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DISTRICT II

February 3, 2021

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You are hereby notified that the Court has entered the following opinion and order:

2020AP860 Matthew Hefter v. Sentry Life Insurance Company (L.C. #2018CV1882)

Before Reilly, P.J., Gundrum and Davis, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Matthew Hefter (Matthew) seeks the death benefits from his former wife's life insurance policy with Sentry Life Insurance Company (Sentry). Matthew appeals from the order of the

circuit court granting Sentry's motion for summary judgment and dismissing this action. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2017-18).[1] We affirm.

Matthew and his former wife, Krista, were married on August 7, 2004. In 2008, while still married, they each purchased a life insurance policy from Sentry. Krista's policy had a face amount of $500,000. Krista designated Matthew as her beneficiary, and Matthew designated Krista as his beneficiary. Matthew and Krista divorced on December 2, 2014. The Marital Settlement Agreement (MSA) required Matthew and Krista to each maintain a minimum of a $500,000 life insurance policy and to name each other as the sole beneficiary on the policy until their youngest child reached the age of majority. Matthew and Krista agreed that Matthew's life insurance policy would be his property and that Krista's life insurance policy would be her property. Under the MSA, each had the right to confirm that the other was complying with his or her obligation to keep the policy in force, and if either failed to comply, the MSA provided that "there shall be a valid and provable lien against his or her estate."

A week after the divorce, Krista called Sentry to update her address and instruct Sentry to change the method of payment for her premiums from the automatic monthly deduction from

[1] All references to the Wisconsin Statutes are to the 2017-18 version.

Matthew's account to a quarterly invoice that she would pay upon receipt. Sentry confirmed the changes in a letter to Krista dated December 9, 2014.[2]

Krista immediately allowed her policy to lapse. On January 26, 2015, Sentry sent Krista her quarterly invoice. When Krista failed to pay the premium, Sentry sent her a letter on March 17, 2015, informing her that her policy had lapsed for nonpayment of premiums but could easily be reinstated. When Krista failed to respond to this second notice, Sentry sent her a third notice, titled "FINAL NOTICE," on April 14, 2015, informing her that her policy was no longer in effect but that she could submit an application for reinstatement. Krista failed to respond to this notice.

Two and one-half years later, on August 23, 2017, Krista attempted to reinstate her policy after she had been diagnosed with stage IV cancer. To obtain reinstatement, Krista was required to submit evidence of good health, which she could not do. Krista died on July 3, 2018. When Matthew requested death benefits from Krista's policy, he was informed by Sentry that her policy had been terminated for nonpayment of premiums.

In October 2018, Matthew brought this breach of contract action against Sentry, seeking to obtain the $500,000 in death benefits that Krista's policy would have provided had she kept

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[2] Sentry's December 9, 2014 letter to Krista provided in relevant part:

> Dear KRISTA HEFTER:
>
> Your method of payment has been changed to quarterly direct billing in the amount of $106.00. The policy is currently paid to 12-14-2014. Enclosed is a prorated bill for $73.02 to pay your policy from 12-14-2014 to 2-14-2015 to keep the policy billing on the anniversary. Please submit this payment if you wish to retain this valuable coverage.

the policy in force. Matthew argues that he had a "contract" with Sentry in which Sentry had an obligation to keep Krista's policy in force via an auto-debit from Matthew's bank account. The alleged contract was a document entitled "Authorization to Honor Debits Drawn by and Payable to Sentry Life Insurance Company, Stevens Point, WI" and "Payment Authorization" that Matthew signed on February 22, 2013, which authorized Sentry to debit Matthew's bank account for payment of the premiums for both his and Krista's life insurance policies. Matthew argues that Sentry was obligated to debit his account for payment of the premiums for both policies unless the authorization was terminated by Sentry or himself, specifically, by giving thirty days' written notice to the other party.

Matthew and Sentry filed cross-motions for summary judgment. After a hearing, the circuit court granted Sentry's motion and denied Matthew's. The court concluded that Sentry had no contractual obligation to deduct payments from Matthew's bank account, and "[t]o read the contractual relationships differently would be to promote the payment authorization exchange to an override of the rights to the policy owner, Krista." Further, explained the court, "even if the payment authorization had required Sentry to either (a) make the automatic deduction or (b) provide notice of payments due, Sentry complied." The court dismissed the case, and Matthew appeals.

We review a grant of summary judgment de novo, applying the same methodology as the circuit court. ***H&R Block E. Enters., Inc. v. Swenson***, 2008 WI App 3, ¶11, 307 Wis. 2d 390, 745 N.W.2d 421. "A party is entitled to summary judgment when there are no disputed issues of material fact and that party is entitled to judgment as a matter of law." ***Id.***; WIS. STAT. § 802.08(2).

We conclude that the document Matthew signed on February 22, 2013, is not a contract.[3] The "authorization" Matthew signed did not obligate Sentry to do anything other than what the policy obligated it to do. The authorization expressly noted that it was a "convenience" to Matthew ("[a]s a convenience to me") for the payment of premiums. Further, the authorization expressly provided that Sentry had no liability if it failed to comply with or honor the authorization: "[Y]ou [(Sentry)] shall be under *no liability whatsoever* even though such dishonor results in the forfeiture of insurance." (Emphasis added.) The authorization also made clear that "[t]he *use* of this [automatic payment] plan shall in no way alter or amend the provisions of *any* policy with respect to the termination of such policy upon nonpayments of the premium due." (Emphasis added.)

The life insurance policy at issue in this case belonged to Krista. Pursuant to the policy application, Krista was the insured, the owner, and the "person paying premium" under her policy. Krista, as owner of the policy, was free to modify any payment terms of her policy. Krista had the authority to bind Sentry, and she did so in the week after her divorce from

[3] Matthew asserts five issues on appeal: (1) whether the circuit court committed reversible error when it determined that the *contract* did not impose a binding obligation on Sentry to withdraw the premium payments from Matthew's account; (2) whether the circuit court committed reversible error when it determined that Sentry was not required to provide Matthew with a thirty-day notice that the *contract* was terminated; (3) whether the circuit court committed reversible error when it determined that Sentry had not breached the *contract* by failing to pay the $500,000 life insurance policy; (4) whether the circuit court committed reversible error by not considering, as an alternative argument, that Sentry is equitably estopped from denying the claim; and (5) whether the circuit court committed reversible error when it determined that Sentry did not breach the *contract*.

All five issues are resolved by our finding that Sentry had no "contract" with Matthew that obligated Sentry to do any of what Matthew claims Sentry was obligated to do. As Sentry did not owe any claim for benefits under Krista's former policy, Sentry also had no "equitable" duty to honor Matthew's claim for benefits from a nonexistent policy. To the extent we have not addressed an argument raised on appeal, the argument is deemed rejected. *See* ***State v. Waste Mgmt. of Wis., Inc.***, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978).

Matthew when she instructed Sentry to change the billing to herself and to change it to a quarterly billing. Krista's revocation of the authorization was memorialized by Sentry's December 9, 2014 letter to Krista.

Sentry was under no obligation to Matthew to oversee Krista's policy for the benefit of Matthew.[4] It is undisputed that no premium payments were debited from Matthew's account for payment of Krista's premiums after the divorce. Sentry complied with all obligations it owed to Krista as the owner of the policy and did not have any obligation to Matthew as to Krista's management and control of her policy. Matthew had the right, following the divorce, to verify with Krista that she was maintaining a life insurance policy, and it is undisputed that Matthew did not exercise that right. Matthew's claim is against Krista's estate per the terms of the MSA.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

[4] Wisconsin law is clear that it is the policy owner, not the beneficiaries of the policy, that have sole authority to "control and dispose of" the policy. ***Strike v. Wisconsin Odd Fellows Mut. Life Ins. Co.***, 95 Wis. 583, 587, 70 N.W. 819 (1897). *But see* ***Beck v. First Nat'l Bank of Madison***, 238 Wis. 346, 350-51, 298 N.W. 161 (1941) ("[T]he rule of this state is of long standing and is a rule of property, and ought not to be changed except by statute, as was done where husband and wife are the insured and beneficiary.").

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals