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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-000783-MR

CHERYL L. BOLDRICK APPELLANT

APPEAL FROM JEFFERSON CIRCUIT COURT
v. HONORABLE JUDITH E. MCDONALD-BURKMAN, JUDGE
ACTION NO. 06-CI-000623

KATHLEEN PRICE, GUARDIAN FOR
TIMOTHY BOLDRICK; AND ALLIANZ
LIFE INSURANCE COMPANY APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CLAYTON AND VANMETER, JUDGES; KNOPF,[1] SENIOR JUDGE.

CLAYTON, JUDGE: Cheryl L. Boldrick (Cheryl) appeals the grant of summary judgment in favor of Kathleen Price (Kathleen), which conferred the proceeds of

[1] Senior Judge William L. Knopf sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

Martha Boldrick's life insurance policy to Kathleen as the guardian of Timothy Boldrick (Timothy). After careful review, we affirm.

PROCEDURAL AND FACTUAL BACKGROUND

This action was originally filed by Kathleen, as Timothy's guardian, against Allianz Life Insurance Company for the proceeds of the $25,000 life insurance policy. This policy insured the life of Martha H. Boldrick, mother of Timothy. Timothy is disabled, and Kathleen is his sister and court appointed guardian. After Martha's death on November 6, 2004, Kathleen, on behalf of Timothy, filed a request for the proceeds of the life insurance as he was the named beneficiary. But Cheryl, his estranged wife, asserted that she was entitled to a portion of the proceeds. Thereupon, Allianz Insurance refused to make payment under the policy. Then, this action was filed by Kathleen in Jefferson Circuit Court.

Next, Cheryl filed an intervening complaint alleging that because she and Timothy made payments from their joint checking account for the premiums on the life insurance policy that Cheryl was also an owner of the policy, and hence, to a portion of the proceeds. Her claim was based on a theory of "joint venture." Subsequently, an agreed order was entered whereupon Allianz was dismissed from the action after they paid out on the policy, and the proceeds were placed in an escrow account. At this point, Kathleen filed the motion for summary judgment, which was granted by the court on January 10, 2007. Besides granting the motion for summary judgment, the court awarded the proceeds of the insurance policy to

Kathleen Price, as Timothy's guardian, and dismissed Cheryl's intervening complaint. This appeal followed.

STANDARD OF REVIEW

The standard of review of an order granting a summary judgment motion is:

> "whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law." The trial court must view the evidence in the light most favorable to the nonmoving party, and summary judgment should be granted only if it appears impossible that the nonmoving party will be able to produce evidence at trial warranting a judgment in his favor. The moving party bears the initial burden of showing that no genuine issue of material fact exists, and then the burden shifts to the party opposing summary judgment to present "at least some affirmative evidence showing that there is a genuine issue of material fact for trial." The trial court "must examine the evidence, not to decide any issue of fact, but to discover if a real issue exists." While the Court in *Steelvest* used the word "impossible" in describing the strict standard for summary judgment, the Supreme Court later stated that that word was "used in a practical sense, not in an absolute sense." Because summary judgment involves only legal questions and the existence of any disputed material issues of fact, an appellate court need not defer to the trial court's decision and will review the issue *de novo*.

Lewis v. B & R Corporation, 56 S.W.3d 432, 436 (Ky. App. 2001) (internal footnotes and citations omitted).

ANALYSIS

The issue is whether Cheryl, on the basis of having been involved in the insurance business with Timothy prior to his becoming disabled with the premium payments made from their joint checking account, has any right to any

portion of the $25,000 from the insurance policy belonging to Martha Boldrick, which designated Timothy as the beneficiary.

It is common knowledge that any person owning a life insurance policy may name as payee or beneficiary anyone of his or her choice. 44 C.J.S. *Insurance* § 354 (2008). Such designation, at the option of the insured/owner, may be made either revocable or irrevocable, and the chosen option shall be set out in the certificate or policy of insurance. In essence, in a revocable life insurance policy, the person whose life is insured may at any time designate a new payee or beneficiary, subject to the provisions contained in the policy.

While some conflict exists on the record as to whether Timothy or Martha was the owner of the policy, it is not disputed that Cheryl's name was never listed as the owner of the insurance policy. Furthermore, although Cheryl contends that the parties were involved in a joint venture, neither is any insurance business [joint venture] listed as an owner of the policy. Thus, this issue, the ownership of the policy, is not dispositive here because neither Cheryl nor a joint venture is named in the contract as the owner. Moreover, the circuit court in granting the motion for summary judgment determined that there was no material issue of fact regarding the existence of a joint venture. We concur.

With regards to the importance of the designation of beneficiary, "where by the terms of the policy the right is reserved by the insured to change the beneficiary at will, then the original beneficiary acquires only a defeasible vested interest in the policy, a mere expectancy, until after the death of the insured."

Bronson v. Northwestern Mut. Life Ins. Co., 75 Ind. App. 39, 48, 129 N.E. 636, 639 (Ind. App. 1921). Cheryl claims that as an owner, she had expectancy in the proceeds of the policy. While we agree that Cheryl was not an owner of the policy, *Bronson* highlights that the person with an expectancy in a life insurance policy is the beneficiary, not the owner. Further, upon the instant of the insured's death, the entire proceeds of the life policy vest in the beneficiary. *Parks' Ex'rs v. Parks,* 288 Ky. 435, 446, 156 S.W.2d 480, 486 (1941). Thus, regardless of whether Cheryl were the owner, or co-owner, of the policy, that status would not give her any interest in the proceeds of the policy following the death of the insured, Mrs. Boldrick.

Regarding the marital status of Cheryl and Timothy, it is obvious that the KRS 403.190 is not applicable to the parties as they are not dissolving their marriage. But even if they were, the Court observed in *Ping v. Denton*, 562 S.W.2d 314, 316 (Ky. 1978) that "[a] policy of insurance is nothing more nor less than a contract wherein an insurance company, for valuable consideration, agrees to pay a sum of money on a specified contingency to a designated person called a beneficiary." Furthermore, the insured has exclusive authority to designate whomever he or she chooses as beneficiary and to change this designation without limitation during his or her lifetime. *See Yett's Adm'r v. Yett*, 261 Ky. 737, 88 S.W.2d 962 (Ky. App. 1935).

CONCLUSION

Hence, we hold that the circuit court was correct in granting Kathleen's motion for summary judgment because no genuine issues of material fact exist, and Kathleen, as Timothy's court appointed guardian, is entitled to judgment as a matter of law.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Alfred J. Simon
Louisville, Kentucky

BRIEF FOR APPELLEE, KATHLEEN PRICE, GUARDIAN FOR TIMOTHY BOLDRICK:

Edward A. Mayer
Louisville, Kentucky

NO BRIEF FILED FOR ALLIANZ LIFE INSURANCE COMPANY