

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

ESTATE OF SCOTT A. HARMON,
Plaintiff/Appellee,

: CV-08-21,488

:
:

vs.

: CIVIL ACTION – LAW IN DIVORCE

:
:

BRENDA L. HARMON,
Defendant/Appellant.

: *Pa.R.A.P.*

: *Rule 1925(a) Order*

MEMORANDUM 1925(A) OPINION
IN SUPPORT OF THE COURT’S AUGUST 30TH ORDER

On September 27, 2019, Brenda Harmon filed a Notice of Appeal with this Court appealing the Court’s August 30, 2019 Order. On October 24, 2019, Brenda Harmon filed a Concise Statement of Matters Complained of on Appeal,¹ which raised the following:

- a) “Did the lower court err as a matter of law and/or otherwise abuse its discretion in finding that the civil division possessed jurisdiction of the above-captioned matter because of the Property Settlement Agreement dated April 22, 2009 that was incorporated into the Court’s Order dated May 4, 2009.
- b) Did the lower court err as a matter of law and/or otherwise abuse its discretion in finding that the civil division possessed original jurisdiction pursuant to [sic] 23 Pa.C.S.A. § 2104(a)(4) when the issue of life insurance proceeds was not properly before the Court when Scott A. Harmon passed away on June 13, 2018 because the instant action was not filed until December 17, 2018.
- c) Did the lower court err as a matter of law and/or otherwise abuse its discretion in finding that Linda Eshenauer was entitled to the Hartford life insurance policy.
- d) Did the lower court err as a matter of law and/or otherwise abuse its discretion in finding that the Employee Retirement Income Security Act (hereinafter “ERISA”), 29 U.S.C.S. § 1001 et seq., did not govern distribution of the Hartford life insurance policy benefits.

¹ Pa.R.A.P. Rule 1925(b)(3)(ii).

- e) Did the lower court err as a matter of law and/or otherwise abuse its discretion in finding that the general rule in 20 Pa.C.S. § 6111.2 controlled distribution of the Hartford life insurance policy benefits.
- f) Did the lower court err as a matter of law and/or otherwise abuse its discretion in dismissing the above-captioned matter.
- g) Did the lower court err as a matter of law and/or otherwise abuse its discretion in failing to address Appellant’s argument that the above-captioned case was not ripe for summary judgment pursuant to Pa.R.C.P. 1035.3(b).
- h) Did the lower court err as a matter of law and/or otherwise abuse its discretion in failing to address Appellant’s alternative argument that general language in a property settlement agreement does not revoke a beneficiary designation in a life insurance policy.”

In response to these claims of judicial error, this Court relies on its Order of August 30, 2019. However, the Court believes the parties and the Superior Court would benefit from a supplemental Opinion in support of that Order, and to that end issues the following.

Background

On October 28, 2008, Scott A. Harmon (“Decedent”) commenced a divorce action against Brenda L. Harmon (“Defendant”) in this Court and under the present docket. On May 4, 2009, the Court issued a Decree (“May 4th Decree”) finalizing the divorce. The May 4th Decree incorporated by reference the parties’ Property Settlement Agreement, executed April 22, 2009 (“April 22nd Property Settlement Agreement”). Within the April 22nd Property Settlement Agreement, each party agreed to waive and relinquish any interest in the life insurance, employee benefits, and pension plans of the other party.²

² *Harmon v. Harmon*, CV-08-21,488; Property Settlement Agreement 5 (April 29, 2009).

Decedent was an employee of the United State Postal Service with a life insurance policy (“Hartford Policy”) administered by the Central Pennsylvania Teamsters (“Teamsters”). Defendant was named primary beneficiary of the Hartford Policy on the 2008 Central PA Teamsters Health & Welfare Fund “Participant Application and Beneficiary Form” (“2008 Beneficiary Form”), effectuated January 4, 2008. The 2008 Beneficiary Form named Decedent’s mother, Linda Eshenauer, as the alternate beneficiary. On November 13, 2017, Decedent sent a fax to the Teamsters requesting that Defendant be removed as a beneficiary of the Hartford Policy. Decedent did not receive a response from the Teamsters and the change was never effectuated.³

On July 13, 2018, Scott A. Harmon suffered an accidental death by drowning. On October 17, 2018, Nicole Morrison, Administratrix of the Estate of Scott A. Harmon (“Plaintiff”), filed a Petition for Contempt with the Court. Plaintiff asserted that following the death of Decedent, Defendant violated the April 22nd Property Settlement Agreement by claiming and retaining benefits under the Hartford Policy.^{4,5} Defendant filed an Answer to Plaintiff’s Petition for Contempt, in which Defendant asserted that after contacting the Teamsters at Plaintiff’s bequest, the Teamsters had notified Defendant that she was the named as the primary beneficiary of the Hartford Policy

³ *Harmon v. Harmon*, CV-08-21,488; Complaint Supplementing the Action in Contempt Filed Previously by the Estate of Scott A. Harmon 2 (Dec. 24, 2018). A copy of the fax is attached as Exhibit C. Decedent’s request was potentially formally deficient because it failed to identify a change in beneficiary designation.

⁴ *Harmon v. Harmon*, CV-08-21,488; Petition for Contempt 2 (Oct. 17, 2018).

⁵ Plaintiff indicated that under paragraph 18 of the April 22nd Property Settlement Agreement, Defendant had the duty to “execute, acknowledge, and deliver any and all instruments which may be necessary or advisable to carry into effect this mutual waiver and relinquishment of all such interest, rights, and claims.” Plaintiff asserted that Defendant violated this duty not in collecting the proceeds, but in refusing thereafter to remit the proceeds to Plaintiff. See *Harmon v. Harmon*, CV-08-21,488; Brief of Nicole Morrison in Support of Motion for Summary Judgment 4 (April 25, 2019).

under the Employment Retirement Income Security Act (“ERISA”).⁶ Defendant attested that she had received \$35,000 from the Teamsters as partial payment on the Hartford Policy.⁷

The Court issued an Order on November 30, 2018 requiring Plaintiff to file a supplemental or amended complaint raising a breach of contract issue, and additionally requiring Defendant to place the \$35,000 and any future insurance benefits in escrow. Plaintiff thereafter filed a Supplemental Complaint asserting breach of contract,⁸ in response to which Defendant filed an Answer and New Matter.⁹ Defendant’s New Matter asserted that Plaintiff’s claim was barred by statute since Defendant’s life insurance policy was governed by ERISA.¹⁰ The New Matter further asserted that the general language in a property settlement agreement does not revoke a beneficiary designation in a life insurance policy.¹¹

After responding to the New Matter, Plaintiff filed a Motion for Summary Judgment on April 25, 2019 with a supportive brief. Defendant filed a brief in opposition on June 5, 2019. In addition to reiterating her ERISA and “general language” arguments, Defendant asserted that the matter was not ripe for summary judgment because Defendant had not had the opportunity to complete discovery.¹²

With the permission of the Court, on July 17, 2019 Defendant filed a Supplemental Response to Plaintiff’s Motion for Summary Judgment raising

⁶ *Harmon v. Harmon*, CV-08-21,488; Answer to Plaintiff’s Petition for Contempt 2 (Nov. 21, 2018).

⁷ *Id.* at 2-3. Defendant subsequently received an additional \$35,000 accidental death benefit, resulting in a total of \$70,000 in proceeds paid out from the Hartford Policy.

⁸ *Harmon v. Harmon*, CV-08-21,488; Complaint Supplementing the Action in Contempt Filed Previously by the Estate of Scott A. Harmon (Dec. 24, 2018).

⁹ *Harmon v. Harmon*, CV-08-21,488; Defendant’s Answer and New Matter (Feb. 14, 2019).

¹⁰ *Id.* at 5 (citing *In re Estate of Sauers*, 32 A.3d 1241 (Pa. 2011)).

¹¹ *Id.* at 6 (citing *Equitable Life Assurance Soc. V. Stitzel*, 445 A.2d 523 (Pa. 1982)).

¹² *Harmon v. Harmon*, CV-08-21,488; Defendant’s Brief in Opposition to Plaintiff’s Motion for Summary Judgment 2 (June 5, 2019)

jurisdictional issues not addressed in Defendant's New Matter. Specifically, Defendant argued that the matter should be transferred from the civil division to the orphans' court on the basis that: (1) The instant matter was initiated following the death of Decedent;¹³ (2) The Hartford Policy did not come into existence until after the death of Decedent.¹⁴ Plaintiff filed a Supplemental Reply on August 20, 2019.

Following review of the aforementioned filings, the Court issued an Order on August 30, 2019 ("August 30th Order") denying Plaintiff's Motion for Summary Judgment, which argued that the estate was the rightful recipient of the life insurance proceeds under an older version of the agreement, finding that Linda Eshenauer, as alternate beneficiary, was entitled to proceeds from the Hartford Policy, and dismissed the matter.

Analysis

The Court first addresses the issue of whether the civil division lacked jurisdiction over the instant matter. In its August 30th Order, the Court found that the orphans' court would have jurisdiction over this matter pursuant to 20 Pa.C.S. § 711, which grants the orphans' court jurisdiction over matters involving the administration and distribution of a decedent's estate, including distribution of life insurance benefits.¹⁵ However, the Court

¹³ *Harmon v. Harmon*, CV-08-21,488; Supplemental Response to Plaintiff's Motion for Summary Judgment 3 (July 17, 2019) (citing *Leese v. Leese*, 534 A.2d 1101, 1102-03 (Pa. 1987); 23 Pa.C.S. § 3104(a)(4)).

¹⁴ *Id.* (citing *Estate of Gentry v. Diamond Rock Hill Realty, LLC*, 111 A.3d 194 (Pa. Super. 2015); 20 Pa.C.S. § 711(1)).

¹⁵ 20 Pa.C.S.A. § 711(1) ("[T]he jurisdiction of the court of common pleas over the following shall be exercised through its orphans' court division: (1) Decedents' estates.--The administration and distribution of the real and personal property of decedents' estates and the control of the decedent's burial [. . .]"); see also *In re Henderson's Estate*, 149 A.2d 892, 900 (Pa. 1959) ("[T]he Orphans' Court was given by the Legislature jurisdiction of personal property of the decedent if the personal property, namely, the life insurance policies, were in decedent's possession actually or presumptively at the time of his death.").

additionally found that the civil division would possess concomitant jurisdiction as a result of the April 22nd Property Settlement Agreement's incorporation into the Court's May 4th Order. Pursuant to 23 Pa.C.S.A. § 3104(a)(4), the civil division has original jurisdiction over "[a]ny property settlement" concerning the "determination and disposition of property rights and interests between spouses, including any rights created by any antenuptial, postnuptial or separation agreement[.]"¹⁶ The application of 23 Pa.C.S.A. § 3104(a)(4) is not expressly limited in situations in which one or both parties are deceased.

While Defendant argued that the jurisdiction of the orphans' court was original and exclusive, the Court found that pursuant to 20 Pa.C.S.A. § 712(3), the orphans' court is divested of mandatory jurisdiction in "any case where there are substantial questions concerning matters enumerated in section 711 and also matters not enumerated in that section." In such instances, "[t]he jurisdiction of the court of common pleas . . . may be exercised through either its orphans' court division or other appropriate division[.]"¹⁷ After determining that either the orphans' court or civil division could adjudicate this matter, the Court exercised its discretion by declining to transfer this matter to the orphans' court.

The Court next addressed the issue of whether Defendant would be entitled to Decedent's life insurance benefits as the named beneficiary on the Hartford Policy. 20 Pa.C.S. § 6111.2(b) holds that, subject to certain exceptions, the designation of a former spouse as a beneficiary on an individual's life insurance policy is revocable at the time of

¹⁶ 23 Pa.C.S.A. § 3104(a)(4) (original jurisdiction in a divorce proceeding).

¹⁷ 20 Pa.C.S.A. § 712; *cf. Baskin & Sears v. Edward J. Boyle Co.*, 483 A.2d 1365 (Pa. 1984) (finding case initiated as trespass and assumpsit in civil division, but otherwise involving the planning and administration of decedent's estate, was not in exclusive jurisdiction of orphans' court); *Estate of Borst v. Edward Stover Sr. Testamentary Trust*, 30 A.3d 1207, 1208 n.1 (Pa. Super. 2011) (finding that case requiring trial court to interpret a testamentary trust was not within exclusive jurisdiction of orphans' court because: (1) The case originated as an action in ejectment; and (2) The case included substantial questions regarding issues not under the exclusive jurisdiction of the orphans' court).

that individual's death.¹⁸ Defendant relied upon the Pennsylvania Supreme Court's determination in *In re Estate of Sauers*, 32 A.3d 1241 (Pa. 2011) that ERISA-governed life insurance policies preempt 20 Pa.C.S. § 6111.2(b) to argue that she would be entitled to benefits from the Hartford Policy. However, post-*Sauers* the Pennsylvania Superior Court determined in *In re Estate of Hoffman*, 54 A.3d 903 (Pa. Super. 2012) that the defendant, as ex-wife to the decedent, was not entitled to the life insurance proceeds over his estate because, although she was not removed as primary beneficiary from the life insurance policy, the parties' Property Settlement Agreement expressly revoked her beneficiary designation in the life insurance policy.¹⁹

The important distinction is that unlike in *Sauers*, there exists in the instant matter, a property settlement agreement that expressly revoked Appellant Harmon of her beneficiary designation. Therefore, the fact that the policy was subject to the provisions of

¹⁸ 20 Pa.C.S.A. § 6111.2(a)-(b) (“[S]ection [6111.2] is applicable if an individual: 1) is domiciled in this Commonwealth; (2) designates the individual's spouse as beneficiary of the individual's life insurance policy, annuity contract, pension or profit-sharing plan or other contractual arrangement providing for payments to the spouse; and (3) either: (i) at the time of the individual's death is divorced from the spouse; or (ii) dies during the course of divorce proceedings, no decree of divorce has been entered pursuant to 23 Pa.C.S. § 3323 (relating to decree of court) and grounds have been established as provided in 23 Pa.C.S. § 3323(g). Any designation described in subsection (a)(2) in favor of the individual's spouse or former spouse that was revocable by the individual at the individual's death shall become ineffective for all purposes and shall be construed as if the spouse or former spouse had predeceased the individual, unless it appears the designation was intended to survive the divorce based on: (1) the wording of the designation; (2) a court order; (3) a written contract between the individual and the spouse or former spouse; or (4) a designation of a former spouse as a beneficiary after the divorce decree has been issued.”).

¹⁹ See *In re Estate of Hoffman*, 54 A.3d 903, 907 (Pa. Super. 2012) (“Here, there is simply no express indication from the parties' property settlement agreement that Decedent intended Appellant Hoffman's beneficiary designation to survive the divorce. In fact, as the Orphans' Court found ‘[t]he property settlement agreement includes a provision by which Decedent and [Appellant] Hoffman mutually agreed to relinquish all rights against each other and their estates arising from the marital relationship.’ Thus, as it does not appear from the wording of the parties' property settlement agreement that Appellant Hoffman's life insurance beneficiary designation was intended to survive the divorce, the general rule of Section 6111.2 controls. Therefore, we find the Orphans' Court did not err in construing the life insurance policy as if Appellant Hoffman (the former spouse) had predeceased Decedent.”) (internal citations omitted)).

ERISA, or that ERISA preempts 20 Pa.C.S. § 6111.2(b), is of no moment.

Plaintiff/Appellee proceeded under a breach of contract claim, not a claim under 20 Pa.C.S. § 6111.2(b). Likewise, the Court's determination that Linda Eshenauer was entitled to the Hartford Policy benefits as alternative beneficiary under the 2008 Beneficiary Form derived from the Court's ruling that Defendant/Appellant was contractually barred from receiving benefits.

Lastly, Defendant's argument that she was entitled to the Hartford Policy proceeds pursuant to the rule established in *Equitable Life Assur. SOC v. Stitzel*, 445 A.2d 523 (Pa. Super. 1982) that general language in a property settlement agreement does not revoke a beneficiary designation in a life insurance policy is misplaced.²⁰ In *Stitzel* the parties specifically agreed to relinquish:

[A]ny and all claims, ... actions, causes of action ... of whatsoever kind or nature, for or because of any matter or thing done, omitted, or suffered to be done by said other party prior to and including the date hereof...²¹

In contrast, the April 22nd Property Settlement Agreement paragraph 9, captioned "LIFE INSURANCE, CD'S, ETC.[,]" states:

Each party hereby waives and relinquishes any and all interest in the others vacation pay, stocks, bonds, bank accounts, annuities, mutual funds, life insurance, employee benefits and any pension plan, profit sharing plan, and/or retirement funds or accounts.²²

²⁰ *Harmon v. Harmon*, CV-08-21,488; Defendant's Answer and New Matter 6 (Feb. 14, 2019).

²¹ *Equitable Life Assur. SOC v. Stitzel*, 445 A.2d 523, 524 (Pa. Super. 1982).

²² *Harmon v. Harmon*, CV-08-21,488; Property Settlement Agreement 5 (April 29, 2009).

In contrast to the imprecise language in *Stitzel*, the Court finds that Decedent and Defendant's agreement to relinquish all interest in the other party's insurance benefits was specific and unambiguous.²³

Conclusion

For the reasoning stated above, it is respectfully recommended that Defendant's appeal be denied.

IT IS SO ORDERED this ____ day of November 2019.

BY THE COURT,

Eric R. Linhardt, Judge

ERL/cp

cc: Pennsylvania Superior Court
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²³ See *Layne v. Layne*, 659 A.2d 1048, 1051-52 (Pa. Super. 1995) (distinguishing from *Stitzel* on the basis that the parties specifically provided in their property settlement agreement that they would have no rights in the pension of the other) (citing *Roth v. Roth*, 604 A.2d 1033, 1036 (Pa. Super. 1992)).