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SIXTH DIVISION
December 23, 2011

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ESTATE OF RICKI DILLARD, By and Through Its)	Appeal from the
Special Representative, Letitia Dillard,)	Circuit Court of
)	Cook County.
Cross-Plaintiff-Appellant,)	
)	
v.)	No. 07 CH 07691
)	
RENEE GREEN, a/k/a Renee Pitts,)	
)	
Cross-Defendant-Appellee,)	
)	
(Primerica Life Insurance Company,)	
Plaintiff,)	
)	
v.)	
Estate of Ricki Dillard, Renee Green Dillard, and Leak)	The Honorable
and Sons Funeral Home,)	Daniel Riley,
Defendants.))	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Robert E. Gordon and Justice Garcia concurred in the judgment.

ORDER

¶ 1 *HELD:* The trial court properly granted a directed finding on a claim that cross-defendant was barred from receiving proceeds from decedent's life insurance policy because she

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intentionally and unjustifiably caused decedent's death where no *prima facie* case was established. The trial court properly dismissed a claim for an oral contract where the terms were uncertain and indefinite.

¶ 2 The question before us is whether decedent's ex-wife was entitled to receive proceeds from decedent's life insurance policy following his murder where the estate claimed she was involved in his death. Cross-plaintiff, Estate of Ricki Dillard, by and through its special representative, Letitia Dillard, (the estate) appeals the trial court's order granting a motion for a directed finding in favor of cross-defendant/ex-wife, Renee Green. The estate contends it presented a *prima facie* case that Green was involved in Ricki's death in violation of section 2-6 of the Probate Act (755 ILCS 5/2-6 (West 2006)). The estate additionally contends the trial court erred in dismissing its claim that Green and Ricki had an oral contract regarding the use of the insurance proceeds. Based on the following, we affirm.

¶ 3 **FACTS**

¶ 4 Ricki died from multiple gunshot wounds late on October 6, 2006, or in the early morning hours of October 7, 2006. Ricki was found handcuffed inside the back seat of his car, which had been set on fire in a remote construction location.

¶ 5 Ricki purchased a life insurance policy on May 10, 2000, from Primerica Life Insurance Company (Primerica) in the amount of \$200,000 with a 5% increasing benefit rider. At the time of Ricki's death, the insurance policy was worth \$260,000. When the policy was issued, Ricki named his daughters, Leticia Dillard and Sabrina Slater, as the beneficiaries. However, at the time of his death, Green was the named beneficiary.

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¶ 6 Following the resolution of an interpleader claim filed by Primerica, the estate filed a four-count cross-complaint against Green. Two of the counts were dismissed with prejudice and are not contested on appeal. Green filed a combined motion to dismiss count IV of the cross-complaint pursuant to section 2-619.1 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619.1 (West 2006)) arguing that the cross-complaint failed to provide facts sufficient to allege an oral contract existed between Ricki and Green in which Green was to use the insurance proceeds for the benefit of Ricki's son, Johntaye Dillard, and that any oral contract was barred by the statute of frauds. On February 11, 2009, the trial court granted Green's motion to dismiss with prejudice on the basis that the contract violated the statute of frauds. The case then proceeded to trial on count I, which alleged that Green should be disqualified from receiving the insurance proceeds because she was involved in Ricki's murder in violation of section 2-6 of the Probate Act.

¶ 7 The facts presented at trial revealed that Ricki met Green early in 2001, and they were married on August 24, 2002. According to Green's testimony, Ricki was a drug dealer that always had money. On July 14, 2004, Ricki purchased a house. Thereafter, Ricki and Green lived in the house and used Green's section eight housing vouchers to pay the mortgage. On October 14, 2004, Ricki completed a beneficiary designation form changing the beneficiary of his life insurance to Green. Green signed the form.

¶ 8 Ricki's and Green's relationship was unstable in the months prior to Ricki's death. At some point, Green began a relationship with Dave Pitts, and Ricki and Green divorced. The marriage was legally dissolved on April 18, 2006. According to Green, she left Ricki because

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she was afraid of his drug dealing lifestyle. Green then became engaged to Pitts and moved out of Ricki's house; however, the engagement to Pitts was called off and Green moved back in with Ricki.¹ Green was aware that Ricki began dating a woman named Roxanne Davis. Ricki and Green then entered into a lease agreement whereby Green continued to pay Ricki with her section eight housing vouchers. The lease term was to end in October 2006.

¶ 9 According to Green, she last saw Ricki at 5 p.m. on October 6, 2006. Later that night, Ricki's brother, Garryl Dillard, called Green inquiring as to Ricki's whereabouts. Prior to that phone call, Green had not spoken to Garryl for an extended period of time. At approximately 3 a.m. or 4 a.m. on October 7, 2006, the police knocked on the door and asked Green questions about Ricki. The police told Green that they were investigating an incident "pertaining to a vehicle." Green denied knowing Ricki and denied that the house belonged to him. The officers, however, retrieved a piece of mail addressed to Ricki and confronted Green. Green responded that she knew Garryl and that Garryl was her landlord. Green also said that she "somewhat" knew Ricki. Green did not report receiving a phone call from Garryl the night before. Green testified that she lied to the police because she knew "the type of things that Ricki was into." After the police left, Green gathered her children and went to her sister's home where she thought they would be safe. Green learned from either Garryl or her sister that Ricki had been kidnapped. Later on October 7, 2006, Green filed a missing person's report, listing herself as Ricki's wife. Then, after finding out that Ricki had been killed, Green identified his body at the morgue on October 9, 2006. While at the morgue, Green learned that Ricki died of multiple

¹Green eventually married Pitts.

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gunshot wounds, was dead before his car was lit on fire, and was found handcuffed in the backseat of the car while sitting on a Bible.

¶ 10 Green initially testified that she never spoke to Ricki about the insurance policy, but later admitted that she had a discussion with him regarding her beneficiary status. Green did not recall calling Primerica about Ricki's death on October 9, 2006. Primerica, however, provided a record showing that Green submitted a claim on October 9, 2006, identifying herself as Ricki's wife.

¶ 11 One week after Ricki died, Green told one of his daughters that "something happened in the house between Ricki and [her] daughter, [Britney]." Green admitted she testified incorrectly during her deposition that Britney slept with a knife because she feared Ricki. According to Green, one of Ricki's sisters reported being molested by Ricki.

¶ 12 Garryl testified that Ricki worked in construction, receiving most of his jobs through his church. Garryl was close to Ricki and had known Green for most of his life. Prior to Ricki's death, Garryl learned that Ricki and Green were having relationship problems and that Green was communicating with another man. Garryl confirmed that Green moved out of Ricki's house, but moved back in due to the section eight housing benefits. When Green moved back in, Ricki was dating Roxanne. Ricki told Garryl that Green was "getting out of the house at the end of [October]." According to Garryl, he was not Green's landlord.

¶ 13 Around 9 p.m. or 10 p.m. on October 6, 2006, Garryl received a phone call from Ricki during which Ricki reported that he had been kidnapped and that the kidnappers demanded \$10,000 in ransom. Ricki warned Garryl not to call the police. The phone number registered on

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Garryl's phone, but he did not recognize it. Ninety minutes later, Ricki called Garryl again.

Garryl lied and told Ricki that he had the ransom money. Ricki responded that he would call Garryl back, but he never did. The second phone number appeared blocked on Garryl's phone.

Garryl testified that he did not call Green that night.

¶ 14 When Garryl learned that Ricki had been killed, he did not call the police. The police, however, approached him outside of a bowling alley approximately two or three months later. Garryl no longer had the phone number from the first ransom demand. According to Garryl, he never told Green about the ransom calls. Garryl testified that he did not believe Green killed Ricki, but said she may have been involved in his death.

¶ 15 Roxanne testified that she began dating Ricki after he divorced Green. Roxanne never saw Green at Ricki's house despite recognizing that she had belongings in his basement. According to Roxanne, she was dating Ricki when he was killed and they were "counting the days" until Green was scheduled to move out of his house at the end of the month.

¶ 16 Detective Oscar Arteaga investigated Ricki's murder. After Ricki was found, the entire car was towed to the medical examiner's office. Once at the medical examiner's office, Ricki's body was removed and it was discovered that he had been sitting on a Bible. Thereafter, Detective Arteaga and two of his partners went to the address where the vehicle was registered to learn more about the victim and to potentially inform family members about Ricki's death. When Green answered the door to Ricki's home, Detective Arteaga informed her that they were investigating an incident related to a vehicle. Detective Arteaga asked whether Green knew anyone related to the vehicle. When Green responded in the negative and Detective Arteaga

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noticed a piece of mail bearing Ricki's name and the address of the house, Detective Arteaga asked again if she knew Ricki. Green acknowledged that Ricki was "somewhat" an owner of the property. Green said she knew Garryl and that she rented from both Garryl and Ricki. Green provided Detective Arteaga with Garryl's phone number and said she could not provide any contact information for Ricki. Detective Arteaga testified that Garryl later called reporting that he received a ransom demand from Ricki's phone the night Ricki was killed.

¶ 17 According to Detective Arteaga, neither he nor any other detective told Green the state of Ricki's body when it was found. Detective Arteaga was not aware that anyone at the medical examiner's office released the confidential information. Detective Arteaga testified that valuable items were found on Ricki and in his vehicle; therefore, the case was not deemed a robbery. The case remained unsolved. Detective Arteaga classified Ricki's murder as "extreme" and "personal," opining that profit or jealousy could be motives.

¶ 18 Doris Goldsberry testified she was Ricki's younger sister. After learning that Ricki had been kidnapped, she went to his house. When she arrived on the morning of October 7, 2006, there were a lot of people at the house, including Green. Goldsberry remembered that "four guys" looked at Green while Goldsberry questioned her about Ricki's kidnapping. Green said Garryl instructed her to tell the police that she did not know Ricki. Green then refused to answer a number of Goldsberry's questions. Goldsberry eventually went to the police station and found out that Ricki was dead. The next day, Goldsberry returned to Ricki's house and again questioned Green. Green reported that Garryl was coaching her. Green also reported that Ricki had molested her daughter.

¶ 19 Britney Green testified that she lived in Ricki's house in April 2006 with Green and her siblings. When Green moved out and into Pitts' house, Britney stayed at Ricki's house. She reported having a good relationship with Ricki and feeling safe in his home. Britney was unaware of the changing status of Green and Ricki's relationship. Britney, however, remembered seeing Roxanne at Ricki's house. On the day Ricki was killed, Britney was at a friend's house when Green called to say that Ricki had been kidnapped. Green told Britney to go to her aunt's house.

¶ 20 According to Britney, Ricki attempted to kiss her in 2002 when she was 13 or 14. Britney, however, never told Green. Britney also denied telling Green that she slept with a knife because she feared Ricki. Ricki apologized for trying to kiss her and the incident was "never brought back up."

¶ 21 Letitia testified that she lives in New York. She has two siblings, Sabrina and Johntaye. Letitia had a good relationship with Ricki, who was a general contractor and frequently volunteered at his church. Letitia first met Green at Ricki and Green's wedding reception. Letitia recalled only meeting Green two other times before Ricki's death. In 2006, Ricki told Letitia that he divorced Green and that Green moved out. Ricki added that he was dating Roxanne. In June 2006, Ricki and Roxanne traveled to New York to visit Letitia and to celebrate Roxanne's birthday. Then, in August 2006, Letitia traveled to Chicago to visit Ricki. Ricki told her that Green had moved back into his house under the terms of a lease for section eight housing.

¶ 22 On October 7, 2006, Letitia received a phone call informing her that Ricki was missing. After learning that Ricki was dead, Letitia flew to Chicago. She first went to the police station and found out that Green had spoken to the police, so she went to Ricki's house. Green failed to answer many of Letitia's questions. Green, however, told Letitia that Garryl instructed Green to identify Ricki's body. Green added that Ricki had been handcuffed to the backseat of his car.

¶ 23 Letitia then proceeded to make funeral arrangements. Letitia and Sabrina agreed to meet with Green per Green's request. At the meeting, Green told them that Ricki went missing after food shopping and that Garryl told her to file a missing person's report and to identify Ricki's body. Green asked to participate in the funeral arrangements, offering to use the insurance proceeds to pay for the funeral. Letitia refused. Green then told Letitia that Ricki had molested Britney. Letitia was shocked and inquired as to why Green had not reported the incident to the police. Green responded that she was satisfied when Ricki apologized, adding, however, that Britney was terrified of Ricki and slept with a knife. Later that week, Green went to the funeral home and again asked Letitia if she could be involved in the funeral arrangements. Letitia agreed. Green then executed an insurance proceeds assignment on October 13, 2006. Green gave a copy of the insurance policy to the funeral director. Green listed herself as Ricki's wife on the assignment and asked the funeral director "how fast we could get the death certificate."

¶ 24 Letitia eventually purchased Ricki's house in a foreclosure sale. When Letitia took possession of Ricki's house, the house had been ransacked and there were significant holes in the walls. Letitia did not believe that Green shot Ricki, but testified that Green may have been

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involved in his death.

¶ 25 Sabrina testified consistently with Letitia, adding that she and her sister received burnt money and jewelry found on Ricki's body.

¶ 26 The parties stipulated to the discovery deposition of David Cocroft, Green's son. Cocroft was incarcerated on a robbery charge and planned to plead guilty in exchange for a three-year sentence. Before his incarceration, he lived at Pitts' house with Green and two of his siblings. Prior to that, he lived at Ricki's house. Green told Cocroft that Ricki had been shot in a vehicle. According to Cocroft, kidnappers called Green to demand money. When the kidnappers called Green again, she heard gunshots through the phone. Green told Cocroft she heard the gunshots before knowing that he had been killed. Cocroft reported that, before Ricki died, Ricki and Green were not happy together. Cocroft recalled that Ricki had a lot of money and wore jewelry. After Ricki's death, he and Green moved into Pitts' house.

¶ 27 At the close of the estate's case, Green filed a motion pursuant to section 2-1110 of the Code (735 ILCS 5/2-1110 (West 2006)) for a directed finding in a bench trial. On June 18, 2010, the trial court found in favor of Green and dismissed the estate's remaining claim.

¶ 28 **DECISION**

¶ 29 **I. Intentionally and Unjustifiably Causing Death**

¶ 30 As an initial matter, the parties dispute the appropriate standard of review. The relevant law for a section 2-1110 motion provides:

"When ruling on a section 2-1110 motion, the trial court must apply a two-part analysis. [Citations]. First, the trial court must determine as a matter of law

whether the plaintiff has presented a *prima facie* case. [Citation.] Second, if the plaintiff has presented a *prima facie* case, the court must consider and weigh all the evidence offered by plaintiff, including evidence favorable to defendant, to determine whether the *prima facie* case survives. [Citations.] ' "This weighing process may result in the negation of some of the evidence necessary to the plaintiff's *prima facie* [*sic*] case, in which case the court should grant the defendant's motion ***." ' [Citations.]

If the trial court finds that the plaintiff has failed to present a *prima facie* case as a matter of law, the appellate standard of review is *de novo*. [Citations.] If the trial court moves on to consider the weight and quality of the evidence, finding no *prima facie* case remains, the appellant standard of review is the deferential 'manifest weight of the evidence' standard. [Citations.]" *Minch v. George*, 395 Ill. App. 3d 390, 398, 917 N.E.2d 1169 (2009).

We, therefore, must look to the record to determine if the trial court dismissed the complaint based on the first part of the section 2-1110 analysis or proceeded to the second part.

¶ 31 While issuing its ruling on the motion, the trial court said:

"This is not the type of a ruling that can be based on credibility. The more I reread the testimony, almost the more incredible the whole situation became.

I agree that Ms. Pitts is a troubled person. Whether she's capable of telling the truth, I don't know, but the inconsistencies, they were legion, and I got tired of circling every time I wrote down 'Does not know, does not recall.' It was horrible.

But there are a couple of other characters in this trial that really didn't fair much better, Garryl for one. I didn't find Garryl to be credible.

As to David Cocroft, I mean, I read that deposition twice, and you begin to note the discrepancies. I mean, he tells two different stories at the drop of a hat. I wouldn't know what to believe from any one of them.

I do believe that there was one person that might really know something. That would be Garry. That's just my feeling based upon his testimony.

So when I say this is not a case that can be decided via credibility, this case--this motion has to be decided on the basis of the evidence. Again, we don't disagree on the law.

I am looking for evidence that--of intentionally and unjustifiably causing the death of Ricki Dillard, and I cannot find, given all the evidence, viewing it all in the light most favorable to the plaintiff, and looking for reasonable inferences that I can draw from that to find that there is evidence of intentionally or unjustifiably causing the death.

It's no more likely that Ms. Pitts did it than Garryl did it. Again, when you have a person who can't tell the same story twice, it's very hard for the Court to give credence to any statement. What I did and do note and take into account is the testimony from the other family members as to just what was going on in those various houses at the time, what was going on in their house.

And even the detective, who I thought was an excellent witness, I mean, he couldn't explain her conduct, because it's unexplainable, you know, why she would deny. But he did say that, in general, he thought she was forthcoming. She didn't appear to be anything other than forthcoming, other than lying.

Again, it's not the kind of case that I can decide it on who deserves or who would benefit most or what the Court would feel better about doing. I guess in my analysis of the evidence in the light most favorable to the plaintiff, I cannot find that there is a *prima facie* proof that this Court could find that she participated in Ricki Dillard's murder."

¶ 32 We conclude that our standard of review on appeal is *de novo* where the trial court dismissed the estate's claim under the first part of the analysis for failure to establish a *prima facie* case. In doing so, the trial court reviewed the evidence presented by the estate; however, the trial court's assessment of the evidence was in light of determining whether a *prima facie* case existed as a matter of law and not whether the *prima facie* case was negated based upon the evidence. See *cf. Walsh/II In One Joint Venture III v. Metropolitan Water Reclamation District of Greater Chicago*, 389 Ill. App. 3d 138, 146, 904 N.E.2d 1158 (2009) (the trial court made credibility findings and thoroughly weighed the quality of the evidence before dismissing the claim); *Baker v. Jewel Food Stores, Inc.*, 355 Ill. App. 3d 62, 66-67, 823 N.E.2d 93 (2005) (the plaintiff's complaint was dismissed after the trial court weighed all of the evidence and concluded that the plaintiff could not sustain its burden for the cause of action). We recognize that the trial court used the term "credible" when discussing its findings in relation to a witness;

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however, reading the findings in their entirety, we conclude the trial court dismissed the cause of action after determining that the estate failed to present a *prima facie* case. Accordingly, we proceed *de novo*.

¶ 33 The estate contends the trial court erred in concluding that it did not meet its burden of establishing a *prima facie* case.

¶ 34 A *prima facie* case is established by presenting at least "some" evidence on each element essential to the cause of action. *Id.* at 66. Pursuant to section 2-6 of the Probate Act "[a] person who intentionally and unjustifiably causes the death of another shall not receive any property, benefit, or other interest by reason of the death, whether as heir, legatee, beneficiary, joint tenant, survivor, appointee or in any other capacity." 755 ILCS 5/2-6 (West 2006). Therefore, in order to prove the underlying cause of action, the estate was required to present "some" evidence that: (1) Ricki was dead; (2) Ricki was intentionally and unjustifiably killed; and (3) Green was the person who intentionally and unjustifiably caused Ricki's death. *Eskridge*, 250 Ill. App. 3d at 609. The first two elements are not in dispute. The question before us is whether the estate established the third element of its *prima facie* case, namely, that Green intentionally and unjustifiably caused Ricki's death.

¶ 35 We conclude that the evidence advanced in support of the estate's claim was purely speculative and failed to establish the third element of the *prima facie* case. We acknowledge that the estate need only present "some" evidence; however, we find the estate did not meet its burden. The testimony merely established that Ricki and Green shared an unstable relationship. Green was easily confused regarding dates, events, and details and the estate attempted to

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speculate that the confusion was a tool to cover up her involvement in Ricki's death. While circumstantial evidence can be advanced to provide reasonable inferences that a person intentionally and unjustifiably caused the death of the insured (*Eskridge*, 250 Ill. App. 3d at 610), the circumstantial evidence here did not provide a *prima facie* case. Ricki named Green as the beneficiary long before his death and there was no evidence, circumstantial or otherwise, that he intended to remove her from that position. The testimony from Ricki's daughters that Green was keen to get the insurance money quickly does not provide a reasonable inference that Green had Ricki killed, especially where Green repeatedly asked to be involved in Ricki's funeral arrangements and used insurance proceeds to pay for those arrangements. Simply put, there was no evidence to establish a *prima facie* case that Green intentionally and unjustifiably caused Ricki's death.

¶ 36

II. Oral Contract

¶ 37 The estate next contends the trial court erred in dismissing count IV of its cross-complaint where it pled sufficient facts to establish the existence of an oral contract between Ricki and Green. The estate further contends the oral contract did not violate the statute of frauds because it could have been completed within one year.

¶ 38 A combined section 2-619.1 motion to dismiss is reviewed *de novo*. *Gastreaux v. DKW Enterprises, LLC*, 2011 IL App (1st) 103482, ¶10. A section 2-615 motion to dismiss attacks the legal sufficiency of the complaint by alleging there are defects on the face of the complaint. *Id.* When considering a section 2-615 motion to dismiss, a reviewing court examines the allegations in the complaint in a light most favorable to the plaintiff while accepting as true all

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well-pleaded facts and drawing all reasonable inferences therefrom in order to determine whether the facts state a cause of action upon which relief may be granted. *Id.* In comparison, a section 2-619 motion to dismiss admits the legal sufficiency of the complaint, but asserts that an affirmative defense or some other matter avoids or defeats the claim. *Id.* We may affirm on any basis in the record. *Janda v. U.S. Cellular Corp.*, 2011 IL App (1st) 103552, ¶ 60.

¶ 39 Taking the allegations in the cross-complaint as true, we find the estate failed to establish the existence of an oral contract between Green and Ricki. To establish an oral contract, sufficient facts must be alleged to show there was an offer, acceptance, and a meeting of minds as to the terms of the agreement. *Bruzas v. Richardson*, 408 Ill. App. 3d 98, 105, 945 N.E.2d 1208 (2011). The contract will be deemed enforceable if the material terms are definite and certain. *Id.* Illinois is a fact-pleading jurisdiction that requires sufficient facts to bring the claim within the scope of the cause of action raised. *Jordan v. Knafel*, 355 Ill. App. 3d 534, 544, 823 N.E.2d 1113 (2005).

¶ 40 In the cross-complaint, the estate alleged that Ricki named Green as the beneficiary of his life insurance policy in exchange for her "promise" to "provide for, and care for, foster, encourage, and provide for a quality education" for Ricki's son, Johntaye, who was 8 years old at the time. The duration of the contract was unclear and indefinite. *Robinson v. BDO Seidman, LLP*, 367 Ill. App. 3d 366, 370, 854 N.E.2d 767 (2006). Moreover, what was promised was unclear and indefinite in that there was no description of how much of the proceeds were to go to Johntaye or in what manner those proceeds should be used., *i.e.*, to provide "support" in the form of monthly stipends for food and clothing or to "provide for quality education" during his

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elementary schooling years or for higher education. We, therefore, conclude the oral contract count was properly dismissed.

¶ 41

CONCLUSION

¶ 42 We find the trial court properly granted the motion for a directed finding on the estate's probate claim where no *prima facie* case was established. We additionally find the trial court properly dismissed the estate's claim alleging that Green and Ricki had an oral contract to provide financial support to Ricki's minor child.

¶ 43 Affirmed.