

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

MAY 7, 1996

NOTICE

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-2620-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

KATHRYN A. PINTER,

Plaintiff-Respondent,

v.

LINDA PINTER,

Defendant-Appellant,

**PRINCIPAL MUTUAL LIFE INSURANCE COMPANY,
SUSAN PINTER and RICHARD PINTER,**

Defendants.

APPEAL from an order of the circuit court for Milwaukee County:
MICHAEL J. BARRON, Judge. *Affirmed.*

Before Wedemeyer, P.J., Sullivan and Schudson, JJ.

PER CURIAM. When Robert Pinter died, his wife Linda and his two children by a prior marriage were the named beneficiaries of a life

insurance policy he carried through his employer, Tax Air Freight, Inc. Robert's ex-wife from his prior marriage, Kathryn Pinter, sought a declaratory judgment requiring payment of the insurance policy proceeds to her. She contended that Robert had agreed as part of their divorce settlement to retain her as the named beneficiary of the policy until Robert's employment with Tax Air ceased. Kathryn contended that she was entitled to the proceeds of the insurance policy because Robert, although disabled, was still employed by Tax Air at the time of his death. The trial court agreed with Kathryn, and Linda appeals. Pursuant to this court's order dated November 2, 1995, this case was submitted to the court on the expedited appeals calendar. We affirm the trial court's order granting Kathryn declaratory judgment.

The parties presented this matter to the trial court on stipulated facts. Robert and Kathryn were married in 1963, and they divorced in 1992. At the time of the divorce, Robert was employed as a truck driver by Tax Air, and he owned a life insurance policy obtained through his employment.

Robert and Kathryn entered a marital settlement agreement as part of the divorce proceedings. In the agreement, Robert agreed to:

[K]eep in full force and effect the life insurance policies presently in existence, with [Kathryn] named as sole beneficiary, until such time as his employment with his present employer ceases.

The marital settlement agreement further provided that if Robert's employment should "cease within two (2) years of the date of judgment of divorce," Robert would obtain comparable life insurance that would "be in effect for at least two (2) years subsequent to the date of judgment of divorce." Robert also agreed to pay Kathryn maintenance and the cost of her health insurance for two years from the date of divorce. The judgment of divorce was entered on June 5, 1992, but the judgment provided that the effective date of the divorce was April 21, 1992. The trial court incorporated the terms of the marital settlement agreement into the final judgment.

Some time later, Robert married Linda. On April 20, 1994, Robert replaced Kathryn with Linda as the named beneficiary of his insurance policy. Subsequently, Robert named Richard and Susan Pinter, the children of his marriage to Kathryn, as additional beneficiaries.

Robert was diagnosed with cancer and ceased active employment with Tax Air in September 1994. From that time until his death on March 10, 1995, Robert received sick pay, vacation pay, or short-term disability pay from Tax Air.

Kathryn commenced the underlying action seeking a declaration that she should be paid the proceeds of the insurance policy under the terms of the marital settlement agreement. Kathryn named Linda, Richard, and Susan as defendants. Richard and Susan, however, did not contest Kathryn's claim to the insurance proceeds.¹

Linda opposed disbursement of the proceeds to Kathryn. She contended that, because of the serious nature of Robert's illness, Tax Air never expected that Robert would be able to resume active employment with the company. Thus, she contended that Robert's employment with Tax Air had ceased and that he had been free to replace Kathryn as the beneficiary of the policy under the terms of the marital settlement agreement.

Second, Linda contended that the insurance clause of the marital settlement agreement was ambiguous. Specifically, she contended that requiring Robert to maintain Kathryn as beneficiary until his employment with Tax Air ceased was inconsistent with the provision that if his employment with Tax Air ended within two years of the divorce, he was to maintain Kathryn as the beneficiary of a comparable life insurance policy for only two years from the date of the divorce. Linda maintained that, when read as a whole, the only reasonable construction of the life insurance clause was that Robert had been obligated to retain Kathryn as the beneficiary of the policy for only two years from the date of divorce. Linda argued that further support for her reading of

¹ Consequently, Richard and Susan do not participate in this appeal.

the agreement was found in the fact that Robert's maintenance and health insurance obligations expired after two years.

The trial court rejected Linda's contentions. The trial court held that the agreement unambiguously provided that Kathryn was to remain the beneficiary of the insurance policy until such time as Robert was no longer employed by Tax Air. The trial court also determined that Robert's employment with Tax Air had never ceased. It noted that, at the time of his death, Robert was receiving disability payments through Tax Air, and that, although Tax Air had had no expectation that Robert would be able to return to work, Robert would have been expected to return to work if his cancer had gone into remission. Linda appeals.

As we have already noted, the marital settlement agreement was incorporated by the trial court into the final judgment of divorce. A judgment is interpreted in the same manner as other written documents. *Jacobson v. Jacobson*, 177 Wis.2d 539, 546, 502 N.W.2d 869, 873 (Ct. App. 1993). Construction of the document is permitted only if it is ambiguous, and the determination of whether it is ambiguous presents a question of law, which this court reviews *de novo*. *Id.* at 547, 502 N.W.2d at 873. Words or phrases in a contract or judgment "are ambiguous when they are reasonably or fairly susceptible of more than one construction." *Weston v. Holt*, 157 Wis.2d 595, 600, 460 N.W.2d 776, 779 (Ct. App. 1990).

While we owe no deference to the trial court's legal conclusion, we nonetheless agree with the trial court that the life-insurance provision of the marital settlement agreement is unambiguous. The plain language of the clause provides that Robert was to retain Kathryn as the beneficiary of the Tax Air life insurance policy until his employment with Tax Air ceased. The clause is not reasonably susceptible to Linda's interpretation that Robert could replace Kathryn as the beneficiary after two years even if he remained employed by Tax Air. Because there is no ambiguity in the provision, there was no need for the trial court to take evidence on the parties' intent in entering the stipulation. Indeed, due to the lack of ambiguity in the provision, construction was prohibited.

Linda contends next that the trial court erred when it held that Robert's replacement of Kathryn as the beneficiary was not permitted under the terms of the marital settlement agreement because his employment with Tax Air had not "ceased." Linda maintains that because Robert performed no work for Tax Air after September 8, 1994 until the time of his death in March 1995, his employment with Tax Air was at an end, and that Robert had therefore been free to replace Kathryn as the named beneficiary of the policy.

To resolve this question, we must again inquire into the meaning of the life-insurance provision of the marital settlement agreement. The clause provides that Robert was to maintain Kathryn as his beneficiary under the life insurance policy until such time as his employment with Tax Air "cease[d]".

In support of her contention that Robert's employment with Tax Air ceased prior to his death, Linda cites to two Wisconsin cases, *Compton v. Shopko Stores, Inc.*, 93 Wis.2d 613, 287 N.W.2d 720 (1980), and *Fessler v. Fessler*, 147 Wis.2d 1, 432 N.W.2d 103 (Ct. App. 1988). Those cases discuss some of the circumstances under which a person can be said to have ceased employment, but they are factually distinguishable from the instant case. In large part, *Compton* and *Fessler* discuss the proposition that severance payments to an employee constitute a "complete manifestation of the termination of the employment relationship" such that the employee can no longer be said to be employed by the employer.

Although the cases are distinguishable, the definition in those cases of what it means to cease or terminate an employment relationship is useful and, we hold, dispositive. In the instant case, there never was "a complete manifestation of the termination of the employment relationship" between Robert and Tax Air. The record contains affidavits of Tax Air's payroll manager, which indicate that Robert was employed by Tax Air until his death on March 10, 1995. The affidavits indicate that, although Robert was not "actively employed" in his capacity as a truck driver, he was not terminated as an employee. During his illness, Robert received disability benefits obtained by virtue of his employment. The payroll manager indicated that to have terminated Robert as an employee would have resulted in the discontinuation of Robert's life insurance benefits,² as well as his disability and health insurance

² Indeed, it appears that the very fact that there were life insurance proceeds to distribute upon

benefits. The payroll manager stated that, although she did not expect Robert to return to active employment, he was nonetheless "considered, for insurance purposes, to be an employee." In addition, as Kathryn points out, there is nothing in the record to indicate that if Robert had, against all expectations, recovered from his illness, Tax Air would not have permitted his return to active employment. Thus, at the time of his death, Robert remained an employee of Tax Air.

Because Robert's employment with Tax Air never ceased, he was never relieved of the responsibility he undertook in the marital settlement agreement to retain Kathryn as the beneficiary of the life insurance policy.

By the Court. – Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.

(..continued)

Robert's death indicates that Robert's employment with Tax Air had not ceased.