STATE OF MICHIGAN

COURT OF APPEALS

GAYLORD GENAW, JR., Personal Representative of the ESTATE OF GAYLORD GENAW, SR.,

Plaintiff-Appellee,

v

CINDY GENAW,

Defendant,

and

UNUM LIFE INSURANCE COMPANY,

Defendant-Appellant.

FOR PUBLICATION
October 6, 2009

No. 284214
St. Clair Probate Court
LC No. 2007-000069-CZ

Advance Sheets Version

Before: Talbot, P.J., and Fitzgerald and Hoekstra, JJ.

FITZGERALD, J. (*dissenting*).

I respectfully dissent because I do not believe that Cindy Genaw, as the contractual beneficiary of the insurance policy, is one of the persons qualified to provide the necessary notice under MCL 552.101(2).

Unum Life Insurance Company issued a group insurance policy to Upper Northwest Bankers Association.[1] The policy provided accidental death and disability (AD&D) coverage for customers of members of the Northwest Bankers Association who enrolled under the policy, including decedent, who was married to Genaw. Decedent enrolled in the plan on August 10, 2001, and designated Genaw as his beneficiary. Decedent had a total of $111,000 in AD&D coverage, including benefits payable under an escalator clause.

[1] The policy is not a benefit covered by the Employees Retirement Income Security Act of 1974 (ERISA).

The Genaws divorced on July 3, 2006. The judgment of divorce expressly extinguished the interest of each party in any insurance policy on the life of the other party. On July 6, 2006, decedent died as the result of an automobile accident. The death certificate lists decedent's marital status as divorced.

On October 2, 2006, a loss report was completed that listed Genaw as the claimant and her relationship to decedent as "ex-spouse." On October 16, 2006, Genaw filed a claim for benefits, checking the box on the claim form to indicate that decedent was divorced. Insurance Administrative Services, Inc. (IAS), forwarded the written claim and a copy of the death certificate to Unum.

In November 2006, Unum conducted an investigation of Genaw's claim and determined that the death was a loss for which policy benefits were payable. On December 1, 2006, Unum received a copy of the beneficiary designation form naming Genaw as the policy beneficiary. On December 4, 2006, Unum paid Genaw the $111,000 in benefits payable under the policy. Unum knew before paying the claim that decedent and Genaw were divorced.

On December 18, 2006, plaintiff was appointed personal representative of decedent's estate. Until that time, he was unaware of the existence of the Unum policy. On January 16, 2007, plaintiff contacted Unum, seeking the policy's benefits. This was the first time that Unum became aware of plaintiff's claim to the policy benefits. On January 19, 2007, Unum denied the claim because the policy had already been discharged.

Plaintiff thereafter sued Genaw and Unum and managed to recoup $42,659.94 from Genaw's savings account, which was all she had left of the insurance proceeds.[2] Plaintiff eventually moved for summary disposition under MCR 2.116(C)(10), asserting that the estate had a right as a matter of law to the balance of the policy's benefit. The probate court ordered Unum to pay the balance, $68,340.46. The court's decision turned on its interpretation of MCL 552.101(2), which provides as follows:

> Each judgment of divorce or judgment of separate maintenance shall determine all rights of the wife in and to the proceeds of any policy or contract of life insurance, endowment, or annuity upon the life of the husband in which the wife was named or designated as beneficiary, or to which the wife became entitled by assignment or change of beneficiary during the marriage or in anticipation of marriage. If the judgment of divorce or judgment of separate maintenance does not determine the rights of the wife in and to a policy of life insurance, endowment, or annuity, the policy shall be payable to the estate of the husband or to the named beneficiary if the husband so designates. *However, the company issuing the policy shall be discharged of all liability on the policy by payment of its proceeds in accordance with the terms of the policy unless before the payment the company receives written notice, by or on behalf of the insured or*

[2] The record reveals that Genaw's expenditures from the insurance proceeds included, among other things, cash gifts to her sons and the purchase of a car.

> *the estate of the insured, 1 of the heirs of the insured, or any other person having an interest in the policy, of a claim under the policy and the divorce.* [Emphasis added.]

The probate court held that the claim and loss report filed by Genaw constituted written notice of a claim and the divorce by "any other person having an interest in the policy," and so Unum was not statutorily absolved of liability. The court reasoned that a "careful reading" of the statute "does not require that notice be given by someone other than the named beneficiary." The court concluded that the word "other" in the second to last clause of the statute's last sentence "was meant to be an all[-]inclusive clause including anyone else with an interest in the policy other than the insured, his estate, or one of his heirs." Thus, the court reasoned, Genaw was one of the persons qualified to give notice.

Interpretation of MCL 552.101(2)

Under MCL 552.101(2), a judgment of divorce is to determine all rights of the wife in and to, among other things, any policy of life insurance on the life of the husband in which the wife was named as beneficiary. Only if the judgment of divorce does not determine the rights of the wife in and to a policy of life insurance is the policy payable to the estate of the husband or to the named beneficiary if the husband so designates. Importantly, the statute also provides that the company issuing the policy shall be discharged of all liability on the policy by payment of its proceeds in accordance with the terms of the policy unless before the payment the company receives written notice by or on behalf of (1) the insured or the estate of the insured, (2) one of the heirs of the insured, or (3) any other person having an interest in the policy, of a claim and the divorce.

At issue in this case is whether Unum received the requisite written notice "by or on behalf of . . . any other person having an interest in the policy, of a claim and the divorce" before payment of its proceeds in accordance with the terms of the policy. This Court reviews de novo questions of statutory interpretation. *Eggleston v Bio-Medical Applications of Detroit, Inc*, 468 Mich 29, 32; 658 NW2d 139 (2003).

The paramount rule of statutory interpretation is that we are to give effect to the intent of the Legislature. *Title Office, Inc v Van Buren Co Treasurer*, 469 Mich 516, 519; 676 NW2d 207 (2004). To do so, we begin with the statute's language. If the statute's language is clear and unambiguous, we assume that the Legislature intended its plain meaning, and we enforce the statute as written. This Court must "consider both the plain meaning of the critical word or phrase as well as 'its placement and purpose in the statutory scheme.'" *Sun Valley Foods Co v Ward*, 460 Mich 230, 237; 596 NW2d 119 (1999) (citation omitted). As far as possible, effect should be given to every phrase, clause, and word in the statute, and "we should avoid a construction that would render any part of the statute surplusage or nugatory." *Wickens v Oakwood Healthcare Sys*, 465 Mich 53, 60; 631 NW2d 686 (2001).

Only one case interprets the pertinent last sentence of MCL 552.101(2). In *Thom v Washington Nat'l Ins Co*, 341 Mich 522; 67 NW2d 809 (1954), the decedent had purchased a life insurance policy from an insurance company that merged with the defendant. The defendant assumed the decedent's policy, which named his wife as his beneficiary. *Id.* at 523. The former insurance company had issued policies to members of the Automobile Club of Michigan, of

which the decedent was a member. *Id.* at 523, 526. The decedent's policy was renewed annually with his club membership. *Id.* at 523. The decedent and his wife later divorced, but the beneficiary designation remained unchanged. *Id.* The decedent died five years after the divorce, after which his ex-wife filed a claim on the policy.

The plaintiff testified that after the decedent's death, he went to the Dearborn office of the automobile club and informed an unidentified clerk that the policy should be paid to the attorney for the estate. *Thom*, *supra* at 525. The plaintiff testified that the clerk wrote a memorandum with this information and attached it to the policy. The memorandum could not be located, however, and the defendant asserted that it had never received it. *Id.* The defendant paid the policy benefit to the ex-wife. *Id.* at 523. The estate sued them both for improperly paying and receiving the benefit. The trial court concluded "that 'giving plaintiff's testimony its full weight and considering the alleged writing made by the woman clerk to be written notice, there is no testimony that such notice or information advised the defendant insurance company that a divorce decree had been entered.'" *Id.* at 526. The trial court ruled against the ex-wife for the full amount of the policy, but held that the plaintiff had no cause of action against the defendant insurer because the insurer had no notice of the divorce. *Id.* at 523-525. On appeal, the Supreme Court affirmed the lower court on the basis of the statutory language:

> The statute is explicit and we are not acquainted with any reason to depart from its terms and in effect, in a case such as this, place upon the company the onus of investigating all ramifications of a patently defective notice. We feel that the statute is intended to do more than put the company "on guard." It is intended to be a conclusive determinant of liability if the prescribed procedure is followed. [*Id*. at 526-527.]

Unlike the situation in *Thom*, Unum did in fact receive written notice of the divorce.[3] Specifically, the loss report form indicated that Genaw was decedent's "ex-spouse," and Genaw checked the box on the claim form indicating that decedent was divorced.

The fact that decedent and Genaw were divorced, however, is not enough to tell Unum that Genaw, as the beneficiary under the policy, had no right to the proceeds of the policy.[4] Indeed, the plain language of the statute absolves an insurer of liability for paying its proceeds in accordance with the terms of the policy unless before the payment it receives written notice of a

---

[3] The statute does not require submission of an actual copy of the judgment of divorce to put the insurer on notice.

[4] While MCL 552.101(2) requires that a judgment of divorce *determine* all rights of the wife in and to a life insurance policy, it does not require that the judgment *extinguish* those rights. Only when the judgment of divorce does not determine the rights of the wife in and to a life insurance policy does the policy become payable to the estate or to a named beneficiary if the husband so designates. Thus, the mere fact that the decedent was divorced did not give Unum notice that Genaw's rights in and to the policy were extinguished. Indeed, it is not unusual for a court to order a husband to maintain a policy of insurance on his life for the benefit of his wife or children.

claim and of the divorce *from one of the persons identified in the statute*. These specified persons—(1) the insured or the estate of the insured, (2) the heirs of the insured, or (3) any *other* person having an interest in the policy—are plainly ones who *could* have an interest in the policy *if* the beneficiary designated in the policy no longer had a right to the benefits of the policy. A claim by such a person would clearly give the insurer notice of the extinguishment of the former wife/beneficiary's interest in the policy and of the existence of a claim by one other than the beneficiary designated in the policy. Thus, "other person" logically means a person other than the claimant (beneficiary) already known to the insurer. Absent written notice of a claim under the policy by one of the persons identified in the statute before making payment on its policy, the insurer is discharged of all liability on the policy for payment of its proceeds in accordance with the terms of the policy. This interpretation advances the clear purpose of the statutory language at issue, which is to protect an insurer that pays its policy proceeds in accordance with the terms of the policy absent the requisite notice of a claim by someone other than the beneficiary designated in the policy. In my view, the plain language of the statute mandates this conclusion.

While not necessary to reaching this conclusion, I note that reading "other person" as encompassing the designated beneficiary in the policy, as plaintiff suggests, violates the rule that the Legislature is presumed not to have included superfluous statutory language. See, e.g., *Backus v Kauffman (On Rehearing)*, 238 Mich App 402, 407; 605 NW2d 690 (1999) (citing "the rule against construing statutory provisions in a way that tends to render portions of the statute surplusage"). An insurer would always have received written notice of a claim before making payment, so if "other person" includes the designated beneficiary in the policy, the statute is redundant in requiring written notice of a claim and of the divorce by one of the persons named in the statute.[5]

I would reverse and remand for entry of an order granting summary disposition in favor of defendant Unum Life Insurance Company.

/s/ E. Thomas Fitzgerald

[5] In essence, if plaintiff's construction were adopted, the statute would read as follows: "However, the company issuing the policy shall be discharged of all liability on the policy by payment of its proceeds in accordance with the terms of the policy unless before the payment the company receives written notice . . . of the divorce." The statute clearly requires more than mere notice of the divorce.