FILED
AUG 3 0 1990
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-344 / 89-1743

BOBBIE JEAN DAVIS,

Plaintiff-Appellant,

154

vs.

DELLA L. OSBORNE,

Defendant-Appellee,

and

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,

Defendant.

Appeal from the Iowa District Court for Carroll County, Gary L. McMinimee, Judge.

Appellant appeals the trial court's refusal to impose a constructive trust on the proceeds of a life insurance policy. **AFFIRMED.**

Dan T. McGrevey, Fort Dodge, for appellant.

Gregory J. Siemann of Green and Siemann, Carroll, for appellee Della Osborne.

Considered by Hayden, P.J., and Sackett and Habhab, JJ.

SACKETT, J.

The sole question on appeal is whether the trial court correctly refused to place a constructive trust on the proceeds of a serviceman's group life insurance policy for a first wife when the policy by its terms was payable to a second and current wife. We agree with the trial court and find it properly determined the policy should go to the current wife.

The insurance company, The Prudential Insurance Company of America, is no longer a party, having paid the proceeds of the policy to the Carroll County Clerk of Court to be dispersed according to the decision in this case.

Plaintiff-appellant Bobbie Jean Davis was Larry Dean Osborne's first wife. Defendant-appellee Della L. Osborne is his second wife and widow. Larry Dean Osborne was killed on May 12, 1988, while serving in the United States Army. At the time of Larry's death, he carried a Servicemen's Group Life insurance policy that paid $51,000 upon his death. On August 25, 1986, Larry had signed a designation of beneficiary form for the policy and designated the beneficiary "by law" which, according to the terms of the policy, required the benefits go to Larry's widow, Della.

Bobbie Jean Davis claimed $45,000 of the policy proceeds should go to her by virtue of a provision in the 1983 decree dissolving the marriage of Bobbie Davis and

Larry Osborne. The decree awarded custody of Bobbie's and Larry's two children to Bobbie. Larry was ordered to pay $250 per month child support and was ordered to "maintain life insurance in the amount of $45,000 with Bobbie named as beneficiary so long as his child support obligation exists." At the time of the dissolution, Larry had two policies which have now been canceled. The policy we are concerned with here had not yet been written. When Larry died, he was still subject to pay child support under the decree.

The trial court found the policy proceeds should go to Della by the terms of the policy and, because the policy was a Servicemen's Group Life insurance policy, the policy was controlled by federal law which has pre-empted state law. The trial court held the terms of the policy prevailed over the terms of the dissolution decree entered in state court.

The trial court relied on Ridgway v. Ridgway, 454 U.S. 46, 60, 102 S. Ct. 49, 57, 70 L. Ed. 2d 39, 51 (1981). In Ridgway, the Court addressed the issue of whether a serviceman's change of beneficiary under a Servicemen's Group Life policy from his first wife, who he had been ordered by a Maine dissolution court to keep as beneficiary for benefit of the couple's children, to his second wife should prevail. The Court held the Servicemen's Beneficiary Designation prevailed over any constructive trust imposed by the first wife.

Bobbie recognizes Ridgway addresses a similar issue under similar facts, but contends it should not be controlling because there is evidence here to support a finding Della conspired to fraudulently convert assets belonging to Bobbie. The evidence Bobbie relies on to support her contention are statements by Della that she was aware of Larry's dissolution decree and knew she was beneficiary of his serviceman's policy. These facts are not sufficient to support a finding of fraud. See Sinnard v. Roach, 414 N.W.2d 100, 105 (Iowa 1987). We reject Bobbie's contention she has proven fraud.

Bobbie also makes an argument that it is unfair for the children not to have this money, and their noncustodial father has not provided for them at death. Under the dissolution decree, child support was fixed at $250 monthly, to increase to $350 in 1993. While the children lost that child support when their father died, as a result of his death they now receive government and social security benefits totaling $1,378 per month. We affirm.

AFFIRMED.