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ARKANSAS COURT OF APPEALS

DIVISION I
No. CA10-619

PEGGY A. YANCEY APPELLANT V. CARLYN J. YANCEY APPELLEE	**Opinion Delivered** February 9, 2011 APPEAL FROM THE WHITE COUNTY CIRCUIT COURT [NO. CV 2008-328-1] HONORABLE TOM HUGHES, JUDGE AFFIRMED

JOSEPHINE LINKER HART, Judge

This appeal involves a dispute over the proceeds of a life insurance policy on the life of Elmer "E.D." Yancey, deceased. The claimants are appellant Peggy Yancey, E.D.'s widow, and appellee Carlyn Yancey, his first wife. The White County Circuit Court imposed a constructive trust in favor of Carlyn as to $500,000 of the proceeds of a policy E.D. had with AIG. For reversal, Peggy argues that the circuit court erred in imposing the constructive trust because Carlyn did not have an equitable interest in the proceeds that could not be divested and that Carlyn did not have a proper cause of action against Peggy. We affirm.

The parties stipulated to the following facts. E.D. and Carlyn married in 1964 and raised two children. They separated in January 1987 and executed a Property Settlement Agreement on July 14, 1987. The Settlement Agreement provided that E.D. was to pay

Carlyn alimony in the amount of $3,000 per month until her death or remarriage;[1] pay her monthly health-insurance premiums; and purchase a new automobile for her every four years beginning January 1987 similar to and in the price range of the Toyota Camry that she was driving on the date the Settlement Agreement was executed. Paragraph 5 of the Settlement Agreement required E.D. to assign and maintain for Carlyn's benefit "one-half of his life insurance coverage at this time, approximately $500,000 in a manner to cover his alimony obligation for Wife in case of his death." At the time the Settlement Agreement was executed, E.D. was the owner of a Union Life Insurance Company policy with a death benefit of $1 million. E.D. named Carlyn as a $500,000 beneficiary of the Union Life policy in November 1987. Carlyn and E.D. also entered into an Amendment to Property Settlement Agreement dated February 20, 1990, that did not change the insurance obligation.

On February 22, 1990, Carlyn was granted an absolute divorce from E.D. by the Pulaski County Chancery Court. The Settlement Agreement and the Amendment were both examined and approved by the court and incorporated into the divorce decree by reference, but neither was filed of record.

After his divorce from Carlyn, E.D. married Peggy in 1993, and they remained married until E.D.'s death on November 2, 2007.

Sometime between the November 1987 designation of Carlyn as beneficiary and

[1]The Settlement Agreement provided that, in the event of Carlyn's remarriage, the alimony obligation would only be suspended and would be reinstated if her subsequent marriage should terminate by the death of her spouse or divorce.

February 24, 1994, E.D. replaced the Union Life policy with a policy from Kemper Life Insurance Company.

On or about April 1, 1994, E.D. replaced the Kemper policy with All American Life Insurance Company Policy No. L1356516, which was a term policy with a death benefit of $1 million and which named Carlyn as a $600,000 beneficiary.

Around June 24, 2003, without the knowledge or consent of Carlyn, E.D. executed a change-in-beneficiary designation for the All American policy naming Peggy as the sole primary beneficiary and revoking the previous designation naming Carlyn as a beneficiary.

In April 2004, E.D. replaced the All American policy with an American General Life Insurance policy, which was a term policy with a death benefit of $1 million and named Peggy as the sole beneficiary. This is referred to as the "AIG policy."

At the time of his death on November 2, 2007, E.D. was still the owner of the AIG policy, and the proceeds therefrom in the amount of $1,002,763.33 were paid to Peggy as the sole beneficiary. E.D. made alimony payments of $3,000 per month to Carlyn until October 2007; paid her health-insurance premiums through July 2007; and paid her car payments through September 2007.

On June 24, 2008, Carlyn filed suit against Peggy and Community First Trust Company, the personal representative of E.D.'s estate. The suit sought to impose a constructive trust on Peggy's receipt of the policy proceeds.[2] Peggy filed an answer to the

[2]The complaint also asserted a breach-of-contract claim and a specific-performance claim against the estate that were to be alternatives in the event that the court did not impose a constructive

complaint, denying the material allegations of the complaint.

Peggy and Carlyn each moved for summary judgment in their favor. The circuit court denied both motions by separate orders entered on August 21, 2009.

The parties filed their joint stipulation of facts on January 13, 2010. Based on that stipulation, the court entered a judgment on February 19, 2010, imposing a constructive trust on $500,000 of the policy proceeds held by Peggy. The court found that, based on E.D.'s wrongful conduct in changing the beneficiary of the policy in violation of the divorce decree and the Separation Agreement, Carlyn had an equitable interest in the proceeds and that a constructive trust was necessary to place the parties in the position they would have otherwise occupied had E.D. not violated the decree and the Separation Agreement. This appeal followed.

Traditional equity cases are reviewed de novo. *Le v. Nguyen*, 2010 Ark. App. 712, 379 S.W.3d 573. While we do not set aside a circuit court's findings of fact unless we determine that the findings are clearly erroneous, the circuit court's conclusions of law are not afforded the same deference. *Columbia Mut. Ins. Co. v. Home Mut. Fire Ins. Co.*, 74 Ark. App. 166, 47 S.W.3d 909 (2001).This is so because the circuit court stands in no better position to apply the law than we do. *See id.* Thus, when we decide that a circuit court erroneously applied the law and that an appellant suffered prejudice as a result, we will reverse the erroneous ruling. *See id.*

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trust. Because the court imposed a constructive trust and did not award any relief against the estate, we need not further discuss the estate's participation.

A constructive trust is an implied trust and, unlike an express trust, it is not created but arises by the operation of law when equity so demands. *Hall v. Superior Fed. Bank*, 303 Ark. 125, 794 S.W.2d 611 (1990); *Tripp v. Miller*, 82 Ark. App. 236, 105 S.W.3d 804 (2003).

In this appeal, Peggy contends that the circuit court erred in imposing a constructive trust on $500,000 of the proceeds from the AIG policy because Carlyn did not have any equitable interest in the proceeds that could not be divested and Carlyn did not have a proper cause of action against her. Peggy relies on the supreme court's decision in *Allen v. First National Bank*, 261 Ark. 230, 547 S.W.2d 118 (1977). That reliance is misplaced because *Allen* is properly understood as a case involving a dispute over who was entitled to the insurance proceeds following a divorce where the decedent made an ineffectual change-of-beneficiary designation. The supreme court held that the rights of the designated beneficiaries in such policies are determined according to contractual law without regard to the effect of a divorce between the insured and the beneficiary. In other words, the *Allen* court held that the divorce decree, by itself, did not affect or defeat the rights of the ex-wife as the designated beneficiary and those rights could only be affected by a change of beneficiary accomplished according to the procedures contained in the insurance policy. This view of *Allen* was made clear in *Kent v. USAble Life*, 84 Ark. App. 359, 141 S.W.3d 895 (2004).

Instead, the present appeal is controlled by our decision in *Orsini v. Commercial National Bank*, 6 Ark. App. 166, 639 S.W.2d 516 (1982), where we affirmed the imposition of a constructive trust upon the proceeds, holding that where a divorce decree or property-

settlement agreement requires a party to maintain a life insurance policy in effect and to retain a specific beneficiary, that beneficiary has a vested interest in the insurance policy proceeds and may assert that vested interest.

Orsini expressly rejected an argument by the second wife, who was the named beneficiary of the policies, that a constructive trust on the proceeds was not permissible because she was not guilty of fraud, wrongdoing, abuse of confidential relationship, or any other form of unconscionable conduct. We noted that "[i]nnocent parties may frequently be unjustly enriched." 6 Ark. App. at 170, 639 S.W.2d at 518 (quoting *Simonds v. Simonds*, 380 N.E.2d 189 (N.Y. 1978)). The proper test in deciding the appropriateness of imposing the constructive trust on the proceeds was not whether Peggy had done anything wrong in accepting them, but whether it would be inequitable under the circumstances for her to retain the proceeds of the policy. *Tripp*, *supra*. Here, the circuit court found that it would be inequitable for her to do so.

Peggy attempts to distinguish *Orsini* from the present case by arguing that *Orsini* was decided on a third-party-beneficiary theory while there is no third-party beneficiary in the present case. That is true; however, it is a distinction without a difference because in both cases, it is the original beneficiary named in the policy that is seeking to enforce the agreement incorporated into the divorce decree after the policy was changed in violation of that agreement.

Peggy further argues that E.D. had the contractual right to change his insurance policy

coverage and beneficiary. We disagree. Carlyn and E.D. had entered into the Settlement Agreement for sufficient consideration whereby E.D. bargained away his right to change the beneficiary as to $500,000 of his life insurance. This did not prevent him from obtaining other, additional insurance policies with other beneficiaries; however, he could not divest Carlyn of her equitable interest in $500,000 of the life insurance proceeds. On the other hand, the parties stipulated that Peggy paid no consideration for being named the beneficiary of E.D.'s All American and AIG policies. Thus, she was a mere volunteer, and Carlyn's interest was superior. *See Reilly v. Henry*, 187 Ark. 420, 60 S.W.2d 1023 (1933).

We are mindful that Carlyn may have a cause of action against E.D.'s estate for breach of the Settlement Agreement. However, the general rule is that, as between the two remedies, the person having the equitable interest in the property may pursue either the property, or the fiduciary who improperly disposed of the property, or both. 5 A.W. Scott & M.L. Ascher, *Trusts* § 29.1.12–.12.1 (5th ed. 2008). This principle was implicitly recognized in *Orsini*. Accordingly, we find no error.

Finally, Peggy makes several references to the fact that Carlyn received, among other things, $3,000 per month in alimony for almost twenty years, a new car every four years, and approximately $171,000 for her interest in other marital property. However, the fact that Carlyn received such payments under the terms of the Settlement Agreement between her and E.D. is irrelevant as to whether Peggy was unjustly enriched.

Affirmed.

PITTMAN and MARTIN, JJ., agree.