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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

RENEE ROSENBLATT, as Independent Administrator)	Appeal from the
of the Estate of David Rosenblatt,)	Circuit Court of
)	Cook County
Plaintiff-Appellee,)	
)	Nos. 13 CH 14203,
v.)	14 CH 00439 (cons.)
)	
BONNIE ROSEBLATT,)	Honorable
)	Leroy Martin, Jr.,
Defendant-Appellant.)	Judge Presiding.

JUSTICE MASON delivered the judgment of the court.
Justices Lavin and Hyman concurred in the judgment.

ORDER

¶ 1 *Held:* Circuit court did not err in granting summary judgment to estate as against decedent's ex-wife's claim to an interest in property held in a land trust. Decedent and ex-wife's marital settlement agreement contained language releasing ex-wife's contingent or beneficial interest in the property.

¶ 2 The sole issue presented in this appeal is whether a wife's contingent interest in a land trust held by her ex-husband during their marriage was extinguished by the terms of a marital settlement agreement that specifically (i) awarded the property to her husband and (ii) waived the wife's expectancy or beneficial interest in all property awarded to the husband under the agreement. We have previously addressed this issue and determined

that such specific provisions can eliminate a future expectancy even if the beneficiary designation in the underlying document is never changed. Finding no reason to depart from this longstanding precedent, we affirm.

¶ 3 BACKGROUND

¶ 4 The parties to this appeal are Renee Rosenblatt, as independent administrator of the estate of her late husband, David Rosenblatt, and Bonnie Rosenblatt, David's former wife.

¶ 5 David and Bonnie Rosenblatt were married on October 14, 1972. During the marriage, David owned a 20% share in a land trust that held legal title to commercial property located in Skokie, Illinois. Under the terms of the trust, David's interest would pass upon his death to Bonnie.

¶ 6 Marriage dissolution proceedings were commenced in 2006. On February 23, 2009, the circuit court entered an order for judgment of dissolution of marriage, which incorporated a marital settlement agreement. The agreement included terms regarding the division of marital property, including David's interest in the Skokie property. Specifically, the agreement provided:

"DAVID shall retain, as his sole and separate property, free of any claim by BONNIE, his twenty (20%) percent interest in the business entity known as RNR Main Partnership, subject to any and all indebtedness thereon. DAVID represents and warrants that the only asset of said RNR Main Partnership is the commercial building located at 4835 Skokie, Skokie, Illinois."

Bonnie further agreed that her acceptance of the property allocated to her under the agreement represented "a full and final settlement of any claims she may have in and to

any of the property, either marital or non-marital, now owned or hereinafter acquired by DAVID whether real, personal or mixed."

¶ 7 The agreement also included mutual releases by Bonnie and David in which they released "to the fullest extent permitted by law *** any and all right, title, claim or interest which he or she otherwise has or might have or be entitled to claim in, to or against the property, assets and estate of the other *** whether now owned or hereafter in any manner acquired by the other party, *whether in possession or expectancy and whether vested or contingent* ***." (emphasis added).

¶ 8 David later married Renee on March 24, 2013. David died on April 4, 2013, and Renee was appointed as the independent administrator of his estate. Prior to David's death, the land trust instrument was not amended to change Bonnie as the contingent beneficiary in the event of David's death.

¶ 9 Following David's death, the other beneficial owners of the land trust located a buyer for the Skokie property. On November 4, 2013, after the dispute regarding Bonnie's interest in the land trust arose, Bonnie and Renee agreed that the sale could go forward, with the proceeds representing David's 20% interest to be held in escrow pending either an order entered by the circuit court of Cook County directing distribution of the escrowed funds or Renee's failure within the ensuing six months to commence an action to determine ownership of the proceeds.

¶ 10 Renee commenced this action on January 9, 2014, seeking a declaration that David's estate was entitled to the proceeds of the sale. (A separate matter concerning property not at issue in this appeal was consolidated with the declaratory judgment action.) Bonnie moved to dismiss the complaint, contending that under the terms of the

marital settlement agreement, her contingent interest in the land trust was not extinguished. Renee responded, also relying on the terms of the agreement to support the opposite conclusion. After the trial court ascertained that both parties agreed the issue was controlled by the terms of the agreement and that no other evidence need be considered, the trial court treated the motion to dismiss and response as cross-motions for summary judgment. The court ultimately determined that the agreement extinguished Bonnie's contingent interest and granted summary judgment in favor of the estate. Bonnie timely appealed.

¶ 11

ANALYSIS

¶ 12

At issue here is an order granting summary judgment, which we review *de novo*. *Williams v. Manchester*, 228 Ill. 2d 404, 417 (2008). Further, because the trial court's ruling was based on its interpretation of the terms of Bonnie and David's marital settlement agreement, we likewise review that interpretation *de novo*. *Velasquez v. Velasquez*, 295 Ill. App. 3d 350, 353 (1998); see also *Estate of Albrecht v. Winter*, 2015 IL App (3d) 130651, ¶ 11.

¶ 13

As we noted at the outset, this court has previously considered this precise issue. In *Velasquez*, an ex-spouse claimed an interest in a land trust created by her former husband of which he was the sole beneficiary. The parties later divorced and their marital settlement agreement specifically awarded the real estate held in the land trust to the husband. The agreement also contained a mutual release by which the parties released any right, title or interest to property belonging to the other " 'whether in possession or in expectancy and whether vested or contingent. ' " *Id.* at 352. Like David here, the husband in *Velasquez* did not change the beneficiary designation under the trust

instrument during his lifetime and so upon his death, under the terms of the trust, his beneficial interest passed to his ex-spouse.

¶ 14 The court in *Velasquez* first noted that a divorce does not automatically terminate property rights that exist independently of the marriage. *Id.* at 353 (citing *Leahy v. Leahy-Schuett*, 211 Ill. App. 3d 394 (1991)). For example, if a wife is named as a beneficiary on her husband's life insurance policy, a property settlement entered as part of a divorce decree containing a mutual general release of claims, without more, is ineffective to extinguish the wife's interest as a named beneficiary where the beneficiary designation remains unchanged prior to the husband's death. Thus, while the release will permit the husband to change the beneficiary designation during his lifetime, extinguishing the ex-spouse's expectancy, the failure to either change the designation or take steps to effect the change will result in payment of the proceeds to the ex-spouse as the named beneficiary. *Williams v. Gatling*, 186 Ill. App. 3d 21, 24-25 (1989); *Cox v. Employers Life Insurance Co.*, 25 Ill. App. 3d 12, 19 (1975). The same is true of real property held in a land trust; a property settlement's assignment of the property "free and clear" of a spouse's claims will not prevent the spouse's expectancy interest as a named beneficiary from vesting where the trust instrument is not changed prior to the other spouse's death. *Leahy*, 211 Ill. App. 3d at 400 (finding ex-wife was entitled to proceeds of sale of property held in a land trust notwithstanding provisions in husband's will directing that proceeds be distributed his children; "[the wife's] contingent beneficial interest was not a claim on the real property but an expectancy interest because [the husband] was free to change the contingent beneficiary.").

¶ 15 In contrast, where a marital settlement agreement specifically references property and assigns it to one spouse and also contains a release encompassing not only present but also future interests in property allocated pursuant to the agreement, the agreement is effective to extinguish the other spouse's expectancy interest even if the underlying document containing the beneficiary designation is not changed. See *Principal Mutual Life Insurance Co. v. Juntunen*, 189 Ill. App. 3d 224, 228 (1989) (wife's interest as named beneficiary in husband's insurance policy waived where parties released any interest "beneficial or otherwise" in life insurance policies owned by the other). *Velasquez* thus articulates a two-part test to determine whether contingent interests are extinguished under a marital settlement agreement: first, the asset in dispute must be specifically listed in the agreement and awarded to one spouse; and, second, release language in the agreement must encompass the waiver of any expectancy or beneficial interest in the asset on the part of the other spouse. 295 Ill. App. 3d at 353. The waiver language may be general and need not specifically reference the asset as long as it expressly applies not only to existing or vested claims, but also to future expectancies or contingent interests. *Id.* at 354.

¶ 16 The test articulated in *Velasquez* is met here. The marital settlement agreement between David and Bonnie specifically awarded the Skokie property held in the land trust to David and the release language in the agreement waived Bonnie's interest in property allocated to David "whether in possession or expectancy and whether vested or contingent." Thus, these provisions were sufficient to extinguish Bonnie's interest in the land trust as a contingent beneficiary regardless of the fact that the trust agreement was never amended to change the beneficiary.

¶ 17 Bonnie's reliance on *Albrecht* is misplaced. In *Albrecht*, a former spouse prevailed against a claim by her ex-husband's estate to the proceeds of a life insurance policy and a surviving spouse annuity. The ex-wife was a named beneficiary on both the insurance policy and the annuity and remained so until her ex-husband's death. The parties' marital settlement agreement awarded each party their own insurance policies and pension benefits "free and clear of claims" by the other. The opinion does not quote the provisions of the parties' agreement, but it apparently contained no reference to waiver of expectancy interests in those assets. Thus, although the estate satisfied the first part of the test articulated in *Velasquez*, in that the assets were specifically awarded to the husband, it failed to identify language in the marital settlement agreement satisfying the requirement of release language expressly waiving the expectancy interest. *Albrecht*, 2015 IL App (3d) 130651, ¶¶ 13, 18.

¶ 18 Here, as the trial court found, both parts of the *Velasquez* test were satisfied. We agree with the conclusion in *Velasquez* that a specific waiver of any expectancy interest as to each identified asset is unnecessary given the all-encompassing language in the mutual general release with its waiver of all claims to property "whether in possession or expectancy and whether vested or contingent." *Velasquez*, 295 Ill. App. 3d at 354.

¶ 19 Bonnie contends that because the parties reserved the right to "dispose, by testament or otherwise" property awarded to them under the agreement, David's failure to make such a disposition by amending the beneficiary designation under the land trust agreement should be given effect. We disagree. Nothing in this provision mandated that David change the beneficiary, but simply gave him the power to do so. David's failure to exercise this right cannot override the specific award of the Skokie property to David and

Bonnie's agreement to waive any expectancy or contingent interest in any property awarded to David, including the Skokie property.

¶ 20 Finally, Bonnie relies on the provisions of the Trusts and Dissolutions of Marriage Act (760 ILCS 35/0.01 *et seq.* (West 2012)) to support her position. That statute provides that unless a judgment for dissolution of marriage provides otherwise, judicial termination of the marriage of a trust settlor automatically revokes every provision of the trust revocable by the settlor pertaining to the former spouse and that the trust shall thereafter be administered as though the former spouse predeceased the settlor. 760 ILCS 35/1(a) (West 2012). Exempt from this provision are certain categories of trusts, including land trusts. 760 ILCS 35/1(c) (West 2012). Bonnie reasons that because land trusts are excluded from the automatic operation of the statute, amendment of a land trust instrument to change the beneficiary designation is required in order to eliminate a former spouse's expectancy interest. Apart from the fact that Bonnie cites no authority for this proposition, nothing in the Act prevented the trial court from giving effect to unambiguous provisions of the marital settlement agreement by which Bonnie agreed to waive an expectancy interest in property held in a land trust that was awarded to David. Thus, the trial court properly awarded the proceeds of the sale of the Skokie property attributable to David's interest to his estate.

¶ 17 CONCLUSION

¶ 18 Bonnie's contingent beneficial interest in the land trust was extinguished through the parties' marital settlement agreement and, therefore, we affirm the judgment entered in favor of the estate.

¶ 19 Affirmed.