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

TERYN BEARDALL THOMPSON
O/B/O R.O.B., A CHILD,

Appellant,

v. Case No. 5D20-111

MARVIN D. JOHNSON, SR. , CLARA FAY JOHNSON AND TRUSTMARK LIFE INSURANCE COMPANY,

Appellees.
_____/

Opinion filed December 4, 2020

Appeal from the Circuit Court
for Osceola County,
Michael Murphy, Judge.

Meredith Pitts Smith, of Copeland, Covert & Smith, PLLC, Altamonte Springs, and Pamela R. Masters, of Pamela R. Masters, P.A., Daytona Beach, for Appellant.

G. Charles Wohlust, of G. Charles Wohlust, PLC, Orlando, for Appellees, Marvin D. Johnson, Sr. and Clara Fay Johnson.

No Appearance for other Appellee.

BOATWRIGHT, J., Associate Judge.

Teryn Thompson appeals the final summary judgment entered in favor of Marvin Dale Johnson, Sr. and Clara Johnson (collectively "the Johnsons"), wherein the trial court awarded the Johnsons the life insurance policy proceeds of their deceased son, Marvin

Dale Johnson, Jr. ("the decedent"). On appeal, Thompson seeks reversal based on the trial court's reliance on the subjective intent of the decedent in interpreting the life insurance policy rather than the plain and unambiguous language of the policy. We agree and reverse and remand for further proceedings.

BACKGROUND

Thompson and the decedent are the biological parents of R.O.B., who was born in 2010. In 2014, the decedent initiated a paternity action, and the court ultimately determined the decedent to be the legal father of R.O.B., awarded Thompson sole custody of R.O.B., and ordered the decedent to pay both retroactive and ongoing child support.

To settle a dispute upon the decedent's failure to pay the required child support, Thompson and the decedent entered into a Joint Stipulation Agreement ("Joint Stipulation"), in which the decedent agreed to terminate his parental rights as to R.O.B. so that a stepparent adoption by Thompson's husband could occur. Later, the trial court entered an order which incorporated the Joint Stipulation. Following entry of this order, the decedent executed a consent to stepparent adoption ("Consent"), which provided in part:

> I understand that, in signing this consent, I am permanently and forever giving up all my parental rights to and interest in this minor child and that this consent may only be withdrawn if the Court finds it was obtained by fraud or duress. I voluntarily, permanently relinquish all my parental rights to this minor child.
>
> I consent, release, and give up permanently, of my own free will, my parental rights to this minor child, for the purpose of stepparent adoption.

Less than two months after executing the Consent, the decedent died.

At the time of his death, the decedent was insured under a group life insurance policy. The policy provides, in pertinent part:

> If there is no designated beneficiary, or if no beneficiary survives, benefits will be paid to the first of the following beneficiary classes in which there is a surviving person:
>
> Your spouse;
> Your **children**;
> Your **parents**;
> Your brothers and sisters;
> Your executors or administrators.

(Emphasis added). At the time of his death, the decedent had not designated a beneficiary of the policy, nor had a final judgment of adoption been entered.

Thompson and the Johnsons filed competing claims with the insurance company for the proceeds of the policy. The insurance company filed an interpleader complaint naming both of them as defendants and acknowledging their competing claims. The insurance company admitted its obligation to pay the proceeds but could not determine which party was entitled to the proceeds.

Thompson, on behalf of R.O.B., argued that the decedent's parental rights had not been terminated and that R.O.B. had priority over the proceeds by virtue of his status as the decedent's child. The Johnsons claimed entitlement to the proceeds because, in their view, the parental rights of the decedent were terminated prior to his death through operation of the Joint Stipulation and Consent.

After limited discovery, Thompson filed a motion for summary judgment. Following a hearing, the trial court granted partial summary judgment in favor of the Johnsons. In making its determination, the court found that the Final Order on Joint Stipulation did not terminate the decedent's parental rights to R.O.B. under Florida law but that the language

of the Joint Stipulation and Consent removed R.O.B. from being considered a child of the decedent under the policy. Thus, the court found that R.O.B. was not entitled to the proceeds under the policy.

Thompson sought reconsideration of the ruling, arguing that the Joint Stipulation and Consent did not mention the life insurance policy and, as a result, the plain language of the policy should control and the death benefits should be awarded to R.O.B. Adhering to its prior ruling, the court denied the request for reconsideration, explaining that the language in the Joint Stipulation and in the Consent "leaves no doubt that the insured did not consider the minor child to be his child at the time of the execution of those documents."

After entry of the foregoing order, the Johnsons filed a motion for summary judgment, relying on the court's two prior orders. The trial court granted their motion for summary judgment, noting its previous determination that R.O.B. was not a child of the decedent for purposes of receiving the policy proceeds. The court concluded that the Johnsons were the next persons entitled to receive the proceeds under the insurance policy as the decedent's parents, and it awarded the Johnsons the insurance proceeds.

STANDARD OF REVIEW

The standard of review applicable to the granting of summary judgment is de novo. Skelton v. Real Est. Sols. Home Sellers, LLC, 202 So. 3d 960, 961 (Fla. 5th DCA 2016). The interpretation of a contract is a question of law, reviewable de novo by an appellate court, which "is not restricted from reaching a construction contrary to that of the trial court." Miren Int'l Lodging Corp. v. Manley, 982 So. 2d 1203, 1204 (Fla. 5th DCA 2008).

The existence of ambiguity in a contract is also a question of law reviewed de novo. Gold Crown Resort Mktg. Inc. v. Phillpotts, 272 So. 3d 789, 792 (Fla. 5th DCA 2019).

ANALYSIS

As discussed below, Chapter 63 of the Florida Statutes supports the trial court's ruling that R.O.B. was legally the child of the decedent at the time of the decedent's death. Therefore, the issue before this court is whether the trial court, in relying on the Joint Stipulation and Consent, properly interpreted the life insurance policy to exclude R.O.B. as a beneficiary. We conclude that it did not.

Florida law does not provide for a parent to unilaterally sever a parent-child relationship. Rather, the parent-child relationship can only be severed, and the parent's rights terminated, pursuant to the procedures for termination of parental rights and adoptions under chapters 39 and 63 of the Florida Statutes. With an adoption, section 63.172, Florida Statutes, makes it clear that parental rights are not terminated until the adoption is final. § 63.172, Fla. Stat. (2019). As Thompson's husband's adoption of R.O.B. was not finalized by the time of the decedent's death, the trial court properly ruled that R.O.B. was legally the child of the decedent. However, when interpreting the life insurance policy and the definition of "children," the trial court turned to the Joint Stipulation and Consent and concluded that R.O.B. was not the decedent's child based on the decedent's subjective intent. This was error.

"Where a contract is clear and unambiguous, it must be enforced pursuant to its plain language" without resort to parol evidence. Hahamovitch v. Hahamovitch, 174 So. 3d 983, 986 (Fla. 2015) (citing Crawford v. Barker, 64 So. 3d 1246, 1255 (Fla. 2011)). Thus, a trial court may consider parol evidence only when a contract is ambiguous. See

Langford v. Paravant, Inc., 912 So. 2d 359, 362 (Fla. 5th DCA 2005). The insurance policy under review does not define "child" or "children." "However, the lack of an operative term's definition does not, by itself, create an ambiguity." Botee v. S. Fid. Ins. Co., 162 So. 3d 183, 186 (Fla. 5th DCA 2015). Rather, "[w]hen a term in an insurance policy is undefined, it should be given its plain and ordinary meaning, and courts may look to legal and non-legal dictionary definitions to determine such a meaning." Id. The dictionary definition of "child" is "son or daughter." See Child, Black's Law Dictionary 290 (10th ed. 2014); Child, Merriam-Webster's Collegiate Dictionary 214 (11th ed. 2012); Child, Oxford Dictionary 213–15 (2d ed. 1989).

As the common definition of "child" is that of a son or daughter, and R.O.B. is the decedent's son, the language of the insurance policy is clear and unambiguous and there is no need to resort to parol evidence as the trial court did in this case. Under the plain terms of the policy, R.O.B. was the decedent's child at the time of the decedent's death. As the decedent's child, and with no surviving spouse, the default beneficiary provision in the policy provides that the proceeds would go to the child before going to the parents. Therefore, R.O.B. is the proper beneficiary and is entitled to the proceeds under the policy.

In reaching its decision, the trial court relied on Cooper v. Muccitelli, 661 So. 2d 52 (Fla. 2d DCA 1995). In that case, the Second District Court of Appeal held that the owner of a life insurance policy can fix or vest the right to the proceeds of the policy by a settlement agreement, and this would override the insured's right to designate the beneficiary in the policy. Id. at 54. Without a specific reference in a settlement agreement to life insurance proceeds, however, the beneficiary of the proceeds is determined by

looking only to the insurance contract. Id. According to the court, "this is the better approach because it requires an objective decision based on a legal principle rather than a case-by-case attempt to determine the unexpressed intent of a deceased person." Id. The Florida Supreme Court affirmed Cooper, saying that a contrary holding would put insurance companies in an "impossible position." Cooper v. Muccitelli, 682 So. 2d 77, 79 (Fla. 1996). The high court pointed out that despite specific and clearly worded language in an insurance contract, a carrier could never be certain to whom to pay the proceeds. Id.

The trial court's reliance on that case is misplaced. Cooper stands for the proposition that life insurance proceeds can be fixed by a settlement agreement and can override beneficiary designations within the policy. However, to accomplish this, the settlement agreement must directly reference the life insurance proceeds to change the beneficiary designation. Here, neither the Joint Stipulation nor Consent referenced the life insurance policy or its proceeds. As a result, the plain language of the policy dictates that R.O.B. would be entitled to the funds.

In conclusion, the life insurance policy contained a default provision which provided for a class structure of beneficiaries, wherein the proceeds would first go to a spouse, then to children, and then to parents. Here, the decedent did not designate a beneficiary in the policy, he was not survived by a spouse, and he was survived by one living child and both parents. Since R.O.B. was his child and his parental rights had not terminated, the plain language of the policy dictated that the proceeds should have gone to R.O.B. rather than the Johnsons. Accordingly, we reverse and remand for further proceedings consistent with this opinion.

REVERSED and REMANDED for further proceedings.

EVANDER, C.J., and TRAVER, J., concur.