Nebraska Supreme Court Online Library
www.nebraska.gov/apps-courts-epub/
11/25/2026 01:12 AM CST

Christine also challenges the district court's denial of her motion to vacate on the basis of improper notice and challenges Terry's serving of notice on her personally for the motion and hearing, rather than on her dissolution counsel. In light of our resolution of the merits of Christine's assertion concerning the motion to determine amounts due, we need not resolve this issue and decline to comment on it further.

REVERSED AND REMANDED WITH DIRECTIONS.

HELGA K. HOHERTZ, APPELLEE, V. ESTATE OF GENE E. HOHERTZ, DECEASED, APPELLEE, VETTA HOHERTZ, ALSO KNOWN AS DIANNE HOHERTZ, APPELLANT, AND AID ASSOCIATION FOR LUTHERANS, AND ITS SUCCESSOR, THRIVENT FINANCIAL FOR LUTHERANS, A FRATERNAL BENEFIT ORGANIZATION, APPELLEE.

802 N.W.2d 141

Filed July 19, 2011. No. A-10-967.

1. **Summary Judgment.** Summary judgment is proper if the pleadings and admissible evidence offered at the hearing show that there is no genuine issue as to any material facts or as to the ultimate inferences that may be drawn from those facts and that the moving party is entitled to judgment as a matter of law.
2. **Divorce: Judgments: Appeal and Error.** The meaning of a decree presents a question of law, in connection with which an appellate court reaches a conclusion independent of the determination reached by the court below.
3. **Divorce: Final Orders: Intent.** Once a decree for dissolution becomes final, its meaning is determined as a matter of law from the four corners of the decree itself.
4. **Divorce: Property Settlement Agreements: Insurance.** Where a property settlement agreement validly provides for the disposition of life insurance benefits, the subsequent execution of a change of beneficiary form absent consent of the other party to the agreement is ineffective.
5. **Contracts.** Ambiguity exists in a document when a word, phrase, or provision therein has, or is susceptible of, at least two reasonable but conflicting interpretations or meanings.
6. **Divorce: Intent.** If the contents of a dissolution decree are unambiguous, the decree is not subject to interpretation and construction, and the intention of the parties must be determined from the contents of the decree.
7. **Divorce.** If the contents of a dissolution decree are unambiguous, the effect of the decree must be declared in the light of the literal meaning of the language used.

Appeal from the District Court for Sarpy County: DAVID K. ARTERBURN, Judge. Reversed and remanded with directions.

Timothy J. Buckley, of Adams & Sullivan, P.C., for appellant.

Richard W. Whitworth, of Reagan, Melton & Delaney, L.L.P., for appellee Helga K. Hohertz.

IRWIN and CASSEL, Judges, and HANNON, Judge, Retired.

CASSEL, Judge.

INTRODUCTION

The decree dissolving Helga K. Hohertz' marriage to Gene E. Hohertz obligated Gene to pay alimony until either he or Helga died and to name Helga as the beneficiary of $100,000 of his life insurance during such time "to secure [his] alimony obligation." Shortly before Gene's death, he changed the beneficiary to his new wife, and after his death, Helga obtained a summary judgment that she was entitled to $100,000 of the death benefit. We conclude that the decree unambiguously limited the insurance beneficiary requirement to securing any unpaid alimony. Because there was none at the time of Gene's death, Helga was not entitled to any of the insurance proceeds. We reverse the summary judgment in Helga's favor and remand the cause with directions.

BACKGROUND

Helga and Gene married in July 1965. On April 28, 1988, Gene acquired a flexible premium adjustable life insurance policy with a total death benefit of $200,000. A court dissolved Helga and Gene's marriage by decree on May 27, 1992. The decree recited that Helga and Gene entered into an oral settlement agreement resolving issues of alimony and property division, which agreement the court accepted. The decree provided:

> IT IS FURTHER ORDERED, ADJUDGED AND DECREED that [Gene] shall pay to [Helga] the sum of $1,000.00 per month as alimony, such sum to commence on the 1st day of June, 1992, with a like sum due

> on the first day of each and every month thereafter for twenty-four (24) consecutive months at which time the alimony shall automatically decrease to $775.00 payable on the 1st day of June, 1994, and continue until the death of either party. If [Helga] shall remarry at any time between the finalization of this divorce and June 1, 1994, the alimony shall automatically reduce to $775.00 per month, but such remarriage will not be grounds to terminate alimony.
>
> . . . .
>
> IT IS FURTHER ORDERED, ADJUDGED AND DECREED that in order to secure [Gene's] alimony obligation, [Gene] shall maintain his present [life insurance policy] naming [Helga] as beneficiary of $100,000.00 of death benefit for so long as he is obligated to pay support to [Helga] as described hereinabove, and [Gene] shall show proof of such insurance and beneficiary designation at least once annually to [Helga]; provided, however, that if [Gene] fails to maintain such insurance naming [Helga] as beneficiary of $100,000.00 of death benefit, [Gene] shall be liable to [Helga] for the sum of $100.00 per month for each and every month such insurance remains ineffective, or that [Helga] is not named as beneficiary for $100,000.00 of death benefit, which payment shall be in the form of alimony and, therefore, non-dischargeable in bankruptcy and shall be paid in accordance with the alimony obligation described hereinabove. [Gene] shall also maintain the Survivor's Benefit Plan connected to his military retired pay for the benefit of [Helga].

On December 6, 1992, Gene remarried. Sometime after this marriage but still in accordance with the terms of the decree, Gene changed the beneficiary designation of his life insurance policy to provide payment of $100,000 to Helga and the balance of the proceeds to his new wife, Vetta Hohertz, also known as Dianne Hohertz.

Gene was diagnosed with lung cancer in June 2009, and on July 13, he changed the beneficiary designation on his life insurance policy to name Vetta as the primary beneficiary. He paid an additional $100 in alimony to Helga on August 3.

Gene died on August 17. At the time of Gene's death, he had paid Helga a total of $100,075 in alimony and was not in arrears.

After Gene's death, Helga filed a complaint for declaratory judgment and for declaration of a constructive trust concerning $100,000 of the life insurance proceeds. Helga subsequently filed a motion for partial summary judgment, and Vetta later filed a similar motion.

Following a hearing on the motions, the district court entered an opinion and order which found that Helga was entitled to judgment as a matter of law upon her motion and that Vetta was not entitled to judgment. The court reasoned: "[Vetta's] claim that all Gene . . . had to do to escape the provisions of the decree was to make one monthly payment of $100.00, makes a complete mockery of the spirit of that provision, which clearly seeks to protect the financial interests of his former wife of 27 years." The court concluded that "Gene had no authority to change the beneficiary of the policy" while both Helga and Gene were alive. The court further stated that "reading the $100.00 per month clause as creating an either/or scenario for Gene to exercise at his whim would lead to an absurd result, such as the very situation now before this [c]ourt."

Vetta timely appeals.

ASSIGNMENTS OF ERROR

Vetta assigns two errors. First, she alleges that the district court erred in finding that Gene's change of beneficiary on his life insurance policy prior to his death violated the terms of the decree of dissolution. Second, she claims that the court erred in finding that Gene's change of beneficiary on the life insurance policy contrary to the terms of the divorce decree voided the beneficiary change as a matter of law.

STANDARD OF REVIEW

[1] Summary judgment is proper if the pleadings and admissible evidence offered at the hearing show that there is no genuine issue as to any material facts or as to the ultimate inferences that may be drawn from those facts and that the moving party is entitled to judgment as a matter of law. *Tolbert v. Jamison*, 281 Neb. 206, 794 N.W.2d 877 (2011).

[2] The meaning of a decree presents a question of law, in connection with which an appellate court reaches a conclusion independent of the determination reached by the court below. *Fry v. Fry*, 18 Neb. App. 75, 775 N.W.2d 438 (2009).

ANALYSIS

[3] The facts are undisputed, and the questions presented are purely matters of law. Once a decree for dissolution becomes final, its meaning is determined as a matter of law from the four corners of the decree itself. *Id.*

The decree, which incorporated an oral settlement agreement of the parties, included two paragraphs touching on Gene's alimony obligation to Helga. One paragraph obligated Gene to pay $775 per month "until the death of either party." The other paragraph began by stating that "in order to secure [Gene's] alimony obligation," Gene was to maintain his life insurance policy naming Helga as the beneficiary of $100,000 of the death benefit "for so long as he is obligated to pay support to [Helga] as described hereinabove," i.e., until the death of either party. That paragraph required Gene to show proof of such beneficiary designation to Helga at least once a year and stated that "if [Gene] fails to maintain such insurance naming [Helga] as beneficiary of $100,000.00 of death benefit, [Gene] shall be liable to [Helga] for the sum of $100.00 per month for each and every month . . . that [Helga] is not named as beneficiary for $100,000.00 of death benefit." The $100 payment was to be in the form of alimony and paid in accordance with the alimony obligation. Finally, that paragraph ordered Gene to maintain a Survivor's Benefit Plan connected to his military retired pay for Helga's benefit.

The parties emphasize separate provisions contained in the latter paragraph. Vetta relies on the phrase "in order to secure [Gene's] alimony obligation" to support her argument that naming Helga a beneficiary was to ensure payment of current and delinquent amounts of alimony and not as additional alimony upon Gene's death. Helga, on the other hand, calls our attention to the inclusion of the requirement that Gene's Survivor's Benefit Plan be maintained in favor of Helga within the same paragraph obligating Gene to maintain his life insurance

policy, which Helga contends "indicat[es] a commonality of purpose." Brief for appellee at 14. Thus, Vetta claims the life insurance policy provision was intended as security of Gene's alimony obligation, while Helga claims that the $100,000 of life insurance death benefit was intended for her, independent of alimony.

[4] While in some circumstances the law prevents a change of beneficiary from having effect, the application of the rule depends upon the specific language of the dissolution decree. Where a property settlement agreement validly provides for the disposition of life insurance benefits, the subsequent execution of a change of beneficiary form absent consent of the other party to the agreement is ineffective. *Metropolitan Life Ins. Co. v. Beaty*, 242 Neb. 169, 493 N.W.2d 627 (1993). However, in the case before us, the decision turns upon whether the agreement (as incorporated into the decree) vested the policy proceeds in Helga or merely used the policy to protect Helga's right to receive the alimony to which she was entitled.

[5-7] The principles of law regarding the meaning of a judgment are well settled. Ambiguity exists in a document when a word, phrase, or provision therein has, or is susceptible of, at least two reasonable but conflicting interpretations or meanings. *Strunk v. Chromy-Strunk*, 270 Neb. 917, 708 N.W.2d 821 (2006). If the contents of a dissolution decree are unambiguous, the decree is not subject to interpretation and construction, and the intention of the parties must be determined from the contents of the decree. *Boyle v. Boyle*, 12 Neb. App. 681, 684 N.W.2d 49 (2004). In such a case, the effect of the decree must be declared in the light of the literal meaning of the language used. See *Bokelman v. Bokelman*, 202 Neb. 17, 272 N.W.2d 916 (1979).

We find no ambiguity in the decree. The provision concerning $100,000 in life insurance proceeds stated that it was "in order to secure [Gene's] alimony obligation." Black's Law Dictionary 1475 (9th ed. 2009) defines "security" as "[c]ollateral given or pledged to guarantee the fulfillment of an obligation." The literal language used—"in order to secure"—provided security for any unpaid alimony at the time of Gene's death rather than awarding $100,000 of life insurance proceeds

to Helga outright. Further, Gene was only obligated to keep Helga as a named beneficiary on the policy for as long as he owed alimony—in this case, until his death.

Although Gene changed the beneficiary contrary to the decree's requirement, he satisfied the additional obligation specifically imposed by the decree in such circumstance. Gene violated his obligation to keep Helga named as the beneficiary of $100,000 of the death benefit when he changed the primary beneficiary to Vetta approximately 1 month before his death. The decree, however, provided a remedy in such a situation—the additional alimony of $100 for each month of violation. Gene complied with the decree when he paid the additional $100 for the month that Helga was not named the beneficiary.

We reject Helga's argument that the requirement to maintain an additional benefit relating to Gene's military retirement introduced ambiguity into the decree. As we have already explained, the plain meaning of the words used in the decree limited the insurance maintenance requirement to the purpose of securing Gene's alimony obligation. While the requirement to maintain the Survivors' Benefit Plan was placed in the same paragraph as the requirement to maintain life insurance, we disagree with the notion that the mere proximity of the two provisions created an ambiguity. We read the paragraph as imposing two separate obligations—one involving life insurance and the other relating to a military benefit. The decree expressly limited the purpose of the life insurance provision but made no similar provision regarding the other benefit.

Gene's changing the beneficiary of the policy to Vetta while both he and Helga were alive was in contravention of the decree. However, because (1) the decree explicitly imposed the life insurance requirement only to secure Gene's alimony obligation, (2) Gene complied with the only remedy specified in the dissolution decree by paying the additional $100 amount, and (3) there was no unpaid alimony at the time of Gene's death, Helga is not entitled to any of the proceeds of the insurance policy.

CONCLUSION

We conclude that Gene's obligation to name Helga as the beneficiary of $100,000 of the death benefit was to merely secure unpaid alimony. Although Gene violated the terms of the decree by removing Helga as the beneficiary prior to his death, he complied with the provision requiring payment of $100 for every month that Helga was not named as the beneficiary. Because there was no unpaid alimony at the time of Gene's death—when his support obligation ended—Helga was not entitled to any of the proceeds. Accordingly, the court erred in granting Helga's motion for summary judgment and in denying Vetta's motion. We reverse the order of the district court and remand the cause with directions to vacate its order entering summary judgment in favor of Helga and to enter summary judgment in favor of Vetta.

REVERSED AND REMANDED WITH DIRECTIONS.