

STATE OF MICHIGAN
COURT OF APPEALS

ROBIN SEBALJ,

Plaintiff-Appellant,

v

STATE FARM LIFE INSURANCE
COMPANY,

Defendant-Appellee.

UNPUBLISHED

November 22, 1996

No. 179851

LC No. 94-005262-CK

Before: Michael J. Kelly, P.J., and O'Connell and K.W. Schmidt,* JJ.

PER CURIAM.

This appeal stems from a dispute over the defendant insurance company's payment of a \$10,000 life insurance policy upon the death of the named insured, Daniel F. Sebalj, to his widow.

The named insured had initially designated his first wife as the policy's primary beneficiary and his surviving children as the policy's successor beneficiary. Thereafter, he and his wife were divorced. He later remarried but did not expressly and specifically change the beneficiary designation. Plaintiff brought this action as a surviving child to recover the policy proceeds despite the fact that the policy proceeds had previously been paid to the decedent's widow (Nedra Sebalj). In addition, the plaintiff and the widow had joined in an affidavit which was tendered to the defendant which provided (among other things):

1. "That the deceased left the following Heirs: Nedra Sebalj and Robin Sebalj,"
2. "That the proceeds of the policy became part of the Estate of the deceased;"
3. "That the Estate of the deceased has not and will not be admitted to probate;"
4. "This affidavit is made to induce the State Farm Life Insurance Company to pay the proceeds of the policy to Nedra Sebalj."

The trial court granted summary disposition in defendant's favor under MCR 2.116(C)(10). Plaintiff appeals of right. We affirm.

The policy of insurance in question provided, in pertinent part, as follows:

"If the applicable method of settlement is one sum, payment of the sum payable at the death of the insured shall be made to the primary beneficiary, if living; otherwise, to the successor beneficiary, if living;..."

Michigan law provides that a judgment of divorce must determine the rights of the parties in each others insurance policies, or the insurance proceeds will go the insured's estate. MCL 552.101(2), (3); MSA 25.131(2), (3). The supreme Court has held these provisions mean a contingent or secondary beneficiary will receive the proceeds of the policy when the primary beneficiary is statutorily disqualified unless the policy in question requires a different result. *Starbuck v City Bank and Trust, Co.*, 384 Mich 295, 301 (1970).

In the case of *In Re: Seitz Estate*, 426 Mich 30, 637 (1986), the Supreme Court considered policy language that provided, "In the event said beneficiary predeceases me, I hereby designate as contingent beneficiary _____." The supreme Court determined that this language meant that the secondary beneficiary could only recover the insurance proceeds when the primary beneficiary dies before the insured. Because the primary beneficiary in that case, even though divorced from the decedent, was living, the Supreme Court determined that the secondary beneficiary was unable to receive the insurance proceeds.

The policy in question here, while different in language, does not contain a distinction in fact. If this court used plaintiff's proffered limitation, a technical and strained construction would result. This matter is analogous to *Seit supra* and we feel constrained to apply it to the given facts.

Therefore, we need not address the question of law implicated by the judgment of divorce as to the referenced statutes because the plaintiff is not entitled to the insurance proceeds as the primary beneficiary is still alive.

Secondly, defendant was entitled to rely on the affidavit signed by plaintiff requesting the policy proceeds be paid to decedent's second wife. Plaintiff's failure to expressly deny the authenticity of the affidavit was properly construed as an admission against the plaintiff. Although this issue need not be reached because of the holding of this Court, we also find no error in the alternative opinion of the trial court that under the circumstances, the affidavit estopped the plaintiff from claiming the proceeds.

Affirmed.

/s/ Michael J. Kelly
/s/ Peter D. O'Connell
/s/ Kenneth W. Schmidt