IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
February 18, 2004 Session

MONUMENTAL LIFE INSURANCE COMPANY v. LINDA ELAINE DONOHO, ET AL.

Appeal from the Circuit Court for Wilson County
No. 11814 John Wootten, Jr., Judge

No. M2003-00269-COA-R3-CV - Filed April 21, 2004

In this interpleader action, two former spouses of the decedent who are mothers of the decedent's three surviving children filed conflicting claims under two marital dissolution agreements alleging beneficial interests in a $50,000 life insurance policy. One claimed an interest for herself; the other claimed an interest for her two children. The matters in dispute arise from inconsistencies in marital dissolution agreements resulting from the decedent's two divorces, and pertain to the duty of the decedent to maintain life insurance and the beneficiary designations. The trial court granted one of two competing motions for summary judgment ruling against the second wife by dividing the proceeds equally among the decedent's three children. We reverse and modify holding that the second wife, not the decedent's third child, was the designated beneficiary of the disputed policy pursuant to the second marital dissolution agreement and that the decedent's first two children had vested interests in the insurance proceeds as mandated by the first marital dissolution agreement.

Tenn. R. App. P. 3 Appeal as of right; Judgment of the Circuit Court Reversed and Modified

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., P.J., M.S., and PATRICIA J. COTTRELL, J., joined.

Jerry Gonzalez, Nashville, Tennessee, for the appellant, Linda Elaine Donoho, et al.

Frank Lannom and Melanie R. Bean, Lebanon, Tennessee, for the appellee, Tammy K. Jones.

Amanda G. Crowell, Lebanon, Tennessee, for the appellee, Kenneth Donoho, a minor.

OPINION

In this case, we determine the rights of competing parties to the proceeds of a $50,000 insurance policy insuring the life of Michael Donoho, now deceased (the decedent). In two marital dissolution agreements (MDA's) the decedent agreed to obtain and/or maintain life insurance. In the first MDA, the decedent agreed to obtain and maintain a $25,000 policy. In the second MDA, the decedent agreed to maintain a then existing $50,000 policy. The decedent never acquired the $25,000 policy required of him under the first MDA. He subsequently and voluntarily acquired a $50,000 policy while married to his second wife, insuring himself, his second wife and their child and naming his second wife as the sole beneficiary if he predeceased her. Upon the dissolution of the second marriage, a second MDA was entered into which required the decedent to maintain the policy and prohibited him from changing the beneficiary designation.

The decedent was twice divorced at the time of his death. He was married to his first wife, Tammy Kay Donoho Jones (Tammy Jones), from 1983 to 1990. They had two children, Heather Nicole Donoho and James Dale Donoho. Thereafter, he was married to his second wife, Linda Elaine Donoho (Linda Donoho), from 1992 to 1995. They had one child, Kenneth Michael Donoho. All three of the decedent's children were minors at his death.

When Tammy Jones and the decedent divorced in 1990, they entered into a marital dissolution agreement (MDA-1). MDA-1 required that the decedent obtain and maintain life insurance in the amount of $25,000 for the benefit of the minor children of Tammy Jones and the decedent, Heather Nicole and James Dale Donoho.

The decedent did not obtain a life insurance policy as required in MDA-1. In fact, he never had a $25,000 policy as required by MDA-1. In May 1992, while the decedent was married to Linda Donoho, he voluntarily purchased a life insurance policy from Commonwealth Insurance Company, now Monumental Life,[1] in the amount of $50,000, and named his second wife, Linda Donoho, as the sole beneficiary.

Linda Donoho and the decedent divorced in 1995. They entered into a marital dissolution agreement (MDA-2) which required that the decedent maintain the current $50,000 policy covering the parties and their children, and that the beneficiary designation not be changed. The pertinent part of MDA-2 reads:

[1]Subsequent to the issuance of the life insurance policy at issue, Commonwealth Life Insurance Company was merged into Monumental Life Insurance Company. Thereafter, Monumental Life assumed responsibility for the life insurance policy at issue.

> There is currently in force a life insurance policy with the Commonwealth Insurance Co. covering the parties and their children. Husband shall maintain the premium payments on said policy and the same shall not be changed as to beneficiaries.[2]

Following his second divorce, the decedent maintained the $50,000 life insurance policy which named Linda Donoho as the sole beneficiary; however, on February 6, 1996, the decedent submitted a "Request Change of Name, Beneficiary or Ownership" form to Monumental Life. The change of beneficiary removed Linda Donoho as the beneficiary and substituted the decedent's three children. The change of beneficiary remained in effect until the decedent's death on May 31, 2001. At the time of the decedent's death, the designated beneficiaries were his three children, Heather Nicole Donoho, James Dale Donoho and Kenneth Michael Donoho.

Shortly after the decedent's death, Tammy Jones and Linda Donoho filed conflicting claims to the insurance benefits. As a consequence, Monumental Life filed this interpleader action naming both former spouses as defendants. Thereafter, Monumental Life deposited the $50,000 life insurance proceeds with the Clerk and the trial court dismissed Monumental Life as a party pursuant to Rule 22, Tenn. R. Civ. P.

Realizing that Ms. Donoho was claiming the proceeds to the exclusion of her son and that her son was a designated beneficiary under the policy, the trial court appointed a guardian ad litem to represent her minor son, Kenneth Michael Donoho. Since Tammy Jones was claiming the proceeds for her two minor children, not for herself, the court did not appoint a guardian ad litem for her children.

The trial court decided the case on summary judgment, denying Ms. Donoho's claim and dividing the $50,000 proceeds equally among the decedent's three children.

Subject Matter Jurisdiction

Subsequent to the filing of the briefs, Appellant Linda Donoho filed a Motion to Dismiss Appeal For Lack of Subject Matter Jurisdiction. The motion suggests that the Wilson County Circuit Court did not have subject matter jurisdiction to interpret or rule on a divorce decree and marital dissolution agreement filed pursuant to a civil action before the Circuit Court of Davidson County, Tennessee. Ms. Donoho's motion relies on *Ethan James Rider v. Laurie Lynn Rider*, No. M2002-00556-COA-R3-CV, 2003 WL 22345475, (Tenn. Ct. App. October 15, 2002).

We find Ms. Donoho's reliance on *Rider* misplaced because *Rider* can be distinguished for four reasons. First, this matter arises from divorces in two different marriages in two different courts in two different counties. *Rider* pertained to one divorce and one marital dissolution

[2] Ironically, the parties and their children were never designated as the beneficiaries of the $50,000 policy. At the inception of the policy, Linda Donoho was the sole beneficiary. Subsequently, the decedent changed the designation of beneficiaries to his three children, Heather Nicole Donoho, James Dale Donoho and Kenneth Michael Donoho.

agreement in one court. Second, Monumental Life was not a party nor a third party beneficiary to either divorce proceeding wherein the plaintiff in *Rider* was a third party beneficiary of the marital dissolution agreement. Third, Monumental Life was not seeking to "enforce" either MDA; it was seeking to "construe" them to determine which of the claimants are entitled to the insurance proceeds. Fourth, Monumental Life was entitled to seek relief pursuant to Rule 22, Tenn. R. Civ. P. from competing and conflicting claims. It would be ludicrous to require Monumental Life to file its interpleader action in two separate courts. Such would only prolong the ordeal and frustrate the purpose of Rule 22, Tenn. R. Civ. P. Accordingly, the motion to dismiss filed by Linda Donoho is denied.

In response to the motion filed by Ms. Donoho, Tammy Jones asserted that the motion was frivolous and requested reimbursement of her attorney fees. Though we denied Ms. Donoho's motion, it was not frivolous. Therefore, Tammy Jones' request for attorney fees is denied.

Issues on Appeal

Linda Donoho raises three issues on appeal. The first two issues assert that summary judgment should not have been granted, because there were material facts at issue. As her first issue, she argues that she paid a sufficient portion of the premiums to create a genuine issue of material fact concerning whether she is a bona fide purchaser of the life insurance policy with superior interests to the other claimants/beneficiaries. As her second issue, she argues that the reference to "children" in the MDA-2 was sufficiently ambiguous to create a genuine issue of material fact concerning the equitable beneficiaries of the life insurance. As her third issue, she argues that the first two children, if they have any interest at all, is limited to $25,000 as mandated in MDA-1.

The party moving for summary judgment bears the burden of demonstrating that no genuine issues of material fact exist. *Byrd v. Hall,* 847 S.W.2d 208, 211 (Tenn.1993). A trial court should grant a motion for summary judgment only if the movant demonstrates that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. Rule 56.04 Tenn. R. Civ. P.; *Byrd,* 847 S.W.2d at 210. We must take the strongest view of the evidence in favor of the nonmoving party, allowing all reasonable inferences in favor of the nonmovant and discarding all countervailing evidence. *Shadrick v. Coker,* 963 S.W.2d 726, 731 (Tenn. 1998) (citing *Byrd* at 210-211.) However, if our review concerns only questions of law, the trial court's judgment is not presumed correct, and our review is *de novo* on the record. *Holt v. Holt*, 995 S.W.2d 68, 71 (Tenn. 1999) (citing *Warren v. Estate of Kirk*, 954 S.W.2d 722, 723 (Tenn. 1997)).

Ms. Donoho argues that there was a genuine issue of material fact concerning whether she was a bona fide purchaser of the $50,000 policy with rights superior to the other claimants. She alleges that she paid "all or a substantial part of the premiums." It is this alleged fact that she claims is material and in dispute. The evidence in the record, however, does not support her assertion. While the premium was paid from an account in the name of Ms. Donoho for a brief period of time during her marriage to the decedent, there is no evidence to suggest that the funds were not the joint assets of the marriage. Further, the decedent paid the premium for a period of time from his separate

funds. More significantly, the decedent was involved in a vehicular accident from which he received serious, permanent injuries, the result of which he was disabled for the rest of his life. As a result, the premium was waived due to his disability and was paid by Monumental Life, not Ms. Donoho. Based upon the foregoing facts, it would be unreasonable to conclude that Ms. Donoho was paying for the policy simply because the premiums were being automatically deducted from "her" checking account because it is undisputed that she and the decedent commingled their funds in that account and for most of the time the premium was being paid the waiver of premium was in effect. Accordingly, we find that Ms. Donoho failed to create a dispute of material fact as to this issue.

We further find that Ms. Donoho is mistaken in her assertion that the Tennessee Supreme Court holding in *Holt v. Holt*, 995 S.W.2d 68 (Tenn. 1999) expressly supports her argument that she has a "superior claim as a bona fide purchaser" to the policy. On page 2 of her brief, she quotes from *Holt* and erroneously suggests that it represents the opinion of our supreme court. It does not. What she quotes is from an opinion by the Michigan Court of Appeals. Our supreme court quoted the Michigan court to contrast the Michigan holding with that of the Wisconsin Court of Appeals.

Ms. Donoho next argues that the phrase "their children" as used in MDA-2 was sufficiently ambiguous to create a genuine issue of material fact concerning the intended beneficiaries, therefore, summary judgment was not proper. MDA-2 stated that the existing policy was "covering the parties and their children." While the phrase "their children" may be ambiguous, such ambiguity is irrelevant for the operative term is "covering" and that term, when used in reference to life insurance, does not make one a beneficiary. To the contrary, the term "covering" makes one an insured. Therefore, the meaning of "children" is neither material nor relevant to the issue and, therefore, does not create a dispute of a material fact. Moreover, we find that the material facts necessary to determine the parties entitled to the beneficial interests under the policy are not in dispute.

Our courts have applied equitable grounds to protect those who were mandated to be beneficiaries of life insurance policies. *Holt*, 995 S.W.2d at 72. Initially, our courts only applied equitable grounds when the policy was in existence when a marital dissolution agreement took effect. When an enforceable marital dissolution agreement mandates that certain individuals be designated as beneficiaries of life insurance policies, which policies existed at the time of the agreement, such vests in those individuals an equitable interest in the designated policy. *Goodrich v. Massachusetts Mut. Life Ins. Co.*, 240 S.W.2d 263, 269-271 (Tenn. Ct. App. 1951) (wherein the policy existed when the MDA was executed.) It was not until *Holt* that Tennessee applied equitable grounds where the policy was required in a marital dissolution agreement but not in existence when the marital dissolution agreement went into effect. *Holt* concluded that no significant difference exists between circumstances in which an identifiable life insurance policy existed at the time of the divorce and no insurance policy existed at the time of the divorce. *Holt*, 995 S.W.2d at 77. Specifically, the court held, "Thus, we find that the divorce decree creates in Elliott Holt [the named insured under the decree] a vested right to any life insurance policy obtained by the decedent that satisfies the mandate in the decree." *Id*. at 77. The court went on to state that a contrary ruling would "abrogate the power" of divorce courts in this state. *Id*. at 77.

The decedent never acquired the policy mandated in MDA-1. Further, while he voluntarily acquired a policy during his second marriage, which was in excess of the coverage mandated in MDA-1, he failed to comply with MDA-1 for he did not designate his first two children as beneficiaries. Instead, he named his second wife as the beneficiary. *Holt* maintains that in spite of the decedent's subsequent actions, MDA-1 afforded the first two children a vested interest in the subsequent policy. *Id.* at 72. Therefore, pursuant to the reasoning in *Holt*, we find that the first two children have a vested interest in the policy the decedent subsequently acquired in an amount not to exceed that mandated in MDA-1, being $25,000.

Ms. Donoho next argues that the trial court erred when it awarded the $50,000 proceeds equally to the three children. She challenges this ruling on two fronts. One, she argues that she, not her son, is entitled to the proceeds for she is the beneficiary mandated by MDA-2. Two, she argues that the ruling unjustly enriched the decedent's first two children. Specifically, she argues that the trial court erred when it determined that the decedent's first two children (Tammy Jones' children) were entitled to two-thirds of the $50,000 policy.

Ms. Donoho was the only beneficiary when MDA-2 went into effect. MDA-2 expressly prohibited the decedent from changing the beneficiary designation; yet, the decedent filed a change of designation of beneficiaries thereafter naming his three children, Heather Nicole Donoho, James Dale Donoho, and Kenneth Michael Donoho, as primary beneficiaries, thereby removing Ms. Donoho. The trial judge recognized the change of beneficiary designation as being valid and relied on it to divide the $50,000 proceeds among the three children.

We find this decision, recognizing the change of beneficiary designation as being valid, to be error for it contravenes the mandate of the trial court that issued MDA-2. To permit a party to violate a marital dissolution agreement would abrogate the power of the court that issued the marital dissolution agreement. *Holt* stands for the proposition that such acts cannot be tolerated. *Id*. at 77. (a contrary ruling would "abrogate the power" of divorce courts in this state). Accordingly, the purported change of beneficiary designation in contravention of MDA-2 cannot be relied on to remove Ms. Donoho as a beneficiary and it cannot be relied on to divide the proceeds equally among the three children. Therefore, Ms. Donoho remains the designated beneficiary of the $50,000 policy as mandated by MDA-2 and the decedent's third child, also Ms. Donoho's child, is not a beneficiary of the disputed policy.

Having made the foregoing decisions, we must now determine the respective amounts Ms. Donoho and the decedent's first two children are entitled to receive out of the $50,000 proceeds. MDA-1 required the decedent to obtain and maintain a policy of insurance in the amount of $25,000 for the benefit of his then two children. Had he done so, his first two children would have received $12,500 each upon his death. Though the decedent did not acquire the mandated policy, equitable principles provide that MDA-1 affords the first two children a vested interest in the subsequently acquired policy. The trial judge divided the $50,000 proceeds equally among the three children, which resulted in each of his first two children being awarded $16,667, which is $4,167 more than

they are entitled to receive under MDA-1. We see no justification for the first two children to receive more than that mandated by MDA-1, being $12,500 each.

We therefore hold that Heather Nicole Donoho and James Dale Donoho are each entitled to a beneficial interest in the proceeds in the amount of $12,500, and that Ms. Donoho is entitled to a beneficial interest in the proceeds in the amount of $25,000. We recognize that costs and fees have been and will be deducted from the gross proceeds of $50,000; therefore, each beneficiary shall receive a proportionate share of the final distribution of the net proceeds based upon the foregoing amounts.

For the reasons set forth above, we reverse and modify the decision of the trial court and remand the case to the trial court for further proceedings consistent with this opinion. One half of the costs are assessed against Linda Elaine Donoho, one fourth of the costs are assessed against Heather Nicole Donoho and one fourth of the costs are assessed against James Dale Donoho.

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FRANK G. CLEMENT, JR., JUDGE