

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ALLSTATE LIFE INSURANCE COMPANY, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
BEATRICE DALL; JARED STEPHEN DALL, )  
ETHAN RYAN DALL; JEANNE CORENE )  
VILORIA; LARRY LEE DALL; SHANNON )  
CHRISTIN OLIVEIRA; SHELLI ALLISON )  
DALL; STEPHEN RAY DALL; BARBARA )  
DALL, )  
 )  
Defendants. )  
\_\_\_\_\_ )

2:07-cv-2264-GEB-KJM

ORDER GRANTING DEFENDANTS  
BEATRICE DALL, JARED STEPHEN  
DALL AND ETHAN RYAN DALL'S  
MOTION FOR SUMMARY JUDGMENT\*

Beatrice Dall, Jared Dall and Ethan Dall (collectively, the "Moving Defendants") seek summary judgment in this interpleader action, arguing that Jared Dall and Ethan Dall are entitled as a matter of law to the proceeds at issue under decedent William Dall's life insurance policy.<sup>1</sup> (Docket No. 32.) Defendants Jeanne Viloria,

\* This matter is deemed suitable for decision without oral argument. E.D. Cal. R. 78-230(h).

<sup>1</sup> At the time this motion was filed, Plaintiffs Jared and Ethan Dall could not file the motion because they were minors and were without a representative as required by Federal Rule of Civil Procedure 17(c). This issue was raised *sua sponte* and cured by an order issued on October (continued...)

1 Larry Dall, Shannon Oliveira, Shelli Dall, Stephen Dall and Barbara  
2 Dall (collectively, the "Non-Moving Defendants") oppose the motion.  
3 For the reasons stated below, the Moving Defendants' motion for  
4 summary judgment is GRANTED.

5 I. Summary Judgment Standard

6 Federal Rule of Civil Procedure 56(c) provides that summary  
7 "judgment . . . shall be rendered if the pleadings, the discovery and  
8 disclosure materials on file, and any affidavits show that there is no  
9 genuine issue as to any material fact and that the movant is entitled  
10 to judgment as a matter of law." "A material fact is one that is  
11 relevant to an element of a claim or defense and whose existence might  
12 affect the outcome of the suit. The materiality of a fact is thus  
13 determined by the substantive law governing the claim or defense.  
14 Disputes over irrelevant or unnecessary facts will not preclude a  
15 grant of summary judgment." T.W. Elec. Serv., Inc., v. Pacific Elec.  
16 Contractors Ass'n, 908 F.2d 626, 630 (9th Cir. 1987).

17 The moving party bears the initial burden of demonstrating the  
18 absence of a genuine issue of material fact for trial. Celotex Corp.  
19 v. Catrett, 477 U.S. 317, 323 (1986). If the moving party satisfies  
20 its burden, "the non-moving party must set forth, by affidavit or as  
21 otherwise provided in Rule 56, specific facts showing that there is a  
22 genuine issue for trial." T.W. Elec. Serv., Inc., 809 F.2d at 630  
23 (quotations omitted). If the non-moving party fails to show that  
24

---

25 <sup>1</sup>(...continued)  
26 26, 2009, appointing Beatrice Dall as the guardian ad litem for Jared  
27 and Ethan Dall. Since this appointment was overlooked by all counsel  
28 involved in the motion, it is made *nunc pro tunc* as of the date the  
motion was filed. Accordingly, the motion will be treated as Beatrice  
Dall moving on behalf of Jared and Ethan Dall as their guardian ad  
litem.

1 there is a genuine issue for trial, "the moving party is entitled to  
2 judgment as a matter of law." Celotex Corp., 477 U.S. at 323.

3 II. Factual Background<sup>2</sup>

4 The Moving Defendants' statement of undisputed facts and the Non-  
5 Moving Defendants' separate statement of undisputed facts reveal that  
6 the material facts in this case are undisputed.

7 William Dall ("William") and Beatrice Dall ("Beatrice") were  
8 married on December 2, 1995. (Non-Moving Defs.' Separate Statement of  
9 Undisputed Facts ("SSUF") ¶ 1.) During their marriage, William and  
10 Beatrice had two children, Jared Dall ("Jared") and Ethan Dall  
11 ("Ethan"). (Id.)

12 On March 5, 1998, William purchased a universal life insurance  
13 policy (the "Life Insurance Policy") from Allstate Life Insurance  
14 Company ("Allstate"). (Id. ¶ 2.) The Life Insurance Policy's face  
15 value, as amended, was \$400,000. (Id. ¶ 3.) William named Beatrice  
16 as the primary beneficiary of the Life Insurance Policy and Jared and  
17 Ethan as equal contingent beneficiaries. (Id. ¶ 4.)

18 On September 21, 2005, Beatrice filed a petition for dissolution  
19 of marriage in Kings County Superior Court. (Id. ¶ 5.)

20 On or about April 4, 2007, Allstate received a Request for Change  
21 of Beneficiary form (the "Change of Beneficiary Form") from William in  
22 which William requested to change the beneficiary designation on the  
23 Life Insurance Policy. (Id. ¶ 6.) The Non-Moving Defendants assert a  
24 foundation objection against the admission of the Change of  
25

---

26 <sup>2</sup> The Non-Moving Defendants object on foundation grounds to the  
27 admission of exhibits accompanying the Moving Defendants' declaration in  
28 support of their motion. Except as where discussed below, the  
Defendants' evidentiary objections pertain to immaterial facts and need  
not be addressed.

1 Beneficiary Form. This objection, however, is overruled since the  
2 Non-Moving Defendants rely on the content of the Change of Beneficiary  
3 Form in their separate statement of undisputed facts. (Id.)

4 William and Beatrice signed a Divorce Order Marital Settlement  
5 Agreement ("MSA") on February 21, 2007, in which William and Beatrice  
6 each waived their respective rights as beneficiaries to the proceeds  
7 of insurance policies held by the other. (Id. ¶ 18.) The Kings  
8 County Superior Court issued a final judgment in William and  
9 Beatrice's marital dissolution proceeding on April 20, 2007. (Id. ¶  
10 17.) Although the Non-Moving Defendants argue the Moving Defendants  
11 have not shown a foundation justifying admission of the Superior  
12 Court's final order, judicial notice is taken of the order since the  
13 Non-Moving Defendants do not dispute that William and Beatrice's  
14 divorce proceeding in Kings County Superior Court was Case No.  
15 05FL0643, nor that the referenced order attached as an exhibit to the  
16 declaration filed in support of the motion, was issued by the Kings  
17 County Superior Court in Case No. 05FL0643. See U.S. ex. Rel  
18 Rancheria Citizens Council v. Borneo, Inc., 971 F.2d 244, 248 (9th  
19 Cir. 1992) (judicial notice of California Superior Court case  
20 appropriate); Fed. R. Evid. 201(b), (c). The parties agree that  
21 William's sons were the only beneficiaries to the Life Insurance  
22 Policy after William and Beatrice executed the MSA; they only dispute  
23 the validity and legal effect of the Change of Beneficiary Form. (See  
24 Non-Moving Defs.' Opp'n. 1:25-2:9.)

25 William died on July 5, 2007. (Non-Moving Defs.' SSUF ¶ 19.)  
26 Following William's death, Beatrice, Jared, Ethan, Shannon Oliveira,  
27 Larry Dall, Shelli Dall, Jeanne Vilorio, Barbara Dall and Stephen Dall  
28 all made claims to Allstate for the proceeds under the Life Insurance

1 Policy. (Compl. ¶ 18.) On October 23, 2007, Allstate brought an  
2 interpleader action against Beatrice, Jared, Ethan, Jeanne Vilorio,  
3 Larry Dall, Shannon Oliveira, Shelli Dall, Stephen Dall and Barbara  
4 Dall, seeking to have the Court determine to whom the proceeds of the  
5 Life Insurance Policy should be paid. (Docket No. 2.) On June 30,  
6 2009, an order issued discharging Allstate from this action and  
7 authorizing Allstate to give the Clerk of the Court the disputed life  
8 insurance proceeds, less attorneys' fees and costs. (Docket No. 28).

### 9 III. Discussion

10 The Non-Moving Defendants argue the Moving Defendants' motion is  
11 premature because they have not conducted discovery, and therefore,  
12 the motion should be denied or continued. (Non-Moving Defs.' Opp'n.  
13 2:16-19.) The Non-Moving Defendants, however, have not shown that  
14 good cause justifies amending the January 24, 2008 status (pretrial  
15 scheduling) order which prescribes June 17, 2009 as the discovery  
16 completion date. See Johnson v. Mammoth Recreations, Inc., 975 F.2d  
17 604, 608 (9th Cir. 1992) (stating that a pretrial scheduling order may  
18 only be modified "upon a showing of 'good cause'"). Since the Non-  
19 Moving Defendants have not shown that good cause justifies amending  
20 the discovery completion date, their *de facto* request to amend the  
21 pretrial scheduling order is denied. See Eagle v. Am. Tel. & Tel.  
22 co., 769 F.2d 541, 548 (9th Cir. 1985) (upholding district court's  
23 decision to deny amendment of scheduling order in summary judgment  
24 proceeding because of failure to show good cause).

25 The Moving Defendants argue summary judgment should be granted in  
26 their favor because California Family Code Section 2040 ("Section  
27 2040") enjoined William from changing the beneficiaries to the Life  
28 Insurance Policy during the pendency of his divorce proceeding. The

1 Non-Moving Defendants counter Section 2040 is inapplicable because it  
2 was not violated. (Non-Moving Defs.' Opp'n. 3:21-24.)

3 Section 2040 states the summons to a martial dissolution  
4 proceeding:

5 shall contain a temporary restraining order . . .  
6 [r]estraining both parties from cashing, borrowing against,  
7 canceling, transferring, disposing of, or changing the  
8 beneficiaries of any insurance or other coverage, including  
9 life, health, automobile, and disability, held for the  
10 benefit of the parties and their child or children for whom  
11 support may be ordered.

12 CAL. FAM. CODE § 2040(a)(3) (West 2009). California Family Code Section  
13 233(a) prescribes when the temporary restraining order is effective as  
14 follows: "Upon filing the petition and issuance of the summons and  
15 upon personal service of the petition and summons on the respondent or  
16 upon waiver and acceptance of service by the respondent, the temporary  
17 restraining order under this part shall be in effect against the  
18 parties until the final judgment is entered or the petition is  
19 dismissed, or until further order of the court." CAL. FAM. CODE §  
20 233(a); Estate of Mitchell, 76 Cal. App. 4th 1378, 1387 (1999) ("This  
automatic restraining order remains in effect until final judgment is  
entered or the petition is dismissed, or until further order of the  
court.") (quotations and citations omitted).

21 Neither side has provided evidence on whether a summons for the  
22 dissolution proceeding was personally served on William, or whether  
23 William waived and accepted service. However, the undisputed facts  
24 show that Section 2040's temporary restraining order became effective  
25 no later than February 21, 2007, when William and Beatrice signed the  
26 MSA, and remained in effect until the Kings County Superior Court  
27 issued its final order in William and Beatrice's divorce proceeding on  
28 April 20, 2007. Therefore, regardless of the validity of the Change

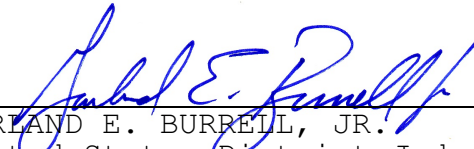
1 of Beneficiary Form Allstate received on or around April 4, 2007,  
2 William was then enjoined by Section 2040 from changing the  
3 beneficiaries to his Life Insurance Policy until after April 20, 2007.  
4 Accordingly, the Change of Beneficiary Form Allstate received on or  
5 around April 4, 2007 had no legal effect on the beneficiaries to the  
6 Life Insurance Policy. The Non-Moving Defendants' argument that  
7 Section 2040 was not violated by the Change of Beneficiary Form is  
8 unpersuasive.

9 Since Beatrice disclaimed her interest in the Life Insurance  
10 Policy in the MSA, Jared and Ethan, as equal contingent beneficiaries,  
11 are the only beneficiaries under the Life Insurance Policy.

12 IV. Conclusion

13 For the reasons stated above, the Moving Defendants' motion for  
14 summary judgment is granted. Counsel for the Moving Defendants,  
15 however, shall file, no later than November 6, 2009, a proposed order  
16 outlining a plan for the disbursement of the interpleader funds that  
17 protects the interests of Jared and Ethan, including any attorneys'  
18 fees the minors' counsel seeks to recover from the interpleader funds.  
19 See Cal. Prob. Code §§ 3610, 3611 (West 2009). Upon court approval of  
20 the proposed order, the Clerk of the Court will be directed to  
21 disburse the funds.

22 Dated: October 27, 2009

23  
24   
25 \_\_\_\_\_  
26 GARLAND E. BURRELL, JR.  
27 United States District Judge  
28