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Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-001157-MR

RUTH ANN SADLER APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE JO ANN WISE, JUDGE
ACTION NO. 96-CI-02799

BARBARA LOIS VAN BUSKIRK APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CLAYTON, CAPERTON, AND TAYLOR, JUDGES.

CLAYTON, JUDGE: Ruth Ann Sadler appeals the Fayette Circuit Court's order denying her motion to declare that Barbara Lois Van Buskirk waived beneficiary rights to Richard Van Buskirk's Individual Retirement Account in the Buskirk's property settlement agreement. After careful consideration, we affirm the trial court.

FACTUAL AND PROCEDURAL BACKGROUND

Barbara Van Buskirk was married to Richard Van Buskirk for thirty-six years. In 1996, they divorced and entered into a property settlement agreement (hereinafter "the Agreement"). Under the terms of the Agreement, Barbara and Richard waived their rights to each other's individual retirement accounts (hereinafter "IRA") and their rights to take against the other's estate upon death. In particular, the terms of the Agreement specified that each party retained the retirement accounts held in his or her individual name and that each party disclaimed all interest in any retirement account held by the other.

At the time the Agreement was effectuated, Richard owned a Dreyfus IRA. He opened the IRA on March 13, 1986, and named Barbara as the beneficiary. Richard, however, never changed the name of the beneficiary after the divorce. Later, Richard married Ruth Ann Sadler. On November 15, 2011, Richard died, and Ruth Ann was appointed administratrix of his estate. Subsequently, she contacted Dreyfus about the aforementioned IRA. Dreyfus informed Ruth Ann that Richard never completed its internal forms to change the named beneficiary and that Barbara was the named beneficiary on the account.

On April 30, 2012, Ruth Ann filed in Fayette Circuit Court a motion to intervene and a motion to declare that Barbara had no rights to the Dreyfus account. Barbara did not file a responsive pleading and did not appear at the May 4, 2012 hearing when the motions were heard. The trial court granted Ruth Ann's motion to intervene and took the other motion under submission. Further, the trial

court issued an order allowing Barbara thirty days to file a written objection to the motion. Although Barbara did not file an objection to the motion, Ruth Ann filed a memorandum of law in support of her motion.

On June 27, 2012, the trial court denied Ruth Ann's motion. Ruth Ann now appeals from this order. She maintains that Barbara has no right to the Dreyfus IRA because of the terms of the Van Buskirks' Settlement Agreement. Barbara disputes this interpretation by observing that the Agreement only addresses the ownership rights, not the beneficial interest of the retirement account. Accordingly, no violation of the Agreement has occurred since Richard designated Barbara as the beneficiary of his IRA account, which was a privilege of his ownership rights.

STANDARD OF REVIEW

In the Commonwealth, a property settlement agreement between the parties to a dissolution action is an enforceable contract. *Pursley v. Pursley*, 144 S.W.3d 820, 826 (Ky. 2004); Kentucky Revised Statutes (KRS) 403.180(5). In general, the construction and interpretation of contracts constitute questions of law for the lower court. *Cinelli v. Ward*, 997 S.W.2d 474, 476 (Ky. App. 1998). We review questions of law de novo and are not required to defer to the trial court's decision. *Id*.

ANALYSIS

In sum, the issue is whether Barbara's status as beneficiary of the IRA is compromised by the terms of the Agreement. Kentucky statutes mandate that in

a dissolution action, the trial court assign and divide marital property. KRS 403.190. Pursuant to the Agreement under discussion, Richard was assigned certain property including the Dreyfus IRA.

Paragraph 5 of the Agreement states that "Husband and Wife each have in his/her own name one or more Individual Retirement Account(s). The parties mutually agree to make no claim upon any interest owned by the other, now or in the future in the current accounts . . ." Hence, according to the Agreement, both parties were assigned their individual retirement accounts and waived their rights to make any claim against these accounts now or in the future.

Based on this language, Ruth Ann argues that Barbara, even though she is the named beneficiary of the IRA, has waived any right to it. Yet, even though Richard was assigned the ownership of the IRA, he never exercised his ownership right to change the named beneficiary on the account. In fact, the Agreement is silent as to the assignment of any beneficial interest.

In a somewhat similar case, *Ping v. Denton*, 562 S.W.2d 314 (Ky. 1978), the Kentucky Supreme Court addressed a case where the divorce decree made no disposition of a life insurance policy in which the wife was designated as the beneficiary. Later, after the husband's death, it was ascertained that he never changed the beneficiary of the policy. The Court held that divorce alone does not disturb a former spouse's status as an insurance policy beneficiary. The Court declared that "[a] policy of insurance is nothing more nor less than a contract wherein an insurance company, for valuable consideration, agrees to pay a sum of

money on a specified contingency to a designated person called a beneficiary." *Id.* at 316.

Nonetheless, Ruth Ann maintains that a later case, *Napier v. Jones*, 925 S.W.2d 193 (Ky. App. 1996), distinguished *Ping* and necessitates a different outcome herein. We disagree. In *Napier*, the issue was whether a trial court could override a joint tenancy with right of survivorship after the death of a survivor who was specifically awarded the property after its joint tenancy was obviated in the divorce decree. Obviously, the facts of this case are quite different. The *Napier* facts involve an asset owned by both parties prior to the dissolution action and specifically dealt with and divested in the decree.

Our Court clarified the holding in *Ping* by stating in *Napier* that "when a circuit court has decided the issue of ownership of specific property and made provision for it in the divorce decree, *Ping* is inapplicable." *Napier* at 196. But, *Napier* is inapposite here because although the Agreement assigned ownership of the IRA to Richard, it remained silent as to the beneficial interest. And given the holding in *Ping* – dissolution of marriage does not terminate an ex-spouse's ability to recover as a beneficiary – Barbara is entitled to her beneficial interest.

Moreover, in *Hughes v. Scholl*, 900 S.W.2d 606 (Ky. 1995), the Kentucky Supreme Court explicated the issue involving the designation of beneficiary interest following a dissolution action when it held that if a party wishes to terminate an ex-spouse's beneficiary expectancy, they must explicitly do so. The Court expressly directed in Footnote 2 that "[t]he divestiture language

should be clear and unambiguous. A general waiver of any interest in the property of the other spouse is insufficient to destroy a beneficiary's right to receive insurance policy proceeds." *Id*. at 608 n.2.

As noted above, a property settlement agreement is regarded as a contract. Thus, the issue lies squarely on the interpretation of the parties' language in the Agreement, i.e., contract. The pertinent language says that they would make no claim upon any interest owned by the other, now or in the future. We do not believe that this language refers to the beneficiary designation on the IRA. Clearly, when the property was divided in the Agreement, and ultimately incorporated in the divorce decree, Barbara waived any right to ownership of Richard's IRA. Barbara, however, has never claimed or attempted to act as owner of the IRA.

Additionally, after the divorce and during Richard's lifetime, he had all the rights of ownership. These rights included withdrawing all the money and/or changing the beneficiary designation. But he did not. Instead, Barbara is receiving the account because Richard, through his ownership authority, designated her beneficiary. Nevertheless, she is not violating the terms of the Agreement since she is not claiming any ownership of the IRA itself. She is the passive recipient because of Richard's act.

Continuing our analysis, we observe several factors that bolster the legitimacy of Barbara's interest as a beneficiary. First, nothing in the Agreement mentions or provides for the disposition of a beneficiary interest in the policy.

Second, Richard never removed Barbara as the beneficiary even though he had many years to designate a new beneficiary of his IRA. It is not the function of a court to presume that Richard intended to do so and act for him. *Hughes v. Scholl*, 900 S.W.2d 606 (Ky. 1995). Lastly, while the General Assembly in KRS 394.092 explicitly eliminated ex-spouses' devised interests under a last will and testament, it has never enacted legislation divesting former spouses' beneficiary interests that fall outside a will and are based on the instrument itself. Here, neither the Agreement nor the paperwork for the IRA divests Barbara of her beneficial interest.

Undoubtedly, beneficial interest and ownership interest are distinct and separate from each other. As defined in *Black's Law Dictionary*, a beneficial interest is "[a] right or expectancy in something (such as a trust or an estate), as opposed to legal title to that thing. (9th ed. 2009). Whereas *Black's Law Dictionary* defines an ownership interest is "[t]he bundle of rights allowing one to use, manage, and enjoy property, including the right to convey it to others." (9th ed. 2009).

Interpreting the terms of the Settlement, it is certain that Richard had ownership of the Dreyfus IRA, which Barbara never challenged. As owner, Richard had the authority to designate a beneficiary, which he did. It was Barbara. Therefore, the terms of the Agreement are not thwarted by Barbara's right to receive its beneficial interest. Barbara is not claiming ownership of the IRA but merely receiving, as a result of Richard's authority as the owner of the account, the

concomitant result of his beneficiary designation. Thus, our de novo review leads us to agree with the trial court's decision.

CONCLUSION

The June 27, 2012 decision of the Fayette Circuit Court denying Ruth Ann's motion to deny Barbara any rights to the Dreyfus IRA is affirmed.

CAPERTON AND CLAYTON, JUDGES, CONCUR.

TAYLOR, JUDGE, CONCURS AND FILES SEPARATE OPINION.

TAYLOR, JUDGE, CONCURRING: Respectfully, I concur with the result reached by the majority in this case. In addition to the extension of the precedent in the *Hughes* case, relied upon by the majority, I also believe that the statutory provisions set forth in KRS 391.360 are applicable and controlling in this case. This statute is part of a statutory scheme relating to multiple party accounts and specifically pertains to written provisions for the transfer of property outside of probate upon the death of a party to a written instrument designating a beneficiary upon death. As noted in the statute, such transfers are nontestamentary, and given the same treatment under our laws as payable on death accounts (POD), as set forth in KRS 391.300, *et seq*.

Accordingly, a property settlement agreement or other writing entered into by the parties in a divorce has no effect on a prior written instrument naming a beneficiary for an IRA or a pension account unless that divorce agreement specifically extinguishes the beneficiary's right to receive the property upon the death of the party who owns the IRA or pension account. Had the IRA in question

been a probatable asset (not subject to KRS 391.360) and subject to disposition under appellant's will, KRS 394.092 would have been applicable and prevented the proceeds of the IRA from passing to appellee. However, KRS 391.360 precludes this due to the express terms of the IRA. Similarly, had the property in question been a state retirement annuity, the divorce would have terminated the ex-spouse's status as a beneficiary as a matter of law under KRS 61.542.

In this case, there does not appear at this time to be any applicable law or legal precedent that would overcome the provisions set forth in KRS 391.360. I would suggest that the dissent of Chief Justice Stephens in *Hughes v. Scholl*, 900 S.W.2d 606 (Ky. 1995), is well-taken and that it is ripe for the Kentucky Supreme Court or the Kentucky General Assembly to take another look at this area of law as concerns the effects of divorce on multiple party – POD accounts and other nontestamentary beneficiary transfers where a spouse is customarily designated as a beneficiary on those accounts. Otherwise, for domestic relations practitioners in Kentucky, this area of law remains a malpractice trap and should be reviewed and scrutinized closely in every divorce.

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