2013 IL App (1st) 121280-U

FOURTH DIVISION
January 31, 2013

No. 1-12-1280

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re Estate of CATHERINE J. O'BRIEN, Deceased.	)	Appeal from the Circuit Court of Cook County, Illinois, County Department, Probate Division.
Citation re: Dorothy Baker, for Dorothy A. Baker to return $389,516.00 to the Estate	)	
DENNIS O'BRIEN and MARY KAY O'BRIEN, Petitioners-Appellants,	)	2007 P 3059
v.	)	Honorable Susan Coleman, Judge Presiding.
DOROTHY BAKER, Respondent-Appellee.	)	

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Presiding Justice Lavin and Justice Pucinski concurred in the judgment.

ORDER

¶ 1 *HELD:* The circuit court erred when it granted the respondent's motion for summary judgment holding, as a matter of law, that the respondent was the default beneficiary of the decedent's AT&T retirement savings plan. Although under the current rules for that plan, the respondent would have been the default beneficiary, there remain genuine issues of material fact as to: (1) whether those rules governed the decedent's retirement savings plan, and (2) whether the decedent was ever placed on either actual or constructive notice, of these rules, so as to make them enforceable.

¶ 2 This cause arises from the circuit court of Cook County's admission into probate the will of the deceased, Catherine J. O'Brien (hereinafter Catherine). After the will was admitted to probate, certain assets ($389,516) from a benefit savings plan that Catherine earned during her lifetime employment with Illinois Bell Telephone (currently AT&T) were distributed to her only living sibling, respondent, Dorothy Baker. The petitioners, Catherine's nephew and niece, Dennis O'Brien and Mary Kay O'Brien, filed two petitions for a citation to issue for the appearance before the court of the respondent, contending that those assets were wrongfully distributed and that they must be returned to the estate. The respondent filed a motion for summary judgment, arguing that the assets were never part of the probate estate and that they were properly distributed pursuant to the clear language of the employee benefit savings plan's beneficiary designation form, which is governed by the Employment Retirement Income Security Act of 1974 (ERISA) (29 U.S.C. § 1001 *et seq*. (2006)) and which designated the respondent as the default beneficiary, in the event that the named beneficiaries predeceased Catherine. The circuit court granted the respondent's motion for summary judgment and the petitioners now appeal. For the reasons that follow, we reverse and remand for further proceedings.

¶ 3 I. BACKGROUND

¶ 4 The record below reveals the following pertinent facts and procedural history. During her life, the decedent, Catherine, worked for Illinois Bell Telephone (now AT&T)[1].

[1] Illinois Bell Telephone first became Ameritech, then SBC, and finally AT&T. For purposes of clarity, heretofore, we shall refer to it simply as AT&T.

While there, she enrolled in various employee benefit plans, including: (1) the Bell System Savings Plan for Salaried Employees (now called the AT&T Savings Plan) (hereinafter the AT&T Savings Plan); (2) the Bell System Employee Stock Ownership Plan (now called the Ameritech Employee Stock Ownership Plan) (hereinafter ESOP); and (3) several types of insurance policies, including basic and supplementary life insurance, and basic disability insurance.

¶ 5 For each of the plans, Catherine completed and signed a beneficiary designation form, designating the recipient of the plan's assets in the event of her death. With respect to the AT&T Savings Plan, on June 10, 1969, Catherine designated her mother, Catherine T. O'Brien, as her primary beneficiary, and her sister, Mary T. O'Brien (hereinafter Mary), as her contingent beneficiary. With respect to the ESOP, on February 7, 1978, Catherine named her sister, Mary, as her primary beneficiary, but left blank the space asking her to name the contingent beneficiary. Catherine amended the ESOP beneficiary designation form on December 16, 1985, adding her mother, Catherine T. O'Brien, as her contingent beneficiary. With respect to all three insurance policies, Catherine named her sister, Mary, as the primary beneficiary (both on December 15, 1999 and on January 1, 2000).

¶ 6 Catherine died on April 14, 2007, in Oak Lawn, Illinois, at the age of 79. Both of her parents predeceased her. Of Catherine's five siblings, only one, the respondent, survived her.

¶ 7 On May 11, 2007, the circuit court admitted to probate Catherine's will, which was executed on February 12, 2007. The will named 36 legatees[2], including the respondent and the petitioners, and bequeathed her estate including, *inter alia*, "her home, her personal effects, her household goods, automobiles, furnishings, stocks, bonds and bank accounts" in varied shares to all of them. The will named Catherine's niece, Margaret Ann Baker, as independent executrix of the estate.

¶ 8 After probate, on May 16, 2007, with the help of the executrix, $389,516 in assets, which Catherine had earned during her lifetime as part of her employee benefit package at AT&T were distributed to the respondent.

¶ 9 After the distribution of the aforementioned assets to the respondent, the petitioners filed two petitions (on September 29, 2010, and October 14, 2010) for a citation to issue for the appearance before the court of the respondent. Those petitions alleged that the distribution of Catherine's "Fidelity Investments AT&T Savings Plan to the respondent was contrary to the decedent's beneficiary designation," and should have remained in the estate. According to the petitions, the respondent was never named as a beneficiary to Catherine's account; rather, Catherine designated her mother and her sister, Mary, as the primary and contingent beneficiaries. In addition, the petitions alleged that "the AT&T beneficiary designation forms" explicitly state that in the event that both named beneficiaries predecease Catherine, the account is to be paid out to Catherine's estate.

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[2] These included the respondent, the petitioners, four other nieces and nephews, as well as numerous grand and great-grand nieces and nephews.

¶ 10 In support of these allegations, the petitioners attached numerous documents including, *inter alia*, relevant to this appeal: (1) copies of different AT&T employee benefit plans' beneficiary designation forms signed by Catherine during her lifetime; (2) a copy of the federal estate tax return filed upon Catherine's death; and (3) the deposition of Edward B. Pierucci, the certified public accountant (CPA) who prepared the tax return.

¶ 11 The federal estate tax return form, which catalogs all the various types of Catherine's income, describes the $389,516 in assets listed under Schedule F--Other Miscellaneous Property Not Reportable Under Any Other Schedule–as:

> "AT&T Savings Plan
> Fidelity Investments
> P. O. Box 770003
> Cincinnati OH 45277-0065
> ACT ENV#MG 000008 MG 20020 D."

Attached to the federal estate tax return is a copy of one of Catherine's retirement savings statements, dated April 17, 2007-April 18, 2007, from that Fidelity Investments AT&T Savings Plan. This document reveals that the total market value of the account in April 2007, was approximately $389,602.27, and explains that it comes from two sources (1) "Stock Investments: AT&T Shares Fund" and (2) "Short Term Investments (including the Dividend Fund Account and Interest Income)."

¶ 12 In his deposition, taken on November 1, 2011, CPA Edward Pierucci testified that he filed the estate tax return on behalf of Catherine's estate on May 21, 2010. He testified that in preparing the return, he received copies of Catherine's April 2007 retirement savings statement from AT&T and explained that they related to Catherine's "profit sharing plan, or

401(k) or retirement plan." He indicated that after reviewing this document, he listed the assets in Catherine's AT&T Savings Plan in the amount of $389,516 under Schedule F because there was nowhere else to report it on the federal tax return form. Pierucci next acknowledged that he is not an attorney, and that there is a difference between probate law and the Internal Revenue Code (26 U.S.C.A. § 1 *et seq*. (2006)). He further averred that it was not his responsibility to determine who was to receive accounts that were owned by the decedent at her death and that in his opinion, AT&T would not have sent money from the AT&T Savings Plan to someone who should not have received it.

¶ 13 On September 13, 2011, the respondent filed her answer to the petitions denying the allegations therein. In addition, on October 18, 2011, the respondent filed a motion for summary judgment arguing that the assets were properly distributed pursuant to the clear language of the AT&T Savings Plan's default beneficiary rules, which are governed by ERISA (29 U.S.C. § 1001 *et seq*. (2006)) and which designated the respondent as the default beneficiary, in the event that the two named beneficiaries predeceased Catherine. The respondent further pointed out that in arguing that the estate, rather than the respondent, is the default beneficiary of Catherine's AT&T Savings Plan, the petitioners incorrectly relied upon irrelevant beneficiary designation forms, namely those relating to the ESOP and the various life and disability insurance plans to which Catherine had subscribed while at AT&T and which are different from the AT&T Savings Plan. According to the respondent, these irrelevant forms explicitly designated the estate as the default beneficiary in the event the named beneficiaries predeceased Catherine.

¶ 10 In support of this position, the respondent attached, *inter alia*, copies of: (1) all relevant beneficiary designation forms signed by Catherine during her employ at AT&T; and (2) the "AT&T Rules for Employee Beneficiary Designations" (hereinafter the AT&T Rules), which, among other things, set forth the proper default beneficiaries in the event that the named beneficiaries predecease the employee. Relevant to this cause, those rules provide that if the employee is "not survived by a spouse, legally recognized partner, child or parent," "then all proceeds from each program in which [the employee] participate[s] will be distributed to *** [the employee's] surviving sibling or siblings (including half blood) in equal amounts." The AT&T Rules also specifically list the AT&T Savings Plan as one of the AT&T employee benefit plans that has adopted the rules,[3] as well as state that the rules are governed by ERISA (29 U.S.C. § 1001 *et seq*. (2006)) and the Internal Revenue Code (26 U.S.C. § 1 *et seq*. (2006)).

¶ 11 On December 30, 2011, the petitioners filed their response to the motion for summary judgment, arguing that the AT&T Rules do not apply to the assets distributed to the respondent from Catherine's estate, since the rules are dated January 2008, and Catherine died on April 14, 2007. Instead, the petitioners asserted that to determine whether the assets belong to the estate, the court should look to the last beneficiary designation form that Catherine singed on December 16, 1985, which unequivocally states

[3]We note that according to the AT&T rules any rule regarding default beneficiary designations does not apply to a program that has explicitly rejected the AT&T Rules. Unlike the AT&T Savings Plan, which directly adopts the AT&T Rules, the record is unclear as to whether the ESOP has explicitly adopted or rejected the rules. Within the rules, ESOP is neither listed as a plan that has adopted or rejected them.

that in the event her primary and contingent beneficiaries predecease her "all shares or cash shall be paid to her estate."

¶ 12 After a hearing arguments by both parties, on March 30, 2012, the circuit court granted summary judgment in favor of the respondent, finding as a matter of law that the assets were never part of the estate and rightly belonged to the respondent. The court first found that there was a difference between the ESOP and the AT&T Savings Plan and that each plan had its own beneficiary designation forms. In doing so, the court noted that"it did not leave its common sense at the door when it came here." The court then found that the only plan at issue here was the AT&T Savings Plan, which is governed by the AT&T Rules, which, in turn, are governed by ERISA (29 U.S.C. § 1001 *et seq*. (2006)). The court concluded that pursuant to the AT&T Rules the respondent was the rightful default beneficiary. The court noted that "if Catherine had wanted the money to go to the estate, she should have read the plan rules and made the appropriate designation."

¶ 12 The petitioners now appeal contending that summary judgment was improper.

¶ 13 II. ANALYSIS

¶ 14 Summary judgment is proper where the " 'pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.' " *Robinson v. Point One Toyota, Evanston*, 2012 IL App (1st) 111889 at ¶5 (quoting 735 ILCS 5/2–1005© (West 2008)); see also *Fidelity National Title Insurance Co. of New York v. West Haven Properties Partnership,* 386 Ill. App. 3d 201, 212 (2007) (citing *Home Insurance Co. v.*

Cincinnati Insurance Co., 213 Ill. 2d 307, 315 (2004)). In determining whether the moving party is entitled to summary judgment, the court must construe the pleadings and evidentiary material in the record strictly against the moving party. *Happel v. Wal-Mart Stores, Inc.*, 199 Ill. 2d 179, 186 (2002). Although the burden is on the moving party to establish that summary judgment is appropriate, the nonmoving party must present a *bona fide* factual issue and not merely general conclusions of law. *Caponi v. Larry's 66*, 236 Ill. App. 3d 660, 670 (1992). A genuine issue of material fact exists where the facts are in dispute or where reasonable minds could draw different inferences from the undisputed facts. *In re Estate of Ciesiolkiewicz*, 243 Ill. App. 3d 506, 510 (1993); see also *Espinoza v. Elgin, Joliet & Eastern Ry. Co.*, 165 Ill. 2d 107, 114 (1995). We review the circuit court's decision to grant or deny a motion for summary judgment *de novo*. *Kajima Construction Services, Inc. v. St. Paul Fire & Marine Insurance Co.*, 227 Ill.2d 102, 106 (2007); *Home Insurance Co.*, 213 Ill. 2d at 315. In doing so, we may affirm on any basis found in the record regardless of whether the trial court relied on those grounds or whether its reasoning was correct. *Illinois State Bar Association Mutual v. Coregis Insurance Co.*, 355 Ill. App. 3d 156, 163 (2004); see also *Pepper Construction Co. v. Transcontinental Insurance Co.*, 285 Ill. App.3d 573, 576 (1996).

¶ 15 On appeal, the petitioners argue that the $389,516 in assets should have been returned to the estate because the respondent was neither a named or default beneficiary of the AT&T Savings Plan. The parties agree that the respondent was not a named beneficiary of Catherine's AT&T Savings Plan. They disagree, however, as to whether the respondent or the estate is the default beneficiary.

¶ 16 The parties first contest which AT&T documents should be relied upon in determining the default beneficiary. In that respect, they also appear to dispute the source of the $389,516. The petitioners seem to argue, albeit not very articulately, that all of AT&T's employee benefit programs fall under one umbrella administered by Fidelity Investments, so that the assets paid to the respondent essentially came from one pot. They therefore assert that in determining the default beneficiary, we may review any and all beneficiary designation forms, involving all of the AT&T employee benefit programs. The petitioners particularly want us to focus on the last beneficiary designation form signed by Catherine on December 16, 1985, for the ESOP, which explicitly provides that in the event that the named beneficiaries predecease Catherine "all shares or cash shall be paid to her estate."

¶ 17 The respondent, on the other hand, contends that the $389,516 came exclusively from Catherine's AT&T Savings Plan, which is separate from the ESOP and the life and disability insurance policies, and that therefore in determining who the default beneficiary should be, it is permissible to look only at the beneficiary designation form relating to the AT&T Savings Plan. This form, signed by Catherine on June 10, 1969, makes no provision as to the distribution of the Saving's Plan's assets in the event that the named beneficiaries predecease Catherine. However, the respondent argues, the AT&T Rules, which govern the AT&T Savings Plan, designate the respondent as the proper default beneficiary.

¶ 18 After a review of the record, we find that the respondent is correct in asserting that the AT&T Savings Plan is a distinct employee benefit plan different from all other AT&T

employee benefit plans, including the ESOP, and that, as such, we must look solely to the AT&T Savings Plan beneficiary designation form to determine the default beneficiary. In that respect, we first note that both the United States Supreme Court and the Illinois appellate court have recognized the difference between the AT&T Savings Plan and the ESOP. See *e.g.*, *Boggs v. Boggs*, 520 U.S. 833 (1997) (noting the difference between the AT&T Savings Plan and the ESOP; and describing them as "a lump-sum savings plan" (the AT&T Savings Plan) and "shares of stock from the company's employee stock ownership plan (ESOP)"); *In re Marriage of Phillips* , 229 Ill. App. 3d 809, 812 (1992) (recognizing the difference between the AT&T "savings plan" and the AT&T "stock ownership plan" and making separate rulings with respect to each). Moreover, it is clear from the record that the $389,516 came solely from one account, namely Catherine's AT&T Savings Plan. The record contains a statement from Catherine's April 2007, AT&T Savings Plan, the front page of which denotes it as a "Retirement Savings" plan, and not a stock option plan. According to that statement, at time of Catherine's death on April 14, 2007, the plan yielded an amount close to $390,000. CPA Pierucci identified this "Retirement Savings Statement" as the one he used in calculating the $389,516 amount for purposes of Catherine's estate tax, and testified that he considered it Catherine's retirement savings account. Contrary to the petitioners' contention, there is absolutely nothing in the record to suggest that the $389,516 came from anything other than Catherine's AT&T Savings Plan or that the AT&T Savings Plan and the ESOP are somehow one and the same. Accordingly, in order to

determine the default beneficiary of these assets, we must look only to the beneficiary designation forms for the AT&T Savings Plan.

¶ 19 As already noted above, Catherine singed only one beneficiary designation form for the AT&T Savings Plan, on June 10, 1969. This form makes no provision as to the distribution of the Saving's Plan's assets in the event that the named beneficiaries predecease Catherine. However, the AT&T Rules, which govern the AT&T Savings Plan designate the respondent as the proper default beneficiary. The rules specifically provide that where the employee is "not survived by a spouse, legally recognized partner, child or parent," "all proceeds from each program in which [the employee] participate[s] will be distributed to *** [the employee's] surviving sibling or siblings (including half blood) in equal amounts."

¶ 20 The petitioners concede that under these rules, as Catherine's last living sibling, the respondent would have been the rightful default beneficiary of the AT&T Savings Plan. They assert, however, just as they did before the circuit court, that the respondent has failed to show that these rules govern Catherine's AT&T Savings Plan, since they are dated January 2008, and Catherine died on April 14, 2007. The petitioners, therefore, contend that because the June 10, 1969, beneficiary designation form is silent as to what happens to the plan's assets in the event that the named beneficiaries predecease the employee, under general probate principles, the assets should revert to Catherine's estate.

¶ 21 After a thorough review of the record, we agree with the petitioners and find that the circuit court erred in granting summary judgment as there remain genuine issues of

material fact as to whether any AT&T Rules, designating the proper default beneficiary in the event that the named beneficiaries predeceased the employee, apply to Catherine's AT&T Savings Plan. In that respect, we note that the AT&T Rules attached to the respondent's pleadings explicitly state that those rules become effective as of "January 1, 2008" and that they are intended to "replace [the employee's] existing AT&T Rules for Employee Beneficiary Designations *** dated February 2007." Since Catherine died on April 14, 2007, we have no basis upon which to conclude that these rules were in place at the time Catherine signed her AT&T Savings Plan beneficiary designation form in 1969, nor any time after that and prior to the rules' effective date in 2008. Moreover, even if identical or similar rules were in place during Catherine's lifetime, there further remains a genuine issue of material fact as to whether Catherine was ever placed on notice, actual or constructive, of these rules, so as to knowingly designate her default beneficiary.

¶ 22 The respondent does not attempt to explain why she has provided the circuit court with a set of AT&T Rules that did not become effective until Catherine's death. Nor does she provide any argument or support for the proposition that Catherine in fact had notice of the default rules, but did nothing to ensure that the assets would remain in the estate. Instead the respondent merely asserts that because the AT&T Savings Plan is governed by ERISA (29 U.S.C. § 1001 *et seq*. (2006)), which preempts state law, Catherine's assets could never revert to the estate under common-law probate principles. This, however, is a circular argument, since the only evidence that respondent presents regarding ERISA governing the AT&T Savings Plan is the set of 2008 AT&T Rules, which state that the AT&T

Savings Plan is governed by that statute. However, as already explained above, since Catherine died in April 2007 prior to the effective date of those rules, we have nothing upon which to conclude that those rules are applicable to Catherine's AT&T Savings Plan. Under these circumstances, construing, as we must, the pleadings and evidentiary material in the record strictly against the petitioners, we find that the trial court's grant of respondent's motion for summary judgment on the basis that "if Catherine had wanted the money to go to the estate, she should have read the plan rules and made the appropriate designation," was premature. *Happel v. Wal-Mart Stores, Inc.*, 199 Ill. 2d 179, 186 (2002).

¶ 23 Accordingly, for all of the aforementioned reasons, we reverse the finding of the circuit court and remand for further proceedings.

¶ 24 Reversed and remanded.