

IN THE COURT OF APPEALS OF IOWA

FILED

SEP 25 1986

CLERK SUPREME COURT

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COMBINED INSURANCE COMPANY
OF AMERICA,

Plaintiff-Interpleader,

vs.

THEODORE ANASTASI, SR.; LONNA
ANASTASI, and MARTHA ANN
ANASTASI,

Defendants-Claimants.

Filed September 25, 1986

LONNA ANASTASI,

Cross-Claimant-Appellee,

vs.

THEODORE ANASTASI, SR. and
MARTHA ANN ANASTASI,

Defendants to Cross-Claim
Appellants.

6-237
85-1236

THEODORE ANASTASI, SR. and
MARTHA ANN ANASTASI,

Counter Cross-Claimants-
Appellants,

vs.

LONNA ANASTASI,

Defendant to Counter
Cross-Claim-Appellee.

Appeal from the Iowa District Court for Shelby County (No. 15599) - J. C.
Irvin, Judge.

Parents of decedent appeal the district court's judgment awarding decedent's former wife proceeds from decedent's life insurance policy, contending that the trial court erred because the dissolution of marriage stipulation signed by the former wife estopped her from claiming benefits of the insurance policy and that equity treats the attempt to change the beneficiary on the insured's policy as completed because it was intended to be completed prior to the insured's death. **AFFIRMED.**

Robert Kohorst of Louis, Moore, Kohorst, Louis, Murtaugh & Kohorst, Harlan, for appellants Theodore Anastasi, Sr. and Martha Ann Anastasi.

Ken Sojka of Buckley & Sojka, Harlan, for appellee Lonna Anastasi.

Considered by Oxberger, C.J., and Snell and Sackett, JJ.

SNELL, J.

The present action was instigated by Combined Insurance Company in order to determine the respective rights of Martha, Theodore Sr., and Lonna Anastasi to proceeds from an insurance policy on the life of Theodore H. Anastasi, Jr., the son of Martha and Theodore Anastasi, Sr. and the former husband of Lonna Anastasi. On April 2, 1979, Combined Insurance Company issued an insurance policy on the life of Theodore H. Anastasi, Jr. The insured's mother, Martha Ann Anastasi, was listed as the policy's owner as well as the named beneficiary, along with the insured's father, Theodore Anastasi, Sr. The insured married Lonna Anastasi on April 11, 1981, and on June 22, 1981 Martha, at the request of her son, changed the named beneficiary on the policy to Lonna. In August of 1981, dissolution proceedings were commenced between Theodore Jr. and Lonna. A stipulation covering the respective property rights of Theodore Jr. and Lonna was signed by them during the pendency of the dissolution proceedings.

On September 11, 1981, Combined Insurance Company received a request from Theodore Jr. for a change of named beneficiary form. As only Martha, the owner of the policy, could change the named beneficiary, the company contacted her by letter dated September 25, 1981, informing her that Theodore Jr. had contacted the company and that if she desired any service rendered on the policy, she should contact their home office. Martha made no such attempt at contacting the company until sometime after October 5, 1981, the date on which the insured died as a result of an automobile accident. Lonna's motion to dismiss the dissolution proceedings was sustained on October 19, 1981.

On January 12, 1983, Combined Insurance Company deposited the insurance proceeds with the district court and began the present equitable action of interpleader pursuant to Iowa Rule of Civil Procedure 35. Interplead as defendants were the decedent's parents and former wife. After depositing the insurance

proceeds with the court, Combined Insurance Company took no further part in this case. The case was tried to the court on July 3, 1985. Judgment in favor of Lonna was rendered on July 29, 1985. Notice of appeal on behalf of Theodore Sr. and Martha was filed on August 28, 1985. As this action sounds in equity, our review is de novo. Iowa R. App. P. 4.

The appellants contend that the trial court erred in awarding judgment to Lonna because the stipulation she signed in conjunction with the dissolution proceedings estopped her from claiming the benefits of the insurance policy at issue here. In support of this claim, appellants direct our attention to the case of Sorensen v. Nelson, 342 N.W.2d 477 (Iowa 1984). In that case, the Iowa Supreme Court held that certain broad, sweeping language contained in a stipulation which had been incorporated into a divorce decree was sufficient to estop the decedent's ex-wife from making a claim to proceeds from a life insurance policy under which she was the named beneficiary. Similar, although certainly not identical, language is contained in the stipulation entered into by Lonna and the decedent during the pendency of the dissolution of their marriage.

Even were we to find the language involved in the present stipulation sufficient to bring it within the cases governed by Sorensen, we would still find the appellants' argument unpersuasive by virtue of the fact that the stipulation here, unlike that in Sorensen, was never made a part of a dissolution decree. Our state's supreme court has said that a property settlement agreement between spouses must be viewed as a conditional contract, conditioned upon approval by the court and the granting of the decree of divorce. Travelers Indemnity Co. v. Gormaney, 258 Iowa 237, 243, 138 N.W.2d 50, 54 (1965). It is only upon the acceptance and approval by the court that the agreement becomes a final contract. Id. at 244, 138 N.W.2d at 55. In the present case, the dissolution proceedings were dismissed and the property settlement never became

incorporated into a decree. Accordingly, any contractual agreement on the part of Lonna to relinquish her rights to the proceeds from her husband's insurance policy never entered into force, and appellants' first claim fails.

Alternatively, appellants contend that the trial court's judgment was error as equity treats the attempt to change the beneficiary on Theodore Jr.'s policy as completed, even though not technically accomplished, before death because that was the intention of the appellants and the insured. In support of this argument, appellants rely upon the case of Petty v. Mutual Benefit Life Ins. Co., 235 Iowa 455, 15 N.W.2d 613 (1944). In Petty, a divorced husband sent a letter to his sister saying that he intended to change the named beneficiary on his life insurance policy from his former wife to his sister. The policy in Petty, similar to the policy at issue here, required written notice to the company in order to effect a change of beneficiary. At the time of his death, he had not done so. The court held that the sister was entitled to the insurance proceeds because a clear intent on the part of the husband to transfer and assign the policy to her had been shown. Id. at 466, 15 N.W.2d at 619. We think that the present case is distinguishable from Petty, however, and that the distinction compels us to reject appellants' argument.

In Petty the insured possessed the right to change the named beneficiary on the policy. His letter to his sister served, therefore, as a manifestation of his intent to change the beneficiary. In the present case, only Martha had the right to change the named beneficiary on the policy. There is no evidence establishing that she had ever attempted or intended to change the policy's beneficiary prior to the decedent's death.

In this respect, the case before us is akin to the case of Edgington v. Equitable Life Assurance Society of the United States, 236 Iowa 903, 20 N.W.2d 411 (1945). In Edgington, the wife was the owner of an insurance policy upon her

life, her husband was the named beneficiary of the policy, and a cousin was named as the contingent beneficiary. The wife and husband were divorced, but the wife never changed the beneficiary from the husband to the cousin. Upon the wife's death, the cousin alleged that she was entitled to the policy proceeds since the husband and wife were divorced and it was the intent of the wife that if she should die leaving no husband, the cousin should be entitled to the insurance proceeds. The court held that the former husband, not the cousin, should be awarded the benefits of the policy. The wife "had full opportunity to change the beneficiary of the policy issued to her. This she did not do. We are constrained to hold that we have no right to change the insurance contract as originally made." Id. at 909, 20 N.W.2d at 414.

We think that Edgington governs the present case. Martha had full opportunity to change the beneficiary on the policy covering her son's life. She knew that to change the beneficiary on the policy she had to sign and return a change of beneficiary form to the company. She previously followed this procedure when she changed the beneficiary from her and her husband to Lonna only several months before Theodore Jr.'s death. Although the owner of an insurance policy is afforded protection to the extent that he can reasonably expect the terms of the policy to protect him, as inferred from all the circumstances, Farm Bureau Mutual Ins. Co. v. Sandbulte, 302 N.W.2d 104, 112 (Iowa 1981), where the language of a contract is clear, the plain meaning of the language prevails. Mopper v. Circle Key Life Insurance Company, 172 N.W.2d 118, 124 (Iowa 1969).

AFFIRMED.