SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0030-16T3

IN THE MATTER OF THE
ESTATE OF RONNY MOHAMMED SALEH.

IN THE MATTER OF THE ESTATE OF
RONNY SALEH,

Plaintiff-Appellant,

v.

HANNIA SALEH,

Defendant-Respondent.

Submitted November 27, 2017 – Decided February 13, 2018

Before Judges Sabatino and Ostrer.

On appeal from Superior Court of New Jersey, Chancery Division, Probate Part, Middlesex County, Docket No. 248322.

Richard A. Amdur, Jr., attorney for appellant.

Santoro and Santoro, attorneys for respondent (David J. Michelson, of counsel and on the brief).

PER CURIAM

Upon cross-motions for summary judgment, the trial court dismissed plaintiff's posthumous complaint to annul the marriage

between defendant Hannia Saleh and her late husband, Ronny Saleh, who died on May 21, 2014. Ronny's estate seeks annulment in order to secure a $48,000 life insurance death benefit that was paid to defendant.[1]

In argument before Judge Frank M. Ciuffani, the parties agreed that there were no genuine issues of material fact and the case was susceptible to disposition on summary judgment. In his written opinion, Judge Ciuffani adopted plaintiff's extensive statement of material facts. We presume the reader's familiarity with those facts and shall not restate them at length here.

In short, defendant and Ronny had a troubled marriage. Ronny's family members alleged that defendant used Ronny to obtain citizenship; lied to Ronny about her intention to raise a family with him; and benefitted financially from the marriage. Defendant entered the country from Costa Rica in 2003 on a tourist visa. It expired long before her marriage to Ronny in 2006. The couple lived together from 2006 until 2011, when she moved out. However, they continued to file joint tax returns until 2013. Defendant ultimately obtained legal status and then citizenship in 2012.

In 2013, Ronny started a new job, which offered life insurance coverage as a fringe benefit. Although Ronny purportedly signed

[1] To avoid confusion, we utilize the decedent's first name. We intend no disrespect in doing so.

a form that year designating his brother as beneficiary, neither Ronny's employer nor the insurer received it before Ronny's death in 2014. His death certificate noted he was married but separated. The insurer paid the death benefit to defendant. Absent a named beneficiary, the policy authorized the insurer, at its option, to pay the death benefit to the insured's estate, or surviving family members, first of whom was a spouse. After the disbursement was already made, Ronny's brother sought payment based on Ronny's alleged intent, as expressed in the unfiled beneficiary designation form, and in a purported 2011 will that named only his brother and sister as beneficiaries. The insurer rejected the claim.[2]

Judge Ciuffani held that plaintiff had failed to present, by clear and convincing evidence, a sufficient factual basis for its claim that defendant fraudulently entered into a sham marriage to gain legal status and citizenship. The court also declined to disturb the disposition of the insurance proceeds.

[2] Notably, plaintiff did not file suit against the insurer. See N.J.S.A. 17B:24-5 (stating that an insurer is discharged of any claims against it under the policy when it pays a life insurance benefit in accordance with the policy's terms); Vasconi v. Guardian Life Ins. Co., 124 N.J. 338, 348 (1991) (citing N.J.S.A. 17B:24-5 and Hirsch v. Travelers Ins. Co., 153 N.J. Super. 545, 549 (App. Div. 1977)).

On appeal, plaintiff renews its prior contention that it presented sufficient circumstantial evidence of fraud. Plaintiff also argues that the court should have implemented Ronny's alleged intention regarding his insurance policy. We are unpersuaded.

When reviewing a grant of summary judgment, we employ the same standard as the motion judge under Rule 4:46-2(c). Henry v. N.J. Dep't of Human Servs., 204 N.J. 320, 330 (2010). Mindful of the plaintiff's burden of persuasion at trial, see Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995), we must determine whether the evidence is "so one-sided that one party must prevail as a matter of law." Id. at 533 (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986)).

In this case, plaintiff bears the burden to establish, by clear and convincing evidence, not only that defendant procured her marriage to Ronny by fraud as to the essentials of marriage, but also that the parties did not subsequently ratify the marriage. Williams v. Witt, 98 N.J. Super. 1, 3 (App. Div. 1967); N.J.S.A. 2A:34-1(d) (stating that a judgment of nullity may be rendered when there was "fraud as to the essentials of marriage" and the marriage was not subsequently ratified). Substantially for the reasons stated in Judge Ciuffani's cogent written opinion, plaintiff has failed to present sufficient evidence to warrant a trial on the annulment claim. As Judge Ciuffani noted, there was

no testimony as to defendant's intentions at the time of the marriage; defendant expressly based her application for citizenship on lawful residence, not marriage;[3] the couple lived together; they shared finances; and despite their difficulties, Ronny made no effort to annul or dissolve the marriage.

Alternatively, plaintiff contends that the trial court should have given effect to Ronny's purported intent to designate his brother as insurance policy beneficiary.[4] We reject the argument for many of the reasons the trial court noted.

The payment of a life insurance benefit is generally governed by contract. See Metro. Life Ins. Co. v. Woolf, 138 N.J. Eq. 450, 454-55 (E. & A. 1946). The rule is tempered by the doctrine of substantial compliance; so, our courts will effectuate a change of beneficiary where the insured has substantially complied with the relevant policy provisions. Haynes v. Metro. Life Ins. Co., 166 N.J. Super. 308, 313 (App. Div. 1979). However, the insured must have "made every reasonable effort to effect [the] change of

[3] Defendant relied upon her being a lawful permanent resident for at least five years, as opposed to being a lawful permanent resident for three years while married and living with the same citizen for the last three years.

[4] We infer the plaintiff sought disgorgement of the insurance proceeds, although plaintiff did not expressly request such relief. Indeed, its complaint sought only an order of annulment, the return of any of Ronny's personal assets, and any further equitable and just relief.

beneficiary." Ibid. There is no proof that Ronny did so here. There is no confirmation of receipt from the employer or the insurer, nor is there any evidence that Ronny attempted to confirm that his alleged beneficiary designation was effective.

A change of beneficiary may also be implied and effectuated, in the narrow circumstance where an insured has divorced his or her spouse; the divorcing spouse waived, in a property settlement agreement, any interest in the other's estate in the case of death; but the insured neglected to remove the divorced spouse as a beneficiary before the insured's death. Vasconi, 124 N.J. at 340. In that case, the Court gave force to the "probable intent of the decedent," and required a divorced spouse to rebut a presumption that she was not an intended beneficiary. Id. at 349.

We recognize that Ronny's will, and the unreceived designation form are evidence of Ronny's alleged intent that his insurance proceeds go to his brother. However, unlike in Vasconi, there was no entry of a final judgment of divorce here, let alone a formal property settlement agreement waiving interest in a divorced spouse's estate. See DeCeglia v. Estate of Colletti, 265 N.J. Super. 128, 135 (App. Div. 1993) (declining to effectuate oral expression of intent to change beneficiary in a case which "does not involve any comparable written agreement between the policyholder and beneficiaries, or any form of written

communication from the policyholder to the insurer expressly requesting a change in the beneficiary designations"). There was merely a separation. Ronny may have held out hope of a reconciliation. He may have wished to provide for his wife, notwithstanding their separation.

We have declined to extend Vasconi beyond its facts. In Fox v. Lincoln Financial Group., 439 N.J. Super. 380, 389 (App. Div. 2015), we declined to infer or give effect to an insured's purported intention to change the beneficiary from his sister to his new wife, absent formal submission of a change of beneficiary form to the insurer. In DeCeglia, 265 N.J. Super. at 136, we declined to give effect to a mere oral expression of intent to change beneficiary. Likewise, we discern no compelling reason here to set aside the terms of the policy, and effectuate a questionable expression of intent that lacks the finality and formality present in Vasconi.

Affirmed.