NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1099-13T1

MADELINE M. FROMAGEOT,

Plaintiff-Appellant,

v.

HENRI FROMAGEOT and
JUANA FROMAGEOT,

Defendants-Respondents.

Argued November 10, 2015 – Decided December 2, 2015

Before Judges Yannotti and Guadagno.

On appeal from Superior Court of New Jersey, Chancery Division, Essex County, Docket No. C-68-09.

Madeline Fromageot, appellant, argued the cause pro se.

Walter A. Lesnevich argued the cause for respondent (Lesnevich, Marzano-Lesnevich & Trigg, L.L.C., attorneys; Mr. Lesnevich, on the brief).

PER CURIAM

Plaintiff Madeline Fromageot appeals from an order entered by the Chancery Division on August 20, 2013, dismissing her complaint with prejudice. We affirm.

We briefly summarize the relevant facts. Plaintiff is the surviving spouse of Paul Fromageot ("Paul"), who died in 2004. In November 1996, upon becoming employed by Alliance Capital Management, L.P. ("Alliance"), Paul completed an "enrollment card" which authorized Alliance to deduct monies from his salary for payment of premiums on an insurance policy issued by Hartford Life Insurance Company ("Hartford"). The policy provided a $452,500 benefit payable on Paul's death.

On the enrollment card, Paul listed four beneficiaries for this policy: plaintiff, defendants Henri and Juana Fromageot, and Paul and plaintiff's eldest child, who was then five months old. Defendants are Paul's parents. The enrollment card stated that "If more than one beneficiary is named, the death benefit, unless otherwise provided herein, will be paid in equal shares to the designated beneficiaries who survive the employee." Similar statements were included in two other sections of the enrollment card, and in a booklet that described the terms of the policy.

Paul later acquired another policy with a different insurance company, which paid a death benefit in the amount of $2,000,000. Plaintiff was the only beneficiary Paul identified for that policy. Plaintiff and Paul later had three additional children.

Following Paul's death, Hartford contacted the four beneficiaries that Paul had identified on the enrollment card for the Hartford policy. Defendants submitted an application for payment, and Hartford subsequently paid them one-half of the death benefit. Plaintiff and the eldest child each were paid one-fourth of the benefit.

Plaintiff thereafter filed a complaint against defendants, individually and as guardian of the couple's three youngest children, alleging that Paul had always intended that she would receive the entire death benefit under the Hartford policy, should she survive him. She alleged that it was never Paul's intention that fifty percent of the death benefit under that policy would be paid to defendants.

Plaintiff claimed that, "[d]ue to poor draftsmanship of the declaration form, misinterpretation of [Paul's] intentions, or mistake of fact," defendants improperly received and appropriated one-half of the death benefit to themselves. Plaintiff alleged that defendants therefore had been unjustly enriched. Among other relief, plaintiff sought restitution of the portion of the death benefit that Hartford paid to defendants. Plaintiff also asserted a claim against defendants for breach of fiduciary duties, and demanded an accounting.

Defendants filed an answer denying the allegations. The court later appointed Drew J. Bauman ("Bauman") to serve as guardian ad litem for the children. Bauman endeavored to resolve the matter, but was unable to do so. He later filed a motion to withdraw as guardian ad litem. The court entered an order dated April 17, 2012, granting the motion. The order also dismissed the minors from the lawsuit, with the parties' consent.

The Chancery Division judge thereafter denied defendants' motions for summary judgment, finding that there were genuine issues of material fact concerning Paul's intentions which could not be resolved without a trial. The judge conducted a trial in the matter on October 1, 2012.

At the trial, plaintiff testified in support of her claim that Paul intended that she would be the sole beneficiary under the Hartford policy. Plaintiff provided the court with an Alliance personal benefits statement from 1999, which identified plaintiff and the couple's eldest child as beneficiaries. Plaintiff also provided "screen shots" from Alliance's computer system, which listed plaintiff, defendants and all four of the children as beneficiaries. Plaintiff claimed that this evidence identified the persons Paul intended to be beneficiaries of the Hartford policy; however, there was no evidence that Paul signed or executed these documents.

Plaintiff also presented testimony from David Reynolds ("Reynolds"), a family friend. Reynolds was a field agent for the Knights of Columbus ("KOC"), and one of Paul's acquaintances. Paul joined the KOC, and thereafter Reynolds met with him and plaintiff. Among other things, Reynolds asked Paul about the "protection" he had for plaintiff and the children. Paul replied that he had an insurance policy with $2,000,000 in benefits.

Paul also told Reynolds that he had a $500,000 policy with his employer, and $250,000 "on" plaintiff. Reynolds apparently understood Paul's statement to mean Paul intended plaintiff would be the sole beneficiary under two insurance policies. Reynolds did not, however, ask Paul any specific questions regarding the beneficiaries, or the manner in which the benefits would be distributed.

Henri Fromageot ("Henri") testified for defendants. He said Paul's marriage to plaintiff was troubled, and Paul had discussed these marital difficulties with him and his wife. Henri said that, although he was initially surprised that Paul left defendants a substantial sum of money by naming them as beneficiaries under the Hartford policy, over time it made more sense to him, in view of defendants' strong relationship with Paul.

On August 20, 2013, the Chancery Division judge filed a written opinion, in which he concluded that the enrollment card for the Hartford policy stated "unequivocally" that if more than one beneficiary is listed, the benefit would be divided equally among the designated beneficiaries. The judge rejected plaintiff's claim that Paul misunderstood the terms of the policy application and intended to name defendants and the couple's eldest son as contingent beneficiaries.

The judge further found that the circumstances explained why Paul had designated defendants as primary beneficiaries under the policy. The judge noted that Paul and plaintiff had "serious problems" in their marriage, which persisted "from the beginning of [their] marriage through and beyond the date Paul designated beneficiaries on the life insurance application."

The judge noted that plaintiff had been reluctant to admit how much she disliked defendants, and that this had "prevented Paul from attending and being the best man at his brother's wedding." The judge also noted the "ill will" between plaintiff and defendants existed for two years before Paul designated the beneficiaries under the policy.

The judge wrote that plaintiff's reluctance to acknowledge these problems was understandable, because they provided "a convincing basis for concluding" that Paul had filled out the

insurance application form intending to designate defendants as primary beneficiaries of fifty percent of the death benefit. The judge also noted that Henri had testified that defendants had a "very, very good" relationship with Paul, and he had confided with defendants "all the time."

The judge pointed out that Henri testified that, after his honeymoon, Paul had confided in defendants that the marriage was "troubled." The judge found that plaintiff's "reluctant testimony" regarding her relationship with defendants undercut her credibility. Initially, she had denied that she had a problem with defendants from the beginning of the marriage, but later acknowledged that the "problems were always there."

In addition, the judge stated that Reynolds' testimony did not alter his conclusion that Paul had intended defendants to be primary beneficiaries under the Hartford policy. The judge noted that, in his discussion with Paul, Reynolds never specifically asked Paul who he had named as beneficiaries under the Hartford policy. The notes Reynolds made during his meeting with Paul were "not precisely accurate," and erroneously stated the amount of the benefits under the Hartford policy. The judge added that

> while the purpose of Reynolds' testimony was to show Paul never said half of the benefit was payable to his parents, it certainly would not be surprising if Paul intentionally did not mention that fact in a meeting with [plaintiff] present,

> considering the reason he had named his parents as beneficiaries in 1996, the fact that he had never previously revealed it to [plaintiff], and had already protected her and the children with a separate $2 million policy.

The judge concluded that Paul had not been misled by any ambiguity in the policy application form when he listed his parents as primary beneficiaries under the Hartford policy. The judge determined that it was reasonable to conclude that Paul's expectations were consistent with the plain language of the application. The judge therefore entered an order dismissing the complaint with prejudice. This appeal followed.

On appeal, plaintiff raised the following arguments:

> [POINT] I
> THE TRIAL JUDGE ERRED IN CONCLUDING PAUL FORMAGEOT INTENDED TO DISINHERIT THREE OF HIS FOUR CHILDREN IN FAVOR OF ENRICHING HIS PARENTS.
>
> [POINT] II
> THE TRIAL JUDGE ERRED IN CONCLUDING ALLIANCE CAPITAL['S] ENROLLMENT CARDS WERE "CONTRACTS" OR "APPLICATIONS OF INSURANCE". THE GUARDIAN AD LITEM FAILED AT HIS BASIC DUTY TO PROPERLY PROBE AND REPORT.
>
> [POINT] III
> THE COURT ERRED IN ALLOWING THE GUARDIAN AD LITEM TO ENGAGE IN MEDIATION.
>
> [POINT] IV
> HENRI FORMAGEOT'S TESTIMONY IS TOO INCREDIBLE TO BELIEVE. THE TRIAL JUDGE HAD A RESPONSIBILITY TO RECUSE HIMSELF AFTER BECOMING HEAVILY INVOLVED WITH PRETRIAL NEGOTIATIONS AND DISPUTED EVIDENTIARY FACTS.

We conclude from our thorough review of the record that plaintiff's arguments are entirely without merit. We affirm the trial court's judgment substantially for the reasons stated by the judge in his written opinion dated August 20, 2013. We add the following brief comments.

We note initially that plaintiff's appeal is largely based on her contention that the record does not support the trial judge's findings of fact. We will not, however, disturb the finding of fact reached by a judge sitting without a jury unless those findings "'are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice." Rova Farms Resort, Inc. v. Investors Ins. Co. of Am., 65 N.J. 474, 484 (1974) (quoting Fagliarone v. Twp. of No. Bergen, 78 N.J. Super. 154, 155 (App. Div. 1963)). Furthermore, deference to a trial court's fact-finding is warranted "when the evidence is largely testimonial and involves questions of credibility." In re Return of Weapons of J.W.D., 149 N.J. 108, 117 (1997).

We are convinced that there is sufficient evidence in the record to support the trial judge's finding that Paul intended to name defendants as primary beneficiaries for the Hartford policy, and the payment to defendants of one-half of the death benefit under that policy was consistent with the terms clearly

and unequivocally spelled out in the enrollment card. The judge correctly found that the relevant section of the enrollment card was clear and unambiguous, and Paul's intent to have his parents receive one-half of the benefit under the policy was consistent with the circumstances that existed when Paul completed the enrollment card.

Notwithstanding plaintiff's arguments to the contrary, the evidence does not support her claim that Paul "changed" the beneficiaries under the policy. Moreover, the judge reasonably found that Reynolds' testimony did not support plaintiff's claim that Paul intended she would be the sole primary beneficiary under the Hartford policy.

We have considered plaintiff's other arguments, including her contentions that: (1) the judge misquoted and mischaracterized Reynolds' testimony; (2) the judge erred in suggesting that Paul took out the $2,000,000 policy as a replacement for the Hartford policy; (3) defendants' improperly acquired a copy of Paul's death certificate to collect the policy benefits; (4) Paul's 1999 personal benefits statement at Alliance superseded the enrollment card for the Hartford policy; and (5) the judge erroneously denied her motion to compel production of certain records from a government agency in

Connecticut. We are convinced that these arguments are without sufficient merit to warrant discussion. R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing is a true copy of the original on file in my office.

CLERK OF THE APPELLATE DIVISION