STATE OF MICHIGAN

COURT OF APPEALS

GAYLORD GENAW, JR., Personal Representative of the ESTATE OF GAYLORD GENAW, SR.,

Plaintiff-Appellee,

v

CINDY GENAW,

Defendant,

and

UNUM LIFE INSURANCE COMPANY,

Defendant-Appellant.

FOR PUBLICATION
October 6, 2009
9:00 a.m.

No. 284214
St. Clair Probate Court
LC No. 2007-000069-CZ

Advance Sheets Version

Before: Talbot, P.J., and Fitzgerald and Hoekstra, JJ.

TALBOT, P.J.

Defendant Unum Life Insurance Company, appeals as of right the order granting summary disposition in favor of plaintiff, Gaylord Genaw, Jr., as personal representative of the Genaw Estate (the Estate). We affirm.

I. Factual and Procedural History

This action involves the erroneous payment of insurance proceeds to defendant Cindy Genaw (Genaw), the ex-wife of plaintiff's decedent. In 2001, the decedent obtained an insurance policy with Unum valued at $111,000 and designated Genaw as his beneficiary. The decedent and Genaw divorced on July 3, 2006. Their judgment of divorce specifically contained a waiver provision, which extinguished both parties' respective interests in any insurance policy on the other's life. Only days after the entry of the divorce judgment, the decedent was killed in an automobile accident. His beneficiary designation on the life insurance policy with Unum had not been changed.

On October 2, 2006, a loss report was completed that listed Genaw as the claimant and designated her relationship to the decent as an "ex-spouse." Approximately two weeks later, Genaw filed a claim for benefits and indicated on the form that the decedent was divorced. A

death certificate, which indicated decedent's marital status as divorced, was also submitted with a copy of the benefits claim. Upon receipt of the claim information, Unum conducted an investigation and determined that benefits were payable pursuant to its policy. Shortly after receiving a copy of the beneficiary designation form, which continued to list Genaw as the policy beneficiary, Unum remitted payment to her in the full amount of the policy.

Approximately one month later, plaintiff was appointed the personal representative of the decedent's estate and became aware of the existence of the Unum policy. Plaintiff contacted Unum on January 16, 2007, seeking to claim the policy benefits on behalf of the Estate. Unum denied the claim on the ground that the policy had already been discharged. Plaintiff initiated litigation against Genaw and Unum to recover the monies remitted by Unum for the Estate. The trial court granted partial summary disposition in favor of plaintiff against Genaw in the amount of $111,000. The trial court ordered that the funds remaining in Genaw's bank account that Unum had paid her, which amounted to $42,659.54, be seized and held in escrow in partial satisfaction of the judgment.[1] In addition, the trial court granted partial summary disposition in favor of plaintiff against Unum in the amount of $111,000, with a setoff for $42,659.54, the amount recovered from Genaw. This appeal focuses exclusively on the interpretation and meaning of the statutory language comprising MCL 552.101(2).

II. Standard of Review

"The goal of statutory interpretation is to discern and give effect to the intent of the Legislature from the statute's plain language." *Houdek v Centerville Twp*, 276 Mich App 568, 581; 741 NW2d 587 (2007). "If the meaning of a statute is clear and unambiguous, then judicial construction to vary the statute's plain meaning is not permitted." *Id.* "The Legislature is presumed to have intended the meaning it plainly expressed." *Watson v Bureau of State Lottery*, 224 Mich App 639, 645; 569 NW2d 878 (1997). Further, "[a] court must look to the object of the statute, the harm it is designed to remedy, and apply a reasonable construction that best accomplishes the purpose of the statute. Statutory language should be construed reasonably, keeping in mind the purpose of the act." *Id.* (citation omitted). "[W]e are bound to interpret plain statutory language as written." *Dawe v Dr Reuvan Bar-Levav & Assoc, PC*, 279 Mich App 552, 569; 761 NW2d 318 (2008), lv gtd 483 Mich 999 (2009).

III. Analysis

MCL 552.101(2) states, in its entirety:

> Each judgment of divorce or judgment of separate maintenance shall determine all rights of the wife in and to the proceeds of any policy or contract of life insurance, endowment, or annuity upon the life of the husband in which the wife was named or designated as beneficiary, or to which the wife became entitled by

[1] The trial court also awarded plaintiff $15,650 in damages against Genaw, finding her in violation of MCL 700.1205(4) for wrongful conversion or embezzlement of property rightfully belonging to the Estate.

> assignment or change of beneficiary during the marriage or in anticipation of marriage. If the judgment of divorce or judgment of separate maintenance does not determine the rights of the wife in and to a policy of life insurance, endowment, or annuity, the policy shall be payable to the estate of the husband or to the named beneficiary if the husband so designates. *However, the company issuing the policy shall be discharged of all liability on the policy by payment of its proceeds in accordance with the terms of the policy unless before the payment the company receives written notice, by or on behalf of the insured or the estate of the insured, 1 of the heirs of the insured, or any other person having an interest in the policy, of a claim under the policy and the divorce.* [Emphasis added.]

As discussed by this Court in *Metropolitan Life Ins Co v Church*, 150 Mich App 539, 544-545; 389 NW2d 122 (1986):

> The purpose of the 1939 amendment to MCL 552.101 . . . was to resolve the situation where a divorced wife could inadvertently receive the proceeds of a forgotten policy.
>
> "Prior to the addition in 1939 of the above-quoted portion of the statute to MCLA § 552.101, the wife was entitled to the proceeds of the policy when she remained the designated primary beneficiary *after a divorce. Ancient Order of Hibernians v Mahon* (1922), 221 Mich 213 [190 NW 696] and *Guarantee Fund Life Association v Willett* (1927), 241 Mich 132 [216 NW 369]. The effect of the amendment, as stated in the title to the statute, in the judgment of divorce, and, in the statute itself, was to affect the interest of the *wife* in the insurance policy and thus cure the situation where a divorced wife could *inadvertently receive* the proceeds of a perhaps forgotten policy. 'Inadvertently receive' should be stressed for the statute does not prohibit the husband or divorce judgment itself from retaining or renaming the wife as the primary beneficiary. It simply requires affirmative action on the part of the court or husband to retain the divorced wife as the primary beneficiary and thus eliminate what could be, and usually appears to be, the inadvertent payment of the life insurance proceeds to a divorced wife." *Starbuck v City Bank & Trust Co*, 384 Mich 295, 299; 181 NW2d 904 (1970) (emphasis in original).

Clearly, the purpose of the statute is to resolve inconsistencies and problems that originated in family law when an ex-spouse waived his or her right to a policy of insurance (or other benefit) but a change in beneficiary was not effectuated. This is evidenced by the language that precedes the disputed portion of the statutory subsection imposing a requirement that all judgments of divorce include provisions clarifying the rights of former spouses to retain an interest in certain identified benefits or policies.

On appeal, it is the contention of Unum, which the dissent adopts, that the language of MCL 552.101(2) does not encompass notice of a claim asserted by a beneficiary, and that the information provided by Genaw, which merely alerted Unum to the existence of a divorce without submission of an actual copy of the judgment or its explicit terms, was insufficient to place the insurer on notice or to impose liability for a payment of the insurance proceeds that was consistent with the policy's beneficiary designation. However, such an interpretation is not

consistent with the actual language of the statute because it improperly inserts wording that does not exist into the statutory provision.

The statutory language absolves an insurance company from liability for payment of the policy proceeds to the designated beneficiary unless it "receives written notice . . . of a claim under the policy and the divorce." The statute requires only notice "of a claim . . . and the divorce." The statutory requirement that notice of the existence of a divorce be provided does not equate to a mandate that an actual copy of the document or detailed information regarding the content of a judgment of divorce be submitted in conjunction with the filing of a claim. This is consistent with the definition of "notice" provided in caselaw as

> "whatever is sufficient to direct attention . . . to prior rights or equities of a third party and to enable him to ascertain their nature by inquiry. Notice need only be of the possibility of the rights of another, not positive knowledge of those rights. Notice must be of such facts that would lead any honest man, using ordinary caution, to make further inquiries in the possible rights of another in the property." [*Royce v Duthler*, 209 Mich App 682, 690; 531 NW2d 817 (1995), quoting *Schepke v Dep't of Natural Resources*, 186 Mich App 532, 535; 464 NW2d 713 (1990).]

Interpreting the statute as merely requiring the providing of notice of the existence of a divorce is consistent with its language and fulfills the intended purpose of precluding the inadvertent payment of benefits to the wrong person.

In addition, the statutory language allows such notice to be provided "by or on behalf of the insured or the estate of the insured, 1 of the heirs of the insured, *or any other person having an interest in the policy.*" (Emphasis added.) Through a strained path of reasoning, the dissent and Unum contend that "any other person having an interest in the policy" excludes a named beneficiary. However, that is inconsistent with the statutory language. The wording is not restrictive, as denoted by the use of the word "any." The statute is purposely broad and encompassing and requires an inclusive definition of who may satisfy the definition of "any other person having an interest in the policy." It is difficult to comprehend how a designated beneficiary would not be encompassed by such a definition. As indicated by the statutory language, the insured, the insured's estate, and an heir are specifically identified as having a potential interest in a policy. Who, other than a designated beneficiary, could also be construed as having an identifiable "interest" in the policy? Given the intent of the statutory provision to preclude "inadvertent payment" of benefits to the wrong individual, it cannot be disputed that the designated beneficiary, if unchanged following entry of a divorce judgment, is the most obvious person the provision should target to prevent him or her from receiving the proceeds of the policy and the most likely to assert a claim.

While factually distinguishable from the present case, our Supreme Court's ruling in *Thom v Washington Nat'l Ins Co*, 341 Mich 522; 67 NW2d 809 (1954), is instructive. In *Thom*, a dispute existed regarding whether an estate administrator had provided the insurance company with notice of the decedent's divorce from the designated policy beneficiary. The Court determined that the estate did not have a cause of action against the insurance company based on the failure to provide notice to the insurer of the existence of a divorce. *Id.* at 523-525. The *Thom* Court ruled in relevant part "that 'giving plaintiff's testimony its full weight and

considering the alleged writing made by the woman clerk to be written notice, there is no testimony that such notice or information advised the defendant insurance company *that a divorce decree had been entered.*'" *Id.* at 526 (emphasis added). Notably, the Court merely required notice of the entry of a divorce decree, not the actual submission of the judgment or a detailed elucidation of its provisions.

In *Thom*, the Court determined that notice of a divorce had not been provided. Hence, the insurance company could not be held liable given the language of MCL 552.101. Accordingly, the Court's ruling is reasonable:

> The statute is explicit and we are not acquainted with any reason to depart from its terms and in effect, in a case such as this, place upon the company the onus of investigating all ramifications of a patently defective notice. We feel that the statute is intended to do more than put the company "on guard." It is intended to be a conclusive determinant of liability if the prescribed procedure is followed. [*Id.* at 526-527.]

In contrast, in the circumstances of this case, it is undisputed that Genaw reported her marital status as that of an ex-wife and informed the insurance company of the existence of the divorce from the decedent as part of her claim submission. Consistent with the holding in *Thom*, this notice did more than merely place the insurance company "on guard"; it required them to investigate further before remitting payment of the benefits to the designated beneficiary. Further, the statute only implies that an insurance company may be liable if it pays the proceeds of a policy to a designated beneficiary despite having received notice of a claim and the existence of a divorce. The statute does not mandate the automatic imposition of liability following the receipt of notice. In accordance with the statute, an insurance company is only "discharged" from the imposition of liability if it pays the benefits in accordance with the policy designation and does not receive written notice of a claim and a divorce.

Under the factual circumstances of this case, it is undisputed that Unum received a claim from Genaw that specifically acknowledged both her status as the ex-wife of the decedent and the existence of a divorce. Consequently, this information, submitted in conjunction with her claim, was sufficient to meet the notice requirement imposed by the existing statutory language, and the insurance company was not absolved of its liability for payment of the proceeds to the designated beneficiary.

It is important to recognize that this statute may prove to be more confusing than helpful to insurance companies given that the determination of the proper beneficiary for payment of policy proceeds is highly dependent on factual circumstances unique to each case. For example, a specific concern is the statute's failure to indicate when it is preempted under ERISA, 29 USC 1001 *et seq.* Although these parties have stipulated that this policy is exempt from ERISA because it was not issued as an employee-related benefit, in cases where MCL 552.101 is preempted, irrespective of having received notice of a divorce, insurance companies are mandated to pay insurance policy proceeds in accordance with the contractual beneficiary designation. *Sweebe v Sweebe*, 474 Mich 151, 154-155; 712 NW2d 708 (2006), citing 29 USC 1104(a)(1)(D). Consistent with preemption, in cases falling within the purview of ERISA, liability is typically assigned to the ex-spouse who engaged in the fraudulent or wrongful

retention of the policy proceeds after having waived such benefits within a judgment of divorce. *Moore v Moore*, 266 Mich App 96, 98; 700 NW2d 414 (2005).[2]

While the more logical and straightforward course would be to adopt the methodology and procedure followed by cases preempted by ERISA, it is for the Legislature to determine whether the statute should be modified. In the interim, the courts can only attempt to follow the dictates of the current statutory language as it is written.

Affirmed.

HOEKSTRA, J., concurred.

[2] See also *Metropolitan Life Ins Co v Flusty*, 545 F Supp 2d 624 (ED Mich, 2008); *Brown v Wright*, 511 F Supp 2d 850 (ED Mich, 2007); *Seaman v Johnson*, 184 F Supp 2d 642 (ED Mich, 2002); *Metropolitan Life Ins Co v Pressley*, 82 F3d 126 (CA 6, 1996); *Kennedy v Plan Administrator for DuPont Savings and Investment Plan*, ___ US ___; 129 S Ct 865; 172 L Ed 2d 662 (2009); *Egelhoff v Egelhoff*, 532 US 141; 121 S Ct 1322; 149 L Ed 2d 264 (2001).