

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

March 19, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

**No. 95-1771**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

**BANK ONE, MILWAUKEE, NA,**

**Plaintiff-Respondent,**

**v.**

**JON-PIERRE FUEGER,  
DANIELLE M. SCHUTZ and  
MICHELLE A. DIEHL,**

**Defendants-Respondents,**

**KATHLEEN LARGET and  
GREGORY KUBASH,**

**Defendants-Third Party  
Plaintiffs-Appellants,**

**v.**

**THE ESTATE OF GISELE KUBASH,**

**Third Party Defendant-Respondent.**

APPEAL from judgments of the circuit court for Milwaukee County: MICHAEL J. BARRON, Judge. *Affirmed.*

Before Wedemeyer, P.J., Sullivan and Cane, JJ.

PER CURIAM. Kathleen Larget and Gregory Kubash appeal from two judgments dismissing their claims against Bank One and Jon-Pierre Fueger, Danielle M. Schutz and Michelle A. Diehl. The judgments were entered after the trial court granted Fueger, Schutz and Diehl's motion for summary judgment in an interpleader action initiated by Bank One. Because the trial court did not err in granting summary judgment to Fueger, Schutz and Diehl, we affirm.

## I. BACKGROUND

Larget's and Kubash's father, Emil Kubash, opened an IRA account with Bank One. He named his wife, Gisele Kubash, as beneficiary and his children from a previous marriage (Larget and Kubash) as contingent beneficiaries for any remainder amount. On July 30, 1987, at age 73, Emil died. Gisele continued to receive monthly payments of \$750 from the IRA account. In August 1993, Gisele withdrew the balance of \$63,071.51 from her deceased husband's IRA and deposited that amount the same day to establish an IRA in her own name. Gisele named her own children from a previous marriage (Fueger, Schutz and Diehl) as beneficiaries on the account. Gisele died in August 1994. At that time, the redemption value of her IRA was \$56,351.72.

Both Gisele's children and Emil's children made a claim for these proceeds. Bank One initiated an interpleader action to determine who should receive the money. Both sides filed motions for summary judgment. Gisele's children argued that federal regulations, the Internal Revenue Code and the IRA adoption agreement signed by Emil clearly permitted Gisele to treat the IRA as her own and name her own beneficiaries. Thus, they requested that the trial court grant summary judgment in their favor. Conversely, Emil's children argued that his will and the marital property agreement evidenced Emil's intent for his children to receive any remainder amount and forbid Gisele from

treating the IRA as her own and changing the beneficiaries. The trial court agreed with Gisele's children. Emil's children now appeal.

## II. DISCUSSION

Summary judgment methodology has been so often repeated that we decline to do so here. *See Voss v. City of Middleton*, 162 Wis.2d 737, 748, 470 N.W.2d 625, 629 (1991). We note only that our review is *de novo*. *Id.* The pivotal question raised in this appeal is what should prevail: the Internal Revenue Code and the Individual Retirement Account Plan that Emil entered into with Bank One *or* the intentions evidenced by Emil's will and marital property agreement. The trial court addressed this question and concluded:

As I can see here, the marital agreement and the will of Emil Kubash are really a smoke screen and really have nothing to do with this case.

The reason I say that is that the marital agreement provides that Emil's will shall control concerning the distribution of the IRA account. So there goes the marital agreement.

The will gives--that is, if there's any differentiation between the two, the will gives Gisele all the benefits from an IRA adoption agreement said benefits being outlined in said agreement which is incorporated herein and made a part hereof.

So the will, therefore, is meaningless because what the will does is says she gets all the benefits from that IRA which are outlined in whatever agreement Emil had with the Bank which is incorporated and made a part of the will. So the will means nothing.

So, therefore, what you have to do is to check and find out what the adoption agreement between the parties are along with federal tax law. All adoptions of beneficiary agreements are subject to federal tax

law; and the beneficiaries in such an agreement, they are not subject to any probate estate.

....

The decision is controlled by whether federal law and the IRA adoption agreement permitted Gisele after his death to convert his IRA to one of her own.

The trial court went on to conclude that federal law and the IRA adoption agreement permitted Gisele to treat Emil's IRA as her own and, therefore, she could legally name her own beneficiaries. The trial court also determined that this conclusion does not violate the will or marital property agreement because both documents indicate that "they're in effect subject to the [IRA] adoption agreement that [Emil] had."

We have reviewed all the relevant documents in this case and conclude that the trial court did not err in granting summary judgment to Gisele's children. The marital property agreement clearly directs the reader to the will with respect to the IRA account. The will specifically states: "I further give and bequeath to my beloved wife, GISELE KUBASH, all of the benefits from an Individual Retirement Account Adoption Agreement, at the [Bank One], said benefits being outlined in said agreement, which is incorporated herein and made a part hereof." The IRA adoption agreement mandates that the IRA must be consistent with federal tax law. Both federal tax law and Bank One's IRA adoption agreement provide that a spouse beneficiary may treat a deceased spouse's IRA account as her own. *See* Treas. Reg. § 1.408-2(b)(7)(ii)(1980). This is exactly what Gisele did.

Accordingly, Gisele's election was consistent with federal law distribution regulations relevant to IRA's. It was also consistent with the terms of the IRA adoption agreement that Emil entered into with Bank One. Moreover, Gisele's action was not in conflict with Emil's will. The will specifically provided that Gisele should receive all the benefits of the IRA as

outlined in the IRA adoption agreement. Therefore, we affirm the judgments of the trial court.<sup>1</sup>

*By the Court.* – Judgments affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

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<sup>1</sup> Based on our decision as outlined in the text of this opinion, it is not necessary for us to address any additional issues raised by appellants. *See Gross v. Hoffman*, 227 Wis. 296, 300, 277 N.W. 663, 665 (1938) (only dispositive issue need be addressed).