IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

PRINCIPAL LIFE INSURANCE COMPANY,

Appellant/Cross-Appellee,

v.

Case Nos. 5D18-3342 and 5D19-1348

JASON HALSTEAD, AS THE SURVIVING TRUSTEE OF THE REBECCA D. MCINTOSH REVOCABLE LIVING TRUST DATED SEPTEMBER 13, 2018, AND LAYNA HALSTEAD AND KAYLA MCINTOSH, AS THE PERSONAL REPRESENTATIVES, ET AL.,

Appellees/Cross-Appellants.
_____/

Opinion filed December 31, 2020

Appeal from the Circuit Court
for Marion County,
Edward L. Scott, Judge.

Sean M. McDonough, Amy L. Baker, and Justin D. Kreindel, of Wilson Elser Moskowitz Edelman & Dicker LLP, Orlando, for Appellant/Cross-Appellee.

Patrick G. Gilligan and George Franjola, of Gilligan, Gooding, Franjola & Batsel, P.A., Ocala, for Appellees/Cross-Appellants Jason Halstead, as the Surviving Trustee of the Rebecca D. McIntosh Revocable Living Trust Dated September 13, 2018, and Layna Halstead and Kayla McIntosh, as the Personal Representatives.

No Appearance for Remaining Appellee/Cross-Appellant.

EISNAUGLE, J.

Appellant/Cross-Appellee, Principal Life Insurance Company ("Principal Life"), appeals a summary judgment entered in favor of Appellees/Cross-Appellants, Jason Halstead, as the surviving Trustee of the Rebecca D. McIntosh Revocable Living Trust dated September 13, 2018, and Layna Halstead and Kayla McIntosh, as the Personal Representatives of the Estate of Rebecca D. McIntosh ("Appellees"). We conclude that, pursuant to the plain language of the life insurance policy, the death benefit was reduced by the insured prior to his death. We therefore reverse summary judgment entered in favor of Appellees and remand for entry of summary judgment for Principal Life on its motion for summary judgment.

Factual Background

During their marriage, Dr. McIntosh acquired a life insurance policy issued by Principal Life, and eventually, Mrs. McIntosh became the sole beneficiary. However, when they separated in 2011, Dr. McIntosh removed Mrs. McIntosh as the beneficiary of the policy and submitted a Life Insurance Adjustment Application to reduce the death benefit payable under the policy from $1.5 million to $500,000, and the corresponding annual premium from $16,000 to $4,000.

The Adjustment Application included Part C and provides:

> When an Adjustment Becomes Effective: I understand and agree that in applying to adjust my policy coverage, any adjustment approved by the Company is effective as of the Adjustment Date shown on the new data pages for the policy, provided that I and the proposed insured (if different than me) sign **the Part D of this Adjustment Application and any amendment form, if applicable**, and return such forms to the Company within 30 days of the adjustment delivery date.

(emphasis added). The parties agree that Dr. McIntosh did not submit Part D with his Adjustment Application requesting a reduction in the face amount of the policy.[1] After his submission of the Adjustment Application, Dr. McIntosh received paperwork from Principal Life reflecting the lower $500,000 death benefit and the corresponding reduced premium.

Dr. McIntosh reconciled with Mrs. McIntosh and redesignated her as the policy beneficiary. He passed away a short time thereafter, and Principal Life tendered the $500,000 death benefit. Mrs. McIntosh subsequently sued Principal Life for breach of contract for providing only the reduced death benefit of $500,000 rather than the unadjusted death benefit of $1.5 million.

On competing motions for summary judgment, the trial court granted summary judgment in favor of Mrs. McIntosh, holding that Principal Life breached the contract by failing to pay the full death benefit of $1.5 million. In so doing, the trial court concluded

[1] Part D utilized by Principal Life in 2011 includes essentially the same provision at issue in this appeal, and reads as follows:

> When an Adjustment Becomes Effective: I understand and agree that if I apply to adjust my policy coverage, any adjustment approved by the Company is effective as of the Adjustment Date shown on the new data pages for the policy, provided that I and the proposed insured (if different than me) **sign this form and any amendment form, if applicable, and return such forms to the Company within 30 days of the adjustment delivery date**.

(emphasis added).

that the benefit adjustment never became effective because Dr. McIntosh did not submit Part D to Principal Life.[2]

On appeal, Principal Life argues, *inter alia*, that the policy's plain language did not require Dr. McIntosh to submit Part D before his requested reduction became effective, and that Principal Life is entitled to entry of summary judgment in its favor as a matter of law because Dr. McIntosh reduced the face amount to $500,000.

Interpretation of Contracts Generally

The interpretation of an insurance policy is a question of law reviewed de novo. *Altman Contractors, Inc. v. Crum & Forster Specialty Ins. Co.*, 232 So. 3d 273, 276 (Fla. 2017) (citation omitted). As an insurance policy is a contract, "contract principles apply to its interpretation." *Am. Strategic Ins. Co. v. Lucas-Solomon*, 927 So. 2d 184, 186 (Fla. 2d DCA 2006) (citation omitted). "The intention of the parties . . . must be determined from an examination of the entire contract and not from separate phrases or paragraphs." *Specialized Mach. Transp., Inc. v. Westphal*, 872 So. 2d 424, 426 (Fla. 5th DCA 2004) (citing *Lalow v. Codomo*, 101 So. 2d 390 (Fla. 1958)). "Thus, the meaning is not to be gathered from any one phrase, but from a general view of the whole writing, with all of its parts being compared, used, and construed, each with reference to the others." *Id*. (citation omitted).

When a contract is clear and unambiguous, the actual language used in the contract is the best evidence of the intent of the parties, and the plain meaning of the language controls. *Palm Beach Pain Mgmt., Inc. v. Carroll*, 7 So. 3d 1144, 1145 (Fla. 4th

[2] Following Mrs. McIntosh's death, Appellees were substituted as the plaintiffs below.

DCA 2009) (citation omitted). "If, however, there are two reasonable interpretations of a contract, summary judgment is inappropriate because there is a genuine issue of material fact." *Id.* at 1145–46 (citation and internal marks omitted).

The Insurance Policy and the Doctrine of the Last Antecedent

Principal Life argues that the qualifying phrase "if applicable" applies to both "Part D" and to "any amendment" because the phrase is set off by commas. Moreover, Principal Life argues that, according to the plain language of the policy, Part D does not apply when an insured seeks to reduce a death benefit. On the other hand, Appellees argue, *inter alia*, that the phrase "if applicable" applies solely to amendments, and that Part D is always required for an adjustment application. At best, according to Appellees, the policy is ambiguous.

We conclude that the policy is not ambiguous and that, based upon the punctuation, the phrase "if applicable" applies to both Part D and to any amendment. Further, based on the plain language of the entire policy, we conclude that the submission of Part D was not required to reduce the death benefit in this case.

The doctrine of the last antecedent is a rule of grammatical construction providing that "relative and qualifying words, phrases and clauses are to be applied to the words or phrase immediately preceding, and are not to be construed as extending to, or including, others more remote." *Kasischke v. State*, 991 So. 2d 803, 811 (Fla. 2008) (citing *City of St. Petersburg v. Nasworthy*, 751 So. 2d 772, 774 (Fla. 1st DCA 2000)); *see also State ex rel. Owens v. Pearson*, 156 So. 2d 4, 6 (Fla. 1963).

Importantly, the doctrine is not absolute and "cannot be applied in a way that ignores the plain reading of the language." *Penzer v. Transp. Ins. Co.*, 29 So. 3d 1000,

1007 (Fla. 2010). In other words, the doctrine can "be overcome by other indicia of meaning." *Barnhart v. Thomas*, 540 U.S. 20, 26 (2003); *see also Lockhart v. United States*, 136 S. Ct. 958, 965 (2016) (discussing ways in which "structural or contextual evidence may rebut the last antecedent inference" (citation and internal marks omitted)). That said, use of the doctrine is "quite sensible as a matter of grammar." *Barnhart*, 540 U.S. at 26 (citation omitted).

The doctrine also has a well-established corollary rule based on simple punctuation. Thus, "[w]here the modifier *is* set off from two or more antecedents by a comma, the supplementary 'rule of punctuation' states that the comma indicates the drafter's intent that the modifier relate to more than the last antecedent." *Bingham, Ltd. v. United States*, 724 F.2d 921, 925 n.3 (11th Cir. 1984) (citation omitted); *see also Mendelsohn v. Dep't of Health*, 68 So. 3d 965, 967–68 (Fla. 1st DCA 2011) ("Based on the rules of grammatical construction, a qualifying phrase will be read as modifying all items listed in a series unless there is no comma between the last of the series and the qualifying phrase." (citations omitted)).

With both the doctrine and its corollary in mind, we reject Appellees' argument that the qualifying phrase "if applicable" applies only to the last antecedent "any amendment." Instead, we find that the supplementary rule of punctuation applies here because the qualifying phrase is separated from the antecedents by a comma. As a result, the qualifier "if applicable" applies to Part D.

Nevertheless, Appellees argue that, despite the punctuation, other provisions indicate that the qualifying phrase "if applicable" applies only to amendments and does not apply to Part D itself. We disagree and instead conclude that, based on the entire

policy, Part D does not apply to an adjustment application seeking to reduce a death benefit.

Appellees' most interesting argument is that Part D is always necessary because an insured must "acknowledge delivery" of an adjustment before it becomes effective. However, the specific language of Part D's acknowledgment provision suggests that it does not apply to an adjustment application. That provision requires an insured to state:

> "I acknowledge *policy numbered* _____ *was delivered to me today* and is based on the life of _____."

(emphasis added). The policy in this case was delivered in 2001, not 2011. Importantly, this provision contains no alternative language with which Dr. McIntosh could have acknowledged delivery of benefit adjustment paperwork—and we will not add words to the contract.[3] At a minimum, this provision is consistent with our interpretation of the qualifying phrase "if applicable."

We therefore reverse the summary judgment entered in favor of Appellees and, based upon the plain language of the policy and the cross-motions for summary judgment, we remand for entry of summary judgment in favor of Principal Life. *See Jedak Corp. v. Seabreeze Office Assocs., LLC*, 244 So. 3d 342, 342 (Fla. 5th DCA 2018); *Jordan v. Fehr*, 902 So. 2d 198, 200–01 (Fla. 1st DCA 2005) ("Because appellate jurisdiction over the final order on motions for summary judgment was properly invoked by the timely filing of the notice of appeal, pursuant to rule 9.110(h), Florida Rules of Appellate Procedure, this court may review any ruling or matter occurring prior to the filing of the

[3] Notably, when describing Part D's acknowledgment provision in their answer brief, Appellees felt compelled to add the words "(as amended with the new data pages)" after the word "policy."

notice.”). Given our disposition, we need not reach the remaining issues raised on appeal and cross-appeal.

REVERSED and REMANDED with INSTRUCTIONS.

EVANDER, C.J., and ORFINGER, J., concur.