**REL: 04/13/2012**



# ALABAMA COURT OF CIVIL APPEALS

**OCTOBER TERM, 2011-2012**

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**2101192**

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**Vicki Joan Brunson Stroeker, Katie Brunson, and Angela Brunson**

**v.**

**Judith Harold**

**Appeal from Mobile Circuit Court**
**(DR-92-502361.04)**

MOORE, Judge.

Vicki Joan Brunson Stroeker ("the former wife"), and Katie Brunson and Angela Brunson ("the children") appeal from a summary judgment entered by the Mobile Circuit Court ("the

trial court") in favor of Judith Harold and Frank H. Kruse, as administrator of the estate of Joseph Talmadge Brunson ("the former husband"). We affirm.

Factual and Procedural Background

On April 19, 1993, the trial court entered a judgment divorcing the former husband and the former wife. The divorce judgment provided, in pertinent part:

> "[The former husband] shall name the minor children as beneficiaries on his present life insurance program and shall furnish such proof that the children have been so designated by furnishing a copy of the designation to [the former wife] within thirty days from the date of this Judgment."

On September 22, 1993, the trial court purported to enter an amended judgment confirming a June 9, 1993, agreement between the former husband and the former wife; that judgment did not modify the foregoing provision in any respect. In compliance with the judgment, the former husband designated the children, then ages 6 and 3, as the beneficiaries of a whole-life insurance policy paying $100,000 upon his death.

The former wife's family owns an insurance company and the former wife's father acted as the agent to secure the former husband's life-insurance policy. After the former husband went to prison in 1995, the former wife's father paid

most of the premiums to maintain the policy. On July 31, 2009, over a year after the younger child had reached the age of majority, the former husband changed the beneficiaries on the life-insurance policy from the children to Harold, with whom he had had a long-standing relationship.

On March 10, 2010, the former wife filed in the trial court a petition for contempt against the former husband, alleging that he had contemptuously violated the life-insurance provision of the divorce judgment and requesting that the trial court order the former husband, who was dying from cancer, to immediately reinstate the children as beneficiaries. On March 11, 2010, the former wife notified the trial court that the former husband had died on March 10, 2010, and requested the trial court to order that the proceeds of the life-insurance policy be frozen or paid into court. The former wife also moved the trial court to add the children as plaintiffs and to substitute Frank Kruse, the administrator of the former husband's estate, as the defendant; that motion was granted.

The trial court subsequently granted a motion to add Harold as a defendant. Kruse and Harold both filed answers

asserting that the life-insurance provision in the divorce judgment no longer applied after the children reached the age of majority. Harold asserted that the former husband had validly designated her as the beneficiary and requested that the trial court declare that she was entitled to the life-insurance proceeds. The former wife and the children (hereinafter referred to collectively as "the plaintiffs") replied that the life-insurance provision was a product of an agreement between the former wife and the former husband that the former husband had drafted and that it should be construed so that it did not expire when the children reached the age of majority. The plaintiffs and Harold eventually filed competing motions for a summary judgment.

On March 21, 2011, the trial court conducted a hearing on the summary-judgment motions. The trial court subsequently entered a judgment on May 4, 2011, denying the motion for a summary judgment filed by the plaintiffs and granting Harold's summary-judgment motion. The trial court further ordered the clerk of the court to pay Harold the insurance proceeds, which had, by that date, been interpleaded into court in a separate civil action. The trial court subsequently denied the

plaintiffs' postjudgment motion. The plaintiffs filed their notice of appeal to this court on September 9, 2011.[1]

Jurisdictional Issues

Before proceeding to the merits of this appeal, we first consider whether the trial court had subject-matter jurisdiction over this dispute. The record indicates that the former wife filed a contempt petition against the former husband approximately four hours before he died. Because the former husband was still alive at the time, the filing of the contempt petition invoked the subject-matter jurisdiction of the trial court. Cf. 67A C.J.S. Parties § 54 (2002) ("The capacity to be sued exists only in persons in being and so, does not exist in the case of persons deceased, and a suit filed against a dead person does not invoke the jurisdiction of the court." (footnote omitted)). After the former husband died, the action did not abate because the former wife was seeking an adjudication regarding property rights in a life-

[1]The trial court's judgment effectively disposed of only the plaintiffs' claims against Harold. However, for the reasons discussed infra, we have determined that the trial court's judgment is final and appealable. Kruse, as administrator of the former husband's estate, is not a party to this appeal.

insurance policy created by a final divorce judgment. See Ex parte Thomas, 54 So. 3d 356, 362 n.5 (Ala. 2010). The former wife moved to substitute Kruse, as the administrator of the former husband's estate, as the defendant, see Rule 25, Ala. R. Civ. P., which motion was granted; however, it does not appear that the trial court considered whether a contempt action can proceed against the estate of a deceased former spouse.

Our research has revealed only one case directly on point, an unreported opinion from the Superior Court of Connecticut, Diana v. Diana, (No. FA9969335, Sept. 14, 2001) (Conn. Super. 2001) (not reported in A.2d). In Diana, a wife sued her husband for a dissolution of the marriage, which prompted the automatic issuance of an interlocutory order preventing either party from changing the beneficiaries on his or her life-insurance policies. The husband died while the action was pending; the wife subsequently discovered that the husband had removed her as the beneficiary of his life-insurance policy. The wife moved the court to substitute the estate of the husband as a defendant so she could pursue a contempt action against the estate. The court said:

> "A substitute defendant cannot vicariously be found in contempt of court for violating court orders directed to the deceased defendant. In this case, even if the court found the defendant husband to have been in civil contempt, the executor of the defendant's estate does not have the authority to change the beneficiaries of the decedent's life insurance policy nor redistribute the death benefits paid to the beneficiaries by the insurance company. 'The proceeds of a life insurance policy made payable to a named beneficiary are not assets of the estate, but belong solely to the beneficiary.' 31 Am. Jur. 2d, Executors and Administrators 257, § 509 (1989). See General Statute § 45a-347. Insurance death benefits are paid by the insurer directly to the named beneficiaries of the policy. 'It follows, then, that satisfying the beneficiary is the contractual responsibility of the insurer not the fiduciary responsibility of the [executor].' Equitable Life Insurance Society of the United States v. Sandra Porter-Engelhart, 867 F.2d 79 (1st Cir. 1989)."

Contempt actions have one of two purposes, either punishment for deliberate disobedience to court orders or coercion to force compliance with court orders. T.L.D. v. C.G., 849 So. 2d 200, 205 (Ala. Civ. App. 2002). We have not located any caselaw that allows the estate of a deceased person to be punished for alleged contemptuous acts committed by the deceased person before his or her death. Furthermore, like in Connecticut, in Alabama life-insurance proceeds made payable to parties other than the deceased person, the estate of the deceased person, or the personal representative of the

estate of the deceased person do not become a part of the estate. See Rau v. Rau, 429 So. 2d 593, 595 (Ala. Civ. App. 1982) ("[B]y virtue of § 27-14-29, [Ala.] Code 1975, the proceeds of the policy of insurance in this case would not be a part of the estate nor subject to creditor's claims."). Kruse, as the administrator of the former husband's estate, has no interest in the life-insurance policy or the proceeds therefrom. See First Nat'l Bank of Mobile v. Pope, 270 Ala. 202, 205, 117 So. 2d 174, 176 (1960) (holding that estate of insured was not indispensable party in dispute over insurance proceeds between beneficiary and purported constructive trustees because "[t]he personal representative has no [ownership] interest in the policies as to require that he be made a party"). Thus, the trial court cannot, through its contempt powers, compel Kruse to reform the beneficiary designation or to pay the children the life-insurance proceeds.

Although a contempt action will not lie against the estate of a deceased spouse, the trial court did not completely lack all power to act on the petition filed by the former wife and joined by the children. In her petition, the

former wife requested "any and all necessary relief as may be judged appropriate under the circumstances." See Rule 54(c), Ala. R. Civ. P. ("[E]very final judgment shall grant the relief to which the party in whose favor it is rendered is entitled ...."). In Rau v. Rau, 429 So. 2d 593, an ex-wife and her children brought an action to enforce the provisions of a divorce judgment requiring the ex-husband to keep in force a policy of life insurance with the children designated as beneficiaries; they sought a constructive trust as to the proceeds of a life-insurance policy that had been paid to the ex-husband's widow. 429 So. 2d at 594-95; see also Pittman v. Pittman, 419 So. 2d 1376 (Ala. 1982) (asserting similar causes of action). In Ex parte Thomas, 54 So. 3d 356, 362 n.5 (Ala. 2010), our supreme court acknowledged that procedure without commenting on its validity, but it appears to us that, because all parties to the controversy were before the trial court, it had the inherent power to interpret its judgment, Jardine v. Jardine, 918 So. 2d 127, 131 (Ala. Civ. App. 2005) ("[A] trial court has the inherent authority to interpret, implement, or enforce its own judgments."), and the equitable power to mold an appropriate remedy consistent with its interpretation. See

Aither v. Estate of Aither, 180 Vt. 472, 913 A.2d 376 (2006) (recognizing that court that had divorced parties could not remedy deceased husband's change of beneficiaries through contempt power but that it could potentially restore beneficiary designation through equitable powers of enforcement).

In reaching this conclusion, we acknowledge that, in the vast majority of cases in which disputes have arisen over the proper beneficiary of a life-insurance policy alleged to be subject to controlling provisions in a divorce judgment, the controversy has been decided through an interpleader action filed by the insurance company. See, e.g., Hanner v. Metro Bank & Protective Life Ins. Co., 952 So. 2d 1056 (Ala. 2006); Whitten v. Whitten, 592 So. 2d 183 (Ala. 1991); Ray v. Ohio Nat'l Life Ins. Co., 537 So. 2d 915 (Ala. 1989); Frawley v. U.S. Steel Min. Co., 496 So. 2d 731 (Ala. 1986); Williams v. Williams, 276 Ala. 43, 158 So. 2d 901 (1963); and Posey v. Prudential Ins. Co. of America, 383 So. 2d 849 (Ala. Civ. App. 1980). In fact, a separate interpleader action was filed by the insurer in this case. Nevertheless, no Alabama case has ever held that an interpleader action constitutes the

exclusive method for deciding a controversy of this nature. See Brown v. Brown, 604 So. 2d 365 (Ala. 1992) (appeal from constructive-trust action brought by former wife against insured's widow). Finding that the trial court had ample inherent and equitable authority to decide the controversy, we need not decide whether it could have presided over an interpleader action as well.

Having concluded that the trial court had subject-matter jurisdiction to adjudicate the controversy among the parties as to the appropriate beneficiary of the former husband's life-insurance proceeds, we next consider whether it entered a final judgment in the case. On May 11, 2010, the plaintiffs filed a "Motion to Compel Estate to Pay Expenses and Past Due Child Support," alleging that the former husband had accumulated a child-support arrearage of over $120,000 before his death. That motion actually amounted to a supplementation of the contempt petition to add a new claim, which Kruse moved to dismiss on, among other grounds, lack of subject-matter jurisdiction. In its May 4, 2011, judgment, the trial court expressly reserved jurisdiction to rule on the motion to dismiss. Only a probate court can adjudicate a child-support-

arrearage claim against the estate of a deceased obligor spouse. See generally Smith v. Estate of Baucom, 682 So. 2d 1065 (Ala. Civ. App. 1996). Therefore, because no claim remains pending within the subject-matter jurisdiction of the trial court, the May 4, 2011 judgment constitutes a final judgment under § 12-22-2, Ala. Code 1975.

Proper Beneficiary

The plaintiffs argue at length in their brief to this court that the life-insurance provision in the divorce judgment should be viewed as part of a voluntary marital property-settlement agreement between the former wife and the former husband.[2] In Williams v. Williams, 276 Ala. 43, 158

[2]Harold asserts that the plaintiffs have raised this argument for the first time on appeal and, thus, that this court may not consider it. See Shiver v. Butler Cnty. Bd. of Educ., 797 So. 2d 1086, 1088 (Ala. Civ. App. 2000) ("Generally, a reviewing court cannot consider arguments made for the first time on appeal."). We note, however, that the plaintiffs asserted in their postjudgment motion that the provision at issue was not in the nature of a child-support award, as Harold has asserted. "'"[A] trial court has the discretion to consider a new legal argument in a post-judgment motion, but is not required to do so."'" Espinoza v. Rudolph, 46 So. 3d 403, 416 (Ala. 2010) (quoting Special Assets, L.L.C. v. Chase Home Fin., L.L.C., 991 So. 2d 668, 678 (Ala. 2007), quoting in turn Green Tree Acceptance, Inc. v. Blalock, 525 So. 2d 1366, 1369 (Ala. 1988)). In denying the plaintiffs' postjudgment motion, the trial court indicated that it had considered the arguments presented by counsel for the parties

So. 2d 901 (1963), the supreme court held that such an agreement, when incorporated into a divorce judgment, could create a vested equitable interest in life-insurance proceeds. The record in this case shows, however, that, following an ore tenus hearing, the trial court unilaterally imposed the life-insurance provision as part of its April 19, 1993, divorce judgment. The former husband and the former wife attempted to modify that judgment by an agreement dated June 9, 1993, which the trial court purported to confirm on September 22, 1993; however, the agreement did not alter any of the language of the life-insurance provision. The original provision has remained intact since its inception; the subsequent agreement of the former wife and the former husband to the life-insurance provision amounts merely to their acknowledgment that they must abide by the terms of the original judgment and cannot be characterized as a modification of those terms by

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at the hearing on the plaintiffs' postjudgment motion. We will therefore consider the plaintiffs' argument on appeal.

agreement.[3] Thus, we conclude that Williams is not dispositive of this case.

When a domestic-relations court orders an obligor spouse to designate children of the marriage as the beneficiaries of a life-insurance policy, the sole purpose of that provision is to secure the payment of child support. In Whitten v. Whitten, supra, our supreme court noted that "[m]inor children are commonly designated as beneficiaries of life insurance policies as 'an aspect of child support' pursuant to an order of divorce." 592 So. 2d at 186 n.4 (quoting H. Clark, Jr., The Law of Domestic Relations in the United States 718-19 (2d ed. 1988), and citing Note, Child Support, Life Insurance, and the Uniform Marriage and Divorce Act, 67 Ky. L.J. 239 (1978)). Based in part on that language in Whitten, this court, in Jordan v. Jordan, 688 So. 2d 839, 842 (Ala. Civ. App. 1997),

[3]We further note that, if the life-insurance provision was properly considered part of a marital-property division, as the plaintiffs argue, the trial court would have lost jurisdiction to modify that provision after 30 days. Dunn v. Dunn, 12 So. 3d 704, 709 (Ala. Civ. App. 2008). Additionally, "parties to a divorce decree may not change or modify the decree merely by an agreement between themselves." Holland v. Holland, 406 So. 2d 877, 879 (Ala. 1981). Hence, any purported modification by the order entered on September 22, 1993, would have been ineffective.

held that domestic-relations courts do not have to state their reasons for mandating life-insurance provisions like the one at issue in this case "because the reason will always be identical. That reason, quite obviously, is to insure that minor children will receive support in the event the supporting parent dies." See also McKnight v. McKnight, 888 So. 2d 1251, 1261 (Ala. Civ. App. 2004) (construing Whitten and Jordan as "characterizing as child support" similar life-insurance provisions).

Under Alabama law, with two notable exceptions inapplicable here, see Ex parte Bayliss, 550 So. 2d 986, 991 (Ala. 1989) (authorizing courts to award postminority-educational support), and Ex parte Brewington, 445 So. 2d 294 (Ala. 1983) (allowing postminority support for disabled children), a parent generally does not owe child support past the date when a child attains the age of majority. In Whitten, supra, our supreme court seized on that point to reverse a circuit court's judgment that had negated the divorced husband's change of beneficiary from the child of his former marriage to other relatives. Based on a default divorce judgment, the divorced husband in Whitten was required

to "'keep in full force and effect all life insurance on his life with the parties' minor child as the irrevocable beneficiaries [sic] of such insurance.'" 592 So. 2d at 184. The supreme court held that the life-insurance provision amounted to a child-support award that did not create an indefeasible, equitable interest in the proceeds of the life-insurance policy that lasted past the point when the child reached the age of majority. The supreme court therefore reversed the judgment, stating: "[T]he trial court's award of the proceeds to [the child] after he had attained the age of majority in effect amounted to an [unauthorized] award of postminority support." 592 So. 2d at 186; see also Brown v. Brown, 604 So. 2d at 369 (holding that constructive trust in favor of minor child applied to life-insurance proceeds based on provision in divorce judgment that obligated father to designate child as irrevocable beneficiary during child's minority).

In this case, the life-insurance provision at issue states only that the former husband "shall name the minor children as beneficiaries on his present life insurance," without even requiring that they be designated as irrevocable

beneficiaries. The life-insurance provision does not expressly state that it lasts only through the minority of the children, and the plaintiffs argue that the term "minor" could be reasonably construed as only describing the children, not as limiting the period of their beneficiary status. However, Whitten implies that all life-insurance provisions like the one in this case necessarily terminate when the benefited child reaches the age of majority unless the judgment expressly provides that the life insurance is intended to secure postminority Bayliss or Brewington support, which is not the case here.

The plaintiffs also state that the former wife subjectively believed the children would remain beneficiaries on the life-insurance policy after their minority ended and that the former wife's family acted on that belief by paying the premiums on the policy. The plaintiffs argue that this parol evidence creates a question of fact as to the intent of the former husband and the former wife in using the language contained in the life-insurance provision. However, the trial court, not the former husband and the former wife, crafted the life-insurance provision, and their interpretation of the

terms of that provision are immaterial. If a judgment is ambiguous, a court can consider its meaning in light of the entire record, but it cannot resort to parol evidence from the parties as if it was construing a contract to ascertain their understanding and intent. Reading v. Ball, 291 S.C. 492, 496, 354 S.E.2d 397, 399 (Ct. App. 1987). More to the point, we find that, under Whitten, the divorce judgment unambiguously required the former husband to name the children as beneficiaries during their minority, so there is no need to resort to extrinsic evidence to determine the meaning of its terms.

The undisputed evidence shows that both children had attained the age of majority long before the former husband changed the beneficiary designation on the life-insurance policy. According to Whitten, which we are required to follow, see § 12-3-16, Ala. Code 1975,[4] whatever equitable

[4]We note that, in Whitten, the supreme court did not have before it a case in which the deceased obligor had died leaving a substantial child-support arrearage, as has been alleged in this case. Nevertheless, we do not consider whether applying Whitten to this case thwarts the purpose of the life-insurance provision by leaving an arrearage unsecured. The plaintiffs have not argued that point in their brief to this court. See Hood v. Hood, 72 So. 3d 666, 677 (Ala. Civ. App. 2011) ("Because the wife has not argued that issue on appeal, it is waived.").

interest the children obtained in the life-insurance policy ended on their 19th birthdays. Thereafter, the former husband was free to change his beneficiary designation without violating the life-insurance provision in the divorce judgment. The trial court did not err in following Whitten and in entering a summary judgment in Harold's favor.

AFFIRMED.

Thompson, P.J., and Pittman, Bryan, and Thomas, JJ., concur.