2018 IL App (1st) 172896-U
No. 1-17-2896
December 17, 2018

FIRST DIVISION

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

STATE FARM INSURANCE COMPANY, Plaintiff-Counterdefendant, v. JEFFREY R. SMITH, Defendant-Counterclaimant-Counterdefendant-Appellee, CAROL A. SMITH and KAYLA SMITH, Defendants-Counterdefendants-Counterclaimants-Appellants.	)	Appeal from the Circuit Court Of Cook County. No. 14 CH 16070 The Honorable Thomas R. Allen, Judge Presiding.

JUSTICE WALKER delivered the judgment of the court.
Presiding Justice Mikva and Justice Pierce concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court erred in finding that the decedent's brother was the beneficiary of his life insurance policy since, at the time of his death, the decedent's marital settlement agreement required the decedent to maintain his daughter as the beneficiary of his life insurance policy.

¶ 2 In a marital settlement agreement (MSA), Craig Smith (Craig) promised to name his daughter Kayla Smith (Kayla) as the irrevocable beneficiary of his life insurance for as long as he had an obligation to support her under certain provisions of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/101 *et seq.* (West 2014)). Craig later named his brother Jeffrey Smith (Jeffrey) as beneficiary of his life insurance, and then Craig killed himself. Kayla and Jeffrey both filed claims for the proceeds of Craig's life insurance. The circuit court granted Jeffrey's motion for summary judgment, holding the MSA unambiguously permitted Craig to change the beneficiary of his life insurance. Because we instead find that at the time of his death, the MSA required Craig to maintain Kayla as the beneficiary of his insurance policy, we reverse the order granting Jeffrey's motion for summary judgment and enter judgment in favor of Carol and Kayla.

¶ 3 BACKGROUND

¶ 4 In September 2012 the circuit court of DuPage County dissolved the marriage of Craig and Carol Smith (Carol). The court incorporated the parties' MSA into the judgment of dissolution. The parties agreed to terms for the care of their daughter, Kayla, and for disposition of the life insurance Craig obtained from State Farm Life Insurance Co. The MSA provides:

> "3.8 ***Medical Coverage***: CAROL shall continue to [carry] major medical, dental and hospitalization insurance for the benefit of the minor child. Uncovered or unreimbursed medical, dental, orthodontia, and mental health expense(s) (including deductibles and/or co-pays) shall be allocated equally to Father and to Mother in relation to both accrued/unpaid as well as prospective medical, dental,

> orthodontia expenses of the minor child. Each parties' obligation to pay for ordinary and extraordinary medical expenses and to provide and maintain medical insurance shall terminate upon the child's eighteenth (18th) birthday, graduation from high school or completion of a college education, whichever event is last to occur but in no event beyond the child's twenty-third (23rd) birthday.
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> ***
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> 4.1 Post secondary educational expenses of the child shall be reserved per Section 513 of the Illinois Marriage and Dissolution of Marriage Act.
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> ***
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> 8.1 For so long as he has an obligation of support pursuant to *§ 505* and *§ 513* of *the Illinois Marriage and Dissolution of Marriage Act*, CRAIG shall maintain in full force and effect life insurance coverage which has aggregate death benefits of $150,000.00, naming the child of the parties as the irrevocable beneficiaries of those policies."

¶ 5 After the divorce, Craig moved into the home of Daniel Hanssen (Hanssen). Kayla turned 18 in March 2013. In June 2013, after Kayla graduated from high school, Craig withdrew $15,000 from his life insurance. Kayla enrolled at Illinois State University in the fall of 2013. Carol and Kayla never took steps under paragraph 4.1 of the MSA to have Craig contribute to payment of Kayla's college expenses.

¶ 6 On July 11, 2014, Craig sent to State Farm a form changing the beneficiary of his life

insurance to his brother Jeffrey. On July 15, Craig signed a will leaving his property to Jeffrey.

¶ 7 When Hanssen returned home on July 19, 2014, he found helium tanks, a mask, and Craig, dead from inhaling helium. The DuPage County coroner ruled the death a suicide.

¶ 8 State Farm recognized that Kayla, Jeffrey, and others might claim the proceeds of Craig's life insurance. In October 2014, State Farm filed a complaint for interpleader, listing Kayla, Jeffrey, and other potential claimants as defendants. State Farm sought a judgment permitting it to deposit with the court the proceeds of the life insurance so that the claimants could litigate the right to the proceeds without any further involvement of State Farm. The circuit court entered an agreed order discharging State Farm from the case upon payment to the court clerk of $135,092.37, the amount of death benefits remaining after Craig's withdrawal of $15,000 from the $150,000 policy.

¶ 9 Jeffrey and Kayla filed counterclaims. Kayla argued that because the MSA made her the "irrevocable beneficiar[y]" of Craig's life insurance, the change in beneficiary filed in 2014 had no effect. Jeffrey contended Kayla's status as irrevocable beneficiary ended when she turned 18 and graduated from high school.

¶ 10 Jeffrey filed a motion for summary judgment on his claim. Carol and Kayla did not move for summary judgment but instead filed a response that disagreed with Jeffrey's interpretation of the MSA and also argued that the MSA was ambiguous. They attached to their response an affidavit from Carol appending documents that, Carol and Kayla claimed, reflected Carol and Craig's understanding that Craig had a continuing obligation to maintain Kayla as a beneficiary of his life insurance until she graduated from college.

¶ 11 Jeffrey filed a motion to strike Carol's affidavit and its attachments. The circuit court heard arguments on the motion to strike and the motion for summary judgment. The circuit court found the MSA unambiguously permitted Craig to change the life insurance beneficiary in 2014. The court granted Jeffrey's motion for summary judgment and denied, as moot, the motion to strike Carol's affidavit. Carol and Kayla now appeal.

¶ 12 ANALYSIS

¶ 13 Jeffrey points out that Carol and Kayla's brief includes no list labeled "Points and Authorities," as required by Supreme Court Rule 341(h)(1). Ill. S. Ct. R. 341(h)(1) (eff. May 25, 2018). Instead, the brief has a "Table of Authorities," without a list of the points in the argument that each authority supports. "Where an appellant's brief contains numerous Rule 341 violations and, in particular, impedes our review of the case at hand because of them, it is our right to strike that brief and dismiss the appeal." *Rosestone Investments, LLC v. Garner*, 2013 IL App (1st) 123422, ¶ 18. Because the error here affects only the form and not the substance of the argument, and the error does not impede our review of the case, we choose to consider the merits of the appeal. See *Cannella v. Village of Bridgeview*, 284 Ill. App. 3d 1065, 1071 (1996).

¶ 14 We review *de novo* the circuit court's decision to grant Jeffrey's motion for summary judgment. *Merca v. Rhodes*, 2011 IL App (1st) 102234, ¶ 40. The circuit court should grant a motion for summary judgment only where the movant has a clear right to the judgment as a matter of law. *Pyne v. Witmer*, 129 Ill. 2d 351, 358 (1989). In addition:

> "If what is contained in the papers on file would constitute all of the evidence before a court and would be insufficient to go to a jury but would require a court

> to direct a verdict, summary judgment should be entered. ***
>
> Inferences may be drawn from undisputed facts (citation), but an issue should be decided by the trier of fact and summary judgment denied where reasonable persons could draw divergent inferences from the undisputed facts." *Pyne*, 129 Ill. 2d at 358.

¶ 15 Resolution of the dispute requires us to construe both section 513 of the Act and the language of the MSA. "In interpreting settlement agreements, ordinary rules of contract construction apply." *In re Marriage of Marquardt*, 110 Ill. App. 3d 271, 273 (1982). "All the provisions of the agreement should be read as a whole to interpret it and to determine whether an ambiguity exists. An ambiguity is not created simply because the parties disagree on the meaning of any provision." *In re Marriage of Hall*, 404 Ill. App. 3d 160, 168 (2010) (citing *Rich v. Principal Life Insurance Co.*, 226 Ill.2d 359, 371, 314 (2007)).

¶ 16 Paragraph 8.1 of the MSA establishes Craig's duty to maintain insurance naming Kayla as its beneficiary "[f]or so long as he has an obligation of support pursuant to *** *§ 513* of *the Illinois Marriage and Dissolution of Marriage Act*." If Carol and Kayla obtained a promise from Craig for payment of college expenses, an issue left reserved for further negotiation in paragraph 4.1 of the MSA, Jeffrey does not dispute that Craig would have a duty under paragraph 8.1 to leave Kayla as beneficiary of his life insurance for the duration of his commitment to helping pay college expenses. Jeffrey relies on the fact that Carol and Kayla never obtained from Craig a promise to help pay Kayla's college expenses.

¶ 17 But Craig promised, in paragraph 3.8 of the MSA, to pay half of Kayla's medical

expenses not covered by insurance. The MSA added:

> "Each parties' obligation to pay for ordinary and extraordinary medical expenses and to provide and maintain medical insurance shall terminate upon the child's eighteenth (18th) birthday, graduation from high school or completion of a college education, whichever event is last to occur but in no event beyond the child's twenty-third (23rd) birthday."

¶ 18 Section 513 of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/513 (West 2014)), in the version in effect when the parties signed the MSA and when Craig died, provided:

> "Support for Non-minor Children and Educational Expenses.
>
> (a) The court may award sums of money out of the property and income of either or both parties *** for the support of the child or children of the parties who have attained majority in the following instances:
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> ***
>
> (2) The court may *** make provision for the educational expenses of the child or children of the parties, whether of minor or majority age ***. The educational expenses may include *** medical expenses."

¶ 19 There is no dispute that, pursuant to paragraph 3.8 of the MSA, Craig had a specific, continuing obligation to contribute to Kayla's medical expenses until she graduated from college or turned 23. If this was a section 513 obligation, then under paragraph 8.1 of the MSA, Craig was also obligated to maintain life insurance for Kayla's benefit during this same time period.

Whether an obligation is encompassed by section 513 of the Act is a question of statutory interpretation. Here, section 513 expressly provides that educational expenses for a non-minor child can include medical expenses. 750 ILCS 5/513 (West 2014). Craig's obligation to contribute to Kayla's medical expenses was thus an obligation pursuant to section 513 of the Act.

¶ 20 Jeffrey insists that this interpretation of paragraph 3.8, as creating an ongoing section 513 obligation while Kayla was in college, conflicts with the parties' blanket reservation, in paragraph 4.1 of the MSA, of "[p]ost-secondary educational expenses." An irreconcilable conflict between the provisions of the MSA would indeed create an ambiguity requiring the court to consider extrinsic evidence of the parties' intent. However, we believe these two sections can and should be read consistently. See *Coe v. BDO Seidman, L.L.P.*, 2015 IL App (1st) 142215, ¶ 27 (noting that "[c]ourts should make reasonable efforts to harmonize apparently conflicting [contractual] provisions" (internal quotation marks omitted)). And to the extent that this is not possible, paragraph 3.8, as the more specific provision, should control. See *Grevas v. United States Fidelity & Guaranty Co.*, 152 Ill. 2d 407, 411 (1992) ("where both a general and a specific provision in a contract address the same subject, the more specific clause controls").

¶ 21 We thus read the parties' general reservation of "post-secondary educational expenses" in paragraph 4.1 of the MSA—which does not mention Craig's specific obligations under paragraphs 3.8 or 8.1—as referring only to commonly understood educational expenses like tuition, books, and room and board for a child who lives on campus. Although the parties reserved such expenses, they also clearly agreed that Craig would contribute to Kayla's medical expenses while she attended college, an expense expressly contemplated by section 513 of the

Act. Craig was thus obligated, under paragraph 8.1, to maintain life insurance for Kayla's benefit during that same time period. The circuit court erred by finding, as a matter of law, that Craig had no such duty.

¶ 22 Although Carol and Kayla did not file a cross-motion for summary judgment, we have recognized that when the parties argue for interpretations of a contract that are in direct opposition to one another, a ruling against the movant is essentially a ruling in favor of the nonmovant, even where the nonmovant did not file a cross-motion for summary judgment motion. *Magnus v. Lutheran General Health Care System*, 235 Ill. App. 3d 173, 185 (1992); see also *West Suburban Bank v. City of West Chicago*, 366 Ill. App. 3d 1137, 1146 (2006) ("when a court denies one party's motion for summary judgment, it is authorized to enter summary judgment in favor of the other party, even though that party does not have a pending motion for summary judgment"). Such is the case here. The parties' agreement, construed pursuant to longstanding principals of contract interpretation, is unambiguous. Judgment should be entered in favor of Carol and Kayla.

¶ 23 CONCLUSION

¶ 24 The circuit court erred when it entered summary judgment in favor of Jeffrey. The parties agreed that Craig would maintain Kayla as the beneficiary of his life insurance policy until she graduated college. Judgment in favor of Jeffrey is reversed and is hereby entered in favor of Carol and Kayla.

¶ 25 Reversed.