IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
December 6, 2006 Session

VICTORIA HINKLE v. THE ESTATE OF JACK LYLE HARTMAN by and through its Personal Representative, Lonas Overholt; BI-LO, L.L.C.; PRUDENTIAL INSURANCE COMPANY OF AMERICA; TYLER HARTMAN; BRAD HARTMAN, a minor, by and through his Guardian Ad Litem, Daphne Cornwell; and HEIDI HARTMAN

Direct Appeal from the Circuit Court for Blount County
No. E-20889 Hon. W. Dale Young, Circuit Judge

No. E2006-01052-COA-R3-CV - FILED MARCH 8, 2007

At the time the deceased and plaintiff divorced, the deceased agreed to maintain the plaintiff as beneficiary of his life insurance policy with his employer. He subsequently left the employer, but returned to the employer and was issued another policy of life insurance on being re-employed, but made his then wife and his two children beneficiaries of that policy. Upon his death, plaintiff sued to enforce the terms of the Marital Dissolution Agreement, but the Trial Court refused and dismissed plaintiff's action. On appeal, we hold that plaintiff is entitled to benefits under the second policy to the extent of the benefits agreed to under the terms of the first policy.

Tenn. R. App. P.3 Appeal as of Right; Judgment of the Circuit Court Reversed.

HERSCHEL PICKENS FRANKS, P.J., delivered the opinion of the court, in which CHARLES D. SUSANO, JR., J., and SHARON G. LEE, J., joined.

Melanie E. Davis, Maryville, Tennessee, for appellant.

Robert N. Goddard, Maryville, Tennessee, for appellee, Heidi Hartman.

OPINION

BACKGROUND

Jack Lyle Hartman and Victoria Hinkle were married on June 11, 1977. Mr. Hartman began working as a pharmacist at Bi-Lo on or about March 3, 1985. During his employment, Bi-Lo offered him life insurance benefits (the "First Bi-Lo Policy"). This policy was worth four times Mr. Hartman's salary. During their marriage, Hartman and Ms. Hinkle had two children: Tyler Hartman and Bradford Hartman. The parties were divorced on October 13, 2000, and entered into a Marital Dissolution Agreement, which was incorporated into the Final Order of Divorce. The Marital Dissolution Agreement provides, in pertinent part:

> The Husband shall continue to maintain and pay the Primerica Li[f]e Insurance Policy No. 13171515 and the life insurance presently maintained through his employment with Bi-Lo. The Wife shall be maintained as beneficiary with the parties' two minor sons to be equal alternative beneficiaries in the event the Wife predeceases the Husband. The parties shall equally own said policies and in the event the cash value of either policy is taken prior to death the parties shall equally divide the same.

At the time of the divorce, Hartman's First Bi-Lo Policy was worth $304,000.00, based upon his $76,000.00 annual salary.

On December 22, 2001, Mr. Hartman left his employment[1] with Bi-Lo, and as a result, he was no longer able to maintain the First Bi-Lo Policy, which then lapsed. At the time the policy was worth $320,000.00, based upon his $80,000.00 annual salary.

On April 5, 2003, Mr. Hartman married Heidi Hartman, and on February 16, 2004, Mr. Hartman was re-employed by Bi-Lo as a pharmacist. At that time he purchased $480,000.00 of life insurance coverage through Bi-Lo (the "Second Bi-Lo Policy"). The policy designated Heidi Hartman, Tyler Hartman, and Bradford Hartman as equal beneficiaries, each entitled to one third of the benefit. Hartman died on August 4, 2005, at which time, he was still employed with Bi-Lo, and the Second Bi-Lo Policy was worth $509,000.00.

On September 22, 2005, Ms. Hinkle filed a "Complaint for Declaratory Action and for Imposition of a Constructive Trust" against the Estate of Jack Lyle Hartman; Bi-Lo, LLC; Prudential Insurance Company of America; Tyler Hartman; Bradford Hartman; and Heidi Hartman with the Circuit Court for Blount County. The Complaint averred that the Marital Dissolution Agreement obligated Hartman to maintain Ms. Hinkle as the beneficiary under the Bi-Lo policy, and

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[1]Heidi Hartman's brief states that the first Bi-Lo policy was cancelled "when decedent changed jobs."

asked the Circuit Court to declare Ms. Hinkle the proper recipient of the life insurance proceeds and to impose a constructive trust requiring payment to Ms. Hinkle.

On January 19, 2006, the Circuit Court entered an Agreed Order requiring Prudential to pay the policy proceeds to the Clerk of the Court in the amount of $509,000.00 plus interest. Prudential paid the Second Bi-Lo Policy benefit plus interest in the Court, in the amount of $539,153.04.

On January 30 and March 10, 2006, the Parties filed stipulations of fact with the Circuit Court, and on May 15, 2006, the Circuit Court entered an Order finding that Ms. Hinkle was not be entitled to any of the Second Bi-Lo Policy proceeds. The Court equally divided the proceeds among Heidi Hartman, Tyler Hartman, and Bradford Hartman.

These issues are raised on appeal:

A. Whether the Circuit Court erred in holding that Ms. Hinkle was not entitled to any of the Second Bi-Lo Policy's proceeds.

B. Whether Ms. Hinkle's interest in the proceeds is limited to $304,000.00.

OUR REVIEW

This appeal follows a trial on stipulated facts. "[W]hen there is no conflict in the evidence as to any material fact, as in this case, the question on appeal is one of law, and our scope of review is *de novo* with no presumption of correctness accompanying the [trial court's] conclusions of law." *Union Carbide Corp. v. Huddleston*, 854 S.W.2d 87, 91 (Tenn. 1993).

ISSUES ON APPEAL

Ms. Hinkle argues that she has a vested equitable interest in the Second Bi-Lo Policy, and that the Trial Court should have imposed a constructive trust over that policy's proceeds for her benefit. Generally, a beneficiary named in a life insurance policy does not have any vested interest in the policy, but only an expectancy during the life of the insured. *Goodrich v. Massachusetts Mut. Life Ins. Co.*, 240 S.W.2d 263, 269 (Tenn. Ct. App. 1951). However, when a divorce decree requires one party to maintain an existing, specific life insurance policy for the benefit of the other party, "the decree in the divorce case g[i]ve[s] the [obligee] a vested right in the policy, as between [the obligee] and the insured." *Id.* at 272.

When the decree requires one party to obtain a specific amount of life insurance for the benefit of the other party, "the divorce decree creates in [the obligee] a vested right to any life insurance policy obtained by the Decedent that satisfies the mandate in the decree." *Holt v. Holt*, 995 S.W.2d 68, 77 (Tenn. 1999). These exceptions flow from the equitable principle that "'[e]quity regards that as done which in good conscience ought to be done'" as well as this state's public policy

strongly favoring enforcement of court orders. *Id.* (quoting *McCann Steel Co. v. Third Nat. Bank*, 337 S.W.2d 886, 891 (1960)). The divorce decree's mandate cannot be defeated by failing to name the obligee as the policy's beneficiary,[2] purchasing insufficient coverage,[3] or allowing the policy to lapse.[4] The courts of this state may impose a constructive trust to protect the obligee's vested equitable interest. *Holt*, 995 S.W.2d at 71.

The relevant portion of the Marital Dissolution Agreement provides, "The Husband shall continue to maintain and pay . . . the life insurance presently maintained through his employment with Bi-Lo." Thus, the divorce decree required Mr. Hartman to maintain the First Bi-Lo Policy and created in Ms. Hinkle a vested right to the First Bi-Lo Policy. *Goodrich*, 240 S.W.2d at 270. Heidi Hartman argues, however, that Ms. Hinkle has no vested right to the Second Bi-Lo Policy because the divorce decree only required Mr. Hartman to maintain the First Bi-Lo Policy and did not impose any requirement to provide replacement coverage when the First Bi-Lo Policy lapsed.

Marital dissolution agreements are contractual in nature, and contain an implied covenant of good faith and fair dealing regarding their performance and interpretation. *Lopez v. Taylor*, 195 S.W.3d 627, 633 (Tenn. Ct. App. 2005). "While this covenant does not create new contractual rights or obligations, it protects the parties' reasonable expectations and their right to receive the benefits of the agreement they entered into." *Id.* Ms. Hinkle would not likely agree to, nor would the Trial Court likely ratify, an obligation which Mr. Hartman could defeat by simply terminating his employment with Bi-Lo. Thus, the Marital Dissolution Agreement created a reasonable expectation that Mr. Hartman would maintain the First Bi-Lo Policy or an equivalent replacement policy.

When a divorce decree requires maintenance of a life insurance policy and the obligor allows the policy to lapse, the obligee is entitled to what she would have received in the absence of the lapse. *Holbert v. Holbert*, 720 S.W.2d 465 (Tenn. Ct. App. 1986); *Breckenridge v. Robbins*, No. W2003-00143-COA-R3-CV, 2003 WL 23100343 (Tenn. Ct. App. Dec. 22, 2003); *Lemay v. Dudenbostel*, No. 03A01-9110-CH-00354, 1992 WL 74584 (Tenn. Ct. App. April 15, 1992). We hold that Ms. Hinkle had a vested right to the Second Bi-Lo Policy to the extent necessary to replace the First Bi-Lo Policy's benefits.

Mrs. Hartman argues that a constructive trust should not be imposed upon the proceeds from the Second Bi-Lo Policy. "A constructive trust is the formula through which the

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[2] *Dossett by Dossett v. Dossett*, 712 S.W.2d 96 (Tenn. 1986); *Herrington v. Boatright*, 633 S.W.2d 781 (Tenn. Ct. App. 1982); *Goodrich v. Massachusetts Mut. Life Ins. Co.*, 240 S.W.2d 263 (Tenn. Ct. App. 1951).

[3] *Holt v. Holt*, 995 S.W.2d 68 (Tenn. 1999).

[4] *Holbert v. Holbert*, 720 S.W.2d 465 (Tenn. Ct. App. 1986); *Breckenridge v. Robbins*, No. W2003-00143-COA-R3-CV, 2003 WL 23100343 (Tenn. Ct. App. Dec. 22, 2003); *Lemay v. Dudenbostel*, No. 03A01-9110-CH-00354, 1992 WL 74584 (Tenn. Ct. App. April 15, 1992).

conscience of equity finds expression. When property has been acquired in such circumstances that the holder of the legal title may not in good conscience retain the beneficial interest equity converts him into a trustee." *Holt*, 995 S.W.2d at 71. The rights of the beneficiaries regarding the Second Bi-Lo Policy derive from Mr. Hartman's rights; therefore, the beneficiaries "can stand on no higher ground than he does." *Goodrich*, 240 S.W.2d at 270. These beneficiaries obtained their beneficial interests in the Second Bi-Lo Policy through Mr. Hartman's conduct.

Ms. Hartman argues that Mr. Hartman was not responsible for the lapse of the First Bi-Lo Policy because Mr. Hartman's employer terminated the policy. The lapse of the First Bi-Lo Policy, however, was a natural consequence of Mr. Hartman's decision to leave Bi-Lo for other employment. Once the First Bi-Lo Policy lapsed, the implied covenant of good faith and fair dealing obliged Mr. Hartman to obtain equivalent replacement coverage under the circumstances. By allowing the First Bi-Lo Policy to lapse without obtaining replacement coverage, Mr. Hartman failed to carry out his responsibility under the divorce decree. When Mr. Hartman did purchase a new policy, upon returning to Bi-Lo, his disregard of his contractual requirements of the divorce decree was wrongful, and under these circumstances, Ms. Hinkle's equitable rights are superior to the beneficial interest of the named beneficiaries. Accordingly, the imposition of a constructive trust is appropriate.

The final issue is whether Ms. Hinkle's interest in the proceeds is limited to $304,000.00.

Benefits under both the First and Second Bi-Lo Policies were linked to Mr. Hartman's annual salary and increased with that salary. The First Bi-Lo Policy's benefit was four times Mr. Hartman's salary. The Second Bi-Lo Policy's benefit was five times Mr. Hartman's salary. At the time of the divorce, the First Bi-Lo Policy was worth $304,000.00 (i.e., four times his $76,000.00 annual salary). Just before Mr. Hartman left Bi-Lo, the First Bi-Lo Policy's value increased to $320,000.00 (i.e., four times his $80,000.00 annual salary). At the time of Mr. Hartman's death, the Second Bi-Lo Policy was worth $509,000.00 (i.e., five times his annual salary). Ms. Hartman argues that Ms. Hinkle's recovery, if any, would be the First Bi-Lo Policy benefits at the time of the divorce, not any subsequent increases.

We rejected a similar argument in *Holbert v. Holbert*, 720 S.W.2d 465 (Tenn. Ct. App. 1986). In *Holbert*, the obligor entered into a property settlement agreement in which he agreed "to continue in force his present life insurance and agree[d] to make one-half of the death benefits payable to each of his children until they reach the age of twenty-one (21) years." *Id.* at 466. Between the time of the agreement and the obligor's death, the value of one of those policies increased $145,983.50 due to salary increases and the addition of an accidental death clause subsequent to the property settlement. *Id.* at 467. Rather than naming his children as beneficiaries under these policies, the obligor named his second wife. *Id.* The obligor's daughter sought a declaratory judgment awarding her half the insurance proceeds. *Id.* at 466. The second wife/widow argued "that as a matter of law the daughter is only entitled to the policy benefits payable at the time the agreement was made and not to subsequent increases." *Id.* at 468. In response, we said "the

better rule is that the children would be entitled to all of the proceeds of insurance policies naturally flowing from their continuation . . . ." *Id.*

Here, Mr. Hartman agreed to maintain the First Bi-Lo Policy and did not limit Ms. Hinkle's rights to a specific amount of coverage. We hold Ms. Hinkle is entitled to all of the proceeds naturally flowing from the First Bi-Lo Policy's terms, which calculation amounts to four fifths of the proceeds from the Second Bi-Lo Policy or $407,200.00.

While Ms. Hinkle, however, argues that she is entitled to all of the proceeds from the Second Bi-Lo Policy, she only has a vested right to the Second Bi-Lo Policy's proceeds to the extent necessary to satisfy the divorce decree's mandate. *See Holt v. Holt*, 995 S.W.2d at 77; *Breckenridge*, No. W2003-00143-COA-R3-CV, 2003 WL 23100343 at *4. This mandate required continuation of the First Bi-Lo Policy's benefits. An award of all the Second Bi-Lo Policy's proceeds would exceed the proceeds naturally flowing from the First Bi-Lo Policy's continuation, thereby exceeding the divorce decree's mandate. Accordingly, Ms. Hinkle is entitled to four fifths of the proceeds from the Second Bi-Lo Policy, and the named beneficiaries retain their beneficiary interests in the remaining one fifth of the proceeds.

We reverse the Judgment of the Trial Court and remand, with the cost of the appeal assessed one-half to Victoria Hinkle and one-half to Heidi Hartman.

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HERSCHEL PICKENS FRANKS, P.J.