2022 IL App (4th) 220310-U

NO. 4-22-0310

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
December 6, 2022
Carla Bender
4th District Appellate
Court, IL

JOSEPH W. SHARPE III,	)	Appeal from the
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Peoria County
CINDY BIRKHOLD, as Trustee of the Joseph William Sharpe Irrevocable Trust Agreement, Dated July 25, 2002,	)	No. 21CH79
	)	Honorable
Defendant-Appellee.	)	James A. Mack,
	)	Judge Presiding.

JUSTICE DOHERTY delivered the judgment of the court.
Presiding Justice Knecht and Justice DeArmond concurred in the judgment.

ORDER

¶ 1 *Held*: Where a judgment of dissolution of marriage defined the parties' child as a minor, a separate clause obligating the ex-husband to maintain life insurance for the benefit of the child applied only during the child's minority.

¶ 2 Plaintiff, Joseph W. Sharpe III, filed a complaint against defendant Cindy Birkhold, as trustee of the Joseph William Sharpe Irrevocable Trust Agreement, Dated July 25, 2002 (Trustee), seeking to impose a constructive trust over certain life insurance proceeds held in the irrevocable trust following the death of his father, Joseph William Sharpe Jr. (William), on a theory of unjust enrichment. The complaint alleged that the terms of a 1994 judgment of dissolution of marriage (Judgment), which required his father to "maintain at all times" $500,000 in life insurance "on his life irrevocably designating Joey individually as the sole beneficiary," vested plaintiff with a superior interest in the insurance proceeds as compared to the beneficiaries of the irrevocable trust. The Trustee moved to dismiss the complaint under section 2-619(a)(9) of the

Code of Civil Procedure (735 ILCS 5/2-619(a)(9) (West 2020)), arguing that the insurance provision in the Judgment terminated upon plaintiff achieving majority age. Under the terms of the irrevocable trust, plaintiff is to receive $250,000 of the total $1,000,000 in insurance proceeds.

¶ 3 The trial court granted the Trustee's motion to dismiss, finding the obligation to maintain the $500,000 in insurance terminated when plaintiff reached 18 years of age. This, in effect, limited plaintiff, as a ¼-beneficiary of the irrevocable trust, to a $250,000 distribution.

¶ 4 Plaintiff appeals to this court, arguing that the Judgment provision created an unambiguous obligation on his father to maintain $500,000 in life insurance with plaintiff as sole irrevocable beneficiary. Alternatively, he argues that the insurance provision is ambiguous and requests reversal and remand to consider extrinsic evidence of intent.

¶ 5 We affirm.

¶ 6 I. BACKGROUND

¶ 7 Judith Sharpe and William were married in 1981 and had one child together, plaintiff, born in 1983. In February 1994, the marriage was dissolved, resulting in the entry of the Judgment awarding Judith "sole and exclusive care, custody and control" of "Joseph W. Sharpe III, the minor child of the parties." The Judgment, which contained provisions relating to custody and visitation (Paragraph 1), child support (Paragraph 2), health insurance and uncovered medical expenses (Paragraph 4), and financial matters, also contained a clause—Paragraph 5—relating to life insurance, which read as follows:

> "[William] shall maintain at all times Five Hundred Thousand Dollars ($500,000) in life insurance on his life irrevocably designating Joey individually as the sole beneficiary. He shall make available on an annual basis proof of existence of the policy and

proof of the payment of premiums beginning within thirty (30) days of entry of the Judgment."

At the time the Judgment was entered, William was insured under three life insurance policies totaling $1,000,000.

¶ 8 In July 2002, roughly one year after plaintiff reached majority, William executed an irrevocable trust agreement (the Trust), naming Cindy Birkhold as trustee. Under Article III of the Trust, William's four descendants—plaintiff and his three stepsisters—were to receive equal distributions from the $1,000,000 insurance proceeds (apparently the same policies that were in effect in 1994).

¶ 9 William died on January 2, 2021.

¶ 10 In August 2021, plaintiff filed his complaint for unjust enrichment based on Paragraph 5 of the Judgment, alleging that his father's obligation to provide life insurance did not terminate upon his attainment of majority and asserting that he retained a superior vested right to $500,000 of the life insurance proceeds. The Trustee's motion to dismiss argued that (1) Paragraph 5's unambiguous language terminated William's obligation to name plaintiff as sole beneficiary on his attainment of majority and, alternatively, (2) if the Judgment was found to be ambiguous, extrinsic evidence showed the intention of the original trial judge to limit William's insurance obligation to only those years when plaintiff was a minor.

¶ 11 In May 2022, the trial court granted the Trustee's motion to dismiss, declared that the Judgment was unambiguous, and further found that William's obligation to maintain the $500,000 policy payable solely to plaintiff terminated upon his attainment of majority age. The court concluded that "the modifier contained in Paragraph 1 of the judgment as to 'Joey' being the 'minor child' of the parties" was "necessary to have a reasonable reading" of Paragraph 4,

regarding health insurance and uncovered medical and dental expenses, and Paragraph 5, regarding life insurance. "It would further be reasonable and appropriate to include the modifier 'minor child' everywhere that [J]oey appears in the judgment." According to the trial court, "To not use that age restriction except in paragraph 1 of the judgment would lead to absurd results," which could not have been the intention of the prior trial judge.

¶ 12 Alternatively, the trial court found that, "even if the language [were] to be considered ambiguous," extrinsic evidence, namely the January and February 1994 orders on which the Judgment was based as well as the "recommendations of Judith Sharpe contained in her closing argument" demonstrated that it was the original judge's intention that the life insurance proceeds were meant only to "insure that there will be sufficient funds for Joey's support in the event of [William's] death."

¶ 13 This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 The issue here is whether the Paragraph 5 of the 1994 Judgment required William to maintain $500,000 in life insurance for the sole benefit of plaintiff indefinitely, or only through the period of plaintiff's minority. If the obligation was only through plaintiff's minority, then William was free to alter the beneficiary designations for his life insurance after plaintiff reached the age of 18, and his claim of unjust enrichment would fail.

¶ 16 A. Standard of Review

¶ 17 Since this case was decided pursuant to defendant's section 2-619(a)(9) motion to dismiss, we review the trial court's decision under a *de novo* standard. *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 55. A motion for involuntary dismissal under section 2-619 admits all well-pleaded facts and reasonable inferences therefrom. The motion should be granted only if the plaintiff can

prove no set of facts that would support a cause of action. *Feltmeier v. Feltmeier*, 207 Ill. 2d 263, 277-78 (2003). When ruling on a section 2-619 motion to dismiss, a court must interpret all pleadings and supporting documents in the light most favorable to the nonmoving party. *Porter v. Decatur Memorial Hospital*, 227 Ill. 2d 343, 352 (2008). Moreover, central to our determination of the issue before this court is the construction of the 1994 Judgment; the interpretation of a contract is likewise a question of law subject to *de novo* review. *Regency Commercial Associates, LLC v. Lopax, Inc.*, 373 Ill. App. 3d 270, 275 (2007).

¶ 18 B. Interpretation of a Dissolution of Marriage Judgment

¶ 19 In interpreting the provisions of a dissolution of marriage decree, the same rules applicable to the construction of contracts apply. *McWhite v. Equitable Life Assurance Society of the United States*, 141 Ill. App. 3d 855, 864 (1986); *In re Marriage of Carrier*, 332 Ill. App. 3d 654, 658 (2002). " '[T]he primary objective when interpreting a divorce [judgment] is to carry out the purpose and intent of the court ***.' " *In re Marriage of Figliulo*, 2015 IL App (1st) 140290, ¶ 15 (quoting *In re Marriage of Szczotka*, 87 Ill. App. 3d 314, 317 (1980)).

¶ 20 In applying this rule, a court initially looks to the language of a contract alone. See *Rakowski v. Lucente*, 104 Ill. 2d 317, 323 (1984) (stating that both the meaning of a written agreement and the intent of the parties is to be gathered from the face of the document without assistance from extrinsic evidence). If the language of the contract is facially unambiguous, then the contract is interpreted as a matter of law without the use of parol evidence. *Farm Credit Bank of St. Louis v. Whitlock*, 144 Ill. 2d 440, 447 (1991); see also *Figliulo*, 2015 IL App (1st) 140290, ¶ 13. If, however, the language of the contract is susceptible to more than one meaning, then an ambiguity is present. *Farm Credit Bank*, 144 Ill. 2d at 447. Only then may parol evidence be

admitted to assist the trier of fact in resolving the ambiguity. *Id*.; see also *Air Safety, Inc. v. Teachers Realty Corp*., 185 Ill. 2d 457, 462-63 (1999).

¶ 21 C. Interpretation of the Judgment's Life Insurance Provision

¶ 22 In light of these basic principles, we turn to the provision at issue and ask whether its meaning can be ascertained from the face of the agreement. According to Paragraph 5, which governs the maintenance of life insurance:

> "[William] shall maintain at all times Five Hundred Thousand Dollars ($500,000) in life insurance on his life irrevocably designating Joey individually as the sole beneficiary. He shall make available on an annual basis proof of existence of the policy and proof of payment of the premiums beginning within thirty (30) days of entry of the Judgment."

¶ 23 In its simplest sense, Paragraph 5 required William to do three things: (1) maintain life insurance on his life "at all times," (2) irrevocably designate "Joey" as the sole beneficiary of those policies, and (3) provide annual proof of the existence of the policy and proof of payment of premiums. These obligations are clear, with one exception: what is the duration of William's obligation?

¶ 24 To answer this question, we need to first look to Paragraph 1 of the Judgment, which governs child custody and provides, "[Judith] shall have the sole and exclusive care, custody and control of Joseph W. Sharpe III (Joey), *the minor child* of the parties, *** subject to the following rights of visitation in [William] ***." (Emphasis added.). "Joey" is defined by the terms of the Judgment as the "minor child of the parties."

¶ 25 The question of the duration of the obligation is more complicated, however, and goes to the heart of the instant controversy between the parties. Did the obligation to provide $500,000 in life insurance proceeds for plaintiff terminate when he reached majority age, or did the obligation continue throughout William's life? According to plaintiff, the obligation continued beyond his minority because Paragraph 5's duration was not expressly limited. In his view, our consideration of Paragraph 5 should be limited to the clause itself.

¶ 26 The Trustee, on the other hand, argues that the obligations of Paragraph 5 terminated once plaintiff attained 18 years of age. The Trustee asserts that Paragraph 5, which only references "Joey," must be read in conjunction with Paragraph 1, which defines "Joey" as a "minor child." Additionally, the Trustee argues that Paragraphs 2 (child support) and 4 (health insurance and uncovered medical expenses) also lack any explicit reference to duration, and that they too rely on the defined term "Joey" to limit their application to the period of the child's minority.

¶ 27 The law is well settled that a decree should be interpreted as a whole and no language should be rejected as surplusage. *In re Schwass*, 126 Ill. App. 3d 512, 515 (1984). Courts have generally held that when the words "minor child" are used in circumstances like those in this case, the related obligation ends when the child reaches majority. Here, Paragraph 5 does not expressly use the term "minor child," but it does incorporate the term "Joey," who is defined by Paragraph 1 as being a minor child. To construe the insurance clause and its interplay with Paragraph 1 further, we turn to the case law addressing similarly worded insurance provisions.

¶ 28 In *Schwass*, the children of Charles Schwass, deceased, sued their father's second wife, Nancy, seeking the imposition of a constructive trust upon life insurance proceeds paid to Nancy. At issue was Paragraph 6 of a prior divorce decree, which read:

> " 'That the said minor children be named as co-equal irrevocable beneficiaries on all existing policies in existence as of September 1, 1971 on the life of Defendant and shall remain in force as such during the minority of said children. ***.' " *Id.* at 513.

¶ 29 "To determine the intent of the parties as expressed by the language of the contract," the court held that "the contract should be considered as a whole." *Id*. (citing *White v. White*, 62 Ill. App. 3d 375 (1978)). "Here, the words 'minor children' are used in paragraph 6 and throughout the divorce judgment and incorporated agreement. Since both children were minors at the time of the agreement, the word 'minor' was not necessary to modify 'children' if it was being used simply to identify the children of the parties." *Id.* Accordingly, the court held, "the use of the words 'minor children' throughout the documents means that the related obligations need be performed only for the benefit of children who are in their minority." *Id*.

¶ 30 In *IDS Life Insurance Co. v. Sellard*s, 173 Ill. App. 3d 174 (1988), the insured's third wife appealed the trial court's order requiring the proceeds of the insured's life insurance policies to be paid to his children, Deborah and Charles, pursuant to the insured's prior divorce decree. Per the marital settlement agreement, which was incorporated into paragraph 6 of the divorce decree, life insurance was provided for as follows:

> " 'Defendant shall keep in full force and effect the life insurance he presently has, with the two children as irrevocable beneficiaries thereunder, and further, he shall be responsible for all items of extraordinary and unusual medical, dental, hospital and orthodontic expenses incurred on behalf of the minor children.' " *Id.* at 178.

¶ 31 Based on this language, the trial court found the insurance provision was not limited by the children's minority and imposed a constructive trust on the insurance proceeds. The appellate court affirmed, stating:

> "We do not believe that the utilization of the words 'minor children' in delineating the decedent's responsibility for extraordinary medical expenses creates an ambiguity in that portion of the paragraph concerning the maintenance of the decedent's insurance policies.
>
> To the contrary, paragraph 6(h) clearly requires that Deborah and Charles be named irrevocable beneficiaries of the decedent's life insurance policies." *Id*. at 179.

¶ 32 According to the court, "under no circumstances could the decedent revoke the rights of Deborah and Charles to receive the proceeds of these policies upon his death." *Id*. Moreover, the court stated, "Had the parties intended to provide the decedent with the right to effectuate a change of beneficiary following the emancipation of Deborah and Charles, they could have done so with a specific statement to that effect." *Id.*

¶ 33 Faced with a somewhat differently worded life insurance provision, this court in *Perkins v. Stuemke*, 223 Ill. App. 3d 839 (1992), held that the divorce decree did not limit the ex-husband Terry Nelson's obligation to the period of the children's minority. The insurance paragraph provided:

> " '[P]laintiff [Nancy L. Nelson] shall remain the beneficiary of defendant's [Terry Nelson's] John Hancock insurance policy in the amount of $10,000.00, for the benefit of the children.' " *Id.* at 841.

¶ 34 According to this court, "[B]ecause the decree referred to the children without mentioning their age, the decree required Terry to maintain the life insurance policy until, if ever, a court expressly modified the 1973 decree." *Id*. at 843. Thus, the ex-husband was obligated to maintain the insurance policy naming his ex-wife as beneficiary for the benefit of the children, irrespective of their minority or majority status.

¶ 35 Finally, and most recently, this issue was discussed in *In re Estate of Mosquera*, 2013 IL App (1st) 120130, which involved two majority-aged sons who brought a claim for life insurance proceeds against their deceased father's intestate estate. The relevant paragraph of the divorce decree's consent judgment provided:

> " 'ORDERED, that the Defendant Raul Norberto Mosquera shall irrevocably designate the minor children Alejandro Raul Mosquera and Fernando Raul Mosquera as the beneficiaries of at least 50% of all life insurance benefits available to him through his employment and he shall provide the Plaintiff Marta Isabel Markman-Mosquera with proof of said beneficiary designation within sixty days.' " *Id.* ¶ 25.

¶ 36 The trial court found the provision was limited to the children's minority and concluded that insurance proceeds were not available because the children had attained majority. On appeal, the claimants asserted that the consent judgment required the decedent to irrevocably designate them as beneficiaries of the Policy and that it was "irrelevant that they had reached majority age at the time of the decedent's death." *Id*. ¶ 26. In opposition, the estate claimed that "by using the terms 'minor children,' the judgment limited the decedent's obligation to maintain the claimants as irrevocable beneficiaries to the period when they were minors.' " *Id.*

¶ 37 After reviewing the holdings in *Schwass*, *IDS Life Insurance Co.*, and *Perkins*, the appellate court concluded that the claimants were not entitled to proceeds from the life insurance policy. According to the court:

> "The terms 'minor children' are used throughout the consent judgment, even though both claimants were minors at the time the judgment was entered. The word 'minor' would have been unnecessary and surplusage had the parties intended it simply to identify their children. Therefore, by modifying 'children' with 'minor,' the parties expressed an intent that the decedent be obligated to designate and maintain the claimants as irrevocable beneficiaries only when they were minors and that his obligation would end when the children attained majority.' " *Id.* ¶ 31.

¶ 38 Consequently, the appellate court affirmed the trial court's order denying the sons' claim to a portion of the insurance proceeds. The court reasoned that, because both children had reached the age of majority when the decedent passed away, the decedent was under no obligation at the time of his death to have continued to name them "as irrevocable beneficiaries of any life insurance policy that the decedent obtained through his employment." *Id.* ¶ 32.

¶ 39 Applying these principles to our case, we conclude that, while Paragraph 5 standing alone does not contain an *express* duration limitation, reading that provision together with Paragraph 1 provides the clarity we seek. We conclude that the term "Joey" must be read in conjunction with his modifying description as a "minor child" in Paragraph 1 of the Judgment. We agree with the trial court that the term "minor" is not surplusage. As was similarly held in *Schwass*, because plaintiff was a minor at the time of the Judgment, "the word 'minor' was not necessary to

modify 'child[ ]' if it was being used simply to identify the child[ ] of the parties." See *Schwass*, 126 Ill. App. 3d at 515. As a matter of law, the Judgment, on its face, is not ambiguous. The term "Joey" is defined within the "four corners" of the Judgment, which in turn defines the duration of paragraph 5.

¶ 40 We emphasize that interpreting the term "Joey" in this manner yields consistency when reading the Judgment as a whole. For example, Paragraph 1 defines child custody and visitation rights for the minor child; Paragraph 2 defines child support; Paragraph 4 provides for health insurance and uncovered medical expenses; and Paragraph 5 provides the obligation for life insurance. None of these paragraphs specifically define the term of the obligations they create. However, each provision uses the name "Joey" as defined in Paragraph 1 to be the "minor" child of the parties. As a result, each provision effectively limits the duration of the obligations created to the period of the child's minority. This is entirely consistent with the purpose for requiring each of these obligations: to provide for the child during minority.

¶ 41 As a general proposition, "a parent's duty to support a child ends when the child reaches the age of majority." *In re Marriage of Chee*, 2011 IL App (1st) 102797, ¶ 8 (citing *In re Marriage of Truhlar*, 404 Ill. App. 3d 176, 180 (2010)). This intention is also reflected in the language of the Illinois Marriage and Dissolution of Marriage Act, wherein it states: "Unless otherwise provided in this Act, or as agreed in writing or expressly provided in the judgment, provisions for the support of a child are terminated by emancipation of the child ***." 750 ILCS 5/510(d) (West 2020). Given the general proposition that a parent's support obligation ends when the child reaches majority, we believe any clause purporting to extend a parent's obligation beyond minority should be expressly worded to achieve that result.

¶ 42 Plaintiff advances two arguments against such a construction. First, he contends that our prior decision in *Perkins* mandates that the life insurance provision contain language *expressly creating a limitation on age* and that if none exists, the obligation continues beyond the age of majority. However, we decline to read *Perkins* in such narrow terms. Although the *Perkins* court focused on the express language of the insurance provision at issue, there is nothing within that opinion that confines our inquiry to the specific provision as opposed to the document as a whole. Moreover, *Perkins* is silent as to how the term "minor" was used in the remainder of the agreement being construed. The critical aspect of *Perkins* is that when the term "children" was used in the insurance clause in question, it was not limited in duration by age-modifying language. Here, while Paragraph 5 contained no specific duration limitation, age modifying language was included in the definition of "Joey," which Paragraph 5 effectively incorporated by using that defined term.

¶ 43 Moreover, giving *Perkins* such a narrow interpretation runs counter to general principles of contract interpretation, which permit a court to consider the *entirety* of a document, not just the clause at issue, when construing contractual terms. In *Rakowski*, 104 Ill. 2d at 323, the supreme court held, "Both the meaning of the instrument, and the intention of the parties must be gathered *from the face of the document* without the assistance of parol evidence or any other extrinsic aids." (Emphasis added.) Adopting plaintiff's position runs afoul of established precedent.

¶ 44 Second, plaintiff argues that the trial court's finding effectively reads out the words "at all times" in Paragraph 5, which he purports extends the insurance obligation beyond majority. Again, we decline to adopt plaintiff's position and we rely, instead, on *Schwass*'s analogous treatment of the phrase "irrevocable beneficiary":

> "The required designation of the minor children as irrevocable beneficiaries simply means that the beneficiary designation could not be changed during the obligation period which, as stated above, continues for each beneficiary until he or she reaches majority. Although decedent was required to maintain the life insurance policies during the minority of the children, that requirement did not further obligate him to name Matthew as a beneficiary beyond his majority." *Schwass*, 126 Ill. App. 3d at 515-16.

¶ 45 We believe the same interpretation is required here—William's obligation was to maintain plaintiff as the sole beneficiary of $500,000 in life insurance "at all times" during plaintiff's minority. The presence of the "at all times" language does not further obligate William beyond plaintiff's majority. Thus, our holding does not nullify any portion of the Judgment.

¶ 46 Under settled Illinois law, "When marital settlement agreements require an insured to maintain life insurance for the benefit of a particular beneficiary, that beneficiary has an enforceable equitable right to the proceeds of the insurance policies against any other named beneficiary except one with a superior equitable right." *Id.* at 514. Although plaintiff *at one time* possessed a superior equitable right to the $500,000 in insurance proceeds, that right terminated once he reached the age of majority. Therefore, William's insurance obligations as to plaintiff terminated in mid-2001, meaning he was free to name as beneficiary of his life insurance any person or entity he saw fit. He did so by executing his 2002 Irrevocable Trust, thereby giving plaintiff a ¼-share of the $1,000,000 insurance proceeds along with his stepsisters, *per stirpes*.

¶ 47 D. Parol Evidence

¶ 48 Both parties offered alternative arguments addressing the use of extrinsic evidence in the event the Judgment was construed as ambiguous. Because we conclude that the Judgment was not ambiguous and that Paragraph 5 could be interpreted from the face of the Judgment as a whole, we decline to address this point.

¶ 49 III. CONCLUSION

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

¶ 51 Affirmed.