

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
June 26, 2007 Session

**EVELYN NADINE BRICENO v. JEWEL FAYE BRICENO, ET AL.**

**Direct Appeal from the Chancery Court for Maury County  
No. 06-100 Robert L. Jones, Judge**

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**No. M2006-01927-COA-R3-CV - Field November 21, 2007**

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In this appeal from a consolidated action, plaintiff ex-wife seeks to enforce two provisions of a divorce decree. She filed suit to impose a constructive trust on life insurance proceeds held by her deceased ex-husband's surviving spouse and to recover alimony arrearage from his estate. The trial court applied the doctrine of laches to limit the alimony award and imposed a constructive trust upon the insurance proceeds only for that limited amount. We reverse and remand.

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

DAVID R. FARMER, J., delivered the opinion of the court, in which ALAN E. HIGHERS, J., and WALTER C. KURTZ, SP. J., joined.

Tracy W. Moore, Columbia, Tennessee, for the appellant, Evelyn Nadine Briceno.

Beverly K. Rayburn, Columbia, Tennessee, for the appellees, Jewel Faye Briceno and The Estate of Nicholas Briceno

**OPINION**

Evelyn Nadine Briceno<sup>1</sup> ("Evelyn Nadine"), the ex-wife of Nicholas Francis Briceno ("Decedent" or "Mr. Briceno"), filed suit against his estate and against his surviving spouse<sup>2</sup>, Jewel Faye Briceno ("Jewel Faye"), to recover two sums of money: \$ 39,750 in unpaid alimony that had accrued at the time of Mr. Briceno's death and \$40,000 in life insurance proceeds, both of which had been awarded to Evelyn Nadine in the final decree of divorce. Of the \$79,750 sought by Evelyn Nadine, the trial court awarded her \$5,950 for unpaid alimony. On appeal, she requests that this

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<sup>1</sup>Because both parties have the last name Briceno, we will refer to their given names for purposes of clarity.

<sup>2</sup>To recover the insurance proceeds from Jewel Faye, Evelyn Nadine originally filed a complaint to establish a resulting trust but the trial court allowed her to amend the pleadings to conform to the evidence. She thus amended the complaint to specify a constructive, rather than a resulting, trust.

Court award all of the alimony due her from Decedent's estate; impose a constructive trust on all of the insurance proceeds (now totaling less than \$40,000) held by Jewel Faye; and enter a deficiency judgment against the decedent's estate to make up the difference.

Evelyn Nadine and Decedent obtained a divorce after thirty-eight years of marriage on June 30, 1995. The parties entered into a marital dissolution agreement (MDA) that provided, in pertinent part, as follows:

6. Alimony: The Husband shall pay as a wage assignment, through his employer, Saturn Corporation, . . . the sum of . . . \$750.00 . . . each and every month as alimony or spousal support, beginning July 1, 1995. This alimony award is predicated on the disparity of earnings and earning capacity between the parties and is further predicated upon the Husband's continued employment with the Saturn Corporation where his base salary is presently some \$40,000.00 annually.

Should the Husband become disabled, be terminated from his employment, laid off or retire, that shall be a change of circumstances justifying a request for an alteration in the amount of alimony/spousal support in accord with the Husband's earning capacity under the changed situation.

. . . .

9. Life Insurance: The Husband agrees to assign an irrevocable assignment of . . . \$40,000.00 . . . of his Life Insurance Benefits to Mrs. Briceno, designating her as an irrevocable beneficiary in that amount.

Mr. Briceno remitted all alimony payments up to his retirement from the Saturn Corporation in November of 2000 but ceased the payments thereafter. In an effort to enforce the alimony obligation, Evelyn Nadine filed a contempt petition against him on June 18, 2001. He filed an answer and a counter-petition, alleging that the parties had entered into an oral agreement to cease alimony payments in light of his retirement. In the filing, Mr. Briceno requested that the court terminate his alimony obligation because of his retirement, his failing health, and his inability to make the payments. He further asserted that the doctrine of laches should bar Evelyn Nadine's claim for payments due after November of 2000 because of their oral agreement. No further action was taken by either party.

Following Mr. Briceno's death on May 9, 2005, Evelyn Nadine filed the alimony and insurance proceeds claims against his estate and, after the estate excepted, filed an action against Jewel Faye to recover the insurance proceeds. The trial court consolidated Evelyn Nadine's claims and heard the matter on May 26, 2006.

There is no dispute that the life insurance policy payout totaled \$23,242 or that the policy named in the MDA was the same one whose proceeds Jewel Faye received after Mr. Briceno's death. Evelyn Nadine testified that she did not know the value of the life insurance policy at the time she

executed the MDA. She also conceded she never checked to verify that Mr. Briceno had named her as beneficiary on the insurance policy. There is no evidence in the record, however, regarding when the Decedent named Jewel Faye as the beneficiary.

On the other hand, Jewel Faye testified that the policy's value at the time of divorce was approximately \$80,900 but began to decline with the passage of time following Mr. Briceno's retirement. She conceded to knowing about the life insurance policy when she married Mr. Briceno in 1995 and testified that she forwarded all divorce paperwork to General Motors following his death. The plan administrator transferred the proceeds to a General Motors interest-bearing account in Jewel Faye's name.

In its order entered on August 9, 2006, the trial court awarded Evelyn Nadine the sum of \$5,250, which represented the alimony due at the time Evelyn Nadine filed the contempt petition, and imposed a constructive trust for that amount on the insurance proceeds. The court ruled that all claims for alimony after that date were barred by the doctrine of laches because Evelyn Nadine had failed to pursue the matter after filing the contempt petition. The trial court also interpreted the divorce decree's insurance provision as security for the alimony obligation. It further provided that

[t]he Court finds that since the doctrine of laches applied to the alimony it therefore applies to the insurance claim as well. The Court also finds that [the Employee Retirement Income Security Act of 1974 ("ERISA")] may prevent the Court from applying a resulting or constructive trust against the insurance proceeds.

In spite of this uncertainty, the trial court nonetheless imposed a constructive trust on the proceeds.

Plaintiff is awarded the sum of \$5,250.00 against the Estate of Nicholas Briceno for alimony amounts due between November 2000 and June 2001 and that all claims for alimony after June 2001 and for life insurance are barred by laches. It is also ordered that a constructive trust be established against the insurance proceeds in the amount of \$5,250.00 to secure the payment of alimony award.

Following the entry of the trial court's judgment, Evelyn Nadine filed a timely notice of appeal.

### **Issues Presented**

Evelyn Nadine raises the following issues, as slightly restated, for our review:

- (1) Whether the trial court erred by declining to impose a constructive trust upon the life insurance proceeds held by Jewel Faye when a divorce decree required Ex-Husband to "assign an irrevocable assignment of [\$40,000] of his Life Insurance Benefits to [Evelyn Nadine], designating her as an irrevocable beneficiary in that amount;" and

- (2) Whether the trial court erred by refusing to award Evelyn Nadine the alimony that accrued after the date she filed a Petition for Contempt based upon the doctrine of laches.

### *Standard of Review*

To the extent the issues on appeal involve questions of fact, our review of the trial court's ruling is *de novo* with a presumption of correctness. Tenn. R. App. P. 13(d); *Berryhill v. Rhodes*, 21 S.W.3d 188, 190 (Tenn. 2000). We may not reverse a trial court's factual findings unless they are contrary to the preponderance of the evidence. *Berryhill*, 21 S.W.3d at 190.

This appeal also presents issues of law concerning the interpretation of the Bricenos' marital dissolution agreement (MDA) and the pre-emption of state law by ERISA. With respect to questions of pure law, our review of the trial court's conclusions is *de novo* with no presumption of correctness. *Bowden v. Ward*, 27 S.W.3d 913, 916 (Tenn. 2000).

Finally, Evelyn Nadine challenges the trial court's application of laches to her claim for unpaid alimony. We review an application of laches under an abuse of discretion standard. *Finova Capital Corp. v. Regel*, 195 S.W.3d 656, 660 (Tenn. Ct. App. 2005); *Dennis Joslin Co. v. Johnson*, 138 S.W.3d 197, 199–200 (Tenn. Ct. App. 2003)(citing *John P. Saad & Sons, Inc. v. Nashville Thermal Transfer Corp.*, 715 S.W.2d 41, 46 (Tenn. 1986)). Accordingly, we will not reverse unless the trial court's determination is "clearly shown to be wrong." *Dennis Joslin Co.*, 138 S.W.3d at 200 (quoting *Freeman v. Martin Robowash, Inc.*, 457 S.W.2d 606, 612 (Tenn. Ct. App. 1970)).

### *Analysis*

#### *Application of the Doctrine of Laches to the Claim for Unpaid Alimony*

Evelyn Nadine filed a contempt petition approximately seven (7) months after the alimony payments ceased. Mr. Briceno answered and counterclaimed to eliminate or reduce his monthly alimony obligation. He argued that the doctrine of laches should prevent Evelyn Nadine's recovery of the unpaid alimony because of a purported oral agreement between the parties to cease alimony payments on the date of his retirement. Neither party took further action until Evelyn Nadine filed a claim against his estate approximately four and a half (4-1/2) years after filing the contempt petition. The issue, as we view it, is whether the trial court erred in applying the doctrine of laches to Evelyn Nadine's claim for unpaid alimony where she failed to pursue her contempt petition filed several years earlier, where Decedent also failed to pursue his counterclaim to modify or eliminate his obligation altogether, and where the limitations period for filing suit on the divorce decree had not yet expired. For the following reasons, we find the trial court erred and accordingly reverse its ruling.

Generally, the doctrine of laches applies to actions not governed by a statute of limitations. *Gleason v. Gleason*, 164 S.W.3d 588, 592 (Tenn. Ct. App. 2004); *Dennis Joslin Co.*, 138 S.W.3d

at 201. Tennessee Code Annotated Section 28-3-110(2) establishes a ten-year limitations period for filing suit to enforce a judgment or decree of court. *See* Tenn. Code Ann. § 28-3-110 (2) (2000). Because the right to enforce an alimony award accrues as each installment becomes due, the ten-year statute of limitations begins to run from the date each installment is due for payment. *Gleason*, 164 S.W.3d at 592. In this case, Decedent first missed a payment in December of 2000, so the limitations period had not yet run on any missed payments when Evelyn Nadine filed her claim against the estate in November of 2005.

Even where the action is governed by a statute of limitations, however, the doctrine of laches may shorten that time period if the plaintiff is guilty of gross laches. *Gleason*, 164 S.W.3d at 592; *Dennis Joslin Co.*, 138 S.W.3d at 201. Gross laches occurs where the plaintiff unreasonably acquiesces in adverse rights for a long duration of time. *Finova Capital Corp. v. Regel*, 195 S.W.3d 656, 660 (Tenn. Ct. App. 2005)(quoting *John P. Saad & Sons, Inc. v. Nashville Thermal Transfer Corp.*, 715 S.W.2d 41, 46 (Tenn. 1986)). Further, gross laches requires prejudice to the defendant such as the loss of evidence and witnesses or a considerable accumulation of interest resulting from the unjustified delay of the plaintiff. *Id.*

When the trial court applied the doctrine of laches to Evelyn Nadine's claim for unpaid alimony accruing after June of 2001, it merely referenced her failure to pursue her petition for contempt. The finder of fact must conclude that it would be inequitable or unjust to enforce the claimant's rights. *Gleason*, 164 S.W.3d at 592 (citing *Archer v. Archer*, 907 S.W.2d 412, 416 (Tenn. Ct. App. 1995)). Nothing in the order or the trial transcript indicates that the trial court considered this point; nor can we find anything in the record to support a finding of gross laches.

We hold that the trial court abused its discretion by limiting Evelyn Nadine's recovery without a showing of gross laches. Evelyn Nadine's reasons for delay ranged from Decedent's illness to "what he did, what he said" during a meeting with their attorneys. Although somewhat cryptic, these reasons fail to furnish the basis for a finding of gross laches. Further, although Evelyn Nadine failed to pursue her contempt petition, Mr. Briceno likewise failed to pursue his counter-petition to eliminate or reduce his alimony obligation. Moreover, we see no prejudice to the estate in this case, as there is no loss of evidence, change in rights, or change in the value of the alimony award over time. Evelyn Nadine has not requested pre-judgment interest. If anything, Mr. Briceno benefitted from the delay by retaining amounts he knew he owed. Even though Mr. Briceno himself is unable to defend the claim and testify to the purported oral agreement to terminate alimony payments, this inability does not prejudice the estate's position so much that the delay rises to the level of gross laches. Mr. Briceno set out these points in his counter-petition yet chose not to pursue the matter beyond the filing. We therefore reverse the trial court's ruling and conclude that Evelyn Nadine is entitled to a judgment against the estate for the unpaid alimony accruing up to his death. We now turn to issue of the insurance proceeds held by Jewel Faye.

*Relationship between the Insurance Provision and Alimony Obligation:  
Interpretation of the MDA*

The trial court found that the parties included the life insurance provision in the MDA as security for the alimony payments. We disagree.

“Where parties contract as to rights and obligations in a marriage dissolution agreement, and that agreement is incorporated into the judgment of divorce, courts should construe the MDA like ‘other contracts [with respect to] its interpretation, its meaning and effect.’” *Bogan v. Bogan*, 60 S.W.3d 721, 730 (Tenn. 2001) (quoting *Gray v. Estate of Gray*, 993 S.W.2d 59, 63 (Tenn. Ct. App. 1998)). When reference to the provisions of the MDA itself will resolve the issue at bar, courts should defer to them, unless doing so would be unconscionable. *See id.* Because an MDA is, in essence, a contract between husband and wife in contemplation of a pending divorce, we seek to ascertain their intention from the contract as a whole and to give effect to it.

Nothing in the MDA suggests the two paragraphs are linked in any manner. The paragraphs of the divorce decree are titled as follows: (1) grounds for divorce, (2) division of personal property, (3) vehicles, (4) retirement accounts, (5) motorcycle, (6) alimony, (7) real estate, (8) savings, (9) life insurance, and (10) attorney fees and court costs. Not only is there an absence of an express link between the two provisions, but there is also a separation of them in the document itself. Further, the language of the alimony provision reveals that the parties contemplated a future modification or outright termination of the alimony payments. In contrast, the life insurance provision employs the term “irrevocable” twice. We cannot concur with the trial court that the insurance proceeds were intended to secure Decedent’s alimony obligation.

#### *Imposition of a Constructive Trust on the Insurance Proceeds*

Resolution of this dispute over insurance proceeds requires this Court to determine, first, if ERISA’s anti-alienation provisions extend to this circumstance, thus pre-empting state law and precluding a state court from imposing a constructive trust on the proceeds. Second, we must determine whether the equities among the parties favor the imposition of a constructive trust. Third, and finally, we must interpret the MDA to determine the proper amount due Evelyn Nadine. She contends she is entitled to all the proceeds and to a deficiency judgment against the estate because the decree awarded her \$16,758 more than the actual payout. Jewel Faye, on the other hand, asserts that, because the value of the policy was approximately \$80,900 at the time the parties entered into the MDA, the parties’ intent was for Evelyn Nadine to take half of the proceeds. Thus, Jewel Faye argues in the alternative that Evelyn Nadine is entitled to, at most, only half of the proceeds. For the following reasons, we hold that ERISA does not preclude the imposition of a constructive trust on the proceeds and that the equities among the parties favor such an imposition. Finally, we hold that Evelyn Nadine is entitled to the full amount of the payout, but no more.

Our review of federal case law addressing the pre-emption of state law by ERISA reveals that the trial court could impose a constructive trust on these proceeds. In particular, we find that the holding in *Central States, Southeast & Southwest Areas Pension Fund v. Howell*, 227 F.3d 672 (6th Cir. 2000), controls the facts of this case. In that case, the Sixth Circuit Court of Appeals considered whether ERISA’s pre-emptive reach extended to life insurance benefits that had already been

distributed to named beneficiaries. *Cent. States*, 227 F.3d at 676. The cross-plaintiff's husband, who died while their divorce was pending, had violated a state court injunction prohibiting him from changing the beneficiary on his life insurance policy. He changed the designation from his prospective ex-wife to his children from a former marriage. *Id.* at 673. Following his death and in the midst of the ensuing litigation over the proceeds from this and other life insurance policies, the wife filed a cross-claim against the children and sought the imposition of a constructive trust upon the insurance proceeds. The Sixth Circuit held that

once the benefits have been released to the . . . designated beneficiary, the district court has the discretion to impose a constructive trust upon those benefits in accordance with applicable state law if equity so requires.

*Id.* at 679.<sup>3</sup> Because the district court had presumed that ERISA pre-empted the state court injunction, it never reached the issue of whether the equities among the parties favored a constructive trust. *Id.* The Sixth Circuit remanded the case for such a determination. *Id.* Here, because the proceeds have already been distributed to Jewel Faye, ERISA's pre-emptive scope no longer prevents a state court from exercising authority over the funds.

We now address whether the equities favor the imposition of a constructive trust. Tennessee case law makes clear that "when a life insurance policy exists at the time of the divorce decree, the mandated beneficiary of the divorce decree retains a vested interest in that policy in the event that the obligor spouse does not comply with the terms of the divorce decree." *Holt v. Holt*, 995 S.W.2d 68, 74 (Tenn. 1999); *see also Dossett by Dossett v. Dossett*, 712 S.W.2d 96, 97 (Tenn. 1986); *Hinkle v. Estate of Hartman*, No. E2006-01052-COA-R3-CV, 2007 WL700973, at \*4 (Tenn. Ct. App. Mar. 8, 2007); *Herrington v. Boatright*, 633 S.W.2d 781 (Tenn. Ct. App. 1984); *Goodrich v. Mass. Mut. Life Ins. Co.*, 240 S.W.2d 263 (Tenn. Ct. App. 1951). The foregoing authorities imposed a constructive trust on life insurance proceeds when, instead of the court-mandated beneficiary, another took legal title to the proceeds in contravention of the divorce decree or court order. *See, e.g., Hinkle*, 2007 WL700973, at \*4 (imposing constructive trust on proceeds held by surviving spouse and children for the benefit of ex-wife); *Herrington*, 633 S.W.2d at 783 (imposing constructive trust on private life insurance proceeds held by decedent's sister for the benefit of ex-wife).

We find that the divorce decree created in Evelyn Nadine a vested right to the insurance proceeds. Further, we hold that a constructive trust is appropriate in this case for the following reasons. In *Holt*, the Tennessee Supreme Court quoted Justice Cardozo on the rationale underlying the constructive trust:

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<sup>3</sup>More recently, the Sixth Circuit has confirmed that the timing of the claimant's assertion of rights is indeed determinative. *See DaimlerChrysler Corp. v. Cox*, 447 F.3d 967, 976 (6th Cir. 2006) (holding that an encumbrance of benefit payments before they have left plan control violates ERISA's anti-alienation provision).

A constructive trust is the formula through which the conscience of equity finds expression. When property has been acquired in such circumstances that the holder of the legal title may not in good conscience retain the beneficial interest equity converts him into a trustee.

*Holt*, 995 S.W.2d 68, 71 (Tenn. 1999)(quoting *Beatty v. Guggenheim Exploration Co.*, 122 N.E. 378, 380–81 (N.Y. 1919)). Tennessee courts employ equitable doctrines to prevent the unjust enrichment of one who “in any way against equity and good conscience, either has obtained or holds the legal title to property which he ought not, in equity and good conscience hold and enjoy.” *Id.* at 72. In this case, Decedent knew the decree obligated him to maintain Evelyn Nadine as a beneficiary of the life insurance policy and failed to fulfill it. Similarly, Jewel Faye knew about this obligation at the time she married him. The equities and the case law, without question, favor Evelyn Nadine.

Finally, we address the amount of proceeds properly due Evelyn Nadine. The life insurance provision in the divorce decree unequivocally directs that she benefit from the life insurance policy. We do not interpret this provision as extending to other assets in the event the policy value should drop below the stated dollar amount. Accordingly, Evelyn Nadine is not entitled to a deficiency judgment against the estate. Further, we decline to consider extrinsic evidence concerning the value of the policy at the time the parties executed the MDA. Other provisions of the decree, such as the retirement accounts paragraph and the provision regarding motorcycle sale proceeds, plainly state that Evelyn Nadine should receive half of the assets or proceeds. The parties opted instead for a flat sum for the life insurance provision, and we therefore will not alter the agreement as written.

For the foregoing reasons, we conclude that Evelyn Nadine Briceno is entitled to a judgement against the estate of Nicholas Francis Briceno for unpaid alimony accruing up to his death and to the imposition of a constructive trust on the proceeds of his life insurance policy. We reverse the judgment of the trial court and remand the cause for proceedings consistent with this opinion. Costs of this appeal are taxed equally to Jewel Faye Briceno and to the estate of Nicholas Francis Briceno, for which execution shall issue if necessary.

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DAVID R. FARMER, JUDGE