

NOTICE
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2016 IL App (5th) 160122-U

NO. 5-16-0122

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

JESSIE J. WARNER,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Jackson County.
)	
v.)	No. 14-MR-149
)	
JACKSON NATIONAL LIFE INSURANCE)	
COMPANY,)	
)	
Defendant,)	
)	
and)	
)	
KEVIN THORNBURG,)	Honorable
)	Ralph R. Bloodworth III,
Defendant-Appellee.)	Judge, presiding.

PRESIDING JUSTICE SCHWARM delivered the judgment of the court. Justices Goldenhersh and Cates concurred in the judgment.

ORDER

¶ 1 *Held:* Because the deceased and her ex-husband were joint owners and insureds of an insurance policy, the deceased's attempted change of beneficiary, executed without her ex-husband's signature, was ineffective.

¶ 2 The plaintiff, Jessie J. Warner, brought this action to recover life insurance proceeds after the death of her mother, Linda J. Thornburg-Hagler. The circuit court entered summary judgment in favor of the defendant, Kevin Thornburg, Linda's ex-husband and co-owner of

the policy. The plaintiff appeals, arguing that she is entitled to the proceeds of the policy because Linda substantially complied with the policy in order to change the beneficiary and the defendant waived his claim to the life insurance proceeds pursuant to his and Linda's marital settlement agreement. For the following reasons, we affirm the circuit court's judgment.

¶ 3

BACKGROUND

¶ 4 Linda and the defendant were married on October 8, 1994. On September 16, 1996, Linda and the defendant purchased as co-owners a life insurance policy issued by Jackson National Life Insurance Company (Jackson National) through their insurance agent, James G. Simpson. The life insurance policy listed both Linda and the defendant as insureds and as owners of the "joint mortgage decreasing term" life insurance policy. The policy provided that the death benefit decreased monthly and that the benefits were payable on the first death of the joint insureds. The policy further provided as follows under the "general provisions" portion of the policy:

"HOW BENEFICIARY MAY BE CHANGED While this Policy is in force, the Owner may change the Beneficiary, unless otherwise provided by endorsement, by filing at the Home Office of the Company an acceptable written request. Such change will be subject to any existing assignment of this Policy and will take effect only when recorded by the Company at its Home Office. When recorded, the change will take effect on the date the notice was signed."

¶ 5 The "Ownership Section" of the life insurance policy provided that "[w]hile the [i]nsureds are living, all rights of this [p]olicy belong to the [o]wner." Pursuant to this

section, "the [i]nsureds will be the [o]wners if the ages of both [i]nsureds on the [p]olicy [d]ate are age fifteen or more." This section further provided that "[t]he ownership of this [p]olicy may be changed at any time during the [i]nsureds' joint lifetimes. Such change must be made by written notice acceptable to the [c]ompany."

¶ 6 Linda and the defendant separated in 2004. On July 30, 2004, Linda sought to effectuate a Life Service Request Form changing the named beneficiary in the life insurance policy to her sister, Michelle Forby. This Life Service Request Form provided under the heading "SIGNATURE REQUIREMENTS" that the signatures required to effectuate a change in joint and multiple policies included "[a]ll [o]wners." Jackson National declined to process the requested change of beneficiary because the defendant, as the policy's joint owner, did not execute the first request. In a letter dated August 25, 2004, Jackson National notified Linda and the defendant that the "signatures of both owners" were required before processing the request for a change of beneficiary.

¶ 7 On October 30, 2006, Linda and the defendant divorced. Incorporated into the judgment of dissolution of marriage, the parties' marital settlement agreement provided as follows:

"Each of the parties hereby releases and/or waives any interest, beneficial or otherwise, which he or she may have acquired in or to life insurance policies owned by the other unless specifically retained in this document."

The life insurance policy at issue was not otherwise identified as an asset pursuant to the marital settlement agreement.

¶ 8 Thereafter, Linda continued to pay the premiums for the policy. In 2011, Linda was diagnosed with terminal bone cancer and given a limited chance of extended survival. On November 1, 2011, Linda executed another Life Service Request Form provided by Jackson National in order to change the designated beneficiary on the policy to the plaintiff. This Life Service Request Form provided, under the heading "Signature Requirements," that "[t]he Owner's signature is required for all changes on this form" and that "[o]n ownership changes, both the old and new Owners' signatures are required." This Life Service Request Form further provided, under the heading "SIGNATURE REQUIREMENTS–ALL APPLICABLE SIGNATURE AREAS MUST BE COMPLETED BEFORE RETURNING," that a joint and multiple policy required the signature of "[a]ll [o]wners."

¶ 9 Jackson National processed the change of beneficiary embodied in the second request, even though the defendant had not executed the Life Service Request Form. On November 2, 2011, Jackson National sent written confirmation of the change of beneficiary to Linda and the defendant. Thereafter, Jackson National also verbally confirmed that the plaintiff was the primary beneficiary of the policy. On February 19, 2013, Linda died.

¶ 10 In early 2013, the plaintiff submitted the Jackson National claim form and accompanying information to collect the proceeds of the policy from Jackson National. In April 2013, the plaintiff was notified that the beneficiary of the policy was the defendant and that the prior amendment to the policy was completed in error. On March 28, 2014, Jackson National issued a letter to Linda's insurance agent, stating that Linda's change of beneficiary request was ineffective. In the letter, Jackson Life noted that it had "mistakenly updated its

records, sent a letter confirming the change, and verbally confirmed the change," and that the mistake went unnoticed until after Linda's death.

¶ 11 Simpson, the insurance agent for Jackson National, filed an affidavit, wherein he stated that on September 5, 2012, after he learned that Linda was terminally ill, he verified with Jackson National's policy service center via telephone that the plaintiff was the primary beneficiary of the policy. Simpson sent a letter to the plaintiff confirming that she was the primary beneficiary on the policy. Simpson stated that after Linda's death and the submission of the plaintiff's claim, he was first notified that the change of beneficiary request was not effective.

¶ 12 On July 24, 2014, the plaintiff filed a complaint for declaratory judgment. In her amended complaint filed on July 31, 2014, the plaintiff alleged, among other things, that she detrimentally relied on Jackson National's representations that she was the beneficiary and that Jackson National was barred by negligence or the doctrine of unclean hands from refusing to pay the plaintiff as beneficiary. The plaintiff further alleged that the defendant waived any claim to the life insurance proceeds pursuant to the language of the marital settlement agreement. On December 1, 2014, the plaintiff filed counterclaims alleging negligence and breach of contract against Jackson National.

¶ 13 On January 29, 2015, the circuit court ordered Jackson National to deposit the sum of \$80,200.04, plus interest, to the clerk of the court, to be held in an interest-bearing account pending further order of the court. Thereafter, on October 2, 2015, the plaintiff filed a stipulation, "dismiss[ing] all claims against Jackson [National] with prejudice." Accordingly, on October 5, 2015, noting that the plaintiff had withdrawn her claims and

counterclaims against Jackson National, the circuit court entered its order dismissing the claims against Jackson National with prejudice.

¶ 14 On February 26, 2016, the circuit court ruled on cross-motions for summary judgment filed by both parties and entered summary judgment in the defendant's favor. The circuit court found that Linda and the defendant were co-owners of the insurance policy, that the defendant's signature was required to effectuate a change of beneficiaries, and that Linda's attempted change of beneficiaries was therefore not effective. The circuit court further found that the defendant did not waive his claim to the life insurance proceeds pursuant to the language of the marital settlement agreement. On March 24, 2016, the plaintiff filed her timely notice of appeal.

¶ 15 ANALYSIS

¶ 16 This case was decided in the context of cross-motions for summary judgment, in which the parties invite the court to decide the issues based on the record. *Pielet v. Pielet*, 2012 IL 112064, ¶ 28. Summary judgment motions are governed by section 2-1005 of the Code of Civil Procedure. 735 ILCS 5/2-1005 (West 2014). Pursuant to that statute, summary judgment should be granted where the pleadings, depositions, admissions, and affidavits on file, when viewed in the light most favorable to the nonmoving party, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2014). Our review of a circuit court's order granting summary judgment is *de novo*. *Pielet*, 2012 IL 112064, ¶ 30.

¶ 17 "Property rights of a husband and wife that exist independent of the marriage are not terminated by a divorce." *Estate of Albrecht v. Winter*, 2015 IL App (3d) 130651, ¶ 11. "A

spouse named as a beneficiary in an insurance policy has an expectancy interest that must be expressly waived for there to be a surrender of the interest under a judgment of dissolution." *Id.* "General waiver language is insufficient to waive an expectancy interest." *Id.* "A waiver should be specific." *Id.* "To determine a waiver's effect, the court considers two factors: (1) whether the disputed asset was specifically listed as a marital asset and awarded to one spouse; and (2) whether the waiver provision specifically states the parties are waiving any expectancy or beneficial interest." *Id.* "We review *de novo* a trial court's interpretation of a waiver provision in a contractual agreement." *Id.*

¶ 18 The plaintiff argues that the defendant has waived his claim to Linda's life insurance proceeds pursuant to the marital settlement agreement, wherein he released and waived any interest, beneficial or otherwise, to the life insurance policy. To support her position, the plaintiff cites *Principal Mutual Life Insurance Co. v. Juntunen*, 189 Ill. App. 3d 224, 225 (1989), wherein the court held that a wife had waived her right and interest in life insurance proceeds by executing a release of those rights as part of a property settlement upon dissolution of her marriage. As noted by the circuit court below, however, the husband in *Principal Mutual Life Insurance Co.* solely owned the two insurance policies at issue. *Id.* Here, Linda and the defendant co-owned the insurance policy, and both were listed as insureds. Thus, we find *Principal Mutual Life Insurance Co.* inapplicable.

¶ 19 The defendant further counters that the plaintiff's assertion, *i.e.*, that both spouses released and waived their ownership interest to the policy pursuant to the marital settlement agreement language, would render the clause nonsensical in that neither party would have owned the policy at the time of the dissolution and no one would be entitled to the proceeds

of the policy. Further, as the defendant correctly notes, Linda clearly exercised ownership of the policy when she continued paying premiums and subsequently attempted to change the beneficiary of the policy.

¶ 20 We agree with the defendant and find that the defendant did not clearly release and waive his ownership interest to the policy pursuant to the marital settlement agreement. The plain language of the marital settlement agreement provided that each of the parties released any interest in life insurance policies "owned by the other." The life insurance policy at issue was not "owned by the other," but was instead owned by both. The defendant, as a spouse named as an owner, insured, and beneficiary in the insurance policy, had an expectancy interest which was not defeated in a dissolution agreement that did not constitute a clear expression of the defendant's surrender of that interest. See *Deida v. Murphy*, 271 Ill. App. 3d 296, 298-99 (1995).

¶ 21 The plaintiff further argues that she is entitled to the proceeds of the policy because Linda substantially complied with the terms of the policy to change the beneficiary. We recognize that when an insured has done everything in her power to effectuate a change of beneficiary, equity may not require exact compliance with the conditions prescribed in the policy. See *Kniffin v. Kniffin*, 119 Ill. App. 3d 106, 108-09 (1983). In the present case, however, both Linda and the defendant are listed as insureds and owners of the policy, and the defendant did not act in any way to change the beneficiary on the policy. See *id.* (to warrant the intervention of equity, Illinois law requires that some positive action be taken by the insured to comply with the terms of the policy).

¶ 22 Accordingly, we agree with the circuit court's conclusion that the defendant's claim to the life insurance proceeds was not extinguished by the language in the marital settlement agreement and that Linda's attempt to change the beneficiary during her lifetime did not effectuate the change without the defendant's signature, as a coinsured co-owner. Therefore, the circuit court properly entered judgment in the defendant's favor.

¶ 23 **CONCLUSION**

¶ 24 For the reasons stated herein, we affirm the judgment of the circuit court of Jackson County.

¶ 25 Affirmed.