NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3136-13T3

IN THE MATTER OF THE
ESTATE OF EDDIE JONES,
III

Argued April 27, 2015 – Decided August 26, 2015

Before Judges Espinosa and St. John.

On appeal from Superior Court of New Jersey, Chancery Division, Burlington County, Docket No. P-2013-0175.

Thomas Connelly argued the cause for appellant Brian Ollivierre, II (Elkind & DiMento, P.A., attorneys; Mr. Connelly, on the brief).

Thomas J. Hurley argued the cause for respondent Aidaliz Jones.

Nada M. Peters argued the cause for respondent The Prudential Insurance Company of America (d'Arcambal Ousley & Cuyler Burk, LLP, attorneys; Ms. Peters, on the brief).

PER CURIAM

Brian Ollivierre, II, appeals from orders that reformed a life insurance policy issued to the decedent, Eddie Jones, III, to honor Jones's obligation under a judgment of divorce. We

affirm, substantially for the reasons expressed by Judge Karen L. Suter in her written opinion.

Eddie Jones, III, and Aidaliz Jones[1] married in 1998 and had one child, A.J., who was born in 2003. When they divorced in December 2009, they entered into a settlement agreement that was incorporated into their Amended Dual Final Judgment of Divorce (AJOD), which included the following provision:

> 5. LIFE INSURANCE – The Husband presently has life insurance on his life with a face amount of approximately $200,000.00. He shall name the minor child as beneficiary of $150,000.00 of that policy naming Wife as trustee. Husband shall continue this policy until the child is emancipated. Husband shall also maintain $50,000.00 of said policy naming Wife as beneficiary to secure his alimony obligation. This requirement for Husband to maintain life insurance naming Wife as beneficiary shall terminate upon the termination of alimony.

The policy in question is a group life insurance policy (the Policy) issued by The Prudential Insurance Company of America (Prudential) to the State Treasurer of New Jersey, providing insurance to members of the Police and Firemen's Retirement System of New Jersey. Jones enrolled under the Policy in September 1997, before he married Aidaliz, and named his parents as beneficiaries. Aidaliz was named as the sole contingent beneficiary.

[1] We refer to Aidaliz Jones in this opinion by her first name to avoid confusion and mean no disrespect.

Also before his marriage to Aidaliz, Jones was advised of a pending paternity suit regarding appellant Ollivierre. Jones did not challenge paternity and paid child support for Ollivierre until his emancipation in June 2012, several months prior to Jones's death in December 2012. Ollivierre has not disputed Aidaliz's assertion that there was never any contact between him and Jones.

Despite the provision of the AJOD, Jones never named A.J. as beneficiary of the policy before he died, intestate. His parents predeceased him. Pursuant to N.J.S.A. 3B:3-14, the divorce revoked Aidaliz's designation as contingent beneficiary under the original language of the policy. The operative provision of the Policy under these circumstances provides, "Any amount of insurance under a Coverage for which there is no Beneficiary" at the time of the insured's death "will be payable to [the insured's] estate."

Ollivierre and Aidaliz were named co-administrators of the estate. Motion practice ensued regarding the disposition of the insurance proceeds and the matter was transferred to the Probate Part. The issues presented to Judge Suter were: (1) Ollivierre's order to show cause to remove Aidaliz as co-executrix, restrain the distribution of the life insurance proceeds, compel an accounting, and for damages and attorney's fees; (2) Prudential's cross-motion seeking the appointment of a guardian ad litem for

the minor child, to interplead the proceeds from the Policy and a release of Prudential upon deposit of the proceeds; and (3) Aidaliz's cross-motion for an order distributing the insurance proceeds pursuant to the terms of the AJOD and dismissing Ollivierre's complaint.

Judge Suter found it "clear" from the AJOD that the parties intended that the Policy secure Jones's child support and alimony obligations. She stated,

> The decedent's failure to conform the beneficiary designation to reflect that purpose should not defeat those provisions of the [AJOD]. There is no impediment on this record to the distribution of the proceeds of the policy. The court reforms the policy to reflect that it was to secure the child support and fixed alimony obligation.

The court proceeded to address the disposition of the Policy proceeds, noting the value was $160,002.09 rather than the face amount. Finding Jones's outstanding alimony obligation to be $10,400, the court allowed $10,002.09 of the proceeds to be paid from the Policy to satisfy the alimony obligation to Aidaliz. Neither the value of the Policy nor the amount to be paid to satisfy the alimony obligation are disputed in this appeal.

As to the remaining $150,000, the court stated:

> The child support obligation was $167 per week. The arrears since the time of decedent's death are $9686. Given the child's age, without any COLA increase, a total of $75,000 would have been paid for the child up

> to age 18. Additionally, the child may attend college and would not be emancipated until then. Easily the child support obligation could equal $150,000. Thus, $150,000 of the life insurance proceeds will be paid to [Aidaliz] as trustee for the minor child consistent with the [AJOD]. The court finds that this does not create a windfall for the child.

The court confirmed there were no arrears on Jones's child support obligation as to Ollivierre and that he was emancipated. In addition, the judge ordered Prudential to make payment as directed in the opinion and released Prudential from liability to any of the parties upon payment. Because the relevant facts were undisputed, the judge found no need for discovery. Requests for counsel fees were denied and an informal accounting was ordered.

In his appeal, Ollivierre argues that the trial court erred in reforming the Policy because there was no legal or factual basis for the reformation and such had not been requested by the parties. He also argues it was error to entertain Aidaliz's cross-motion for the imposition of a constructive trust over his objection and without permitting discovery. These arguments lack merit.

N.J.S.A. 2A:34-23 explicitly authorizes a trial court to "require reasonable security" for the payment of child support obligations. It is, therefore, well-established that the court may direct an obligor to "maintain [life] insurance, naming the

minor children as beneficiaries, for the purpose of securing due fulfillment of the support order during their minority." Grotsky v. Grotsky, 58 N.J. 354, 361 (1971). Here, the obligation to maintain life insurance for that purpose was not imposed by the court but, rather, was agreed to by Jones and Aidaliz. "[M]atrimonial agreements between spouses relating to alimony and support, which are fair and just, fall within the category of contracts enforceable in equity." Petersen v. Petersen, 85 N.J. 638, 642 (1981). Moreover, "children of a marriage are third-party beneficiaries of a settlement agreement between their parents." Flanigan v. Munson, 175 N.J. 597, 606 (2003). When support is secured by a life insurance policy and the policy fails to provide such security because the policy names an incorrect beneficiary, the court may impose a constructive trust on all or a portion of the life insurance proceeds after the obligor's death. See, e.g., id. at 608-09.

In Flanigan, the divorced parties included a provision in their settlement agreement that required each of the parties to name the children as irrevocable beneficiaries until their emancipation "on any life insurance policies either of them avail themselves of through employment." Id. at 601. The Court addressed the question whether a constructive trust should be imposed to enforce that provision when the decedent mother failed

to name any beneficiary on a contributory life insurance policy she purchased through her employer's employee-benefits program. Id. at 600.

The Court acknowledged the authority of courts to impose a constructive trust to "'prevent unjust enrichment and force a restitution to the plaintiff of something that in equity and good conscience [does] not belong to the defendant.'" Id. at 608 (quoting Dan B. Dobbs, Remedies § 4.3 at 241 (1973)). The Court described the two-prong test to be applied to determine whether a constructive trust is warranted:

> First, a court must find that a party has committed "a wrongful act." The act, however, need not be fraudulent to result in a constructive trust; a mere mistake is sufficient for these purposes. Second, the wrongful act must result in a transfer or diversion of property that unjustly enriches the recipient.
>
> [Ibid. (internal citations omitted).]

As was the case in Flanigan, Jones's failure to name A.J. as beneficiary on the Policy was "a wrongful act." Ibid. Further, the diversion of these proceeds to the estate pursuant to the Policy provision "cannot trump or curtail the unambiguous language of the earlier property settlement," id. at 609, and would constitute an unjust enrichment. We therefore conclude that the circumstances warranted the exercise of judicial authority to

impose a constructive trust upon the Policy proceeds by reforming the Policy to enforce the term of the AJOD.

Affirmed.