SUMMARY
April 25, 2024

2024COA44

No. 23CA1381, *Estate of Arnold* — Probate — Colorado Probate Code — Nonprobate Transfer on Death — Expectancy Interest in Payable on Death Account

A division of the court of appeals considers whether a payable on death (POD) designation on an account can be waived through a settlement agreement absent language that specifically addresses the beneficiary's future expectancy interest in that account. The division concludes that it cannot.

Accordingly, the division reverses the district court's order holding that the funds in the account belonged to the estate and remands with instructions to enter an order holding that those funds belong to the designated POD beneficiary instead.

COLORADO COURT OF APPEALS **2024COA44**

Court of Appeals No. 23CA1381
Delta County District Court No. 22PR30008
Honorable Steven L. Shultz, Judge

In the Matter of the Estate of Michael P. Arnold, deceased.

First Colorado National Bank,

Plaintiff,

v.

Annette M. English,

Defendant-Appellant,

and

Lynn M. Arnold, Personal Representative,

Defendant-Appellee.

ORDER REVERSED AND CASE
REMANDED WITH DIRECTIONS

Division I
Opinion by JUDGE GOMEZ
J. Jones and Harris, JJ., concur

Announced April 25, 2024

Evans Case LLP, Susan G. Pray, Keith D. Lapuyade, Marianne LaBorde, Andrew W. Rogers, Denver, Colorado, for Defendant-Appellant

Samuel J. Owen P.C., Melanie J. Stickler, Golden, Colorado; Alan B. Hendrix, Golden, Colorado, for Defendant-Appellee

¶ 1 This probate case, which involves competing claims to funds from a bank account with First Colorado National Bank formerly owned by the decedent, Michael P. Arnold, presents novel issues concerning the waiver of payable on death (POD) assets through a settlement agreement. Annette M. English, who was previously in a romantic relationship with the decedent and thereafter remained designated as the POD beneficiary of the bank account, contends that she owns the account funds as a matter of law. But Lynn M. Arnold, who is the decedent's sister, the personal representative of his estate, and the primary beneficiary under his will, contends that the account funds belong to the estate because English waived her interest through a settlement agreement she entered into with the decedent after their relationship ended.

¶ 2 We conclude that the settlement agreement didn't waive English's expectancy interest in the POD account. Therefore, we reverse the district court's order holding that the account funds belong to the estate, and we remand the case with instructions to enter an order holding that those funds belong to English.

I. Background

¶ 3 Several years ago, the decedent opened a single-party POD bank account with First Colorado National Bank and designated English as the beneficiary of the account.

¶ 4 When their relationship ended six years later, the decedent and English entered into a settlement agreement. Under that agreement, the decedent paid English $25,000 in "complete settlement" of any claims she might have against him, including claims recited in the agreement that the decedent had allegedly breached an oral implied agreement giving English a right of support and/or property interest. The release language in the settlement agreement provides,

> Each party hereby releases and holds harmless the other party of and from any and all claims, demands, obligations, actions, causes of action, rights, covenants, contracts, controversies, agreements, promises, debts, costs, damages, expenses, judgments and the like, of any nature whatsoever, whether known or unknown, including, without limitation, all claims related to their past relationship and their past financial dealings with each other, except for claims arising out of the enforcement of this Agreement.
>
> . . . .

> It is understood and agreed that the consideration referenced herein and provided by or on behalf of the parties is made and accepted in compromise and settlement of disputed claims, and that this Agreement shall terminate all issues which may have been, might have been, or could be raised in any suit, or action in any court of law or equity, or any judicial, quasi-judicial, or administrative forum. It is the intention of the parties that this Agreement shall terminate and waive forever any and all claims that they have, have had, may have, whether know [sic] or unknown at this time, except for claims arising out of the enforcement of this Agreement.

The agreement provides that these releases are for the benefit of both parties, as well as their successors and assigns. It also provides that if either party fails to abide by the terms of the agreement, the defaulting party will indemnify the other party for all reasonable expenses, including attorney fees, incurred in successfully enforcing the agreement.

¶ 5 The decedent died more than ten years after entering into the settlement agreement, having never changed the POD designation on the bank account. English and the personal representative both asserted their entitlement to the account funds, which then totaled more than $165,000.

¶ 6 The personal representative opened this action with an application for informal probate of the decedent's will and appointment as the personal representative. Following her appointment, she petitioned the district court to determine that the bank account funds were property of the estate and to enjoin the parties from bringing a separate action against the bank. The bank joined in those requests and sought interpleader relief under C.R.C.P. 22. The court treated the filings as an interpleader motion by the bank, designated English and the estate as co-defendants as to that motion, granted leave to deposit the account funds into the court registry, and ordered English and the personal representative to file briefs addressing their competing claims to those funds.

¶ 7 The district court later ruled that the bank account funds belong to the estate, reasoning that the settlement agreement's broad language effectuated a waiver of English's right to assert a claim against the estate based on the POD designation.

II. Waiver of the POD Designation

¶ 8 On appeal, English contends that she didn't waive her rights as the POD beneficiary of the bank account by entering into the settlement agreement. We agree.

A. Standard of Review

¶ 9 We review a district court's legal conclusions de novo but defer to its factual findings when they are supported by the record. *In re Estate of Treviño*, 2020 COA 125, ¶ 13. Because the relevant facts are undisputed and the district court didn't make any factual findings, our review in this appeal is exclusively de novo. Indeed, the district court's ruling involves interpretation and application of the Colorado Probate Code, interpretation of the settlement agreement, and determination of whether the bank funds are part of the decedent's estate, all of which present legal issues subject to de novo review. *See In re Estate of Dowdy*, 2021 COA 136, ¶ 9; *Highlands Broadway OPCO, LLC v. Barre Boss LLC*, 2023 COA 5, ¶ 15; *In re Estate of Treviño*, ¶ 13.

B. Applicable Legal Standards

1. Interpretation of the Probate Code and Settlement Agreement

¶ 10 Our primary objective when interpreting provisions of the Colorado Probate Code, like any other statute, is to ascertain and effectuate the General Assembly's intent. *See In re Estate of Dowdy*, ¶ 9. If more than one statute addresses an issue, we construe the related provisions as a whole and read them together. *Id.* We begin

with the statutes' plain language, giving that language its commonly accepted and understood meaning. *Id.* If the language is unambiguous, we apply it as written. *Id.*

¶ 11 Because the Colorado Probate Code is adapted from the Uniform Probate Code, we may look to case law from other jurisdictions that have adopted similar provisions from the Uniform Probate Code. *In re Estate of Colby*, 2021 COA 31, ¶ 14; *see also* § 15-10-102(1), (2)(e), C.R.S. 2023 ("This code shall be liberally construed and applied to promote its underlying purposes and policies," including "[t]o make uniform the law among various jurisdictions."); § 15-16-928, C.R.S. 2023 ("In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.").

¶ 12 When interpreting a contract, like the settlement agreement, our primary goal is to effectuate the parties' intent. *French v. Centura Health Corp.*, 2022 CO 20, ¶ 25. We discern that intent by examining the language in the contract and construing that language based on the plain and generally accepted meaning of the words. *Id.* If the contract is unambiguous, we apply it as written.

Id. And the mere fact that parties disagree about a contract's interpretation doesn't itself establish ambiguity. *Id.*

2. POD Designations

¶ 13 Under the Colorado Probate Code, insurance policies, pension plans, individual retirement plans, trusts, deposit agreements, and other written instruments may provide for the nonprobate transfer of assets upon death, meaning that the assets transfer directly to the POD beneficiary upon the owner's death without becoming an asset of the probate estate. *See* § 15-15-101(1), C.R.S. 2023; *In re Estate of Scott*, 77 P.3d 906, 909 (Colo. App. 2003). As relevant here, this means that a deposit agreement may provide for bank account funds to be distributed to a POD beneficiary upon the account owner's death. *See* §§ 15-15-201(8), -203(1), -212(2), -214, C.R.S. 2023; *In re Estate of Treviño*, ¶¶ 15-16.

¶ 14 During the account owner's lifetime, a POD beneficiary has no right to any of the assets in the POD account. *See* § 15-15-211(3), C.R.S. 2023; *Est. of Westfall v. Westfall*, 942 P.2d 1227, 1230 (Colo. App. 1996). But the POD beneficiary becomes the owner of those assets by operation of law immediately upon the owner's death. *See* §§ 15-15-212(2)(b), -214; *In re Estate of Treviño*, ¶ 16.

C. Application

¶ 15 The parties agree that because English was designated as the bank account's POD beneficiary, she ordinarily would've become the owner of the account funds upon the decedent's death. They also agree that section 15-11-804(2)(a)(i), C.R.S. 2023 — under which a divorce automatically revokes any revocable disposition of property to a former spouse unless a court order, agreement, or instrument expressly provides otherwise — doesn't apply because the decedent and English were never married. *See* § 15-11-804(6) ("No change of circumstances other than as described in this section . . . effects a revocation."); *cf. In re Katherine E. Reece Tr.*, 2023 COA 89, ¶ 14 (section 15-11-804(2)(a) doesn't apply when spouses merely separate from each other).

¶ 16 Thus, the sole dispute on appeal is whether English waived her interest in the POD account through the settlement agreement. English contends that (1) the settlement agreement wasn't specific enough to effectuate a waiver of any interest in the POD account; and (2) even if it was, it wasn't effective because the bank didn't receive proper notice of it during the decedent's lifetime as provided

in section 15-15-213(1), C.R.S. 2023. We needn't resolve the second contention because we conclude that the first is dispositive.

¶ 17 Through the settlement agreement, English released the decedent and his successors and assigns from all claims of any nature that "ha[d] been, might have been, or could be raised," whether known or unknown, "including, without limitation, all claims related to their past relationship and their past financial dealings with each other."

¶ 18 As an initial matter, English's interest in the POD account is not a claim that is "related to" her "past relationship" or "financial dealings" with the decedent. While the decedent initially may have designated English as the beneficiary because of their relationship and intertwined finances, English's rights in the account funds derive from the POD designation alone — not from her previous relationship or financial dealings with the decedent. And there is no indication that the decedent was ever obligated, by virtue of the parties' relationship or financial dealings, to list or to retain English as a beneficiary. *See PaineWebber Inc. v. East*, 768 A.2d 1029, 1033 (Md. 2001) (a former spouse's interest in a POD account wasn't "based on status or relationship as a spouse" but, rather,

was "under a contract right, as the named beneficiary"); *Maccabees Mut. Life Ins. Co. v. Morton*, 941 F.2d 1181, 1185 (11th Cir. 1991) (applying Georgia law) (a former spouse's interest as the beneficiary of a POD account was "unrelated to the husband-wife relationship of the parties," as the decedent "was never obligated to designate [her] as a beneficiary" and "was never prevented from removing her as a beneficiary, either before or after their divorce").

¶ 19 More generally, English's interest in the POD account doesn't constitute a "claim" against the decedent or his successors or assigns within the meaning of the settlement agreement. When they entered into the settlement agreement, the decedent owned the bank account outright and English had no rights in it. *See* § 15-15-211(3); *Est. of Westfall*, 942 P.2d at 1230. Rather, as the POD beneficiary, English's interest was merely one of expectancy. *See In re Estate of DeWitt*, 54 P.3d 849, 856 (Colo. 2002) (a beneficiary of a life insurance policy possesses only an expectancy, or contingent, interest in the policy during the insured's lifetime); *see also In re Estate of Allmaras*, 2007 ND 130, ¶ 20, 737 N.W.2d 612, 617 (interpreting statutory language similar to that in section 15-15-211(3) as conferring no rights upon the POD beneficiary

during the account owner's lifetime); *Jordan v. Burgbacher*, 883 P.2d 458, 464-65 (Ariz. Ct. App. 1994) (same). Because she held only an expectancy interest in the account, English couldn't assert any claim to it during the decedent's lifetime.

¶ 20 To be sure, the decedent retained the right to remove English as the POD beneficiary at any time, even after entering into the settlement agreement. He simply "chose not to do so or failed to exercise that right." *Ex parte Pitts*, 435 So. 2d 83, 85 (Ala. 1983). Only when he died, without having changed the POD designation, did English have any rights in the account. And even if we were to interpret the settlement agreement to include future claims, as the district court did, English's interest didn't become a "claim" against the decedent or his estate when he died. Rather, it became an ownership right in the bank account itself. *See Jordan*, 883 P.2d at 465 (an interest as a POD payee is a right arising from a contract of deposit, not a claim or right to share in a decedent's estate); *Kruse v. Todd*, 389 S.E.2d 488, 491 (Ga. 1990) (a claim to proceeds from a life insurance policy is against the insurer, not the decedent).

¶ 21 Finally, the broad but vague language in the settlement agreement isn't sufficiently clear to effectuate a waiver of English's expectancy interest in the POD account.

¶ 22 The Colorado Supreme Court and divisions of this court have repeatedly held that a settlement or separation agreement doesn't waive an expectancy interest in a POD account unless the agreement expressly renunciates that interest or otherwise clearly manifests an intent to extinguish it. (Although most of these cases preceded the enactment of section 15-11-804(2)(a)(i), such that they no longer apply in cases involving divorced spouses, they still apply in cases like this one involving persons who were never married.) *Compare Christensen v. Sabad*, 773 P.2d 538, 540 (Colo. 1989) (a former spouse didn't waive her interest as a beneficiary of a life insurance policy where a separation agreement "d[id] not clearly indicate that the decedent and [the former spouse] intended that her expectancy as beneficiary of the policy be terminated"), *and In re Estate of DeWitt*, 32 P.3d 550, 555-56 (Colo. App. 2000) (a former spouse didn't waive her interest as a beneficiary of a life insurance policy where a separation agreement didn't list life insurance among the property being divided and didn't indicate an

intent to waive expectancy interests), *rev'd on other grounds*, 54 P.3d 849 (Colo. 2002), *and Mullenax v. Nat'l Reserve Life Ins. Co.*, 29 Colo. App. 418, 424, 485 P.2d 137, 140 (1971) (a former spouse didn't waive her interest as a beneficiary of a life insurance policy where a separation agreement didn't "contain a renunciation of her expectancy in the policy"), *with Napper v. Schmeh*, 773 P.2d 531, 536 (Colo. 1989) (a former spouse waived her interest as a beneficiary of a life insurance policy where a separation agreement provided for the complete release of all property rights and claims and treated life insurance as one of those rights or claims by allowing changes to life insurance policies and beneficiary designations only after entry of a divorce decree), *and In re Estate of McEndaffer*, 192 Colo. 431, 433-34, 560 P.2d 87, 89 (1977) (a former spouse waived her interest as a beneficiary of a life insurance policy where a settlement agreement waived all property rights and claims and treated life insurance as one of those rights or claims by requiring the decedent to maintain life insurance benefitting the former spouse for a specified time period).

¶ 23 Similarly, courts in other states have declined to find a waiver of an expectancy interest in a POD account unless a settlement or

separation agreement clearly provides for such a waiver. *Compare Frier v. Frier*, 692 S.E.2d 667, 670 (Ga. Ct. App. 2010) (a former spouse didn't waive her expectancy interest as a beneficiary of a certificate of deposit account where a settlement agreement didn't include "an explicit waiver of any party's interest" or any language "chang[ing] the POD status of th[e] account"), *and Pitts*, 435 So. 2d at 85 (a former spouse didn't waive his interest as a beneficiary of a retirement plan where a separation agreement "made no specific mention of the plan"), *with Johnson v. Johnson*, 746 P.2d 1061, 1062-63 (Idaho Ct. App. 1987) (a former spouse waived her interest as a beneficiary of a retirement account where a settlement agreement expressly provided that the account would be awarded to the decedent "free and clear of any claims"). *See generally PaineWebber*, 768 A.2d at 1035-36 (collecting cases).

¶ 24 In this case, although the settlement agreement has broad release language, it doesn't mention the POD account or any survivorship interests or expectancies. Therefore, regardless of whether English was aware of the beneficiary designation at the time of the agreement (a fact on which the parties disagree), the

agreement isn't specific enough to effectuate a waiver of her expectancy interest in the POD account.

¶ 25 We reject the personal representative's argument that awarding the account funds to English gives her a windfall. We cannot know why the decedent never modified the account to remove English as the POD beneficiary; nor does it make any difference as a legal matter. And whether it creates a windfall or not is not for us to discern. Our role is simply to apply the law as written — and that law mandates that English, as the designated POD beneficiary, receive the account funds in the absence of any waiver of her interest in them.

¶ 26 We also reject the personal representative's reference to a court's broad equitable discretion when acting in probate. *See generally Beren v. Beren*, 2015 CO 29, ¶ 19. The district court in this case didn't rule based on any equitable bases, such as undue influence (another concept the personal representative has referenced in this appeal). Instead, the court merely applied legal principles to interpret the scope of the settlement agreement — and, as we've indicated, we review that interpretation de novo.

¶ 27 Therefore, we reverse the district court's order and remand the case with instructions to enter an order holding that English is entitled to the funds from the POD account.

III. Appellate Attorney Fees

¶ 28 Because we conclude that the settlement agreement didn't waive English's expectancy interest in the POD account, we reject the personal representative's request for appellate attorney fees and costs under the settlement agreement's attorney fee provision.

IV. Disposition

¶ 29 The order is reversed, and the case is remanded with instructions to enter an order holding that English is entitled to the funds from the POD account.

JUDGE J. JONES and JUDGE HARRIS concur.