COURT OF APPEALS
DECISION
DATED AND FILED

April 17, 2014

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

Appeal Nos. 2012AP1910
2013AP649

Cir. Ct. Nos. 2011CV377
2012CV400

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

DAVID BRANDT AND ADAM C. BRANDT,

PLAINTIFFS-APPELLANTS,

V.

RITA A. VASQUEZ,

DEFENDANT-RESPONDENT.

PAUL BRANDT,

PLAINTIFF-APPELLANT,

V.

RITA A. VASQUEZ,

DEFENDANT-RESPONDENT.

APPEALS from a judgment and orders of the circuit court for Portage County: JOHN V. FINN and THOMAS T. FLUGAUR, Judges. *Affirmed*.

Before Blanchard, P.J., Lundsten and Kloppenburg, JJ.

¶1 PER CURIAM. These consolidated appeals arise from a dispute as to the proceeds of a life insurance policy held by decedent Mary Brandt.[1] Mary's sons, David and Adam Brandt, appeal an order for payment of the proceeds to Mary's sister, Rita Vasquez. Paul Brandt, who is Mary's ex-husband and David and Adam's father, appeals an order dismissing Paul's subsequent action asserting Paul's right to the life insurance proceeds. The Brandts argue that Mary was required to name either Paul or David and Adam as beneficiaries of the life insurance policy under Paul and Mary's divorce judgment. We disagree, and affirm.

Background

¶2 Paul and Mary divorced in November 2009. The divorce judgment indicated that Paul and Mary had entered into an oral stipulation as to custody, placement, maintenance, property division, and related issues, and the circuit court incorporated that stipulation into the judgment.

¶3 The divorce judgment ordered that primary placement of Paul and Mary's minor children, David and Adam, would be with Paul. It also ordered that

[1] Some of the parties to this action share a surname. For ease of reading, when we refer to those parties in their individual capacities, we use their first names. We refer to the appellants collectively as "the Brandts."

Paul would make interim maintenance payments to Mary based on the unemployment of both parties and Paul's continuing receipt of severance payments. Another provision indicated that Paul and Mary would both "keep in full force and effect and pay the premiums on all life insurance presently in existence … with the other party or the minor children of the parties as primary beneficiaries until further Court order." At the time of the divorce, Mary held a life insurance policy that named Paul as the beneficiary. The circuit court expressly retained jurisdiction to determine maintenance to Mary, child support, life insurance, and related issues.

¶4 In December 2009, Paul and Mary entered into a stipulation to amend their divorce judgment. The stipulation provided that Mary was waiving maintenance and, in exchange: (1) Paul would maintain health, dental, and life insurance for David and Adam; (2) Mary would receive an increased share of an E*Trade account; and (3) Mary would not pay child support. Later that month, Mary changed the beneficiary of her life insurance policy from Paul to David and Adam. In February 2010, Mary changed the beneficiary to her sister, Vasquez.

¶5 Mary died in July 2010. Vasquez and the Brandt children both claimed a right to the proceeds of Mary's life insurance policy.

¶6 David and Adam sought a declaratory judgment in the circuit court to establish their right to the insurance proceeds. Vasquez answered the complaint, denying that David and Adam were entitled to the insurance proceeds and seeking a declaration that the proceeds belong to Vasquez. On July 16, 2012, the circuit court ordered the insurance proceeds paid to Vasquez.

¶7 In August 2012, Paul sought a declaratory judgment in the circuit court to establish his right to the insurance proceeds. The circuit court determined

that claim preclusion and issue preclusion barred Paul's claim to the insurance proceeds, and dismissed the action. The Brandts appeal both circuit court decisions.

Discussion

¶8 The Brandts argue that David and Adam are entitled to the proceeds of Mary's life insurance policy under Paul and Mary's divorce judgment. They assert that Paul and Mary stipulated to the beneficiary restriction as part of their property division, giving David and Adam an equitable interest in the insurance proceeds.[2] Vasquez responds that the beneficiary restriction was tied to Mary's child support obligations, and thus the restriction terminated when the parties stipulated that Mary would not pay child support. We agree with Vasquez.

¶9 The Brandts rely on ***Richards v. Richards***, 58 Wis. 2d 290, 206 N.W.2d 134 (1973), for the proposition that a beneficiary restriction in a divorce judgment creates an equitable interest in the insurance proceeds in favor of the named beneficiaries. The Brandts' reliance on ***Richards***, however, is misplaced.

¶10 In ***Richards***, the supreme court held that the deceased's wrongful conduct in changing the beneficiary of his life insurance policy from his children to his second wife, in violation of a divorce judgment, justified a constructive trust over the insurance proceeds in favor of the children. ***Id.*** at 293-94. However,

[2] As an initial matter, the Brandts dispute the circuit court's determination that the beneficiary restriction in the divorce judgment prohibited Mary from changing the beneficiary from Paul to David and Adam. They argue that the beneficiary restriction required Mary to maintain *either* Paul *or* David and Adam as beneficiaries. We will assume, without deciding, that the beneficiary restriction did not prohibit Mary from changing the beneficiary from Paul to David and Adam.

there was no dispute in ***Richards*** that the deceased was required to maintain his children as the named beneficiaries of his life insurance policy, and that he acted wrongfully by changing the beneficiary to his second wife. *See* ***id.*** at 291-92, 296-99. Thus, ***Richards*** addresses the proper remedy when a party violates a beneficiary restriction in a divorce judgment. It does not address the initial question we face here: that is, whether a beneficiary restriction survives an amendment to the divorce judgment that eliminates child support.

¶11 We agree with Vasquez that ***Vaccaro v. Vaccaro***, 67 Wis. 2d 477, 227 N.W.2d 62 (1975) and ***Estate of Barnes v. Hall***, 170 Wis. 2d 1, 486 N.W.2d 575 (Ct. App. 1992), are instructive on this point. Both ***Vaccaro*** and ***Barnes*** address whether a particular beneficiary provision in a divorce judgment is a modifiable term tied to child support or part of a final property division.

¶12 In ***Vaccaro***, the supreme court determined that the life insurance provisions at issue were tied to child support rather than a property division. The court explained: (1) the divorce judgment provided that changes could be made to the insurance policies with future court authorization, and property divisions are final; and (2) a court may divide property only between a husband and wife in a divorce judgment. ***Vaccaro***, 67 Wis. 2d at 482-84.

¶13 In ***Barnes***, we relied on ***Vaccaro*** in determining that the life insurance beneficiary restriction in favor of the divorcing parties' children was tied to child support rather than property division. ***Barnes***, 170 Wis. 2d at 9-10. We explained that ***Vaccaro***'s clear statement that a divorce judgment could not award property to the children of the parties required that result. ***Barnes***, 170 Wis. 2d at 9-10. We therefore held that the beneficiary restriction did not survive the termination of the support obligation. ***Id.*** at 5, 13.

¶14 The Brandts argue that the vitality of ***Vaccaro*** and ***Barnes*** is questionable in light of the supreme court's holding in ***Tensfeldt v. Haberman***, 2009 WI 77, 319 Wis. 2d 329, 768 N.W.2d 641, that divorcing parents may stipulate to grant property to their children in a divorce judgment. The Brandts assert that Paul and Mary stipulated to award Mary's life insurance proceeds to David and Adam in their divorce judgment, as allowed by ***Tensfeldt***. We do not agree with the Brandts that ***Tensfeldt*** dictates the outcome in this case.

¶15 In ***Tensfeldt***, the supreme court held that the estate planning provision in a divorce judgment was an enforceable division of property in favor of the parties' adult children. ***Id.***, ¶¶28-35. The court recognized that in both ***Vaccaro*** and ***Barnes*** the insurance provisions of the divorce judgments could reasonably have been interpreted as either property division for the benefit of the children or child support that would expire when the children reached majority. ***Tensfeldt***, 319 Wis. 2d 329, ¶32. The court observed that the ***Vaccaro*** and ***Barnes*** courts both interpreted the insurance provisions as tied to child support for the minor children because that option was expressly provided for in the divorce statutes. ***Tensfeldt***, 319 Wis. 2d 329, ¶32. The court held that, in contrast, the estate planning provision in the Tensfeldt divorce judgment was intended as a property benefit in favor of the parties' adult children, noting that there were no minor children at the time of the divorce. ***Id.***, ¶33.

¶16 The ***Tensfeldt*** court also rejected any implication in ***Barnes*** that a property benefit for adult children cannot be incorporated into a court order, determining that parties may stipulate to award property to their children as part of a divorce judgment. ***Id.***, ¶¶34-35. However, the court did not state that a life insurance beneficiary restriction in a divorce judgment cannot be tied to child support, such that the restriction ends when the child support obligation

terminates. Rather, our reading of ***Vaccaro***, ***Barnes***, and ***Tensfeldt*** indicates that a life insurance beneficiary restriction may be tied either to child support or to part of a property division, in light of the divorce judgment as a whole.

¶17 We turn, then, to the divorce judgment in this case. We review the language in a divorce judgment de novo, as we do any written instrument. *See* ***Waters v. Waters***, 2007 WI App 40, ¶6, 300 Wis. 2d 224, 730 N.W.2d 655.

¶18 Paul and Mary's divorce judgment required the parties to "keep in full force and effect and pay the premiums on all life insurance presently in existence … with the other party or the minor children of the parties as primary beneficiaries until further Court order." The life insurance provision follows provisions for custody, physical placement, maintenance, and health insurance for the parties and their minor children. The provisions after the life insurance provision provide for property division. The divorce judgment also stated that, because the parties were then unemployed, the circuit court would retain jurisdiction to determine maintenance to Mary, child support, life insurance, and other related issues. The parties subsequently stipulated that Paul would maintain health, dental, and life insurance for David and Adam, and that Mary would not pay child support.

¶19 The Brandts argue that the beneficiary restriction itself does not state that it is related to child support. They also point out that the parties' subsequent stipulation did not expressly remove the beneficiary restriction. They assert that the parties intended Mary's life insurance proceeds to be awarded to David and Adam as part of Paul and Mary's property division. We disagree.

¶20 First, we find it significant that Paul and Mary's divorce judgment required Mary to name Paul or David and Adam as beneficiaries of her life

insurance policy *until further order of the court*. Thus, the beneficiary restriction was modifiable rather than permanent, strongly indicating that the restriction was tied to child support rather than a final property division. Moreover, the circuit court expressly retained jurisdiction to determine modifiable issues such as maintenance and child support, including matters related to life insurance. We are also persuaded by the fact that separate provisions in the divorce judgment purport to be "a full, final and complete division of the property and estate" of Paul and Mary, and that those provisions award life insurance policies to each party, but do not award the insurance proceeds to David and Adam. Finally, in the context of the divorce judgment as a whole, it makes sense that Mary was required to name Paul or David and Adam as beneficiaries as security for child support the court might have ordered; the divorce judgment provided that primary placement of David and Adam would be with Paul, but did not order Mary to pay child support at that time, noting that Paul and Mary were both unemployed.

¶21 Because we determine that the life insurance beneficiary restriction in Paul and Mary's divorce judgment was tied to child support, we also determine that the restriction terminated as a matter of law when the parties stipulated that Mary would not pay child support. Thus, after that stipulation, Mary was free to name Vasquez as the beneficiary of her life insurance policy. Accordingly, we affirm the circuit court's order denying David and Adam's claim to the insurance proceeds and awarding the proceeds to Vasquez.

¶22 Our conclusion that Mary was free to change the beneficiary of her life insurance policy following Paul and Mary's stipulation also defeats Paul's claim to the insurance proceeds. We therefore also affirm the circuit court order dismissing Paul's claim, although on different grounds.

By the Court.—Judgment and orders affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2011-12).