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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1016**

Mary K. Strauss, on behalf of her minor child, Finley Strauss,
Appellant,

vs.

Michelle Kitsmiller, on behalf of her minor child, Elise Clifton,
Respondent.

**Filed February 19, 2019
Affirmed
Larkin, Judge**

Dakota County District Court
File No. 19HA-CV-17-2192

Beau D. McGraw, McGraw Law Firm, P.A., Lake Elmo, Minnesota (for appellant)

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Considered and decided by Schellhas, Presiding Judge; Larkin, Judge; and Slieter,
Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges the district court's denial of her request to equitably distribute one-half of decedent's life-insurance proceeds to her minor child. She argues that her child

was an intended beneficiary of decedent's life-insurance policy and that the district court misstated the relevant law and erroneously determined that decedent did not effectively add the minor child as a beneficiary. We affirm.

FACTS

In 2014, Finley Strauss was born to appellant Mary Strauss and decedent Shane Clifton. They were not married at the time. Decedent had another child, Elise Clifton, who was born in 2007, to decedent and respondent Michelle Kitsmiller. Decedent did not provide financial support for Finley during the first year of her life. In July 2015, appellant initiated child-support proceedings regarding Finley.

At a child-support hearing on July 28, 2015, appellant and decedent agreed that decedent would pay \$300 per month in child support, instead of the presumptive amount of \$629 per month under the Minnesota Child Support Guidelines, and that the issue of past unpaid child support would be reserved for determination. During the hearing, decedent's counsel informed the presiding officer that the parties had a "private agreement" and that if decedent "fail[ed] to fulfill that private agreement," appellant could seek payment for the past unpaid child support. The terms of that private agreement were not stated on the record.

On August 13, 2015, a child support magistrate approved appellant and decedent's on-the-record agreement to set child support at \$300 a month. The child-support magistrate's order did not refer to appellant and decedent's private agreement or the terms of that agreement. Also on August 13, decedent added Finley as a dependent on his health-insurance policy. On August 31, decedent passed away unexpectedly after a heart attack.

On November 9, 2015, decedent's life-insurance company sent respondent a Certificate of Indebtedness regarding Elise's status as beneficiary of that policy. The Certificate of Indebtedness indicates that Elise will receive a lump sum, as well as any accrued interest, when she turns 18 years old.

On January 12, 2017, appellant sued respondent on behalf of Finley, requesting that the district court equitably distribute one-half of decedent's life-insurance proceeds to Finley. Respondent moved for summary judgment, arguing that appellant had not presented evidence establishing a basis for equitable relief. The district court denied summary judgment.

On January 22 and March 29, 2018, the case was tried to the district court. Appellant, respondent, and a benefits manager for the City of St. Paul testified at trial. The district court denied appellant's request to designate Finley as a beneficiary of decedent's life-insurance policy. This appeal follows.

D E C I S I O N

Appellant contends that the district court erred by denying her request to equitably designate Finley as a beneficiary of decedent's life-insurance policy. Appellant did not move for a new trial in the district court. This court's review is therefore "limited to determining whether the evidence sustains the [district court's] findings of fact, and whether the findings sustain the conclusions of law and the judgment." *U.S. Bank N.A. v. Cold Spring Granite Co.*, 802 N.W.2d 363, 370 (Minn. 2011). Following a bench trial, this court reviews the district court's factual findings for clear error and its legal conclusions de novo. *Porch v. Gen. Motors Acceptance Corp.*, 642 N.W.2d 473, 477

(Minn. App. 2002), *review denied* (Minn. June 26, 2002). In reviewing the district court’s factual findings, this court “view[s] the evidence in the light most favorable to the verdict.” *Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 797 (Minn. 2013).

“Where an insured has clearly and unambiguously demonstrated an intent to change the beneficiary on a life insurance policy, this intent should be given effect, despite failure to fully comply with policy requirements, unless prejudice to the insurer would result.” *Lemke v. Schwarz*, 286 N.W.2d 693, 694 (Minn. 1979). A change of beneficiary may be properly effected despite the insured’s failure to comply with policy requirements if (1) “the insured intended to change the beneficiary” and (2) the insured “took affirmative action or otherwise did substantially all that he could do to demonstrate that intention without regard to whether he complied with the change-of-beneficiary provisions in the policy.” *Brown v. Agin*, 109 N.W.2d 147, 151 (Minn. 1961). “If there exists any confusion as to the insured’s intent or conflicting expressions of intent, then the named beneficiary should be entitled to the proceeds.” *Lemke*, 286 N.W.2d at 696. A determination whether a decedent effectively changed the beneficiary of an insurance policy is governed by equitable principles, *Brown*, 109 N.W.2d at 150-51, and this court reviews the district court’s ultimate decision whether to grant such equitable relief for an abuse of discretion, *Metro. Life Ins. Co. v. Belland*, 583 N.W.2d 592, 593 (Minn. App. 1998).

The district court found that prior to the child-support hearing on July 28, appellant and decedent discussed child support, child care, and medical support for Finley, as well as decedent’s life-insurance policy. The district court found that decedent told appellant that he wanted his two children to be treated equally and to share the life-insurance

proceeds. The district court also found that appellant and decedent agreed that decedent would seek reimbursement from respondent regarding child-support payments, provide more care for Finley, help appellant pay back money she had borrowed from her family, make his health insurance available for Finley if necessary, and add Finley as a beneficiary to his life-insurance policy.

The district court determined that the record “[was] sufficient to establish” the private agreement and that “the Decedent intended to add Finley as a beneficiary.” However, the district court also determined that “the record simply does not support a finding . . . that [decedent] did substantially all that he could do to demonstrate his intention to add Finley as a beneficiary” and that it was “unable to conclude that the Decedent made affirmative efforts to effect this change.”

The district court relied on *Lemke v. Schwarz*. In *Lemke*, a decedent was insured under the terms of two life-insurance policies which listed his spouse as the beneficiary. 286 N.W.2d at 694. Shortly before the decedent’s death, the decedent wrote a letter in his own handwriting and mailed it to one of his daughters. *Id.* The letter stated that the decedent bequeathed all of his assets to his two daughters, including a life-insurance policy. *Id.* The supreme court stated, “The language of the [decedent’s] letter expresses the [decedent’s] clear and unambiguous intent that his daughters rather than his wife receive the entire proceeds of the policies. It is also apparent that the [decedent] expected and fully intended the letter to have legal significance.” *Id.* at 695. The supreme court reasoned that “[t]here seems to be . . . little, if any, distinction between writing a letter to the insurer [regarding] the change and making an unequivocal statement of such intent in a letter to

another.” *Id.* at 696. Because the decedent’s letter expressed his intent that his daughters receive the proceeds of his life-insurance policies and indicated that he “made affirmative efforts to effect this change and under the circumstances substantially complied with the relevant policy provisions,” the supreme court held that the decedent’s daughters were entitled to the proceeds of the decedent’s life-insurance policies. *Id.*

Appellant argues that the district court erred in its application of *Lemke*. Appellant notes that the district court’s order states, “In *Lemke*, the Minnesota Supreme Court indicated that it ‘regretted’ the result but nevertheless felt obliged to hold that the insured simply did not do enough to change the beneficiary.” Appellant points out that these statements are inaccurate because the supreme court did not use the word “regretted” in *Lemke* and because that case actually “resulted in the insurance policy proceeds being awarded to two (2) parties that were *not* the named beneficiaries on the policies.” The district court’s inaccurate description of the outcome in *Lemke* is immaterial because the district court nonetheless correctly described and applied the two-part test for determining whether a decedent effectively changed the beneficiary of an insurance policy.

Appellant argues,

If a decedent writing a letter to his daughter, believing that it would be enough to make her the beneficiary of his life insurance policies, even though he did not send that same letter to his insurer, is enough of a step toward changing the beneficiary to result in the daughters taking the proceeds in *Lemke*, the decedent in this case making an unconditional promise that he would include Finley as a beneficiary on his life insurance policy as part of a deal to pay less than half of his actual child support obligation, then standing in front of a judge and having that promise become part of a legally enforceable agreement is enough of a legally significant step

toward compliance that Finley must be awarded her share of the policy proceeds.

The facts in this case are readily distinguishable from those in *Lemke*, where the insured clearly memorialized his intent to change his beneficiary in a letter and expected that letter to have legal significance. *Id.* at 695. Here, decedent's agreement to add Finley as a beneficiary of his life-insurance policy was not made part of the record at the July 28 child-support hearing, and the ensuing order does not mention it. Decedent's acknowledgment that he could be required to pay past-due child support if he failed to comply with an undisclosed term of a private agreement is not comparable to the clear and unambiguous written communication of the decedent's intent to change his beneficiary in *Lemke*.

Appellant also argues that “[a]ll the evidence in this matter points to [decedent] doing substantially all he could to demonstrate his intention to change the beneficiary without actually having completed the change at the time of his untimely and entirely unexpected passing.” Appellant notes that decedent followed through with other parts of the private agreement between appellant and decedent, including (1) seeking reimbursement from respondent to allow him to make his child-support payments to appellant, (2) adding Finley as a dependent on his health insurance, (3) spending more time with Finley, and (4) attempting to get a loan to help appellant repay her debts to her family. Appellant argues that “the fact that [decedent] was doing these things leads to the inescapable conclusion that it was [his] intent to have both of his children treated equally” and that had decedent “not passed away, there is every reason to believe that he would have

continued to follow through with his promises and intent by having Finley added to his life insurance policy as a beneficiary.” Appellant also argues that decedent’s failure to change the beneficiary designation on his life-insurance policy, despite his addition of Finley as a dependent on his health-insurance policy, is not determinative for several reasons, including that different processes were necessary to make the changes and time did not appear to be of the essence.

Appellant’s arguments are not persuasive because they are not based on evidence in the record showing that decedent “took affirmative action or otherwise did substantially all that he could do to demonstrate” his intent to change his beneficiary. *See Brown*, 109 N.W.2d at 151. Instead, appellant’s argument seems to be that there is no evidence that decedent would not have added Finley as a beneficiary in due time. But that is not the standard used to determine whether a decedent effectively changed a beneficiary designation.

In cases in which courts have determined that decedents effectively changed the beneficiary of an insurance policy, the decedents took an affirmative step to effectuate the change. For example, in *Pabst v. Hesse*, the decedent signed a change-of-beneficiary form and mailed a copy to his spouse, the intended beneficiary. 173 N.W.2d 925, 926-27 (Minn. 1970). In *Lemke*, the decedent sent a handwritten letter to his daughter stating that his life-insurance policy was bequeathed to his daughters. 286 N.W.2d at 694, 696. In *Larsen v. Nw. Nat’l Life Ins. Co.*, the decedent entered into a stipulated dissolution settlement with her spouse, the named beneficiary, awarding each party all right, title, and interest in their respective life-insurance policies and the life-insurance company received a copy of the

stipulation and dissolution decree. 463 N.W.2d 777, 779, 781 (Minn. App. 1990), *review denied* (Minn. Feb. 6, 1991). In *Metro. Life Ins. Co. v. Belland*, the decedent delivered an executed change-of-beneficiary form to his insurance agent. 583 N.W.2d at 593-94. And in *In re Will of Kipke*, the decedent completed and signed change-of-beneficiary forms and sent them to his insurance agent's office. 645 N.W.2d 727, 734 (Minn. App. 2002), *review denied* (Minn. Aug. 20, 2002).

Unlike the cases above, there is no evidence that decedent attempted to document—and thereby demonstrate—his intent to add Finley as a beneficiary of his life-insurance policy. He did not memorialize his intent in any written form. And he did not state his intent on the record at the July 28 child-support hearing, even though he acknowledged the private agreement. When the facts here are compared to the caselaw examples above, we cannot say that the district court erred in reasoning that “the record simply does not support a finding . . . that [decedent] did substantially all that he could do to demonstrate his intention to add Finley as a beneficiary.” We therefore hold that because the district court correctly concluded that the standard for effectively changing a beneficiary was not met, it did not abuse its discretion by denying equitable relief.

Affirmed.