STATE OF MICHIGAN

COURT OF APPEALS

In re Estate of STEINER.

THOMAS J. STEINER JR. and LAURA STEINER,

Plaintiffs-Appellants,

v

NEILEIGH K. REGETS, personally and as personal representative of the ESTATE OF THOMAS J. STEINER, and METLIFE INC.

Defendants-Appellees.

UNPUBLISHED
June 12, 2012

No. 302855
Wayne Probate Court
LC No. 2010-751541-CZ

Before: RONAYNE KRAUSE, P.J., and SAAD and BORRELLO, JJ.

PER CURIAM.

Plaintiffs appeal by right the trial court's grant of summary disposition in favor of defendants. This matter arises out of a claim by the children of the decedent's second marriage that the consent judgment of divorce that terminated that marriage obligated the decedent to maintain them as beneficiaries of a life insurance policy until they all reached the age of 23. At the time of the decedent's death, one of the plaintiffs had not yet reached the age of 23, but the decedent had changed the beneficiary of his life insurance policy to be defendant Neileigh Regets, his third wife. The trial court concluded that because the divorce judgment specified that the life insurance obligation was only a security for payment of the decedent's child support obligations, which had all been paid, plaintiffs were not entitled to any of the proceeds. We affirm.

The decedent, Thomas Steiner Sr. and Elaine Gladfelter divorced in 1995 pursuant to a consent judgment. They had two children while they were married, plaintiffs Thomas James Steiner (born 7/18/1985) and Laura Elizabeth Steiner (born 3/17/1987). The Judgment of Divorce provided, among other matters, that Gladfelter would have physical custody of the children and the decedent would pay "child support and child care expenses" until the children reached the age of majority. It further provided that the decedent would maintain health care insurance and most of the uninsured health care expense for the children, which would be treated as a child support obligation. The Judgment stated that "[i]t is the intent of the parties that they

shall both share in the cost of a college education for the children." In final relevant part, the Judgment provided as follows:

> In order to provide security for [the decedent's] payment of child support, child care expense, health insurance, uninsured health care expense, should [the decedent] die before those obligations terminate, [the decedent] shall maintain the minor children as irrevocable beneficiaries of the life insurance held with Smith Barney, until said children attain the age of twenty-three (23) years old.
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> Upon request (but not more often than annually), [the decedent] shall provide written verification to [Gladfelter] of the required coverage, and this Judgment shall serve as authorization for the insurer to release directly to [Gladfelter] or [Gladfelter's] counsel all information necessary to verify the coverage required by this Judgment.
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> Except as otherwise provided in this paragraph, each party has the right to designate any person as beneficiary of insurance on his or her life, and this Judgment extinguishes all rights that either party may have in any policy or contract of life insurance, endowment or annuity on the life of the other party.

This dispute in this matter is to a great extent simply whether the life insurance provision in the Judgment of Divorce obligated the decedent to maintain his policy for college expenses.

The plaintiff children reached the age of majority by 2003 and 2005, respectively, and the decedent paid their child support until that time. The decedent paid for their health insurance for a few years beyond that date; however, both children incurred significant medical expenses due to injuries, and the decedent paid nothing toward those costs. The decedent paid some of Thomas's college costs, but less than half of his first year. Gladfelter testified that at the time of the divorce proceedings, the decedent had promised to pay the entirety of the children's college costs, as he had done for his other two children. However, by the time he stopped paying for the plaintiff children's college costs, he was no longer providing any support for them.

At some point in 2006, the Friend of the Court became confused about the extent to which the decedent was paying his child support obligations. Gladfelter testified that the decedent did pay all of the child support he owed, but for no known reason, the Friend of the Court arrived at the conclusion that he had not and threatened to start withholding money from the decedent's disability checks. She wrote a letter on April 19, 2006, which she opined in retrospect she should have had drafted by an attorney, stating that the decedent did not owe her any additional support payments and the case should be considered closed. Gladfelter explained that the letter clearly referred to the child support case number and she meant only child support payments.

On August 11, 2006, the decedent married Neileigh Regets. Approximately a year before the decedent died, Gladfelter became aware "[t]hat some things had been going on," and she had a telephone conversation with the decedent to verify "that the children were still named as beneficiaries" on the decedent's life insurance. The decedent explained to her that he was going to change the beneficiary designation to Regets, which Gladfelter believed the decedent could

not do. On May 20, 2008, the decedent designated Regets as the sole beneficiary of his life insurance benefits. Gladfelter contacted an attorney who drafted a letter regarding the life insurance policy and stating that pursuant to the terms of the Judgment of Divorce, "[the decedent's] children must be named as beneficiaries until March 17, 2010." The letter was sent on July 2, 2008, to the same Orlando, Florida address listed on the Beneficiary Authorization Form.[1]

The decedent died on June 22, 2009. Thomas was then 24 years old, but Laura was only 22 years old. In September of 2009, MetLife paid to Regets the approximately $163,000 that the decedent's life insurance policy was worth. Plaintiffs commenced suit, alleging that the decedent and his estate committed a breach of contract by changing the decedent's life insurance beneficiary to Regets; that MetLife committed a breach of contract by paying the life insurance proceeds to Regets despite being aware that the policy's beneficiaries were immutable until March 17, 2010; that Regets was unjustly enriched by the receipt of monies that belonged to plaintiffs; and that Regets breached her fiduciary duty as the personal representative of the decedent's estate by failing to see to it that plaintiffs received that money. The trial court granted summary disposition in favor of the defendants pursuant to MCR 2.116(C)(8) and (10) (M Tr IV, 25-26). The trial court relied on our Supreme Court's decision in *Monreal v Monreal*, 422 Mich 704; 375 NW2d 329 (1985), and it concluded that the life insurance provision in the Judgment of Divorce had been intended to secure payments that the decedent paid in full. This appeal followed.

A grant or denial of summary disposition is reviewed de novo on the basis of the entire record to determine if the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). This Court reviews de novo whether a trial court had subject-matter jurisdiction. *Steiner School v Ann Arbor Twp*, 237 Mich App 721, 730; 605 NW2d 18 (1999). "A challenge to subject-matter jurisdiction may be raised at any time, even if raised for the first time on appeal." *Smith v Smith*, 218 Mich App 727, 729-730; 555 NW2d 271 (1996). We observe initially that the parties' arguments make little sense without an unusually lengthy discussion of the cases they invoke.

In *In re Monreal Estate* (*Monreal I*), 126 Mich App 60; 337 NW2d 312 (1983), a panel of this Court, prior to the "first-out rule," MCR 7.215(J)(1), considered the effect of a provision in a divorce judgment that obligated a deceased husband to designate his children as beneficiaries of a life insurance policy. Specifically, the husband was obligated to "designate the minor children of the parties as irrevocable beneficiaries on his life insurance policy or policies until his obligation to pay support for said minor children has been fully completed." *Id*. at 62. The husband was also obligated to pay support for each of the minor children until they reached the age of eighteen or graduated from high school, whichever occurred later. *Id*. The husband initially did name his children as beneficiaries of his life insurance policy, but he then changed

[1] Defendant MetLife contends that the letter never reached it and that it was sent to the wrong entity, so it did not provide MetLife with notice of plaintiffs' claim to the life insurance proceeds. As will be discussed, we need not consider this issue.

the designation to name only a wife from whom he was later divorced pursuant to a judgment extinguishing her interest in any life insurance policy. *Id*. at 63. When the husband died, his former wife remained named on the policy, and his will excluded his children, one of whom had not yet reached the age of 18. *Id*. A panel of this Court concluded that the life insurance policy must be used to continue to pay support for the remaining minor child until such time as the terms of the husband's support obligations terminated, and any remainder would pass to the husband's estate, because the insurance policy was "only security to protect the children's right to support during their minority." *Id*. at 64-65.

On appeal, our Supreme Court affirmed. *In re Monreal Estate* (*Monreal II*), 422 Mich 704; 375 NW2d 329 (1985). Our Supreme Court recited this Court's conclusion "that the life insurance benefits should be used for the minor's support, but that the remainder should pass to [the husband's] estate," because it agreed "that an examination of the divorce judgment as a whole makes it clear that the requirement pertaining to the life insurance was intended to be security for the father's support obligation in case any of the children did not reach the age of majority before his death." *Id*. at 707. It further observed that it made no sense to construe the divorce judgment as requiring the husband to continue providing for all of the children just because one of them was still a minor, noting that "[i]t would frustrate the intent of the parties to allow the adult sons and daughter to benefit from an insurance policy required as adequate security for their support as minors." *Id*. at 710. "Accordingly, the change of beneficiaries was effective except as to the support of the minor child." *Id*. at 711.

In *Pernick v Brandt*, 201 Mich App 293; 506 NW2d 243 (1993), this Court again addressed the effect of a requirement in a divorce judgment obligating the deceased husband to name the wife as a beneficiary on a life insurance policy. In that case, "[p]ursuant to the terms of the judgment of divorce, [the husband] was ordered to 'maintain a Fifty Thousand Dollar life insurance policy naming [the plaintiff] as beneficiary.'" *Id*. at 294. The husband initially complied, but then cancelled that policy and obtained a different policy naming a different beneficiary, the defendant, who collected the proceeds thereof upon the husband's death. *Id*. The plaintiff sued the defendant for the proceeds that would have been due to her under the original life insurance policy. *Id*. at 294-295. This Court held that the plaintiff had a vested interest in the proceeds of the first insurance policy, although because the defendant might have had no knowledge of the husband's obligation, the defendant might equitably have a superior interest in some or all of it. *Id*. at 296-297, 299-300. In relevant part, this Court explicitly distinguished *Monreal*, stating that "[c]ontrary to [the defendant's] argument on appeal, there is no indication from the language of the judgment of divorce that the parties intended that the life insurance policy should serve only as security for [the husband's] child support obligation." *Id*. at 297 n 2.

This Court again addressed a divorce judgment obligating a deceased ex-husband to name a minor child as a life insurance policy beneficiary in *In re Lobaina Estate*, 267 Mich App 415; 705 NW2d 34 (2005). Pursuant to the judgment of divorce, both the husband and wife were obligated to "irrevocably designate the minor children as beneficiaries of any life insurance policies they may have" and that "they shall continue said minor children as beneficiaries until such time as their obligation to support said minor children as herenbefore provided shall have been terminated or until the further Order of the Court." *Id*. at 417. The husband was to pay child support for the child until she reached the age of eighteen or graduated from high school up

to the age of nineteen and a half. *Id*. The child was sixteen when the husband died. *Id*. This Court found that the divorce judgment constituted an unambiguous contract that obligated the husband to name the child as beneficiary of his life insurance contract. *Id*. at 418. However, this Court disagreed with *Monreal* and held that the obligation was not limited only to child support, but rather the child was entitled to the entire amount of the life insurance policy irrespective of how much child support remained outstanding. *Id*. at 418-423.

Much of the parties' argument in the case at bar concerns whether this Court in *Lobaina* was permitted to disregard *Monreal* and hold that it was incorrectly decided. *Lobaina*, 267 Mich App 415. The *Lobaina* Court correctly stated that it was not obligated to follow *Monreal I* because decisions of the Court of Appeals decided before November 1, 1990, are not binding. MCR 7.215(J)(1). *Lobaina*, 267 Mich App at 419. The same would not be true of *Monreal II*, because it goes without saying that a decision from our Supreme Court from any date would be binding unless overruled. This Court expressed its belief that "the Supreme Court's decision in *Monreal* [*II*] is [not] relevant to this Case because the Supreme Court's focus was on a question not present here, namely whether the decedent's adult children should share in the life insurance proceeds." *Id*. at 419 n 6. We disagree: our Supreme Court explicitly stated its agreement with the Court of Appeals panel's interpretation of the divorce judgment to the effect that the life insurance provision was only to secure the support of the minor children. *Monreal II*, 422 Mich at 707. We do not believe that *Monreal II* was irrelevant or that this Court in *Lobaina* was free to disregard it.

However, more importantly, this Court in *Lobaina* made it clear that the divorce judgment in that case was materially and significantly distinguishable from the divorce judgment at issue in *Monreal*. Therefore, any error committed by the *Lobaina* Court in disregarding *Monreal* was harmless. Specifically, the *Lobaina* divorce judgment obligated *both* parties to *each* maintain a life insurance policy in favor of the child, and there was seemingly no indication other than coincidental timing to suggest that the life insurance obligation was intended to secure any support obligations. *Lobaina*, 267 Mich App at 422. The *Lobaina* Court essentially held that there was no reason why a life insurance obligation in a divorce judgment in favor of a minor child that terminated at the same time as child support obligations was *necessarily* just a security for those support obligations. *Id*. at 423. Consequently, *Lobaina* and *Monreal* and *Pernick* all agree that the touchstone is, first and foremost, that a reading of the divorce judgment as a whole is the touchstone.

Here, the matter is, frankly, utterly unambiguous and would be under any of the above cases. The Judgment of Divorce *explicitly* states, in the plainest and clearest possible language, that the decedent's life insurance obligations are only to secure his payment of certain support obligations. It is not disputed that all of his support obligations other than the possibility of college expenses have been satisfied. Consequently, with that one possible exception, the life insurance obligation is no longer binding, notwithstanding the age of any of the children, because its stated purpose of securing already-satisfied obligations is no longer needed. The fact that the policy designation was to be "irrevocable" is shared with that in *Monreal*. See *Monreal II*, 422 Mich at 708. Consequently, the decedent may have technically violated the terms of the Judgment of Divorce by changing the beneficiary designation, but that does not entitle the children to any of the proceeds—unless there remains outstanding any other unpaid support

obligation. As defendants point out, the irrevocability of the provision until the age of 23 would rationally account for the possibility of unpaid arrearages or other support obligations.

Plaintiffs argued that Gladfelter's testimony proved that the life insurance beneficiary provision was intended for more than just child support and that the children were to be absolutely entitled to the entirety of the proceeds until both of them had reached the age of 23. In the trial court, plaintiffs relied in part on the provision in the Judgment of Divorce stating that "[i]t is the intent of the parties that they shall both share in the cost of a college education for the children." The latter, however, appears merely precatory, in that it only expresses a wish or desire rather than an obligation or requirement. See *In re Stuart's Estate*, 274 Mich 282, 285; 264 NW2d 372 (1936) (explaining generally that language merely stating a desire is precatory). The former constitutes parol evidence, which may not be admitted to interpret the meaning of an unambiguous contract. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 470; 663 NW2d 447 (2003); *Liparoto Constr, Inc v Gen Shale Brick, Inc*, 284 Mich App 25, 34; 772 NW2d 801 (2009). Consequently, there is no indication in the Judgment of Divorce that the life insurance beneficiary provision was intended for any purpose other than to secure payment of obligations that have, in fact, been paid.

We therefore conclude that the trial court correctly determined that defendants were entitled to summary disposition. Consequently, we need not address defendant MetLife's alternative arguments regarding the applicability of federal law, but we must address MetLife's argument that the Probate Court lacked subject-matter jurisdiction. Specifically, MetLife argues that this matter is not within the scope of matters enumerated in MCL 700.1302 or MCL 700.1303. MCL 700.1302 provides that the Probate Court has exclusive jurisdiction over:

> (a) A matter that relates to the settlement of a deceased individual's estate, whether testate or intestate, who was at the time of death domiciled in the county or was at the time of death domiciled out of state leaving an estate within the county to be administered, including, but not limited to, all of the following proceedings:
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> (i) The internal affairs of the estate.
>
> (ii) Estate administration, settlement, and distribution.
>
> (iii) Declaration of rights that involve an estate, devisee, heir, or fiduciary.
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> (iv) Construction of a will.
>
> (v) Determination of heirs.
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> (vi) Determination of death of an accident or disaster victim under section 1208.
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> (b) A proceeding that concerns the validity, internal affairs, or settlement of a trust; the administration, distribution, modification, reformation, or termination of a trust; or the declaration of rights that involve a trust, trustee, or trust beneficiary, including, but not limited to, proceedings to do all of the following:
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> (i) Appoint or remove a trustee.
>
> (ii) Review the fees of a trustee.
>
> (iii) Require, hear, and settle interim or final accounts.
>
> (iv) Ascertain beneficiaries.
>
> (v) Determine a question that arises in the administration or distribution of a trust, including a question of construction of a will or trust.

(vi) Instruct a trustee and determine relative to a trustee the existence or nonexistence of an immunity, power, privilege, duty, or right.

(vii) Release registration of a trust.

(viii) Determine an action or proceeding that involves settlement of an irrevocable trust.

(c) Except as otherwise provided in section 1021 of the revised judicature act of 1961, 1961 PA 236, MCL 600.1021, a proceeding that concerns a guardianship, conservatorship, or protective proceeding.

(d) A proceeding to require, hear, or settle the accounts of a fiduciary and to order, upon request of an interested person, instructions or directions to a fiduciary that concern an estate within the court's jurisdiction.

MCL 700.1303(1) provides that the Probate Court has:

> concurrent legal and equitable jurisdiction to do all of the following in regard to an estate of a decedent, protected individual, ward, or trust:
>
> (a) Determine a property right or interest.
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> (b) Authorize partition of property.
>
> (c) Authorize or compel specific performance of a contract in a joint or mutual will or of a contract to leave property by will.
>
> (d) Ascertain if individuals have survived as provided in this act.
>
> (e) Determine cy-pres or a gift, grant, bequest, or devise in trust or otherwise as provided in 1915 PA 280, MCL 554.351 to 554.353.
>
> (f) Hear and decide an action or proceeding against a distributee of a fiduciary of the estate to enforce liability that arises because the estate was liable upon some claim or demand before distribution of the estate.
>
> (g) Impose a constructive trust.
>
> (h) Hear and decide a claim by or against a fiduciary or trustee for the return of property.
>
> (i) Hear and decide a contract proceeding or action by or against an estate, trust, or ward.
>
> (j) Require, hear, or settle an accounting of an agent under a power of attorney.
>
> (k) Bar an incapacitated or minor wife of her dower right.

The Probate Court is a court of limited jurisdiction established by statute. *In re Lager Estate*, 286 Mich App 158, 162; 779 NW2d 310 (2009).

MetLife's argument is essentially that no matter which party ultimately prevails in the substance of this action, the life insurance policy would in no event be payable to the decedent's estate, so this could not possibly be a matter for the Probate Court. However, MetLife relies on cases that relied on older and more limited grants of statutory jurisdiction. In *Hilliker v Dowell*, 54 Mich App 249, 251-252; 220 NW2d 712 (1974), a panel of this Court held that "the probate court is without jurisdiction to determine questions of title," which is no longer true pursuant to MCL 700.1303(1)(a). This Court subsequently explained that Probate Courts lacked jurisdiction to resolve disputes as to title prior to the enactment of the Revised Probate Code, 1978 PA 642, but could by then do so if "'ancillary to the settlement of an estate.'" *Noble v McNerney*, 165 Mich App 586, 591, 593; 419 NW2d 424 (1988), quoting MCL 700.22(1)(a). The present statute

is not even limited to being "ancillary," but merely "in regard to." Inexplicably, MetLife argues that this Court in *Noble* found that the Probate Court lacked jurisdiction in that case, when in fact, this Court found that the Probate Court *did* have jurisdiction. *Noble*, 165 Mich App at 607.

Contrary to MetLife's argument, this dispute is not strictly between plaintiffs and Regets in her personal capacity. Plaintiffs alleged that the decedent, and therefore his estate, breached an obligation, and furthermore plaintiff alleged that Regets, in her role as personal representative of that estate, breached a fiduciary duty to make sure that the decedent's legal obligations were honored. This matter therefore appears to satisfy at least MCL 700.1303(1)(a), (f), and (h). Therefore, we conclude that the Probate Court did have jurisdiction to entertain this matter.

Affirmed.

/s/ Amy Ronayne Krause
/s/ Henry William Saad
/s/ Stephen L. Borrello