change.” (Doc. 61 at 2.)
4 Therefore, there is no genuine dispute regarding whether the Decedent was competent at
5 the time of the beneficiary designation on October 28, 2013.³

6 **B. Confusion or Mistake**

7 Sandra Sue Miller challenges the October 28, 2013 beneficiary designation on the
8 ground that the Decedent was confused at that time due to the side effects of medication
9 and chemotherapy. (Doc. 61 at 1-2.) She asserts that there was “speculation of possible
10 confusion as to the distinction of the beneficiary designation.”⁴ (Doc. 61 at 1.)

11 Under Arizona law, when the rights of respective claimants to the proceeds of an
12 insurance policy are in dispute, the intent of the insured governs. *Jackson Ntl. Life Ins.*
13 *Co. v. Cabrera*, 48 Fed. App’x 618 (9th Cir. 2002) (citing *Doss v. Kalas*, 383 P.2d 169,
14 172 (1963)). Here, there is no genuine issue as to the Decedent’s intent to name Karen
15 Bressler the primary beneficiary of the contracts. The undisputed evidence indicates that
16 the Decedent designated Karen Bressler the primary beneficiary on the contracts in
17 October 2013 and Thrivent acknowledged the change on November 20, 2013. (Docs. 1-
18 6, 1-7, 1-8.) The Decedent’s long-time friend and co-worker attests that the Decedent
19 “confided in [her] that she was naming her daughter, Karen Bressler, as primary

20
21 ³ To support her motion for summary judgment, Karen Bressler filed a
22 Declaration from Sally Fine. (Doc. 30-1.) Sally Fine describes herself as a close
23 personal friend who worked with the Decedent for eighteen years. (*Id.*) She declares that
24 she witnessed the Decedent sign the beneficiary designation and can testify that she was
25 “competent.” (Doc. 30-1 at ¶ 5.) Sandra Sue Miller argues that Fine is not qualified to
26 attest to the Decedent’s competence. (Doc. 60 at 2.) To the extent Sally Fine purports to
27 make a legal or medical opinion about the Decedent’s competency, the Court does not
28 rely on that statement to support its decision.

29 ⁴ In her Answer, Sandra Sue Miller asserts that the Decedent called her a
30 “beneficiary.” (Doc. 26 at ¶ 18.) However, she does not reiterate that statement in her
31 response to the motion for summary judgment or provide any support for that statement.
32 Michael Bressler did not respond to the motion for summary judgment, but in his Answer
33 he asserted that the Decedent was mistaken or confused when she designated Karen
34 Bressler the primary beneficiary under the contracts. (Doc. 27 at ¶ 18.) These statements
35 in the Defendants’ answers are insufficient to defeat summary judgment. *See Fed. R.*
36 *Civ. P. 56(c); Liberty Lobby*, 477 U.S. at 248

1 beneficiary of the Thrivent life insurance contracts as she was also the person responsible
2 for handling settlement of [the Decedent's] estate and final wishes." (Doc. 30-1 at ¶ 6.)

3 Sandra Sue Miller speculates that the Decedent was confused when she made the
4 beneficiary designation because she was suffering side effects of medication and had
5 recently completed "rigorous chemotherapy." (Doc. 61 at 1.) However, Sandra Sue
6 Miller does not provide any details about these alleged circumstances or offer any
7 evidence to support her assertions that the Decedent was confused about the beneficiary
8 designation. Sandra Sue Miller cannot defeat summary judgment by relying upon
9 blanket, unsupported assertions or declarations in her opposing memorandum.
10 Conclusory allegations, unsupported by factual material, are insufficient to defeat
11 summary judgment. *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989).

12 C. Undue Influence

13 In her response to the motion for summary judgment, Sandra Sue Miller also
14 speculates that the Decedent's friend Sally Fine or insurance agent Bill Brookes unduly
15 influenced the Decedent's designation of Karen Bressler as the primary beneficiary of the
16 contracts. (Doc. 60 at 2.) However, she does not offer any evidence to support this
17 assertion. Rather, Sandra Sue Miller states that she "has a belief that there was undue
18 influence," but admits that she has not "indicated" that the Decedent signed the
19 beneficiary forms "under duress." (Doc. 61 at 2.) Sandra Sue Miller's unsupported
20 speculation that the Decedent was unduly influenced by Fine or Brookes is insufficient to
21 defeat Karen Bressler's motion for summary judgment. *See Taylor*, 880 F.2d at 1045.

22 V. Conclusion

23 The record before the Court indicates that Karen Bressler is the primary
24 beneficiary of the contracts. Sandra Sue Miller's conclusory, unsupported allegations of
25 mistake, confusion, and undue influence do not create a genuine issue of fact regarding
26 the Decedent's intent to name Karen Bressler as the primary beneficiary. Therefore, the
27 Court grants Karen Bressler's motion for partial summary judgment.

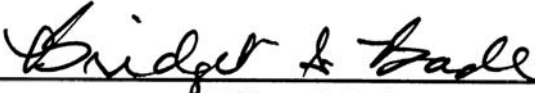
28 Accordingly,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS ORDERED that Karen Bressler’s motion for partial summary judgment (Doc. 30) is **GRANTED** and the Clerk of Court is directed to enter judgment in favor of Karen Bressler for the remainder of interpleaded funds that were deposited with the Clerk of Court on December 8, 2016. (*See* Doc. 37 (reduced by an award of attorneys’ fees and costs on Jan. 30, 2017, Docs. 58 and 64).)

IT IS ORDERED that **thirty days after** the date on which this Order is filed, Karen Bressler may move for disbursement of the interpleaded funds currently held by the Clerk of Court.

Dated this 15th day of March, 2017.



Bridget S. Bade
United States Magistrate Judge