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2011 IL App (3d) 100887-U

Order filed August 24, 2011

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

In re ESTATE OF RICHARD F. WICKS,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
Deceased	)	Peoria County, Illinois,
	)	
(Richard F. Wicks,	)	
	)	Appeal No. 3-10-0887
Plaintiff-Appellant,	)	Circuit No. 09-P-397
	)	
v.	)	
	)	
Thelma Virginia Wicks,	)	Honorable
	)	Stuart P. Borden,
Defendant-Appellee).	)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices Holdridge and Wright concurred in the judgment.

ORDER

¶ 1 *Held*: Where the divorce decree did not clearly state that permanent maintenance payments should continue after the husband's death, former husband's estate was not required to continue monthly maintenance payments to former wife upon the husband's death.

¶ 2 Defendant, Thelma Wicks, brought a claim against the estate of her former husband, Richard

F. Wicks, seeking ongoing maintenance payments under the provision of the parties' 1978 dissolution decree. The trial court granted summary judgment in Thelma's favor and ordered the estate to pay her $1,000 per month until her death or remarriage. We reverse and remand for further proceedings.

¶ 3 Richard and Thelma Wicks dissolved their marriage by a decree entered in Iowa, on September 27, 1978. Paragraph 7 of the decree provided:

> "As a supplement to the property division above provided for, Respondent (Thelma Virginia Wicks) shall have judgement against the Petitioner (Richard F. Wicks) for alimony in the sum of $1,000 .00 per month, commencing on October 1, 1978, and continuing in such amount on the first day of each month, thereafter, until such time that Respondent may remarry or die, whichever event occurs first. That to secure such judgment for alimony, Petitioner shall pledge and assign the proceeds of the following policies of insurance on the Petitioner's life with the respective insurance carriers, and provide proof thereof to the Respondent, together with the continued inability of the Petitioner to either change, amend, and/or withdraw said assignments or to borrow against said policies or in any way to reduce their value, to the end that the collateral and security herein provided to the Respondent is impaired:
>
> > (A) Farm Bureau straight life policy, dated January, 1970 in the amount of $30,000."

¶ 4 In conjunction with the divorce proceedings, Richard and Thelma also executed a stipulation. In paragraph 6 of the stipulation, Richard agreed that, in the event a decree of dissolution was entered, the language of paragraph 7 would be included.

¶ 5 Richard moved to Illinois, and Thelma did not remarry. For the next 30 years, Thelma received $1,000 each month according to the terms of the decree. On July 31, 2009, Richard died an Illinois resident. Shortly thereafter, Thelma stopped receiving monthly maintenance payments.

¶ 6 Thelma brought a claim against the estate in Illinois probate court, seeking periodic payments in accordance with the Iowa decree of dissolution. The estate responded that any payments to Thelma terminated upon Richard's death pursuant to the laws of the State of Iowa. Thelma moved for summary judgment. The trial court granted Thelma's motion and entered an order instructing the estate to pay "the sum of ONE THOUSAND AND NO/100 ($1,000) DOLLARS per month on the first day of each month and continuing in such amount until such time that Claimant may remarry or die, whichever event occurs first, commencing as of the 1st day of August, 2009."

¶ 7 The estate claims that the specific language in paragraph 7 of the divorce decree does not provide for maintenance payments to continue after Richard's death. It argues that, under the plain terms of the provision, Thelma only has a contractual claim for the proceeds of the Farm Bureau insurance policy, not an ongoing right to collect maintenance.

¶ 8 Illinois courts refer to the law of another state when the law of that state is deemed to apply to a matter pending before an Illinois court. *Boersma v. Amoco Oil Co.*, 276 Ill. App. 3d 638 (1995); *Estate of Barnes*, 133 Ill. App. 3d 361 (1985). In this case, the divorce decree was entered by an Iowa court. Therefore, we will apply Iowa law to the interpretation of paragraph 7 of the decree.

¶ 9 Under Iowa law, it is the general rule that periodic payments of maintenance to the wife terminate, or are presumed to terminate, upon the husband's death, in the absence of an agreement which requires the payments to continue after such death. *In re Roberts' Estate*, 131 N.W.2d 458 (Iowa 1964); *Mullen v. Mullen*, 69 N.W.2d 420 (Iowa 1955). The reason for this rule is that

maintenance is a substitute for the right of marital support, and since such right terminates upon the death of the spouse, periodic payments of maintenance should also terminate with the spouse's death. *In re Roberts' Estate*, 131 N.W.2d at 460.

¶ 10 Nevertheless, Iowa courts have also held that parties to a divorce have the right to agree that periodic payments to the wife shall continue after the husband's death or for the lifetime of the wife. *In re Yoss' Estate*, 24 N.W.2d 399 (Iowa 1946); see also *In re Roberts' Estate*, 131 N.W.2d at 460. Where such agreement is approved by the court, it is valid and enforceable against the husband's estate. *Serrano v. Hendricks*, 400 N.W.2d 77 (Iowa Ct. App. 1986). In deviating from the general rule, the courts note that a divorce decree must clearly provide for the continuation of maintenance beyond the payor's death before a court may hold an estate liable for those payments. *In re Roberts' Estate*, 131 N.W.2d at 460; *In re Yoss' Estate*, 24 N.W.2d at 400-401.

¶ 11 In *In re Estate of Jones*, 434 N.W.2d 130 (Iowa Ct. App. 1988), the appellate court recognized the parties' ability to agree to posthumous maintenance, but found the terms of the decree lacked the explicit intent. In that case, the language of the divorce decree required the former husband to pay maintenance of $100 per month "until such time as [former wife] dies or remarries." The court concluded that the language was not sufficiently clear and unambiguous to impose a requirement that maintenance continue after the death of the former husband. The court reasoned that since the decree did not contain express words that the payments would continue after the husband's death, the general rule that periodic payments of alimony to a divorced wife are presumed to terminate upon the husband's death should be applied. *In re Estate of Jones*, 434 N.W.2d at 132.

¶ 12 As with all other contractual matters, we must construe the terms of a divorce judgment in accordance with its evident intention. *In re Roberts' Estate*, 131 N.W.2d at 461. To determine the

intent, we look at the four corners of the decree and ascertain the parties' wishes as disclosed by all the provisions of the decree. *Id.*

¶ 13 Here, nothing in the language of decree expressly states that the payments should continue after Richard's death. The parties could have inserted clear terms that maintenance was to continue after Richard's death if they so intended. Without explicit language extending the payments, we are compelled to follow the holding in *Jones* and apply the general rule that maintenance is limited to the life span of the payor.

¶ 14 The insurance policy provision in the decree supports our interpretation that the maintenance payments terminated upon Richard's death. In the decree, Richard agreed to secure the periodic payments with a policy naming Thelma as the beneficiary. The insurance policy provision indicates that it was the intention of the parties that, in the event of Richard's death, the life insurance proceeds would be the only source of funds available to Thelma.

¶ 15 Public policy also encourages the termination of maintenance payments upon a spouse's death. Courts have regularly stated that maintenance is an allowance for the beneficiary while both parties are alive, and a court should assume the parties entered into their marital settlement agreement with that principle in mind. See *In re Estate of Jones*, 434 N.W.2d 130; *In re Roberts' Estate*, 131 N.W.2d 458. Moreover, an indefinite agreement to pay maintenance through the estate would produce significant uncertainty and would interfere with the testator's right to dispose of his property as he wishes. It would also add time and expense to the probate process and diminish the benefits of the heirs. Thus, although the parties may agree to charge the estate of the payor with monthly alimony payments, that interpretation should not be made lightly. See *Mullen*, 69 N.W.2d at 423-24. Illinois public policy is the same: "[a] court should not saddle a decedent's estate with

an obligation to pay periodic maintenance unless the decedent clearly agreed to his open-ended arrangement." See 16A Illinois Law & Practice §148, at 69 (2004).

¶ 16 In this case, Richard did not clearly agree to pay Thelma maintenance after his death. Richard agreed to pay Thelma $1,000 in monthly maintenance and to secure those payments with a $30,000 Farm Bureau policy naming her as the beneficiary. Upon Richard's death, the maintenance payments terminated, and Thelma had a contractual claim for the proceeds of the life insurance policy. See *Serrano*, 400 N.W.2d at 79 (husband secured maintenance obligation with life insurance policy according to decree). In pursuing her claim against the estate, Thelma is not entitled to ongoing monthly maintenance; she is, however, entitled to receive $1,000 per month from the insurance proceeds until she dies or remarries. *Id.* at 79-80. We reverse the trial court's ruling granting Thelma's motion for summary judgment and remand for further proceedings consistent with this order.

¶ 17 The judgment of the circuit court of Peoria County is reversed, and the cause is remanded for further proceedings.

¶ 18 Reversed and remanded.