



WRNewswire

An AALU Washington Report

Friday 15, August 2014

WRN# 14.8.15

The *WRNewswire* is created exclusively for AALU Members by insurance experts led by Steve Leimberg, Lawrence Brody and Linas Sudzius. The *WRNewswire* provides timely reports and commentary on tax and legal developments important to AALU members, clients and advisors, delivered to your inbox as they happen

TOPIC: Spousal Beneficiary Designation, Divorce Decree and ERISA

CITES: *Wendy Jeanelle HENNIG, v. Michael “Miro” DIDYK*, No. 05–13–00656–CV, 2014 WL 3705175 (Ct of App of TX Dallas July 28, 2014); [Section 9.301 of the Texas Family Code](#).

SUMMARY: The Texas Court of Appeals held that, because of the specific terms of a couple’s divorce decree, the payment of policy proceeds to the former spouse of the deceased insured, who remained as named beneficiary of the policy, which was held by a profit sharing plan, was invalid.

The spouse argued that, because the policy was an asset of a profit sharing plan, the proceedings should be governed by the Employee Retirement Income Security Act of 1974 (ERISA). She argued that, as such, the proper jurisdiction for the case was in a federal court and not a state court.

The wife also argued (creatively) that the decree applied only to *policies* and not to *death proceeds* where the decree provided that the husband’s policies were his and the wife’s policies were hers.

The wife lost on both counts.

Finally, the court pointed out that Texas law provided that divorced spouses were removed automatically as policy beneficiaries when a divorce was finalized.

BACKGROUND: Appellee Michael “Miro” Didyk is the independent administrator of the estate of his son, Matthew Michael Didyk, deceased, and appellant Wendy Jeanelle Hennig is the decedent’s former wife.

At the time of his death in September 2010, Mathew, the decedent, was insured by a life insurance policy issued as part of an employee benefit plan. It is undisputed that he was insured by the life insurance policy as a result of his employment, and that the life insurance policy was part of an employee welfare benefit plan subject to ERISA.

In April 2005, the decedent had designated his then-wife, appellant, as the beneficiary of the policy. However, on May 15, 2007, Mathew and his wife were divorced by an agreed final decree of divorce.

The divorce decree provided in part:

A. Property to MATTHEW MICHAEL DIDYK

5. All sums, whether matured or unmatured, accrued or unaccrued, vested or otherwise, together with all increases thereof, the proceeds therefrom, and any other rights related to any profit-sharing plan, retirement plan, Keogh plan, pension plan, employee stock option plan, 401(k) plan, employee savings plan, accrued unpaid bonuses, disability plan, or other benefits existing by reason of the husband’s past, present, or future employment.

....

9. All policies of life insurance (including cash values) insuring the husband’s life.

Mathew died on September 25, 2010. He had never changed the policy beneficiary designation and, accordingly, his former wife remained the designated beneficiary in the policy at the time of Mathew’s death.

In December 2010, a Texas probate court appointed appellee Miro Didyk, the decedent’s father, to serve as the independent administrator of the decedent’s estate, and later held the lawful heirs of the decedent’s estate were his parents—Miro Didyk and Virginia Didyk, his wife—in equal shares.

In June 2011, the life insurance company filed an interpleader action in federal court and was dismissed from the action.

However, the federal court held that in any action for the enforcement of the divorce decree and for the suit for breach of contract against Hennig (for not complying with the decree), the proper forum was in the state court. The court did not make any finding that Hennig was ultimately

entitled to the insurance benefits. It held that this "... is a matter for the state court to determine."

The decedent's father, as administrator of the decedent's estate, filed suit in a Texas District Court. Hennig transferred the death proceeds to Texas state court pending the outcome of the state proceeding.

The court ruled that, based on the language of the divorce decree and on Texas law, that the Didyks were entitled to the death proceeds of the life policy.

Hennig appealed.

FACTS: The Texas Appeals Court made the following determinations:

1. Claim that ERISA Preempted State Law

The court observed that a number of state and federal courts have concluded that ERISA does not preempt post-distribution lawsuits against the beneficiaries of ERISA-governed policies. The court decided to follow that line of cases.

2. Texas State Law

Section 9.301 of the Texas Family Code provides that if an insured's spouse is designated as a life insurance beneficiary but the couple later divorces or their marriage is annulled, the earlier designation of the former spouse as a policy beneficiary is not effective unless:

- (1) the decree designates the insured's former spouse as the beneficiary;
- (2) the insured redesignates the former spouse as a beneficiary after rendition of the decree;
or
- (3) the former spouse is designated to receive the proceeds in trust for, on behalf of, or for the benefit of a child or a dependent of either former spouse.

This provision is similar to those in many states. The court found that this law was applicable in this case.

3. The Divorce Decree

Hennig argued that the divorce decree applied only to a policy and not to the death proceeds. The court dismissed this argument by citing the expansive language in the decree, specifically the language provided for in paragraph 5 as well as in paragraph 9 reproduced above. The court went on to conclude that the divorce decree language showed it was the parties' intent that the former wife surrendered not only her rights regarding the life insurance policy, but also any

claim to future proceeds she might have had as the designated beneficiary of the policy.

RESULT: The Texas Appeals Court held that the proceeds belonged to the father and mother of the decedent and not to the decedent's ex-spouse.

RELEVANCE: This case emphasizes the ongoing problem of failing to review beneficiary designations when there is a final divorce decree. This failure has led to numerous court cases, such as have been described in *WRNewswires* 14.03.26 and 14.06.16. It is important to note that while some state laws invalidate policy beneficiary designations on divorce (as here), others do not. Accordingly, insured policy owners should not rely on state law to protect their intended beneficiaries. A review of the parties' policy beneficiary designations and a timely filing of any necessary beneficiary changes after a divorce will help prevent future legal problems.

WRNewswire 14.8.15 was written by Tom Commito of Lincoln Financial Advisors.

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