

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
November 1, 2016 Session

**VOYA RETIREMENT INSURANCE AND ANNUITY COMPANY v. MARY
BETH JOHNSON ET AL.**

**Appeal from the Chancery Court for Davidson County
No. 151297III Ellen H. Lyle, Chancellor**

No. M2016-00435-COA-R3-CV – Filed October 27, 2017

A plan administrator filed an interpleader action asking the court to determine the proper beneficiary of death benefits in a retirement plan. After the plan participant died, both his former wife and his estate demanded payment from the plan administrator. Although the former wife was listed as the designated beneficiary in the plan, the estate claimed that the beneficiary designation had been revoked in the couple's marital dissolution agreement. The former wife filed a motion for judgment on the pleadings and a counterclaim alleging breach of the implied covenant of good faith and fair dealing in the administration of the plan. The trial court denied the former wife's motion, awarded the disputed proceeds to the estate, and dismissed the counterclaim. The former wife appealed. Upon review, we conclude that the marital dissolution agreement did not revoke the previous beneficiary designation. We also conclude that the trial court erred in dismissing the counterclaim. Thus, we reverse in part, vacate in part, and remand this case for further proceedings consistent with this opinion.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Reversed
in part; Vacated in part; and Case Remanded**

W. NEAL MCBRAYER, J., delivered the opinion of the court, in which ANDY J. BENNETT and RICHARD H. DINKINS, JJ., joined.

David M. Rich, Nashville, Tennessee, for the appellant, Mary Beth Johnson.

Chadwick W. Stanfill, Nashville, Tennessee, for the appellee, Estate of Stephen Vincent Leary.

Lauren Paxton Roberts and J. Anne Tipps, Nashville, Tennessee, for the appellee, Voya Retirement Insurance and Annuity Company.

OPINION

I.

On August 6, 2001, Stephen Leary enrolled in the Metropolitan Government of Nashville and Davidson County Employees Deferred Compensation Plan (the “MetroMax Plan”). He designated his wife, Mary Beth Leary, as the beneficiary.

The Learys divorced on April 18, 2002. As part of their divorce, Mr. and Mrs. Leary executed a marital dissolution agreement (“MDA”), which was approved by the court and incorporated as part of the final divorce decree. In the MDA, Mr. Leary was awarded all right, title, and interest in “all retirement that he may have through his employment with the Metro Government.” Mr. Leary died on January 24, 2014, leaving his former wife, now Mary Beth Johnson, as his designated beneficiary.

Both Ms. Johnson and Mr. Leary’s estate (the “Estate”) demanded payment of the death benefits in the MetroMax Plan. On October 28, 2015, the plan administrator, Voya Retirement Insurance and Annuity Company, filed this interpleader action in the Chancery Court for Davidson County, Tennessee, seeking to join both claimants as defendants and to deposit the disputed funds with the court. *See* Tenn. R. Civ. P. 22.

Ms. Johnson filed a motion for judgment on the pleadings and a counterclaim. In her counterclaim, Ms. Johnson alleged that the plan administrator had breached the implied covenant of good faith and fair dealing. The plan administrator responded with a motion to dismiss the counterclaim for failure to state a claim upon which relief may be granted.

On February 8, 2016, the trial court entered a memorandum and order denying Ms. Johnson’s motion and awarding the disputed proceeds to the Estate. The court ruled that the MDA revoked Mr. Leary’s designation of his former wife as his beneficiary. Under the terms of the plan, without a designated beneficiary, the death benefits were payable to the Estate.

Because the court determined that Ms. Johnson was not entitled to the disputed proceeds, the court also granted the motion to dismiss. The court concluded that Ms. Johnson, as a matter of law, had “suffered no harm or damages from Plaintiff’s conduct.”

II.

On appeal, Ms. Johnson contends that the MDA could not revoke the beneficiary designation in the MetroMax Plan. First, she argues that, in order to revoke the designation, the MDA had to comply with the statute governing the designation of

beneficiaries of employee pension plans, Tennessee Code Annotated § 35-50-108. Second, she argues that the MDA by its plain terms does not effect a change in the beneficiary designation. She also asserts that the court erred in dismissing her counterclaim.

We review a trial court's decision on a Tennessee Rule of Civil Procedure 12.03 motion for judgment on the pleadings de novo with no presumption of correctness. *Young v. Barrow*, 130 S.W.3d 59, 63 (Tenn. Ct. App. 2003). We assume all factual allegations of the non-moving party are true. *Id.* "Conclusions of law are not admitted nor should judgment on the pleadings be granted unless the moving party is clearly entitled to judgment." *McClenahan v. Cooley*, 806 S.W.2d 767, 769 (Tenn. 1991).

A.

We can quickly dispose of Ms. Johnson's argument that Tennessee Code Annotated § 35-50-108 governs the revocation of a beneficiary designation. The application of a statute to undisputed facts presents a question of law, which we review de novo with no presumption of correctness. *Kyle v. Williams*, 98 S.W.3d 661, 663-64 (Tenn. 2003). Our goal is to "ascertain and effectuate the legislature's intent." *Kite v. Kite*, 22 S.W.3d 803, 805 (Tenn. 1997). We start by looking to the language of the statute, and if it is unambiguous, we apply the plain meaning and look no further. *Thurmond v. Mid-Cumberland Infectious Disease Consultants, PLC*, 433 S.W.3d 512, 517 (Tenn. 2014); *State v. Hawkins*, 406 S.W.3d 121, 131 (Tenn. 2013).

Tennessee Code Annotated § 35-50-108 primarily addresses the impact of statutes or rules of law "governing the transfer of property by will or gift or on intestacy" on the designation of beneficiaries in pension, stock bonus, and investment plans. Tenn. Code Ann. § 35-50-108(a) (2015). The statute also provides the method for designating beneficiaries of such plans. *Id.* § 35-50-108(d). Specifically, subsection (d) of the statute states that the designation "must be made in writing and signed by the person making the designation, and must be agreed to by the employer or be made in accordance with rules prescribed for the pension, retirement, death benefit, stock bonus, profit-sharing or employees' savings and investment plan, system or trust." *Id.*

According to the statute's plain terms, if a beneficiary designation is made as provided in subsection (d), the beneficiary designation cannot be defeated by a contrary provision in a will or by gift or by the laws of intestate succession. The statute is irrelevant to the issue before us: whether a marital dissolution agreement should be construed as a revocation of a previous beneficiary designation.

B.

To determine which claimant is entitled to the death benefits, we look to the terms of the MetroMax Plan. *See Mathews v. Lawrence*, 703 S.W.2d 156, 158 (Tenn. Ct. App. 1985) (describing the right of a beneficiary under a retirement plan as a contractual right). The MetroMax Plan allowed eligible employees to defer a portion of their pay and receive benefits “at retirement, separation from service, death, or in the event of financial hardship due to unforeseeable emergencies.” As the plan participant, Mr. Leary had the right to designate a person or entity to receive benefits in the event of his death and to “amend or revoke such designation at any time, in writing.” The designation, amendment, or revocation was effective when received by the plan administrator. Upon death, benefits were payable to the “Participant’s Beneficiary.” If a plan participant died without a designated beneficiary, the plan directed death benefits be paid to the participant’s estate.

Mr. Leary designated Ms. Johnson as his sole beneficiary and “failed to amend the beneficiary designation” after his divorce. But the chancery court ruled that the MDA revoked his beneficiary designation and denied Ms. Johnson’s motion for judgment on the pleadings. We conclude that the chancery court erred in its application of Tennessee law to the undisputed facts. As explained below, a beneficiary designation in a retirement plan may only be changed as provided in the plan. The MetroMax Plan required the plan participant to send a written request to the plan administrator to amend or revoke a beneficiary designation. Although the MDA is in writing, the language therein cannot be reasonably interpreted as a revocation of Mr. Leary’s beneficiary designation. And Mr. Leary did not send the MDA to the plan administrator.

Our supreme court considered whether a property settlement agreement in a divorce proceeding could be construed as a revocation of a beneficiary designation in a life insurance policy in the seminal case of *Bowers v. Bowers*, 637 S.W.2d 456, 456-57 (Tenn. 1982). The *Bowers* court held that the property settlement agreement “had no force and effect whatever” on the husband’s previous beneficiary designation. *Id.* at 459. And “neither the agreement nor the divorce terminated wife’s status as named beneficiary in the policy or her right to receive the proceeds.” *Id.* The *Bowers* court reasoned that a beneficiary’s right to receive life insurance proceeds was governed by the terms of the insurance contract. *Id.* at 457-58.

Since *Bowers*, our courts have consistently looked to the terms of the relevant insurance contract to determine whether a purported change of beneficiary designation was effective. *See In re Estate of Williams*, No. M2000-02434-COA-R3-CV, 2003 WL 1961805, at *19 (Tenn. Ct. App. Apr. 28, 2003); *Travelers Ins. Co. v. Webb*, No. 01-A-01-9508-CH00379, 94-2051-III, 1996 WL 23491, at *3 (Tenn. Ct. App. Jan. 24, 1996). In this context, we draw no distinction between annuity contracts, retirement plans, and

life insurance policies.¹ See *Mathews v. Harris*, 713 S.W.2d 311, 313 (Tenn. 1986) (applying *Bowers* to the designated beneficiary of retirement benefits); *Mathews v. Lawrence*, 703 S.W.2d at 158 (“In the view of this Court, the status of [a] designated beneficiary of refund of contributions [to a retirement plan] is not materially different from the position of a designated beneficiary of an insurance policy.”); *Teachers Ins. & Annuity Ass’n*, 709 S.W.2d 592, 595 (Tenn. Ct. App. 1985) (“Although the appellant in this case argues that there is a distinction between annuity agreements and a life insurance policy, we are unable to see any distinction.”).

The chancery court determined that, when the plan administrator finally received a copy of the MDA after Mr. Leary’s death, his beneficiary designation was revoked, consistent with the requirements of the MetroMax Plan. The chancery court focused on the following provision:

RETIREMENT/PENSION ACCOUNTS: The parties agree that the Husband shall be awarded all right, title and interest in the following retirement/pension accounts:

a. All retirement that he may have through his employment with the Metro Government[.]

The MDA is a contract. *Barnes v. Barnes*, 193 S.W.3d 495, 498 (Tenn. 2006). Because contract interpretation is a question of law, our review is de novo with no presumption of correctness. *Id.* We seek to ascertain and effectuate the parties’ intent as expressed in the MDA, giving each word its natural and ordinary meaning. *Long v. McAllister-Long*, 221 S.W.3d 1, 9 (Tenn. Ct. App. 2006).

¹ The chancery court’s determination that “subsequent divorce proceedings can affect a retirement plan beneficiary designation if the divorce proceedings include that issue” was based on *Mathews v. Harris*, a post-*Bowers* decision from our supreme court. 713 S.W.2d at 313. In *Mathews v. Harris*, the surviving spouse argued that the property settlement agreement executed during her husband’s divorce from his former wife revoked the husband’s designation of his former wife as his beneficiary in his retirement plan. *Id.* at 313. The supreme court disagreed:

On the authority of *Bowers* . . . , the [trial court] held that the previous designation was not affected by the subsequent divorce proceedings which made no reference to it. We concur in that conclusion for the reasons stated in that opinion, which dealt with the designation of a beneficiary on a policy of life insurance.

Id.

In our view, *Mathews v. Harris* does not create an exception to *Bowers*. Rather, *Mathews v. Harris* clarifies that the reasoning in *Bowers* applies equally to the beneficiary designation in a retirement plan.

The retirement provision in the MDA did not revoke the beneficiary designation in the MetroMax Plan. Mr. Leary's retirement funds were marital property and thus subject to division in the MDA. *Cohen v. Cohen*, 937 S.W.2d 823, 828-29 (Tenn. 1996); *Mathews v. Lawrence*, 703 S.W.2d at 157. This provision awarded Mr. Leary sole control of his retirement account and extinguished any *marital right or interest* Ms. Johnson had in the account. Ms. Johnson's right to receive death benefits, however, depended solely on her status as the designated beneficiary. *See Bowers*, 637 S.W.2d at 457-58. Although Mr. Leary had the ability to change his designated beneficiary at any time by sending a written request to the plan administrator, he did not do so.

Even if the language in the MDA had been sufficient to revoke the beneficiary designation, Mr. Leary did not send the MDA to the plan administrator. We will not enforce "[a] mere unexecuted intention to change" a beneficiary designation. *Sun Life Assurance Co. v. Hicks*, 844 S.W.2d 652, 654 (Tenn. Ct. App. 1992) (quoting *Cronbach v. Aetna Life Ins. Co.*, 284 S.W. 72, 73 (Tenn. 1926)). Tennessee courts require substantial compliance with the plan's terms to give effect to a purported beneficiary change. *Id.* To sustain a finding of substantial compliance, "it must be determined from the record that [the plan participant] took all reasonable steps possible to meet the conditions imposed by the [plan]." *Id.* This record falls short of that standard. *See In re Estate of Williams*, 2003 WL 1961805, at *19 (affirming ruling in favor of the beneficiary although the beneficiary had agreed in an MDA to waive any claim to husband's annuities, when "no attempt was made to change the beneficiary in compliance with the annuity contract provisions").

Under these facts, we conclude that Mr. Leary's beneficiary designation was never revoked as provided in the MetroMax Plan. Thus, we reverse the chancery court's denial of Ms. Johnson's motion for judgment on the pleadings and the entry of judgment in favor of the Estate and remand this case for further proceedings consistent with this opinion.

C.

Finally, Ms. Johnson contends that the chancery court erred in dismissing her counterclaim for breach of the implied duty of good faith and fair dealing. A Rule 12.02(6) motion to dismiss for failure to state a claim "challenges only the legal sufficiency of the complaint, not the strength of the plaintiff's proof or evidence." *Webb v. Nashville Area Habitat for Humanity, Inc.*, 346 S.W.3d 422, 426 (Tenn. 2011). Therefore, "[t]he resolution of a 12.02(6) motion to dismiss is determined by an examination of the pleadings alone." *Id.* In considering a 12.02(6) motion, courts must "construe the complaint liberally, presuming all factual allegations to be true and giving the plaintiff the benefit of all reasonable inferences." *Trau-Med of Am., Inc. v. Allstate Ins. Co.*, 71 S.W.3d 691, 696 (Tenn. 2002). The complaint should not be dismissed unless it appears that the plaintiff can prove no set of facts in support of his or her claim

that would warrant relief. *Doe v. Sundquist*, 2 S.W.3d 919, 922 (Tenn. 1999). Making such a determination presents a question of law, and our review of a trial court's determination on issues of law is de novo, with no presumption of correctness. *Id.*

Tennessee courts impose an implied covenant of good faith and fair dealing in the performance and enforcement of every contract. *Dick Broad. Co., Inc. of Tenn. v. Oak Ridge FM, Inc.*, 395 S.W.3d 653, 668 (Tenn. 2013). Breach of the duty of good faith and fair dealing is not an independent cause of action. *Jones v. LeMoyne-Owen Coll.*, 308 S.W.3d 894, 907 (Tenn. Ct. App. 2009). “[R]ather, it is part of an overall breach of contract claim.” *Id.* The essential elements of a breach of contract claim are an enforceable contract, nonperformance amounting to a breach, and damages. *ARC LifeMed, Inc. v. AMC-Tennessee, Inc.*, 183 S.W.3d 1, 26 (Tenn. Ct. App. 2005).

Ms. Johnson alleged the following relevant facts in her counterclaim: (1) Mr. Leary designated Ms. Johnson as his beneficiary in the MetroMax Plan; (2) he never changed the beneficiary designation; (3) benefits were payable upon Mr. Leary's death; (4) Ms. Johnson demanded payment; and (5) the plan administrator failed to pay the benefits in a timely manner. According to the counterclaim, the failure to pay benefits as required by the MetroMax Plan breached the implied covenant of good faith and fair dealing and caused Ms. Johnson economic damage.

The plan administrator had a duty to pay death benefits “as soon as administratively feasible following the death of a Participant[.]” Liberally construing the allegations of the counterclaim, we conclude that Ms. Johnson stated a claim for breach of contract, which may include breach of the implied covenant of good faith and fair dealing. *See Lyons v. Farmers Ins. Exch.*, 26 S.W.3d 888, 894 (Tenn. Ct. App. 2000). Thus, we vacate the chancery court's dismissal of the counterclaim and remand this case for further proceedings on the counterclaim.

III.

For the foregoing reasons, we reverse the chancery court's denial of Ms. Johnson's motion for judgment on the pleadings and the judgment awarding the disputed proceeds to the Estate. On remand, we direct the court to grant judgment to Ms. Johnson on the disputed funds. We vacate the dismissal of Ms. Johnson's counterclaim and remand for further proceedings consistent with this opinion.

W. NEAL MCBRAYER, JUDGE