

STATE OF MICHIGAN
COURT OF APPEALS

THRIVENT FINANCIAL FOR LUTHERANS,

Plaintiff,

v

NATALIE KOLASKI, Conservator of the Estate
of JESSICA CARPENTER; and WILLIAM
CARPENTER, Personal Representative of the
Estate of JOHN CARPENTER,

Defendants-Appellees,

and

JOSEPH CARPENTER and CYNTHIA
CARPENTER, Conservators of the Estate of
JACOB CARPENTER,

Defendants-Appellants.

UNPUBLISHED

March 27, 2007

No. 269481

Genesee County Circuit Court

LC No. 05-082241-CK

Before: White, P.J., and Zahra and Kelly, JJ.

PER CURIAM.

In this interpleader action, appellants appeal by right from an order denying their motion for summary disposition and granting summary disposition in favor of appellee Natalie Kolaski, as conservator of the estate of Jessica Carpenter. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I Basic Facts and Procedure

In 1985, John W. Carpenter purchased a \$50,000 life insurance policy from plaintiff. The policy named his parents as beneficiaries. John then fathered Jacob R. Carpenter. John did not marry Jacob's mother but provided child support. John later married appellee Natalie Kolaski. In 1995, John named his spouse as the first beneficiary of the policy and Jacob as the contingent beneficiary. In 1996, John and Natalie became the parents of a daughter, Jessica.

John and Natalie divorced in 1998. The judgment provided that the parties were to have joint legal custody of Jessica and that John was to have physical custody, with Natalie providing monetary support if employed.

Significantly for the issues here, the judgment also provided:

CUSTODY OF MINOR CHILD

IT IS FURTHER ORDERED AND ADJUDGED that the [insured] shall have the physical care, custody and control of the minor child

* * *

LIFE INSURANCE

IT IS FURTHER ORDERED AND ADJUDGED that each of the parties hereto shall name the minor child as the irrevocable beneficiary of any life insurance in force and effect upon their lives, and they shall maintain such insurance in full force and effect until the obligation to support said minor child, as provided herein has terminated.

* * *

INSURANCE/RETIREMENT/PENSION

IT IS FURTHER ORDERED AND ADJUDGED that neither party hereto shall hereafter have any further interest as beneficiary or otherwise in and to any life insurance policies, endowments, annuity contracts, retirement and/or pension benefits standing in the name of or insuring the life of either party.

John died in 2005 without changing the policy beneficiaries to conform to the judgment of divorce. Upon John's death, appellee Natalie Kolaski sought the insurance proceeds as the conservator of Jessica's estate. Appellants, Jacob's guardians and conservators, also claimed the policy proceeds for Jacob's estate.

Plaintiff filed this interpleader action asking the court to determine the appropriate distribution of the proceeds. In granting summary disposition in favor of appellees and awarding the insurance proceeds to Jessica, the trial court concluded that decedent owed a statutory duty to support Jessica notwithstanding his failure to comply with the terms of the divorce judgment, citing MCL 722.3.

II Analysis

We review a decision on a motion for summary disposition *de novo*. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

There exists no question that the terms of the judgment of divorce entered between Natalie Kolaski and the decedent operate to waive any claim Natalie personally has as the named first beneficiary under the policy. *Prudential Insurance Co v Irvine*, 338 Mich 18; 61 NW2d 14

(1953). The question presented in this case is whether, in the face of a waiver of the named beneficiary by operation of a judgment of divorce, the proceeds under the policy should be paid to the contingent beneficiary as named under the insurance policy or the intended first beneficiary as designated in the judgment of divorce.

Preliminarily, we reject the conclusion reached by the trial court that the proceeds should be awarded to appellees because the insured was under a statutory duty to support Jessica, independent of the terms of the judgment of divorce. The trial court failed to identify a specific statute. To the extent there is such a statutory duty, that duty would not be unique to Jessica, and would apply equally to Jacob, as the insured was Jacob's legally recognized father.

We nonetheless affirm the judgment of the trial court. The terms in the judgment of divorce pertaining to the life insurance proceeds at issue here are substantially similar to those at issue in *In re Monreal Estate*, 422 Mich 704; 375 NW2d 329 (1985). There, the insured was ordered by judgment of divorce to name his minor children as beneficiaries under his life insurance policy. While the insured initially complied with the judgment of divorce, the insured later changed the policy to reflect his second wife as the beneficiary.¹ At the time of the insured's death, one of his children remained under the age of majority. The Supreme Court concluded that the life insurance benefits were intended by the judgment of divorce to act as a means of child support for the children in the event decedent died before the youngest child reached the age of 18. The Supreme Court ostensibly rewrote the terms of the insurance contract to honor the dictates of the judgment of divorce. A portion of the insurance proceeds sufficient to fund the balance of the child support obligations due until the youngest child reached the age of 18 was paid to the estate of the minor child. The balance of the insurance proceeds was paid pursuant to the dictates of the policy.²

The terms of the judgment of divorce in this case refer to the decedent's obligation to support Jessica "as provided herein." Appellants argue that the judgment of divorce does not expressly require the insured to provide "support" for Jessica; rather, the judgment provides that the insured's ex-wife shall provide support when she is able to find "gainful employment." As such, appellants contend, the insured's obligations to Jessica ended when he died. We find this argument unpersuasive.

We agree the judgment did not expressly require decedent to pay a periodic and specific dollar-amount of "support" for Jessica when he was alive. However, the court awarded him sole physical custody of the child. A court may award custody only after it has determined that doing

¹ The insured divorced his second wife and, as part of the judgment of divorce in that case, the second wife waived her interest in the life insurance proceeds. The fact that the second wife waived her interest in the insurance proceeds is not relevant to our analysis here, as the Supreme Court had to determine whether the first judgment of divorce essentially reformed the insurance policy, thereby precluding the insured from avoiding his obligation under the first judgment of divorce.

² It appears that in light of the waiver of the named beneficiary, the insured's second wife, the policy required the proceeds to be paid to the insured's estate.

so is in the child's best interests. See *Harvey v Harvey*, 470 Mich 186, 192; 680 NW2d 835 (2004). It is axiomatic, then, that a court would not award physical custody to a parent and still find it necessary to state separately a level of "support" for the child – such support is inherent in the custody award. Moreover, the judgment of divorce expressly provides that, to "effectively rear" Jessica, each parent "shall have an active role in providing a sound moral, social, *economic* and education [sic] environment for the minor child." [Emphasis added.] A sound economic environment for Jessica includes the monetary support from the custodial parent needed to provide an appropriate custodial environment.

Michigan courts have historically modified insurance contracts to comport with judgments of divorce. See *White v Michigan Life Ins Co*, 43 Mich App 653; 204 NW2d 772 (1972). Moreover, by statute the lower court had the power to place a child support order within a judgment of divorce as well as enforce it.³ MCL 552.16 reads:

(1) Upon annulling a marriage or entering a judgment of divorce or separate maintenance, the court may enter the orders it considers just and proper concerning the care, custody, and, as prescribed in section 5 of the support and parenting time enforcement act, 1982 PA 295, MCL 552.605, support of a minor child of the parties. . . .⁴

(2) An order concerning the support of a child of the parties is governed by and is *enforceable* as provided in the support and parenting time enforcement act, 1982 PA 295, MCL 552.601 to 552.650. [Emphasis added.]

Accordingly, MCL 552.625 expressly gives courts and payees both enumerated and unenumerated means to enforce support orders in judgments. It provides:

In addition to providing remedies or imposing penalties otherwise available under this act or other law for the enforcement of support orders, the court, upon petition by the office of the friend of the court or recipient of support and after notice to the payer and an opportunity for a hearing, may require a payer to provide sufficient bond, security, or other guarantee to secure the payment of support that is past due, *or due in the future*, or both. . . . *Upon default in the payment of the amount awarded in the judgment, the court may order execution of the judgment; . . . or take any other appropriate action to enforce the judgment.* [Emphasis added.]

In this case, the judgment of divorce ordered disbursement of proceeds from "any life insurance in force" at the time of the judgment, which proceeds were obviously "due in the future," to go to Jessica. The court below in this case properly ordered execution of the

³ Whether a court could unilaterally impose such terms had been unsettled in Michigan. See *Kasper v Metropolitan Life Ins Co*, 412 Mich 232; 313 NW2d 904 (1981).

⁴ See *Burba v Burba*, 461 Mich. 637, 642; 610 NW2d 873 (2000), where the Court noted that the statutory language prior to amendment gave courts "little guidance in ordering child support."

judgment of divorce because to make a disbursement to any person other than Jessica, who was nine years old at the time of her father's death, would result in a default on the support envisioned and awarded in that judgment.⁵

Affirmed.

/s/ Helene N. White
/s/ Brian K. Zahra
/s/ Kirsten Frank Kelly

⁵ We note that in *In re Monreal Estate, supra*, the Supreme Court limited its holding to require payment only of those funds needed to pay child support until the youngest child reached the age of 18. Thus, in some circumstances, it may be necessary for a trial court to conduct an evidentiary hearing to determine the amount of support payable from a custodial parent from the time of that parent's death until the children at issue reach the age of majority. Here, Jessica was nine years old when her father died, leaving a void of more than eight years in which her father would have been supporting her as the primary custodial parent. We take judicial notice pursuant to MRE 201(b) that the amount of monetary support needed by a custodial parent to provide for the support of one child for more than eight years would well exceed the value of the insurance proceeds at issue in this case. We further note that Jacob's conservators have not argued that the proceeds should be apportioned; they argue only that the circuit court erred in finding that John had a obligation to list Jessica as a beneficiary.