

# Commonwealth of Kentucky

## Court of Appeals

NO. 2007-CA-000723-MR

MICHELLE BROWN

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE BARRY WILLETT, JUDGE  
ACTION NO. 05-CI-003096

SHERRY SOUTHARD AS PERSONAL  
REPRESENTATIVE OF THE ESTATE OF  
WILLIAM SOUTHARD

APPELLEE

OPINION  
AFFIRMING

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BEFORE: LAMBERT AND VANMETER, JUDGES; KNOPF,<sup>1</sup> SENIOR JUDGE.

LAMBERT, JUDGE: Michelle Brown appeals the grant of summary judgment in favor of William Southard, which awarded half of their son's life insurance policy to William.

After careful review, we affirm.

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<sup>1</sup>Senior Judge William L. Knopf, sitting as Special Judge by Assignment of the Chief Justice pursuant to Section 110 (5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

On July 29, 2004, Jeremy Brown, son of Michelle Brown and William Southard, tragically died while training for the upcoming football season. As an eligible student-athlete in the Jefferson County Public School System, Jeremy's death was covered under a Life Insurance Company of North America (hereinafter "LINA") group life insurance policy purchased by the school system. The full death benefit was \$25,000.00.

The policy did not identify a specific beneficiary, instead listing various classes of potential beneficiaries. The policy reads:

If there is no named beneficiary or surviving beneficiary, the insured's loss of life benefit will be paid in one sum to the first *surviving class* of the following:

- (1) the beneficiary named...;
- (2) spouse;
- (3) child or children
- (4) *mother or father*;
- (5) sister or brothers; or
- (6) the estate of the insured.

(emphasis added).

Michelle, who had sole custody, made a claim as beneficiary to LINA for the full \$25,000.00 death benefit, and William simultaneously filed a claim for half the policy. LINA paid Michelle \$12,500.00, equivalent to half the total death benefit, after it determined that William and Michelle were each entitled to equal benefit distribution as they were both part of class (4) outlined in the contract. Michelle immediately initiated this action, therefore LINA delayed payment to William until the dispute was resolved.

Michelle originated this action in Jefferson Circuit Court, arguing that she was entitled to the full death benefit because: (1) Jeremy had lived with her; (2) William was in child support arrears of approximately \$2,554.72; and (3) the language of the contract suggests that the mother *or* the father collects the full death benefit. Both parties made motions for summary judgment. After careful consideration, the trial court entered an order supporting LINA's interpretation of the contract and granting judgment in favor of William in the amount of \$9,945.28, half the policy less the child support arrearage. This appeal followed, and William, having since deceased, is represented by his wife, Sherry Southard, as personal representative of his estate.

Michelle argues that the trial court erroneously awarded the balance of the policy less child support arrearage to William because the contract language was ambiguous, which called for the issue to be submitted to a jury. We disagree.

The “construction and interpretation of a contract, including questions regarding ambiguity, are questions of law to be decided by the court.” *First Commonwealth Bank of Prestonburg v. West*, 55 S.W.3d 829, 835 (Ky.App. 2000). Where there is no ambiguity, a written instrument is to be strictly enforced according to its terms which are to be interpreted “by assigning language its ordinary meaning and without resort to extrinsic evidence.” *Island Creek Coal Co. v. Wells*, 113 S.W.3d 100, 104 (Ky. 2003).

Based upon the clear and unambiguous language of the policy, the trial court found that both Michelle and William, as Jeremy's parents, were rightful

beneficiaries entitled to equal distribution of the benefits from the policy. The contract clearly delineates mother or father as a *class* and does not purport to assign the total amount of death benefit to one or the other. It would be contrary to the ordinary meaning to assert that insurance companies are charged with the duty of deciding which parent, the mother or the father, is rightfully entitled to death benefits. In the case at hand, it is unfortunate that a beneficiary was not designated. It would be, however, counter to the intent of the parties in an insurance contract such as the one at issue here to interpret the word “or” as it is used in the parental class to mean that either the mother or the father collects death benefits but not both. Accordingly, we find the trial court's findings are not clearly erroneous and affirm the judgment in favor of William Southard.

ALL CONCUR.

BRIEF FOR APPELLANT:

Teddy B. Gordon  
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BRIEF FOR APPELLEE:

Daniel M. Oyler  
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