



# WRNewswire

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The *WRNewswire* is created exclusively for AALU Members by insurance experts led by Steve Leimberg, Lawrence Brody and Linas Sudzius. *WRNewswire* #15.01.07 was written by Linas Sudzius of Advanced Underwriting Consultants.

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**TOPIC: Wisconsin Appeals Court Refuses to Impose Constructive Trust in Beneficiary Dispute**

**CITE:** [\*McDonah v. McDonah\*](#), 2014 WL 7271598, No. 2014AP712 (WI Ct App, Dec. 23, 2014); [\*USAA Life Insurance Company v. Benvenuto\*](#), No. 13 CV 660, 2014 WL 4379087 (U.S.D.C. N.D.IL E. Div Sept 3, 2014).

**SUMMARY:** The insured's children sought a constructive trust over life insurance proceeds payable upon their father's death to their stepmother, the policy's beneficiary. The children argued that the circuit court misinterpreted a divorce order and settlement agreement, which they contended required their father to maintain them as named life insurance beneficiaries.

The Wisconsin appeals court affirmed the decision of the trial court that the life proceeds were to be paid to the stepmother.

**RELEVANCE:** We wrote in *WRNewswire* #14.09.22 about the decision in *USAA Life v. Benvenuto*, in which an Illinois federal district court imposed a constructive trust on life insurance death proceeds because of language in a divorce decree. The *Benvenuto* court actively protected the still-current rights of the insured's children under the divorce decree.

In the *McDonah* case, the Wisconsin state appeals court dealt with a situation under which the children protected by the divorce decree were already adults. The children argued that their claims to the life insurance proceeds survived the date when they reached majority. The court rejected that argument.

The insured in this case paid attention to the date his children became adults, changing the beneficiary designation on his life policy to his new wife only *after* he felt he had fulfilled his life insurance obligation under his decree. This case would probably not have been litigated if the marital agreement had been drafted with more care, explicitly terminating the life insurance obligation of each spouse in favor of the children at a definite date.

**FACTS:** Carly and Nellie McDonah's parents divorced in Florida in April 1999. At that time, Carly was age ten and Nellie was age seven. The divorce judgment ordered their father, Gerald McDonah, Jr., to pay child support until each child became self-supporting. It further required Gerald to pay temporary alimony for six years.

The child support provision of the agreement stated, "Each parent has an equal responsibility to support the children...." The settlement agreement also provided that Gerald would continue to provide health insurance for the children until they "reach[ed] the age of eighteen ... years, marry, [became] self-supporting or die."

In addition to dividing the parties' assets and liabilities, the settlement agreement provided the following, stand-alone clause: "Each party will continue to carry life insurance in the minimum amount of \$100,000 with the children named as the irrevocable beneficiaries thereof."

The child support provisions of both the divorce judgment and the settlement agreement included similar language, providing that if a child was still in high school on her eighteenth birthday, support would continue until either graduation or age nineteen, whichever occurred first. The younger daughter, Nellie, turned eighteen in October 2009 and graduated from high school in May 2010. Gerald maintained the requisite life insurance policy from the time of divorce until June 2010. At that time, he changed the beneficiary to his then-current wife, Candice.

Gerald died in October 2012, and the life insurance proceeds were paid to Candice. Carly and Nellie were age twenty-four and twenty-one at the time of Gerald's death. They sued Candice, seeking a court order for a constructive trust over the life insurance proceeds, asserting the divorce judgment required Gerald to maintain them as named beneficiaries into perpetuity. Both sides moved for summary judgment. The circuit court granted judgment in Candice's favor, and Carly and Nellie appealed.

The appeals court observed that the essential issue presented was whether the settlement agreement's life insurance clause was intended as child support or property division. If the provision was intended as child support, the requirement terminated together with Gerald's other support requirements upon Nellie's graduation from high school. If, on the other hand, the life insurance clause was intended as property division, Gerald was required to indefinitely maintain the policy with his daughters as beneficiaries. If Gerald had violated a property division requirement, the proper remedy would be a constructive trust over the insurance proceeds.

The appeals court reasoned that in the absence of clarifying language in the settlement agreement, it was objectively more reasonable to interpret a life insurance provision as applying only while the children are still minors. It would make little sense to require parents to maintain a life insurance policy in favor of their children into perpetuity.

In the present case, the life insurance clause was made jointly applicable to both parents, rather than just one. This fact, taken together with the settlement agreement's express recognition that both parents bore a responsibility to support the children, led the appeals court to conclude that the parents intended the life insurance provision to be a component of child support.

**RESULT:** The appeals court affirmed the decision of the trial court that Gerald was within his rights when he changed the beneficiary of his life policy to his new wife. It refused to order the payment of the death proceeds to a trust for the benefit of the insured's children.

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