IN THE COURT OF APPEALS OF IOWA

No. 8-305 / 97-2272

DEBORAH JOHNSON,

Plaintiff-Appellant,

vs.

JULIE VAN ZUUK,

Defendant-Appellee.

FILED
AUG 28 1998
CLERK SUPREME COURT

Appeal from the Iowa District Court for Polk County, George W. Bergeson, Judge.

Deborah Johnson appeals from the district court's dismissal of her petition at law seeking, individually and in her capacity as conservator for Richard Agey, money damages against Julie Van Zuuk, the administrator of Richard's father's estate. **AFFIRMED.**

Douglas A. Haag of Patterson, Lorentzen, Duffield, Timmons, Irish, Becker & Ordway, L.L.P., Des Moines, for appellant.

William J. Trout of Coppola, Trout & Taha, Des Moines, for appellee.

Heard by Sackett, P.J., and Huitink and Mahan, JJ.

MAHAN, J.

Deborah Johnson appeals the decision of the district court. Deborah contends the district court erred when it determined James Agey had substantially complied with the provisions of the divorce decree requiring James to maintain a life insurance policy worth $50,000 with Richard Agey as the named beneficiary. We affirm.

Deborah and James divorced in August 1988. Richard was their only son. The court approved the stipulated decree ordering James to pay $370 per month child support for Richard. James' obligation was to continue until Richard graduated from high school, married, or became self-supporting. The decree also provided:

> IT IS FURTHER ORDERED, ADJUDGED AND DECREED that [James] shall maintain a life insurance policy on his own life with the face value of $50,000, naming the parties' minor child as his beneficiary for the period of time that he is required to pay child support. The Court deems this life insurance policy as adequate to guarantee the Respondent's child support obligation as long as he is required to pay child support.

James died on November 27, 1996. Richard was only thirteen. James died intestate with one life insurance policy with total benefits payable in the amount of $150,000. Richard and James' four adult children from a previous marriage were equal beneficiaries to the policy. Each child received $30,000. Each of the children will receive twenty percent of James' estate after probate.

James also had a U.S. Civil Service retirement plan. The plan was worth approximately $51,000 on the date of James' death. James changed the beneficiary

of the plan to Richard on October 11, 1988, approximately two months after the district court approved the decree of dissolution. Richard is also receiving approximately $380 per month in social security benefits, as well as $6200 as a designated beneficiary from James' Government Thrift Savings Plan.

Deborah filed this action on Richard's behalf, contending James failed to comply with the dissolution decree. She asked the district court to award a sum of money that would put Richard and herself in the same position they would have enjoyed had James complied with the decree. The district court determined the receipt of the civil service retirement benefits and the life insurance proceeds are substantially more than Richard was receiving as child support payments. Thus, according to the district court, James had substantially complied with the requirements of the dissolution decree and denied Deborah's claim.

I. STANDARD OF REVIEW. Our review of this equitable proceeding is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

II. LIFE INSURANCE REQUIREMENT. It is clear the provision in the dissolution decree requiring James to maintain a $50,000 life insurance policy is valid. *Stackhouse v. Russell*, 447 N.W.2d 124, 125 (Iowa 1989).

III. COMPLIANCE WITH INSURANCE REQUIREMENTS. The dissolution decree gave James his civil service retirement account:

> IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Respondent shall be entitled to any annuity or interest he has in his civil service retirement account through the Postal Service.

Deborah contends naming Richard as the beneficiary of the plan does not satisfy the decree's requirement of a life insurance policy. She argues the dissolution court knew about the retirement account and would have contemplated James might have directed that some or all of these assets would go to Richard upon James' death. According to Deborah, even though all this was contemplated, the parties and the court agreed to include the $50,000 life insurance requirement in the decree. Deborah also argues allowing James to use the retirement account to satisfy the life insurance requirement would allow him to unilaterally change the requirements of the dissolution decree. She contends James should have gone to the court to seek modification and approval for this action.

We find James substantially complied with the life insurance requirement of the dissolution decree. The decree established the purpose of the life insurance was to guarantee James' child support obligation. Within two months of the decree, James named Richard as the sole beneficiary of the U.S. Civil Service retirement plan. In so doing, he specifically excluded his four other children. Instead of receiving $50,000 as required by the decree, Richard received $81,000. This amount is $31,000

more than the district court found necessary to ensure James' child support obligation would be satisfied.

IV. RETROACTIVE MODIFICATION. Deborah contends the district court exceeded its power by retroactively modifying the terms of the dissolution decree. She argues the determination modified, not interpreted, the terms of the dissolution decree. We find this argument is without merit.

For these reasons, we affirm the decision of the district court.

AFFIRMED.