

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

In re: the Matter of the Estate of:

TOBIN DANIEL GOTTIER, deceased.

AILEEN M. WOERTH, Petitioner/Appellant,

v.

JACK P. REESE, et al., Respondents/Appellees.

No. 1 CA-CV 19-0797

FILED 9-22-2020

Appeal from the Superior Court in Mohave County

No. S8015PB201800191

The Honorable Lee Frank Jantzen, Judge

AFFIRMED

COUNSEL

Goodman Law Firm PC, Prescott

By Mark N. Goodman

Counsel for Petitioner/Appellant

Rahnema Law PLLC, Lake Havasu City

By Richard C. Rahnema

Counsel for Respondents/Appellees

OPINION

Presiding Judge Samuel A. Thumma delivered the opinion of the Court, in which Judge D. Steven Williams and Judge David D. Weinzweig joined.

T H U M M A, Judge:

¶1 This appeal turns on whether life insurance proceeds paid to a decedent’s estate, as specified in the life insurance contract, are exempt from claims by the estate’s creditors. Because the proceeds are property of the estate, and not exempt from creditors’ claims under Arizona Revised Statutes (A.R.S.) Section 20-1131 (2020),¹ the judgment is affirmed.

FACTS AND PROCEDURAL HISTORY

¶2 Tobin Daniel Gottier and his wife Jamie had a daughter, Hannah. Gottier owned a life insurance policy on his life, where he designated Jamie as the primary beneficiary and Hannah the contingent beneficiary. The policy’s payment provision states that, “[i]f no beneficiary is living when the insured dies, we [the insurance company] will pay the proceeds to the owner or to the owner’s estate.”

¶3 In September 2018, Gottier apparently killed Jamie and Hannah. Less than an hour after they died, Gottier killed himself.

¶4 Appellant Aileen M. Woerth, Gottier’s mother, is the personal representative of Gottier’s estate. Because no beneficiary or owner of the policy was living when Gottier died, the life insurance company was required to pay the proceeds to Gottier’s estate under the policy’s payment provision.² Jamie’s parents, Jack and Judith Reese, filed a claim against the estate for the deaths of their daughter and granddaughter. Woerth, as

¹ Absent material revisions after the relevant dates, statutes and rules cited refer to the current version unless otherwise indicated.

² It is unclear whether the proceeds have been paid to Gottier’s estate and, because the superior court sealed most of the insurance policy, the amount of the proceeds is uncertain. Selected terms of the insurance policy in the unsealed record, however, include the policy’s payment provision.

WOERTH v. REESE, et al.
Opinion of the Court

personal representative, denied the claim. The Reeses also filed a separate wrongful death action that remains pending.

¶5 Woerth filed a petition in probate court seeking a declaration that the life insurance proceeds are exempt from the claims by Gottier's creditors, including the Reeses, under A.R.S. § 20-1131(A). The court denied the petition, concluding that A.R.S. § 20-1131(A) does not exempt life insurance proceeds when, as here, they are paid to the estate under the terms of the insurance policy and are property of the estate. This court has jurisdiction over Woerth's timely appeal from the resulting partial final judgment. *See* A.R.S. § 12-2101(A)(9); *Brumett v. MGA Home Healthcare, L.L.C.*, 240 Ariz. 420, 428 ¶ 13 (App. 2016); *see also In re Estate of McGathy*, 226 Ariz. 277, 280 ¶ 17 (2010) (concluding A.R.S. § 12-2101(A)(9) [formerly A.R.S. § 12-2101(J)] permits appeal of the final disposition of each formal proceeding instituted in an unsupervised probate administration).

DISCUSSION

¶6 Woerth argues the life insurance proceeds are exempt from creditors' claims under A.R.S. § 20-1131(A), a legal issue subject to de novo review. *In re Estate of King*, 228 Ariz. 565, 567 ¶ 9 (App. 2012). "[T]he best and most reliable index of a statute's meaning is its language and, when the language is clear and unequivocal, it is determinative of the statute's construction." *State ex rel. Montgomery v. Harris*, 234 Ariz. 343, 344 ¶ 8 (2014) (quoting *State v. Hansen*, 215 Ariz. 287, 289 ¶ 7 (2007)). "Words and phrases shall be construed according to the common and approved use of the language." A.R.S. § 1-213. The court must give effect to each word in a statute and, when interpreting statutes that relate to the same subject, construe them together. *In re Estate of Butwin*, 239 Ariz. 338, 340 ¶ 10 (App. 2016).

I. The Life Insurance Proceeds at Issue Are Estate Assets and Are Not Exempt from the Estate's Creditors Under Section 20-1131(A).

¶7 An "'Estate' includes the property of the decedent . . . as originally constituted and as it exists from time to time during administration." A.R.S. § 14-1201(22). Gottier owned the insurance policy at the time of his death and Jamie and Hannah died before Gottier. As a result, the policy's payment provision required the proceeds to be paid to "the owner's estate," here, Gottier's estate. Accordingly, *unless exempt*, the life insurance proceeds are property of Gottier's estate subject to claims by the estate's creditors. *Id.* This is true regardless of whether, to date, the insurance company has actually paid the proceeds to Gottier's estate. *See*

WOERTH v. REESE, et al.
Opinion of the Court

A.R.S. § 14-3709(A) (personal representative “shall take possession or control of, the decedent’s property”); A.R.S. § 14-6102(A) (“Except as otherwise provided by law, a transferee of a nonprobate transfer is subject to liability to the decedent’s probate estate for allowed claims against the decedent’s probate estate.”).

¶8 Woerth argues the proceeds are exempt under Section 20-1131(A), also relying on *May v. Ellis*, 208 Ariz. 229 (2004) and *In re Estate of King*, 228 Ariz. 565 (App. 2012). Section 20-1131(A) is not a model of clarity and is dense:

If a policy of life insurance is effected by any person on the person’s own life or on another life in favor of another person having an insurable interest in the policy, or made payable by assignment, change of beneficiary or other means to a third person, the lawful beneficiary or such third person, other than the person effecting the insurance or the person’s legal representatives, is entitled to its proceeds against the creditors and representatives of the person effecting the insurance.

A.R.S. § 20-1131(A). The two cases Woerth relies on that construe Section 20-1131(A) do not resolve the issue presented here.

¶9 Unlike this case, *May v. Ellis* applied Section 20-1131(A) where the insurance proceeds were paid to the decedent’s widow (who survived his death), not the decedent’s estate. 208 Ariz. at 230 ¶¶ 1–6. In *May*, under the terms of the policy, the insurance proceeds were paid directly to the surviving spouse who was the named beneficiary in the insurance policy, meaning the proceeds never became an asset of the estate. *Id.* at 232 ¶ 13. *May* did not, as Woerth suggests, hold that life insurance proceeds are never subject to claims by an estate’s creditors. *Id.* Instead, *May* turned on how the proceeds were paid under the designation made in the insurance policy. Although Gottier could have designated additional contingent beneficiaries in the insurance policy so that the proceeds would not be paid to his estate, he failed to do so. Thus, *May* does not apply here.³

³ Nor has Woerth shown how *In re Wilson’s Estate*, 202 N.W.2d 41 (1972), raised for the first time in her reply on appeal, aids her cause. Even if timely

WOERTH v. REESE, et al.
Opinion of the Court

¶10 Woerth also relies on dicta from *In re Estate of King* for the proposition that the exemption in Section 20-1131(A) should “be construed liberally” to encourage individuals to protect their heirs from creditors’ claims. 228 Ariz. at 568 ¶ 12 (citing cases from other states). *Estate of King*, however, found that Section 20-1131(A) “is not ambiguous,” meaning the court “must give it effect without resorting to any rules of statutory construction.” 228 Ariz. at 569 ¶¶ 18–19 (citations omitted); accord, e.g., *Glazer v. State*, 244 Ariz. 612, 614 ¶ 9 (2018); *State v. Gates*, 243 Ariz. 451, 453 ¶ 7 (2018); *State ex rel. Dep’t Econ. Sec. v. Pandola*, 243 Ariz. 418, 419 ¶ 6 (2018). Therefore, *Estate of King* negates Woerth’s argument that Section 20-1131(A) should be liberally construed. Instead, the issue is whether the express terms of Section 20-1131(A) exempt the insurance proceeds at issue here from claims against Gottier’s estate.

¶11 Section 20-1131(A) provides that the beneficiary of a life insurance policy or another person to whom the policy proceeds are made payable may receive the proceeds without potential liability to the policy owner’s creditors or representatives, so long as the recipient is not the owner of the policy or the owner’s legal representative. See *In re Estate of King*, 228 Ariz. at 569 ¶ 19. The statute does not, as Woerth contends, exempt all life insurance proceeds from creditors’ claims, and this court will not read a statute contrary to its express terms. *Estate of Braden ex rel. Gabaldon v. State*, 228 Ariz. 323, 325 ¶ 9 (2011). Section 20-1131(A) provides that such proceeds are exempt only when (1) they are paid or to be paid to a named “beneficiary or . . . third person” and (2) that named beneficiary or third person is not the policy owner (the “person effectuating the insurance”) or the policy owner’s “legal representatives.”

¶12 Woerth admits that there was no named beneficiary living at the time of Gottier’s death. Woerth, however, argues Gottier’s estate is a “third person” under Section 20-1131(A). As Woerth concedes, “[t]he word ‘estate’ has different meanings in different contexts.” The dispositive question is whether, in the context of Section 20-1131(A), “third person” includes “estate.”

raised, *Wilson’s Estate* construed an Iowa statute unlike Section 20-1131(A) in concluding that life insurance proceeds paid to a decedent’s children were subject to claims for administrative costs of the estate, an issue not presented here. *Id.* at 43-44; see also *Nelson v. Rice*, 198 Ariz. 563, 567 ¶ 11 n.3 (App. 2000) (noting arguments raised for the first time in a reply brief on appeal are waived).

WOERTH v. REESE, et al.
Opinion of the Court

¶13 Under Arizona’s Probate Code, which is contained in A.R.S. Title 14, “[a]n estate is a collection of the decedent’s assets and liabilities.” *Ader v. Estate of Felger*, 240 Ariz. 32, 39 ¶ 22 (App. 2016) (citing A.R.S. § 14-1201(17) (defining “estate” as “the property of the decedent”) and *In re Johnson’s Estate*, 129 Ariz. 307, 310 (App. 1981)). Indeed, Woerth acknowledges that “an estate is a non-jural entity,” a concession that undercuts her claim that an estate is a person.

¶14 Section 20-1131(A) does not appear in the Probate Code and, instead, is part of Arizona’s Insurance Code, contained in A.R.S. Title 20. Title 20 defines “person” in a way that does not include an estate. As used in Title 20, “‘Person’ includes an individual, company, insurer, association, organization, society, reciprocal or inter-insurance exchange, partnership, syndicate, business trust, corporation and entity.” A.R.S. § 20-105. Although *Estate of King* noted that this definition means a trust benefitting a third party may be an “entity” under Section 20-1131(A), 228 Ariz. at 568 ¶ 13, none of the terms in this Title 20 definition of “Person” include an estate. Significantly, Woerth provides no authority supporting her argument that an estate is included in this definition of “Person” in A.R.S. § 20-105. Because the insurance proceeds were paid to Gottier’s estate, not a “third person,” the Section 20-1131(A) exemption is inapplicable. For these reasons, the life insurance proceeds are part of Gottier’s estate, meaning they are not exempt from creditors’ claims.⁴

II. The Reeses Are “Interested Persons.”

¶15 Woerth next argues the Reeses have no interest in the insurance proceeds because they were not named beneficiaries in the insurance policy and Jamie’s interest did not vest before she died. The Reeses, however, do not claim to be beneficiaries under the insurance policy or assert a claim under the policy. Instead, they assert the insurance proceeds belong to Gottier’s estate and are available to satisfy independent tort claims made against the estate. As such, the Reeses are “interested persons.” A.R.S. § 14-1201(33) (“‘Interested person’ includes any . . . person who has a . . . claim against . . . the estate of a decedent”).

⁴ Given this resolution, this court need not (and expressly does not) address the import of “third” modifying “person” as used in Section 20-1131(A) or whether Woerth, as the estate’s personal representative, is one of Gottier’s “legal representatives” as used in Section 20-1131(A).

III. The Insurance Policy Payment Provision Is Not a Facility-of-Payment Clause.

¶16 Relying on Section 20-1131(C), Woerth argues the insurance proceeds are deemed payable to a “person other than the insured” because the insurance policy payment provision directing payment to Gottier’s estate is a “facility-of-payment” clause. That statute states:

For the purposes of [A.R.S. § 20-1131(A)], a policy shall also be deemed to be payable to a person other than the insured if and to the extent that a facility-of-payment clause or similar clause in the policy permits the insurer to discharge its obligation after the death of the individual insured by paying the death benefits to *a person* as permitted by the clause.

A.R.S. § 20-1131(C) (emphasis added). As noted above, Gottier’s estate is not a “person” under Title 20, meaning Section 20-1131(C) does not apply. Moreover, the policy payment provision is not a “facility-of-payment clause.”

¶17 Woerth’s argument that the policy payment provision is a facility-of-payment clause is based on *Jackman Financial Corp. v. Humana Insurance Co.*, 641 F.3d 860 (7th Cir. 2011). *Jackman* states that a facility-of-payment clause is an insurance policy provision that “provides for payment to a named beneficiary or to a member of a named class or, in the alternative, to any person found by the insurer to be equitably entitled.” *Id.* at 863 (citation omitted). Under a facility-of-payment clause, the insurer has “a right to elect the person whom it will pay thereunder.” 166 A.L.R. 10 § V(a) (originally published in 1947). As noted in *Jackman*, a facility-of-payment clause provides an insurer discretion in determining who should be paid proceeds “when an insured person dies without an effective designation of a beneficiary.” 641 F.3d at 865.

¶18 Here, the policy payment provision clearly designated Gottier’s estate as the relevant beneficiary (and payee) of the insurance proceeds. The policy payment provision did not provide the insurance company “broad discretion” as would be required for a facility-of-payment

WOERTH v. REESE, et al.
Opinion of the Court

clause. *Id.* For the additional reason that the policy payment provision was not a facility-of-payment clause, Section 20-1131(C) does not apply.⁵

CONCLUSION

¶19 The partial judgment is affirmed. Because they are the prevailing party on appeal, the Reeses are awarded their taxable costs on appeal contingent upon their compliance with Arizona Rule of Civil Appellate Procedure 21.



AMY M. WOOD • Clerk of the Court
FILED: AA

⁵ Woerth also argues that Arizona's slayer statute, A.R.S. § 14-2803, does not apply to insurance proceeds. Given the resolution of this appeal, this court need not (and expressly does not) address that issue.