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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0488-14T3

IN THE MATTER OF THE ESTATE
OF JOHN H. MATCHUK, Deceased.

Submitted October 19, 2015 – Decided October 28, 2015

Before Judges Lihotz and Fasciale.

On appeal from Superior Court of New Jersey, Chancery Division, Probate Part, Atlantic County, Docket No. 110621.

Jeffrey H. Sutherland, attorney for appellant Michele R. Grottola, Ph.D.

Levine, Staller, Sklar, Chan & Brown, P.A., attorneys for respondent Estate of Mary Elling (David J. Azotea and Anthony Morgano, on the brief).

PER CURIAM

In this probate case, Michele R. Grottola appeals from a July 3, 2014 order dismissing her complaint with prejudice and entering summary judgment in favor of the Estate of Mary Elling (the estate). We affirm.

Grottola is the widow of decedent John H. Matchuk. Mary Elling, now deceased, was Matchuk's sister. Elling survived Matchuk, but passed away prior to the final disposition of this case. Elling's estate advances her claim that existed at the time of Matchuk's death. This appeal involves competing claims

made by Grottola and the estate against two of Matchuk's retirement accounts. We discern the following facts from the motion record, which the judge found "essentially acknowledged by both counsel[.]"

In the early 1980s, Matchuk worked for approximately two years as an educator at Atlantic County Community College. In that capacity, Matchuk maintained three retirement accounts through the Teachers Insurance and Annuity Association – College Retirement Equities Fund (TIAA-CREF), which acted as a retirement fund provider. In 1984, Matchuk designated Elling as the beneficiary of all three accounts.[1] At that time, Matchuk was not married.

In 1987, Matchuk married Grottola. In 2006, during the course of their twenty-three-year marriage, Matchuk changed the beneficiary designation on only one of the three accounts by substituting Elling's name with that of Grottola. That account is not the subject of the complaint.[2] The remaining two accounts, which totaled approximately $114,000, are the subject of this appeal. Elling remained Matchuk's designated beneficiary on those accounts.

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[1] Matchuk identified his sister by using her maiden name, Mary Cartier.

[2] Grottola received $27,817.56 from this account after Matchuk passed away.

In 2010, Matchuk died intestate. In May 2013, Grottola filed a complaint seeking an order designating her as the beneficiary of the two accounts. Approximately one month later, Elling died. As a result, Grottola filed an amended complaint naming the estate as the party in interest.

During the discovery phase of the proceedings, the parties exchanged documents and Grottola testified at her deposition. Grottola conceded during her deposition testimony that she is not designated as the beneficiary on the TIAA-CREF beneficiary form for the two accounts, and that there are no documents that would suggest otherwise. At the conclusion of discovery, the parties filed motions for summary judgment. The judge conducted oral argument before rendering an oral opinion.

The estate argued that Elling had a vested property right to the two accounts that could be divested only "in the manner prescribed by the policy." The estate further contended that it was entitled to summary judgment because Matchuk never changed the designated beneficiary status for the accounts on the TIAA-CREF beneficiary form. As a result, the estate urged the judge to dismiss Grottola's complaint with prejudice and grant summary judgment in its favor.

Grottola focused primarily on her status as Matchuk's wife at the time of his death. Relying on Vasconi v. Guardian Life

Insurance Company of America, 124 N.J. 338 (1991), Grottola contended that the judge should presume Matchuk intended to designate her as the beneficiary on the accounts. The premise of Grottola's contention was that her marriage to Matchuk created such a presumption. Grottola asserted that when Matchuk switched the name of the beneficiary on one of the retirement accounts from Elling to Grottola, he also meant to name Grottola as the beneficiary on the remaining two accounts. In other words, Grottola maintained, because she was his wife, that it was Matchuk's probable intent to designate her as the beneficiary on all three accounts.

The judge and the parties agreed that the facts were undisputed and the issue was ripe for summary judgment. The judge acknowledged that Grottola admitted there were no documents demonstrating Matchuk's probable intent to designate Grottola as the beneficiary on all of the accounts. The judge concluded there was no credible evidence that Matchuk was uninformed as to how to modify the designated beneficiary. He rejected Grottola's reliance on Vasconi, and entered the order under review.[3]

[3] On August 22, 2014, the judge denied Grottola's motion for reconsideration. Grottola has not appealed from the reconsideration order, but if she had done so, such an appeal (continued)

On appeal, Grottola repeats her contention that Vasconi creates a presumption in her favor designating her as the beneficiary on the accounts. Grottola argues that her long-term marriage to Matchuk warrants application of equitable principles to the facts of this case. She emphasizes, as she did before the judge, that we should weigh heavily the "uniqueness of the marital relationship" and summarily name her as the beneficiary on the two accounts.

The judge reached his conclusions from the undisputed facts. We accord no deference to the motion judge's conclusions on issues of law, which we review de novo. Manalapan Realty, L.P., v. Twp. Comm., 140 N.J. 366, 378 (1995). Applying these standards, we conclude that the judge correctly entered summary judgment in favor of the estate and dismissed the complaint.

A designated beneficiary generally possesses a vested property right "which can be divested only by a change of beneficiary in the mode and manner prescribed by the [policy]." Czoch v. Freeman, 317 N.J. Super. 273, 285 (App. Div.) (alteration in original) (citation omitted), certif. denied, 161 N.J. 149 (1999). "Unless the change of beneficiary is executed in the manner prescribed by the policy, evidence that the

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(continued)
would have been without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

insured intended to change the beneficiary will not [a]ffect the change." Ibid. (citation omitted). Although substantial compliance with the method prescribed in the policy may warrant a modification of this general rule, we have previously stated that "only under limited circumstances will a designated beneficiary be denied the right to receive the insurance proceeds." Ibid. There are no such circumstances here.

In 1984, when Matchuk named Elling as the beneficiary on all of the accounts, Matchuk executed a designation of beneficiary form acknowledging that "[t]he right to change beneficiaries is reserved to [Matchuk]." In November 2006, Matchuk followed the TIAA-CREF procedure and, on only one account, modified the original beneficiary form by designating Grottola as the beneficiary and Elling as the contingent beneficiary. In January 2007, TIAA-CREF informed Matchuk that he could update his beneficiary information by "logging on to [its website] or completing and mailing a [d]esignation of [b]eneficiary form" for all three accounts. Matchuk did not follow the procedure and change the beneficiary status for the remaining accounts.

In general, even oral statements indicating that a decedent was contemplating a change in beneficiary status are insufficient to establish substantial compliance with the method

prescribed in a policy. In DeCeglia v. Estate of Colletti, 265 N.J. Super. 128 (App. Div. 1993), we held that oral statements of an insurance agent and an attorney, that the insured was contemplating changing the beneficiary designation under his insurance policy, did not accomplish a beneficiary change. We concluded that verbal expressions of a decedent's intention to change the beneficiary on an insurance policy were insufficient to constitute substantial compliance with the policy's requirements for changing beneficiaries. Id. at 135. Even if the record reflected credible oral statements that Matchuk also intended to name Grottola as the beneficiary on the remaining two accounts, which is not the case, then such statements would have been insufficient to satisfy the policy's requirements for changing beneficiaries.

We agree with the judge that Grottola's reliance on Vasconi is misplaced. Vasconi involved competing claims to an insurance policy in the context of a detailed matrimonial property settlement agreement (the PSA), which provided that the divorcing couple waived all claims each one had to the other's assets. The Court held that

> when spouses divorce and enter into a [PSA] that purports to settle "all questions pertaining to their respective interests in distribution of the marital assets," the proceeds of a life-insurance policy subject to the lifetime control of one spouse should

> ordinarily be considered as encompassed within the terms of the settlement agreement. Such a settlement agreement and waiver of interest in the property of the deceased spouse should be regarded as presumptively revoking the nonprobate transfer of the insurance proceeds.
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> [Vasconi, supra, 124 N.J. at 346.]

As a result, Vasconi is factually distinguishable from this case.

In Fox v. Lincoln Financial Group, 439 N.J. Super. 380, 383 (App. Div.), certif. denied, 221 N.J. 566 (2015), we recently considered, as Grottola suggests, whether marriage creates a presumptive right to life insurance benefits of a spouse, "thereby revoking any contrary premarital beneficiary designation made by the deceased spouse." We held that marriage alone is insufficient to defeat a premarital beneficiary designation. Ibid. In reaching that holding, we specifically rejected the assertion that Vasconi created a presumption, triggered by marriage, that each party "intends to make the other the primary beneficiary under any life insurance policy[.]" Id. at 387. Rather, "[a] beneficiary designation must yield to the provisions of a separation agreement expressing an intent contrary to the policy provision." Ibid. (alteration in original) (quoting Vasconi, supra, 124 N.J. at

347). There is no such determinative agreement under the facts of this case.

Here, the judge properly relied on the designated TIAA-CREF beneficiary form, which reflected Matchuk's intent to name Elling, not Grottola, as the beneficiary on the remaining two accounts. Consequently, the judge properly dismissed the complaint and entered summary judgment to the estate.

Affirmed.