COURT OF APPEALS
DECISION
DATED AND FILED

September 30, 2003

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 03-0230-FT **Cir. Ct. No. 02IN000097**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

IN RE THE ESTATE OF JEROME R. UNGER:

DAWN GARCIA, PERSONAL REPRESENTATIVE,

APPELLANT,

V.

JANET GIESEN UNGER,

RESPONDENT.

APPEAL from an order of the circuit court for Outagamie County: DENNIS C. LUEBKE, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Dawn Garcia, as personal representative of Jerome Unger's estate, appeals an order determining that Janet Giesen Unger is the proper beneficiary of Jerome's Universal Life Insurance Policy. Garcia argues

there was insufficient extrinsic evidence to rebut the presumption that Jerome and Janet's divorce revoked Janet's designation as beneficiary of Jerome's life insurance policy.[1] We reject this argument and affirm the order.

BACKGROUND

¶2 Janet and Jerome were married in 1984, separated in 1999 and divorced on April 19, 2002—seventeen days before Jerome's death. At the time of his death, Jerome owned a life insurance policy designating Janet as the beneficiary of the policy's proceeds. On two occasions after the divorce, Jerome met with his financial planner, John Cozzuol, to finalize the distribution of assets. At the second of these meetings, Cozzuol informed Jerome of the existence of various policies and other vehicles which had beneficiary designations that would have to be changed "either then or at some time." Jerome indicated he did not wish to make any changes then but he would call Cozzuol within the following couple of days, at which time they would discuss what Jerome should do with the property he retained after the divorce, including whatever changes Jerome should make to the beneficiary designations.

¶3 After Jerome's death, Garcia petitioned the probate court to determine the ownership of proceeds and assets Jerome owned at the time of his death, including the proceeds of the subject insurance policy. The court determined Janet was entitled to the proceeds of the insurance policy. This appeal follows.

[1] This is an expedited appeal under WIS. STAT. RULE 809.17. All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

ANALYSIS

¶4 Garcia contends the probate court erred by determining that there was sufficient extrinsic evidence to rebut the statutory presumption that the parties' divorce revoked Janet's designation as beneficiary of Jerome's life insurance policy. The construction of statutes and their application to a particular set of facts are questions of law that we review independently. ***State v. Isaac J.R.***, 220 Wis. 2d 251, 255, 582 N.W.2d 476 (Ct. App. 1998). The aim of statutory construction is to ascertain the legislature's intent, and our first resort is to the statutory language itself. ***Id.*** If the words of the statute convey the legislative intent, that ends our inquiry; we do not look beyond the statute's plain language to search for other meanings, but simply apply the language to the facts before us. ***Id.*** at 255-56.

¶5 WISCONSIN STAT. § 845.15(3)(a) creates a presumption that divorce revokes the beneficiary status of a former spouse. The statute provides, in relevant part:

> (3) Revocation upon Divorce. Except as provided in subs. (5) and (6), a divorce, annulment or similar event does all of the following:
>
> (a) Revokes any revocable disposition of property made by the decedent to the former spouse or a relative of the former spouse in a governing instrument.

In turn, § 845.15(5) provides that the statute "does not apply if … there is a finding of the decedent's contrary intent [and] [e]xtrinsic evidence may be used to construe that intent." The burden of proof necessary to overcome the statutory presumption of § 845.15(3) is the same as any other presumption—the greater weight of the credible evidence. Citing ***Allstate Life Ins. Co. v. Hanson***, 200 F. Supp. 2d 1012 (E.D. Wis. 2002), Garcia nevertheless contends that a decedent

must have performed an "affirmative act" to overcome the presumption of revocation. Even were we to assume that an "affirmative act" is necessary to demonstrate a contrary intent sufficient to rebut the presumption, here there was such an act. Jerome affirmatively told his financial advisor that he wanted to hold off on changing the beneficiary designation.

¶6 Garcia, however, surmises that Jerome's unwillingness to remove Janet as the designated beneficiary arose from her presence at the meeting. Garcia claims that Jerome's actions are not consistent with contrary intent, "but rather with a desire to discuss his separate financial matters with [Cozzuol] outside the presence of his ex-wife." Garcia contends that Jerome would have removed Janet as the designated beneficiary had he not died before his next meeting with the financial advisor.

¶7 As the probate court noted, however, the issue is not what Jerome may ultimately have done with the beneficiary designations, but rather, whether he was making a "conscientious choice to leave the designation as was then in place." Jerome explicitly told his financial advisor not to change the designated beneficiaries. Garcia can only speculate why he chose not to change the designation at that time or what he might have later decided to do. Reasonable inferences from the facts support the court's finding that Jerome knew his ex-wife was still a beneficiary and that he wanted to leave the designation intact.[2] Because

[2] To the extent Garcia contends Jerome did not know who the designated beneficiary was, the probate court noted that the parties' divorce settlement agreement specifically addressed the issue of life insurance. The parties had agreed to keep the beneficiary designations the same during the divorce's pendency and also agreed that they could be changed after the final hearing. The parties had just gone through a lengthy process of identifying their marital estate and arriving at an agreed-upon division of that estate. These facts support the trial court's finding that Jerome knew Janet was the beneficiary on the policy in question.

there was sufficient extrinsic evidence to rebut the presumption of revocation upon divorce, the order is affirmed.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.