

DEN / Probate

COLORADO COURT OF APPEALS
No. 03CA176

FILED IN DISTRICT COURT
May 27, 2004
MANDATE

2004 MAY 27 10:12:03

In the Matter of the Estate of
LARRY TRATTLER, SR, DECEASED,
IMPARTIAL
and
BARBARA LYNN TRATTLER, AS PERSONAL, REPRESENTATIVE, OF THE ESTATE OF, LARRY
TRATTLER, SR,
APPELLANT
v.
JEANNE GRANVILLE, AN INDIVIDUAL,
APPELLEE

FILED IN DISTRICT COURT
MAY 27 2004

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Appeal from the District Court of DENVER PROBATE COURT
Honorable C. JEAN STEWART, Judge
No. 2002PR001422

This proceeding was presented to this Court on the record on
appeal. In accordance with its announced opinion, the Court of
Appeals hereby ORDERS:
JUDGMENT AFFIRMED.

Clerk of the Court of Appeals

By: *Maria Lopez*
Deputy Court Clerk

COPIES MAILED TO	
COUNSEL OF RECORD	
Tri. Ct. Judge	<u>Tri. Ct. Clerk</u>
AND	_____
ON	<u>5-27-04</u>
BY	<u>Mh</u>
COLORADO COURT OF APPEALS	

COLORADO COURT OF APPEALS

Court of Appeals No. 03CA0176
City and County of Denver County District Court No. 02PR1422
Honorable C. Jean Stewart, Judge

In the Matter of the Estate of Larry Trattler, Sr., Deceased
Impartial.

Barbara Lynn Trattler, as Personal Representative of the Estate
of Larry Trattler, Sr.,

Appellant,

v.

Jeanne Granville, an individual,

Appellee.

JUDGMENT AFFIRMED

Division V
Opinion by JUDGE DAILEY
Vogt and Russel, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(f)
March 11, 2004

Dufford & Brown, P.C., Herbert A. Delap, Jacalyn W. Peter, Adam
B. Kehrli, Christian D. Hammond, Denver, Colorado, for Appellant

Michael A. Williams, LLC, Michael A. Williams, Denver, Colorado;
Goddard & Goddard, P.C., Susan B. Goddard, Denver, Colorado, for
Appellee

In this dispute over a life insurance benefit, plaintiff Barbara Trattler (Trattler), the personal representative of the estate of Larry Trattler (decedent), appeals the dismissal of her case against defendant, Jeanne Granville (Granville), for failing to state a claim upon which relief could be granted. We affirm.

In August 2000, decedent's marriage to Granville was dissolved pursuant to a dissolution decree that incorporated the terms of a separation agreement. Pursuant to the separation agreement (1) decedent agreed to pay a portion of the support and college expenses for each of the two minor children born of the marriage, as well as \$2000 per month maintenance for Granville for a period of ten years or until she remarried, whichever occurred first; (2) decedent and Granville were to secure their child support/college expense obligations by maintaining life insurance of not less than \$225,000 on their respective lives, each naming the other as the beneficiary under their policies; and (3) decedent was to secure his maintenance obligation to Granville by obtaining life insurance with a death benefit payable to Granville.

Accordingly, decedent had an insurance policy on his life, payable to Granville, as his ex-spouse, in the amount of \$500,000. Four months later, he applied for and obtained a replacement policy providing \$1 million in benefits. Again, he

named Granville as beneficiary, designating her as his "ex-spouse."

A year later, decedent married Trattler, and within a month of his marriage, he died. After the \$1 million life insurance benefit was paid to Granville, Trattler instituted the present action, asserting that, under § 15-11-804(2), C.R.S. 2003, and the terms of separation agreement, Granville was obliged to pay decedent's estate all life insurance proceeds in excess of the \$375,943 necessary to satisfy decedent's outstanding child and spousal support obligations. Trattler attached the separation agreement and dissolution decree to her complaint for monetary, declaratory, and equitable relief.

Upon Granville's motion, the trial court dismissed Trattler's complaint, finding no basis in law or equity upon which to conclude that Granville owed decedent's estate any of the life insurance proceeds.

Trattler contends that the trial court erred in dismissing her complaint. We disagree.

When reviewing a trial court's dismissal under C.R.C.P. 12(b)(5) for failure to state a claim upon which relief may be granted, we accept all material averments of fact in the complaint as true, and we construe them in the light most favorable to the plaintiff. And because a C.R.C.P. 12(b)(5) motion to dismiss is viewed with disfavor, it should not be

granted unless it appears beyond doubt that the plaintiff cannot prove facts in support of the claim that would entitle the plaintiff to relief. See Lang v. Bank of Durango, 78 P.3d 1121, 1122 (Colo. App. 2003).

Even accepting all facts in the complaint as true, and viewing them in the light most favorable to Trattler, we reject her assertion that she is entitled to relief from the clear and unambiguous terms of the life insurance policy awarding benefits to Granville.

Section 15-11-804(2)(a)(i), C.R.S. 2003, provides, in pertinent part, that "[e]xcept as provided by the express terms of a governing instrument, a court order, or a contract relating to . . . the divorce . . . [r]evokes any revocable . . . disposition or appointment of property made by a divorced individual to his or her former spouse in a governing instrument." The General Assembly defined "governing instrument" in § 15-11-804(1)(d), C.R.S. 2003, as one "executed by the divorced individual before the divorce or annulment of his or her marriage to his or her former spouse" (emphasis added).

Despite Trattler's argument to the contrary, it is clear that the statute only applies to revoke certain dispositions made prior to dissolution of marriage. See In re Estate of DeWitt, 54 P.3d 849, 852 (Colo. 2002) (statute gives effect to

presumptive intent to revoke dispositions that decedent most likely would have acted upon but for his or her inattention).

We need not address Trattler's argument regarding the combined effect of the statute and the dissolution decree on decedent's initial insurance policy, because, regardless of when that policy was obtained, decedent did not leave it in place.

According to the complaint, after the dissolution of the marriage, decedent was given the option of maintaining the same level of coverage at a reduced premium or obtaining increased coverage for a slightly higher premium. He chose the latter, naming Granville, his ex-spouse, as beneficiary. Because this transaction occurred after the dissolution of decedent's marriage to Granville, § 15-11-804(2) is inapplicable and Trattler cannot rely on it to divest Granville of any part of the insurance proceeds.

We also reject Trattler's assertion that, as a result of the separation agreement, Granville waived any claim to insurance proceeds other than as provided in the separation agreement.

Trattler relies upon Napper v. Schmeh, 773 P.2d 531, 533-37 (Colo. 1989), and In re Estate of McEndaffer, 192 Colo. 431, 432-34, 560 P.2d 87, 88-89 (1977), cases which were decided before the enactment of § 15-11-804(2). In those cases, the supreme court recognized that broadly worded waiver, release,

and satisfaction clauses in separation agreements listing insurance obligations can effect a waiver of or limitation upon a spouse's expectancy interest as a beneficiary of an insurance policy. However, the McEndaffer and Napper cases are distinguishable from the present case.

In both McEndaffer and Napper, the issue was whether particular language in the separation agreement divested a spouse of an expectancy interest in a pre-existing insurance policy; the issue was not, as here, whether the language effected a waiver of or limitation upon a new expectancy interest created after dissolution of the parties' marriage.

Further, even assuming McEndaffer and Napper had any relevance to cases in which a new insurance policy is purchased after the dissolution, we do not read the separation agreement here as effecting a waiver of Granville's expectancy interests (and especially those created after dissolution of marriage), particularly in light of the clauses (1) requiring the parties to maintain life insurance, in each other's name, of not less than \$225,000 for the benefit of their children; and (2) explicitly recognizing the parties' right to also provide for each other by will and to accept any benefits so provided. In our view, these clauses implicitly recognize the parties' option to voluntarily provide for and receive from the other -- on

behalf of their children and themselves -- more than what was required under the separation agreement.

We will not assume bitterness or an intent contrary to the unambiguous language of the replacement policy. Further, because that language is unambiguous, Trattler would not be entitled to put on parol evidence, if any, of a contrary intent if the case were allowed to proceed to trial. See Boyer v. Karakehian, 915 P.2d 1295, 1299 (Colo. 1996).

We also reject Trattler's assertion that the estate is entitled to recover excess insurance proceeds on an unjust enrichment theory.

Unjust enrichment is a theory of contract recovery that involves an implied contract at law when the parties either have no express contract or have abrogated it. See Dudding v. Norton Frickey & Assocs., 11 P.3d 441, 444 (Colo. 2000).

To recover for unjust enrichment, Trattler would have to show that: (1) at the estate's expense (2) Granville received a benefit (3) under circumstances that would make it unjust for Granville to retain the benefit. See Dudding v. Norton Frickey & Assocs., supra, 11 P.3d at 445; Salzman v. Bachrach, 996 P.2d 1263, 1265-66 (Colo. 2000).

Here, Trattler is barred from recovering in unjust enrichment in part because, inasmuch as the estate had neither a vested nor expectancy interest in the proceeds of the policy,

the benefit conferred upon Granville did not come at its expense. See In re Estate of DeWitt, supra, 54 P.3d at 855 (only interests implicated in a life insurance policy are those of the insured, the beneficiary, and the insurer).

Further, whether it would be unjust for Granville to retain the proceeds depends in part upon whether she engaged in some type of improper conduct or wrongdoing to obtain them. See Dudding v. Norton Frickey & Assocs., supra, 11 P.3d at 445; DCB Constr. Co. v. Central City Dev. Co., 965 P.2d 115, 117 (Colo. 1998). However, Trattler makes no such allegation in her complaint.

For these reasons we perceive no basis upon which it could be held unjust for Granville, as the intended beneficiary of the policy, to reap the benefits of the policy on behalf of herself and decedent's minor children. See Freedman v. Freedman, 116 F. Supp. 2d 379, 381-82 (E.D.N.Y. 2000) (estate's equitable claim for insurance proceeds not permitted when a valid and legally enforceable instrument designating an insurance beneficiary exists); Rice v. Garrison, 898 P.2d 631, 639 (Kan. 1995) (it would be "an inappropriate exercise of the court's equitable power" to invalidate a decedent's life insurance beneficiary designation in favor of surviving wife); cf. Mack v. Mack, 613 N.W.2d 64, 69 (S.D. 2000) ("unless there is injustice in a son's

acceptance of his father's gift -- a proposition few would support -- there was no unjust enrichment").

We, like the trial court, conclude that Trattler has failed to state a claim upon which relief may be granted.

Accordingly, the judgment is affirmed.

JUDGE VOGT and JUDGE RUSSEL concur.