

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).

2014 IL App (4th) 130171-U

NO. 4-13-0171

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: the Estate of JULIAN H. YUDIN, Deceased,)	Appeal from
ROBERT A. SMITH, Administrator With the Will)	Circuit Court of
Annexed of the Estate of Julian H. Yudin, Deceased;)	Vermilion County
and LINDA KAY YUDIN and FREDERICK LEE)	No. 12MR150
YUDIN, Successor Cotrustees of the Julian H. Yudin)	
Trust,)	
Plaintiffs-Appellees,)	
v.)	
GARY KYGER, Executor of the Estate of ALMA)	
PATE, Deceased,)	
Defendant-Appellant,)	
And)	
PRUDENTIAL INSURANCE COMPANY OF)	Honorable
AMERICA, a Corporation,)	Derek J. Girton,
Defendant.)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Appleton and Justice Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in granting summary judgment in favor of plaintiffs.

¶ 2 Defendant, Gary Kyger (Kyger), executor of the estate of Alma Pate (Pate), deceased, appeals a decision of the trial court, regarding the distribution of Pate's life insurance proceeds, which the court found payable to the estate of Julian H. Yudin (Yudin). On appeal, defendant argues the court erred in granting summary judgment in favor of Yudin's estate and against defendant. We affirm.

¶ 3

I. BACKGROUND

¶ 4

The facts on appeal are largely undisputed. Yudin was the sole shareholder of J.H. Yudin, Inc., an Illinois corporation. In 1991, Pate was employed by the corporation and it obtained an insurance policy from Prudential Insurance Company of America (Prudential), insuring Pate's life for \$100,000. Pate consented to the policy and the corporation was both the owner of the policy and its sole beneficiary. Sometime after the policy was issued, the corporation was voluntarily dissolved. However, Pate continued her employment with Yudin and his associated entities. The parties acknowledge Pate was an office manager and "key employee of Julian H. Yudin, Inc., Julian H. Yudin, and Julian H. Yudin Associates."

¶ 5

No change was ever made to the named beneficiary on the life insurance policy. Further, all premiums for the policy were paid by J.H. Yudin, Inc.; Yudin personally; or J.H. Yudin & Associates.

¶ 6

On May 21, 2011, Yudin died. On July 15, 2011, Pate ceased working for any entity with which Yudin was associated and, in fact, stopped working altogether. On September 14, 2011, Pate also died.

¶ 7

On July 26, 2012, Michael Merlie, successor executor of Yudin's estate and successor trustee under the Yudin trust, filed a complaint for declaratory judgment, naming both Kyger, as the executor of Pate's estate, and Prudential as defendants. He alleged that, when J.H. Yudin, Inc., was dissolved, the corporation's remaining assets were distributed to Yudin as its sole shareholder and Yudin's estate and trust were the successors in interest of all property owned by Yudin at the time of his death. Merlie further alleged that among the assets owned by Yudin and his successors was the life insurance policy J.H. Yudin, Inc., had obtained on Pate.

He asserted claim forms had been submitted to Prudential; however, Prudential indicated the "proper claimant" was Pate's estate. Merlie asked for a declaratory judgment, finding Yudin's estate was entitled to the life insurance policy proceeds.

¶ 8 On October 19, 2012, pursuant to a joint motion of the parties, the trial court ordered Prudential to deposit the full death benefit payable under the life insurance policy (\$112,560.86) with the court to be deposited by the clerk of the court into an interest-bearing account. It then ordered Prudential dismissed from the action and discharged from further liability.

¶ 9 On October 31, 2012, Kyger filed a motion for summary judgment. On December 7, 2012, Merlie filed a countermotion for summary judgment. On December 12, 2012, the trial court conducted a hearing on the matter, following which it granted Merlie's motion for summary judgment. On February 20, 2013, the court's written order was filed.

¶ 10 This appeal followed. While the appeal was pending, Merlie died and plaintiffs, Robert A. Smith, administrator of Yudin's Estate, and Linday Kay Yudin and Frederick Lee Yudin, successor cotrustees of the Yudin trust, were substituted as parties.

¶ 11 II. ANALYSIS

¶ 12 On appeal, defendant argues the trial court erred in granting plaintiffs' motion for summary judgment. "Summary judgment is proper when '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.'" *Skokie Castings, Inc. v. Illinois Insurance Guaranty Fund*, 2013 IL 113873, ¶ 27, 998 N.E.2d 69 (quoting 735 ILCS 5/2-1005(c) (West 2010)). "Where the parties file cross-motions for

summary judgment *** they agree that only a question of law is involved, and they invite the court to decide the issues based on the record." *Martin v. Keeley & Sons, Inc.*, 2012 IL 113270, ¶ 25, 979 N.E.2d 22. The trial court's decision to grant a motion for summary judgment is subject to *de novo* review. *Skokie*, 2013 IL 113873, ¶ 27, 998 N.E.2d 69.

¶ 13 Defendant first challenges the trial court's decision on the basis that the record fails to reflect any individual or entity other than J.H. Yudin, Inc., had an interest in the life insurance policy at issue. He contends nothing in the record shows the corporation transferred its interest in the life insurance policy or that the policy's beneficiary was ever changed. Defendant further contends it is "dubious to characterize the existence of a key man insurance policy as an 'asset.' "

¶ 14 Section 12.30 of the Business Corporation Act of 1983 (805 ILCS 5/12.30 (West 2012)) provides as follows regarding the dissolution of a corporation:

"(a) Dissolution of a corporation terminates its corporate existence and a dissolved corporation shall not thereafter carry on any business except that necessary to wind up and liquidate its business and affairs, including:

- (1) Collecting its assets;
- (2) Disposing of its assets that will not be distributed in kind to its shareholders;
- (3) Giving notice *** and discharging or making provision for discharging its liabilities;
- (4) Distributing its remaining assets among its shareholders

according to their interests; and

(5) Doing such other acts as are necessary to wind up and liquidate its business and affairs.

(b) After dissolution, a corporation may transfer good and merchantable title to its assets as authorized by its board of directors or in accordance with its by-laws.

(c) Dissolution of a corporation does not:

(1) Transfer title to the corporation's assets[.]"

¶ 15 Although a dissolved Illinois corporation retains legal title to its assets, shareholders "have an interest in the assets of a dissolved corporation." *In re Lipuma*, 167 B.R. 522, 525 (1994). "In Illinois, the legislature has established a five-year period within which a dissolved corporation must wind up its affairs" and "[a]t the end of that five-year period, subject to the rights of creditors, a corporation's assets devolve, by operation of law, to its shareholders." *Hamilton v. Conley*, 356 Ill. App. 3d 1048, 1057, 827 N.E.2d 949, 958 (2005). See also *Shute v. Chambers*, 142 Ill. App. 3d 948, 952, 492 N.E.2d 528, 531 (1986) ("Whatever assets a dissolved corporation has belongs to the stockholders subject to the rights of creditors" and "[e]ven without the purported assignment, the remaining assets of the dissolved corporation, including contractual rights secured by a note, would pass to the shareholders by operation of law.>").

¶ 16 Initially, we note defendant's argument as to this issue is deficient. Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013) requires that the argument portion of an appellant's brief "contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." "Both argument and citation to relevant

authority are required" and "[a]n issue that is merely listed or included in a vague allegation of error is not 'argued' and will not satisfy the requirements of the rule." *Vancura v. Katris*, 238 Ill. 2d 352, 370, 939 N.E.2d 328, 340 (2010). "Moreover, an argument that is developed beyond mere list or vague allegation may be insufficient if it does not include citations to authority." *Vancura*, 238 Ill. 2d at 370, 939 N.E.2d at 340.

¶ 17 Here, defendant failed to cite relevant legal authority to support his position that Yudin's estate has no interest in the life insurance policy as an "asset" of the dissolved corporation. He also presented undeveloped argument as to that issue. In his opening brief, defendant cited no authority to support his position. Additionally, in his reply brief, he cited only the statutory section setting forth the general effect of dissolution on a corporation. Notably, defendant failed to set forth facts that would in any way demonstrate Pate's entitlement to the insurance proceeds. Instead, the undisputed facts show J.H. Yudin, Inc., was both the owner and sole beneficiary of the insurance policy, all insurance premiums were paid by Yudin or one of his associated entities, and Yudin was the sole shareholder of J.H. Yudin, Inc., which has been dissolved. Given these undisputed facts and the deficiencies of defendant's argument on appeal, we find no error as to this issue.

¶ 18 Defendant also argues the trial court erred in granting summary judgment in plaintiffs' favor because neither Yudin nor any of his associated entities had an insurable interest in Pate's life at any time other than when the policy was first issued. Defendant acknowledges both that J.H. Yudin, Inc., had an insurable interest in Pate's life on the date the policy was issued and that Pate consented to the purchase of the policy. However, he contends the record fails to suggest Pate consented to the transfer of the policy or the turnover of the policy's proceeds to the

sole shareholder of her employer "some 20 years later." Defendant argues "[t]here is a substantial public policy involving prohibition on persons obtaining insurance on people for whom they have no insurable interest."

¶ 19 "Public policy forbids one person who has no interest in the continuance of the life of another from speculating on that life by procuring a policy of insurance." *Colgrove v. Lowe*, 343 Ill. 360, 363, 175 N.E. 569, 571 (1931). " 'The very meaning of an insurable interest is an interest in having the life continue.' " *Colgrove*, 343 Ill. at 363, 175 N.E. at 571 (quoting *Grigsby v. Russell*, 222 U.S. 149, 155 (1911)). The question of whether an insurable interest exists "must be determined as of the date upon which the insurance was taken out." *Wagner v. National Engraving Co.*, 307 Ill. App. 509, 513, 30 N.E.2d 750, 752 (1940). "If within the meaning of the law, defendant had an insurable interest on that date, then the fact that at a later date the interest ceased would not invalidate the policy." *Wagner*, 307 Ill. App. at 513, 30 N.E.2d at 752. See also *Speroni v. Speroni*, 406 Ill. 28, 34, 92 N.E.2d 63, 66 (1950) ("A policy is not avoided by the cessation of the insurable interest unless such be the necessary effect by the provisions of the policy itself.").

¶ 20 As stated, defendant acknowledges on appeal that J.H. Yudin, Inc., had an insurable interest in Pate's life at the time the policy was issued. As a result, the policy is not void or against public policy simply because the corporation's interest ceased at a later time. We note the insurance policy itself is not in the appellate record and defendant has failed to argue or present facts showing the policy contained a provision which would defeat plaintiffs' claim to the insurance proceeds. Under these circumstances, the policy at issue did not violate public policy.

¶ 21 On appeal, both parties also rely heavily on section 224.1 of the Illinois Insurance

Code (Insurance Code) (215 ILCS 5/224.1 (West 2012)), which provides as follows:

"Employer insurable interest. Notwithstanding any other Section of this Code, an employer or an employer sponsored trust for the benefit of its employees has an insurable interest in the lives of the employer's directors, officers, managers, nonmanagement employees, and retired employees and may insure those lives on an individual or group basis with the consent of the insured. The consent requirement will be satisfied if the insured is provided written notice of the coverage and does not reject such coverage within 30 days of receipt of such notice. The extent of the employer's or the trust's insurable interest for nonmanagement and retired employees shall be limited to an amount commensurate with the employer's projected unfunded liabilities to nonmanagement and retired employees for welfare benefit plans, ***. An insurable interest must exist at the time the contract of life or disability insurance becomes effective, but need not exist at the time the loss occurs."

¶ 22 However, we note the law in effect at the time an insurance policy was issued is controlling. *General Casualty Insurance Co. v. Lacey*, 199 Ill. 2d 281, 285, 769 N.E.2d 18, 20 (2002). Section 224.1 was not added to the Insurance Code until after the policy that is the subject of this appeal was issued. See Pub. Act 87-936, § 1 (eff. Aug. 28, 1992) (adding 215 ILCS 5/224.1, formerly Ill. Rev. Stat., ch. 73, ¶ 836.1).

¶ 23 In any event, we find section 224.1 supports plaintiffs' position rather than defendant's. "The primary objective in construing a statute is to ascertain and give effect to the intent of the legislature." *Prazen v. Shoop*, 2013 IL 115035, ¶ 21, 998 N.E.2d 1. "The most reliable indicator and best evidence of legislative intent is the language used in the statute itself, which must be given its plain and ordinary meaning." *Prazen*, 2013 IL 115035, ¶ 21, 998 N.E.2d 1. Further, "[w]ords and phrases should be construed in light of other relevant provisions of the statute and must not be interpreted in isolation." *Prazen*, 2013 IL 115035, ¶ 21, 998 N.E.2d 1.

¶ 24 Initially, section 224.1 provides that an employer has an insurable interest and may insure certain categories of employees, including the employer's directors, officers, managers, nonmanagement employees, and retired employees. It then limits the employer's insurable interest for nonmanagement and retired employees. We find this language refers to the employer's insurable interest at the time the policy is issued rather than the date of loss. Such an interpretation is consistent with the additional provision in section 224.1, stating "[a]n insurable interest must exist at the time the contract of life or disability insurance becomes effective, but need not exist at the time the loss occurs." 215 ILCS 5/224.1 (West 2012).

¶ 25 Here, defendant acknowledges Pate was a manger for J.H. Yudin, Inc., at the time the life insurance policy was issued and the corporation had an insurable interest in her life. The change in Pate's employment status prior to the date of loss is of no consequence.

¶ 26 III. CONCLUSION

¶ 27 For the reasons stated, we affirm the trial court's judgment.

¶ 28 Affirmed.