

No. 1-14-1081

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE APPELLATE COURT  
OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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*In re* MARRIAGE OF

WILLIAM S. DECARLO,

Petitioner-Appellee,

v.

LORILYN CHAMBERLIN,

Respondent-Appellant.

) Appeal from the  
) Circuit Court of  
) Cook County  
)  
)  
) No. 13 D 7165  
)  
)  
) Honorable  
) William S. Boyd,  
) Judge Presiding.

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JUSTICE REYES delivered the judgment of the court.  
Justice Hall concurred in the judgment.  
Justice Lampkin specially concurred.

**ORDER**

¶ 1 *Held:* Affirming the judgment of the circuit court of Cook County where the wife did not have a vested interest in the death beneficiary designation of the husband's life insurance policy.

¶ 2 Respondent Lorilyn Chamberlin appeals the denial of a petition for a preliminary injunction by the circuit court of Cook County. In the petition, Lorilyn sought to be reinstated as the beneficiary on two life insurance policies insuring the life of petitioner William DeCarlo. On

appeal, Lorilyn argues the circuit court erred in denying her petition for a preliminary injunction because: (1) the circuit court did not consider the present cash value of the policies in its denial of her petition; and (2) she had a vested interest in the life insurance policies. For the reasons that follow, we affirm the judgment of the circuit court.

¶ 3

### BACKGROUND

¶ 4 In August 2013, William filed a petition for dissolution of marriage. Thereafter, William removed Lorilyn as the beneficiary of two Northwestern Mutual life insurance policies (the life insurance policies). In response, Lorilyn filed a petition for injunctive relief pursuant to section 501(a)(2) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/501(a)(2) (West 2012)) to enjoin William from further changing any beneficiary designations on all accounts titled in his name. Lorilyn further requested the circuit court reinstate her as a beneficiary.

¶ 5 In the petition, which is supported by an affidavit, Lorilyn alleged the following facts. The parties married on August 4, 1984. Thereafter, the parties acquired the two life insurance policies on May 19, 1989, and September 19, 1990, both of which insured the life of William and named Lorilyn as a direct beneficiary. In September 2013, William, on two separate occasions, changed the beneficiary designation to the life insurance policies, first to his sister, Regina DeCarlo, and then ultimately to the "William S[.] De Carlo Trust Dated May 10, 2010" (the trust). William also amended the trust after the commencement of the dissolution proceedings. The total death benefit for both policies was \$1.87 million and the cash surrender value at the time of the filing of the petition exceeded the sum of \$836,000.

¶ 6 Lorilyn argued in her petition that the life insurance policies were acquired by the parties during the marriage with marital funds and, therefore, are presumed to be marital property

pursuant to section 503(b)(1) of the Act. 750 ILCS 5/503(b)(1) (West 2012). She further asserted that pursuant to section 503(b-5) of the Act she had a vested interest in the life insurance policies, in her designation as a beneficiary, and in securing a maintenance award from her husband. 750 ILCS 5/503(b-5) (West 2012). Lorilyn additionally asserted the change of beneficiary on the life insurance policies irreparably harmed her because without them there would be no security for a maintenance award.

¶ 7 After the matter was fully briefed and argued, the circuit court in a memorandum opinion denied Lorilyn's petition for a preliminary injunction, concluding Lorilyn did not have a vested property interest in the death benefit designation. The circuit court, finding this matter to be analogous to *In re Marriage of Centioli*, 335 Ill. App. 3d 650 (2002), reasoned that the property interest in a death benefit of a life insurance policy is outside the ambit of the Act. The circuit court denied Lorilyn's petition based on its determination that "[b]ecause she has no present property interest she has no clearly ascertainable right" needing protection.

¶ 8 The circuit court also addressed the 2012 amendment of the Act, which added section 503(b-5). Pub. Act 97-608 (eff. Jan. 1, 2012) (adding 750 ILCS 5/503(b-5)). The circuit court concluded that this amendment provided courts with "the authority to allocate the death benefits at the time of dissolution—this does not create a present property interest in beneficiary status before the dissolution."

¶ 9 Lorilyn filed a timely interlocutory appeal pursuant to Supreme Court Rule 307(a) (eff. Feb. 26, 2010).

¶ 10 ANALYSIS

¶ 11 On appeal, Lorilyn argues: (1) the trial court erroneously focused on the death benefit aspect of the life insurance policies and failed to give any consideration to her interest in the cash

value of the policies; and (2) the trial court erred in finding the beneficiary designation on the life insurance policies constituted an expectancy interest.

¶ 12 Forfeiture

¶ 13 William maintains Lorilyn's first argument is forfeited on appeal because Lorilyn failed to argue she had an interest in the cash value of the life insurance policies before the circuit court. We find that Lorilyn did not properly present her argument to the circuit court regarding her ownership interest in the cash value of the life insurance policies. Further, Lorilyn did not present this issue in her petition for a preliminary injunction, nor did she argue this issue at the hearing. Lorilyn also does not cite to the record to demonstrate that this issue was raised before the circuit court. Accordingly, this issue is forfeited. See *In re Estate of Feinberg*, 2014 IL App (1st) 112219, ¶¶ 115-16.

¶ 14 Whether a Beneficiary Designation is a Property Interest

Under Section 501(a)(2) of the Act

¶ 15 We now turn to consider Lorilyn's remaining argument on appeal, whether being the beneficiary of a life insurance policy constitutes a property interest under section 501(a)(2) of the Act. "Generally, an abuse of discretion standard of review applies [citation], but where, as here, the trial court's determination regarding the grant of a preliminary injunction involves the interpretation of statutory law, the appropriate standard of review is *de novo*." *Caro v. Blagojevich*, 385 Ill. App. 3d 704, 708-09 (2008).

¶ 16 In her petition for a preliminary injunction, Lorilyn requested relief pursuant to section 501(a)(2) of the Act. That section provides, in pertinent part:

"(a) Either party may move for:

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(2) a temporary restraining order or preliminary injunction, accompanied by affidavit showing a factual basis for any of the following relief:

(i) restraining any person from transferring, encumbering, concealing or otherwise disposing of any property except in the usual course of business or for the necessities of life, and, if so restrained, requiring him to notify the moving party and his attorney of any proposed extraordinary expenditures made after the order is issued;

\* \* \*

(iv) providing other injunctive relief proper in the circumstances[.]" 750 ILCS 5/501(a)(2) (West 2012).

¶ 17 The purpose of a preliminary injunction is to preserve the status quo pending a decision on the merits; "[t]he status quo to be preserved by a preliminary injunction is the last, actual, peaceable, uncontested status which preceded the pending controversy." *Postma v. Jack Brown Buick, Inc.*, 157 Ill. 2d 391, 397 (1993). To justify entry of a preliminary injunction, the moving party carries the burden of persuasion on four issues: (1) he or she possesses a clearly ascertainable right which needs protection; (2) he or she will suffer irreparable injury without the injunction; (3) there is no adequate remedy at law for his or her injury; and (4) a likelihood of success on the merits exists. *In re Marriage of Petersen*, 319 Ill. App. 3d 325, 336 (2001). "A preliminary injunction is an extraordinary remedy that is applicable only to situations where an extreme emergency exists and serious harm would result if not issued." *Centioli*, 335 Ill. App. 3d at 654.

¶ 18 Whether the property interest in a death benefit is the type of "clearly ascertainable right" that may be protected by a preliminary injunction was decided in *Centioli*. In that case, the

husband filed a petition for dissolution of marriage. *Id.* at 652. During the pendency of the dissolution proceedings he removed his wife as the beneficiary of his *inter vivos* revocable trust. *Id.* The wife then filed a petition for injunctive relief pursuant to section 501(a)(2) of the Act, seeking to compel the husband to restore his estate plan as it existed prior to the institution of the dissolution proceedings by reinstating her as the beneficiary. *Id.* at 653. The wife maintained that pursuant to section 503(e) of the Act, her rights to the marital property vested at the time the dissolution proceedings commenced. *Id.* The wife further alleged that without the requested relief she would be permanently divested of all of her interest in a significant portion of the marital property. *Id.* The husband filed a motion to dismiss the petition for a preliminary injunction pursuant to section 2-615 of the Code, which was granted by the circuit court. *Id.*

¶ 19 On appeal, the court concluded the wife's beneficial interest in the husband's trust was not a vested property interest. *Id.* at 656. In reaching this conclusion, the court first considered section 503 of the Act, which calls for the equitable division of both spouses' property upon dissolution of marriage and establishes the concept of marital property. *Id.* at 655. The court noted that pursuant to section 503(b) of the Act, " 'all property acquired by either spouse after the marriage and before a judgment of dissolution \*\*\* is presumed to be marital property, regardless of whether title is held individually or by the spouses in some form of co-ownership.' " *Id.* (quoting 750 ILCS 5/503(b) (West 2000)). In addition, "section 503(e) provides in pertinent part that '[e]ach spouse has a species of common ownership in the marital property which vests at the time dissolution proceedings are commenced and continues only during the pendency of the action.' " *Id.* at 655-56 (quoting 750 ILCS 5/503(e) (West 2000)). Accordingly, at the time the dissolution proceedings commenced the wife had a vested interest in all marital property regardless of who holds the title. *Id.* at 656.

¶ 20 The *Centioli* court then considered what constituted property under the Act:

"While the term 'property' has been defined as 'a word of the very broadest import, connoting any tangible or intangible *res* which might be made the subject of ownership' [citation], in order to be property within the ambit of the Act, 'the *res* must be in the nature of a present property interest, rather than a mere expectancy interest' [citation]. An expectancy interest is the interest of a person who merely foresees that he might receive a future beneficence, such as the interest of an heir apparent \*\*\* or of a beneficiary designated by a living insured who has a right to change the beneficiary." (Internal quotation marks omitted.) *Id.*

¶ 21 The court then concluded:

"Here, [the husband] has a revocable trust in the nature of a will substitute which provides that his estate will pour over into his trust upon his death. Thus, [the wife's] right to a beneficial interest in [the husband's] trust was but a mere expectancy. While [the husband's] change in beneficiary may be a relevant factor in determining an equitable distribution of property [citation], it cannot be characterized as a vested property interest within the ambit of the Act. Consequently, [the wife's] beneficial interest is not a clearly ascertainable right to be protected." *Id.*

¶ 22 The court further considered the wife's argument that she only sought to maintain the status quo during the pendency of the dissolution proceedings. The court concluded that if the husband should die during the pendency of the proceedings, by maintaining the status quo, the wife would receive the entire estate, which would be "certainly more than she would acquire under an equitable distribution of the marital estate and would result in an overcompensation to [the wife]." *Id.* The court explained, "[r]ather, the right [the wife] seeks to protect in the instant

case is essentially the continued right to an equitable distribution of the marital assets in the event of [the husband's] death." *Id.*

¶ 23 The court then examined the interplay between the Act and the Probate Act of 1975 (755 ILCS 5/5-1-1 *et seq.* (West 2000)), noting that "it is well settled in Illinois that the death of either party to a divorce action prior to final judgment deprives the circuit court of jurisdiction over all aspects of the marriage relationship." *Id.* at 656-57. If the husband died testate and transferred all of his assets into the trust prior to his death, such that none of his assets were to pass through probate, the wife could be undercompensated. *Id.* at 657. The court acknowledged that "this outcome would not reflect the partnership-based theory of marriage." *Id.* The *Centioli* court concluded, however, that "[b]ecause Illinois law does not provide [the wife] with such a right to an equitable distribution upon [the husband's] death, she cannot prove that she has a clearly ascertainable right in need of protection under count I." *Id.* at 658.

¶ 24 In the present case, William has two life insurance policies that were purchased during the marriage and, therefore, are presumed to be marital property. 750 ILCS 5/503(b) (West 2012). Lorilyn alleged in her petition that prior to the dissolution proceedings she was the designated beneficiary; however, William removed her as a beneficiary in September 2013, after the dissolution proceedings commenced. A death beneficiary designation constitutes an expectancy interest, as it is "the interest of a person who merely foresees that he [or she] might receive a future beneficence \*\*\*." (Internal quotation marks omitted.) *Id.* at 656. Accordingly, the circuit court did not err in finding that Lorilyn's beneficial interest in the life insurance policies was a mere expectancy. See *id.* In addition, as the insured, William has the right to change the beneficiary designation, thus providing a further basis for the circuit court's determination that Lorilyn had an expectancy interest in the life insurance policies. See *Schultz*

*v. Schultz*, 297 Ill. App. 3d 102, 108 (1998) ("an insured may change the beneficiary on his life insurance policy on his own whim if he reserved the right to do so.").

¶ 25 The Addition of Section 503(b-5) of the Act

¶ 26 Lorilyn, however, asserts that the addition of section 503(b-5) of the Act in 2012 "changes the game under any *Centioli*-type interpretation, giving the *Centioli* decision little 'teeth' here." Lorilyn maintains that "while the ability to change the beneficiary is not uncommon under the terms of some policies, it still conflicts with section 503(b-5) of the Act, where the death benefits and present cash values stand as statutorily-designated marital property, subject then to allocation at time of judgement [*sic*]." (Emphasis omitted.)

¶ 27 William argues the 2012 amendment of the Act did not overrule *Centioli*, but instead asserts section 503(b-5) was added to codify the court's power to designate the beneficiaries of life insurance policies at the time of judgment. William maintains the amendment does not change the legal principle in *Centioli* that there is only an expectancy interest in the beneficiary designation on a life insurance policy.

¶ 28 We turn to examine section 503(b-5) of the Act to determine whether it allows or permits the circuit court to reinstate a spouse's beneficiary designation prior to entry of a judgment of dissolution. 750 ILCS 5/503(b-5) (West 2012). The principles governing our review are well established. In construing a statute, our primary goal is to effectuate the intent of the legislature. *In re Marriage of Kates*, 198 Ill. 2d 156, 163 (2001). To determine that intent, we first look to the plain language of the statute. *In re Marriage of Best*, 228 Ill. 2d 107, 116 (2008). "When the language is clear, our task is simple: we must give it effect as it was written and enacted." *In re Marriage of Mathis*, 2012 IL 113496, ¶ 20.

¶ 29 Section 503(b-5) provides:

"As to any policy of life insurance insuring the life of either spouse, or any interest in such policy, that constitutes marital property, whether whole life, term life, group term life, universal life, or other form of life insurance policy, and whether or not the value is ascertainable, the court shall allocate ownership, death benefits or the right to assign death benefits, and the obligation for premium payments, if any, equitably between the parties *at the time of the judgment for dissolution* or declaration of invalidity of marriage." (Emphasis added.) 750 ILCS 5/503(b-5) (West 2012).

It does not, as Lorilyn suggests, create a vested property interest in a death benefit designation during the pendency of dissolution proceedings. Based on our review of section 503(b-5) we find this section of the statute is inapplicable to the present matter. Moreover, the addition of section 503(b-5) to the Act did not change the law regarding the expectancy interests of beneficiaries as explained in *Centioli*. Because Lorilyn cannot establish she had a clearly ascertainable right to be designated as the beneficiary of the two life insurance policies, the circuit court did not err in denying her petition for a preliminary injunction.

¶ 30

#### CONCLUSION

¶ 31 For the aforementioned reasons, the judgment of the circuit court is affirmed.

¶ 32 Affirmed.

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¶ 33 JUSTICE LAMPKIN, specially concurring:

¶ 34 I concur in the judgment only.