

STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of ROBERT JUSKUSKY, Deceased.

RITA JUSKUSKY,

Plaintiff/Counterdefendant-
Appellee,

v

MISTY JUSKUSKY, Personal Representative of
the Estate of ROBERT JUSKUSKY, Deceased,

Defendant/Counterplaintiff-
Appellant.

UNPUBLISHED

June 17, 2004

No. 246246

Macomb Probate Court

LC No. 02-173309-CZ

Before: Saad, P.J., and Sawyer and Fort Hood, JJ.

MEMORANDUM.

Defendant appeals as of right from the probate court's order granting plaintiff's motion for summary disposition and denying defendant's motion for summary disposition. We affirm in part and reverse in part.

Plaintiff and defendant's decedent were divorced by consent judgment on March 13, 2000. The consent judgment of divorce, signed by both parties, contained the following provision addressing life insurance:

IT IS FURTHER ORDERED AND ADJUDGED that any rights of either party in any policy or contract of life, endowment or annuity insurance of the other, as beneficiary, are hereby extinguished, unless specifically preserved by this Judgment.

In April 2000, the decedent designated his daughter as the beneficiary of his optional life insurance and personal accident insurance. However, the decedent did not remove plaintiff as the beneficiary of his basic life insurance policy. Following the death of the decedent in October

2001, plaintiff filed a claim for personal property¹ and pension benefits in the amount of \$4,691.21 to reflect retroactive benefits because the qualified domestic relations order (QDRO) had to be amended. The estate denied the claim for retroactive benefits and sought to have the basic life insurance proceeds received by plaintiff turned over to the estate, relying on the provisions of the consent divorce judgment. The probate court ruled that plaintiff was entitled to retain the insurance proceeds and held that \$4,691.21 in pension benefits was owed to plaintiff.

Plaintiff cannot retain the insurance proceeds from the basic insurance policy where she expressly waived any entitlement in the consent divorce judgment. See *MacInnes v MacInnes*, 260 Mich App 280, 286-290; 677 NW2d 889 (2004). However, plaintiff was entitled to the \$4,691.21 in pension benefits where the amended QDRO signed by the parties provided that it took effect as if entered on the date of the initial order and on the date of the consent judgment of divorce. See *Safie Enterprises, Inc v Nationwide Mutual Fire Ins Co*, 146 Mich App 483, 492-493; 381 NW2d 747 (1985).

Affirmed in part, reversed in part. We do not retain jurisdiction.

/s/ Henry William Saad
/s/ David H. Sawyer
/s/ Karen M. Fort Hood

¹ At the hearing regarding the cross motions for summary disposition, the parties resolved the property issues which are not at issue on appeal.