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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-573

No. COA20-897

Filed 19 October 2021

Mecklenburg County, No. 19-CVS-20436

PROVIDENT LIFE AND ACCIDENT
INSURANCE COMPANY, Plaintiff,

v.

SHATIA BROWN, THOMAS LINDSAY
ERIC JEFFREY NEELY, SR., and
EXPRESS FUNERAL FUNDING, LLC,
Defendants.

Appeal by Defendants Shatia Brown and Thomas Lindsay from an order entered on 4 September 2020 by Judge Carla N. Archie in Mecklenburg County Superior Court. Heard in the Court of Appeals 8 September 2021.

Crumley Roberts, LLP, by Elizabeth A. Ray, for the Defendant-Appellee.

Kakassy Law, by Thomas B. Kakassy, for the Defendants-Appellants.

JACKSON, Judge.

I. Factual and Procedural Background

¶ 1 The decedent, L. Neely (“Ms. Neely”), was the owner of a life insurance policy with Provident Life and Accident Insurance Company (“Provident Life”). Prior to her death, the beneficiary of this policy was Ms. Neely’s ex-husband, Eric Neely

(“Appellee”). Although Ms. Neely and Appellee divorced on 9 August 2017 and had been separated for years, Appellee remained the beneficiary on Ms. Neely’s policy.

¶ 2 Ms. Neely’s contract with Provident Life stated the following:

Beneficiary. At any time prior to the death of the Insured, you may name or change a revocable Beneficiary. If no Beneficiary has been named, you will be the Beneficiary. A change of Owner or Beneficiary must be made in writing. To be binding on us, the change must be signed by you and any irrevocable Beneficiary and must be filed at our Home Office. Any such change shall take effect as of the date it was signed, subject to any payment made or other action taken by us before the change was filed. Unless otherwise provided, the proceeds to be paid at the death of the Insured shall be paid in equal shares to those named beneficiaries who survive the Insured. Payment will be made in the following order: (1) The primary beneficiaries; (2) Any secondary beneficiaries, if no primary Beneficiary survives the Insured; (3) You; and (4) Your executors, administrators, or assigns, if no named Beneficiary survives the Insured.

¶ 3 On 12 June 2019, just a few days before her death, Ms. Neely completed Provident Life’s policy change form apparently attempting to designate Shatia Brown, her niece, and Thomas Lindsay, her partner, as beneficiaries under her life insurance policy. After Ms. Neely’s death on 15 June 2019, proceeds of \$60,615 plus interest became payable under the policy. Both Ms. Brown and Mr. Lindsay (hereinafter “Appellants”) submitted claim forms to Provident Life. Appellee also submitted a claim form for the proceeds.

¶ 4 On 26 June 2019, Provident Life informed Ms. Neely that the beneficiary

change request could not be processed because (1) the beneficiary names were not legible and one person appeared to be listed twice, (2) the relationship between the insured and the beneficiary was not indicated for one of the beneficiaries, (3) the percentages of benefits for each beneficiary were not listed, and (4) the spelling of Ms. Neely's name on the form did not match Provident Life's records. Thereafter, Provident Life sent letters to Appellee and Appellants advising them of their competing claims.

¶ 5 Because the parties could not reach an agreement about the proceeds, Provident Life filed an interpleader action on 17 October 2019, asking the trial court to determine which claimant was entitled to the funds. Appellee and Appellants filed Answers to Provident Life's complaint. Appellants admitted to multiple errors on the change of beneficiary form, including that Mr. Lindsay's name was listed twice and the percentages of benefits for each beneficiary were not listed. At the close of discovery, both parties moved for summary judgment. A hearing on the motions took place on 20 August 2020. The trial court granted Appellee's summary judgment motion and denied Appellants' summary judgment motion. Provident Life was discharged and dismissed from the action.

¶ 6 Appellants timely filed written notice of appeal.

II. Analysis

A. Standard of Review

¶ 7

Summary judgment is proper “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law.” N.C. Gen. Stat. § 1A-1, Rule 56(c) (2019). “When considering a motion for summary judgment, the trial judge must view the presented evidence in a light most favorable to the nonmoving party.” *Dalton v. Camp*, 353 N.C. 647, 651, 548 S.E.2d 704, 707 (2001). On appeal, “[w]e review a trial court’s order granting or denying summary judgment *de novo*.” *Craig v. New Hanover Cnty. Bd. of Educ.*, 363 N.C. 334, 337, 678 S.E.2d 351, 354 (2009).

B. Appellee’s Motion for Summary Judgment

¶ 8

A life “insurance policy is a contract[,] and its provisions govern the rights and duties of the parties thereto.” *Fid. Bankers Life Ins. Co. v. Dortch*, 318 N.C. 378, 380, 348 S.E.2d 794, 796 (1986). The contract therefore dictates who is entitled to life insurance proceeds. *Id.* “[A]n insurance company may make reasonable rules and regulations by which the insured may change the beneficiary named in the policy of insurance . . . and [] such rules and regulations become a part of the contract.” *Wooten v. Grand United Ord., O. F.*, 176 N.C. 52, 55, 96 S.E. 654, 656 (1918). An insured attempting to change the named beneficiary “must make the change in the manner required by his policy and the rules of the association, and [] any material deviation from this course will render the attempted change ineffective.” *Id.* at 56-57, 96 S.E.

at 656. A beneficiary change “may be accomplished by an insured who has ‘expressed a clear, unequivocal intent to change the beneficiary’ and ‘performed every act in his power to perform.’” *Adams v. Jefferson-Pilot Life Ins. Co.*, 148 N.C. App. 356, 361, 558 S.E.2d 504, 508 (2002) (quoting *Sudan Temple v. Umphlett*, 246 N.C. 555, 558, 99 S.E.2d 791, 793 (1957)).

¶ 9 Appellants argue that the trial court erred in granting summary judgment for the Appellee because Ms. Neely intended and attempted to change the beneficiary of her policy before her death, thus “substantially complying” with Provident Life’s requirements. We disagree.

¶ 10 Under the substantial compliance doctrine, “[t]he insured has substantially complied with change of beneficiary requirements if ‘all that remains to be done are ministerial acts.’” *Adams*, 148 N.C. App. at 361, 558 S.E.2d at 508 (quoting *Teague v. Pilot Life Ins. Co.*, 200 N.C. 450, 456, 157 S.E. 421, 424 (1931)) (internal brackets omitted). An act is ministerial when it “leave[s] nothing to the exercise of judgment or discretion[.]” *Id.* at 362, 558 S.E.2d at 508 (internal quotation and citations omitted).

¶ 11 This doctrine is satisfied if there is “nothing further that [the insured] might do to accomplish a change in beneficiary” and the only action that remains is administrative filing by the insurance company. *Id.* at 363-64, 558 S.E.2d at 509. For example, in *Adams*, decedent completed a change of beneficiary form and

returned it to an agent of the insurance company before his death. *Id.* at 357, 558 S.E.2d at 506. However, the agent failed to mail the form to the insurance company's office until after the decedent's death. *Id.* at 358, 558 S.E.2d at 506. This Court found that (1) decedent was the owner of the policy, (2) he took "affirmative steps" to change the policy's beneficiary, and (3) the form itself complied "in significant measure" with the insurance company's procedures. *Id.* at 361, 558 S.E.2d at 508. We therefore held that decedent substantially complied with the insurance company's procedures, because "it only remained for office administrators to complete the filing and endorsement of the change of beneficiary form," which was merely ministerial. *Id.* at 362, 558 S.E.2d at 508.

¶ 12 Here, in the light most favorable to Appellants, it appears that Ms. Neely intended to change her policy's beneficiary and attempted to do so in conformance with the insurance company's requirements. However, Ms. Neely did not perform "every act in [her] power" to perform, and more than mere ministerial acts remained to process her beneficiary request. Therefore, the substantial compliance doctrine has not been satisfied.

¶ 13 Provident Life, by its rules and regulations which are incorporated into the contract, required the insured to complete and submit a change of beneficiary form, which Ms. Neely submitted before her death. However, for the company to effect the requested change in beneficiary, this form needed to be completed clearly. Provident

Life was not able to process Ms. Neely’s requested change for the following reasons: (1) “Beneficiary names are not legible – one person may have been listed twice”; (2) “No relationship noted for some of the beneficiaries”; (3) “Percentage of payment for each beneficiary not noted”; and (4) “Spelling of insured name on the form does not match [] records[.]” Thus, Ms. Neely’s attempted change of beneficiary did not comply in “significant measure” with Provident Life’s requirements.

¶ 14 Unlike in *Adams*, where all that remained for the insurance company was administrative filing, Provident Life had more than mere ministerial acts remaining to effect Ms. Neely’s requested change of beneficiary. At the time Ms. Neely submitted the form, the identities of the intended beneficiaries were not completely clear to Provident Life, nor was the percentage of payment each beneficiary would receive under the policy. In order to process the requested change, Provident Life would have had to exercise “judgment or discretion” to determine (1) why one of the intended beneficiaries was listed twice on the form and (2) what percentage each beneficiary should receive under the policy. Instead of exercising this discretion, Provident Life notified Ms. Neely that it could not process her request, and further action was needed from Ms. Neely to clarify her beneficiary designation.

¶ 15 Therefore, in the light most favorable to Appellants, the trial court did not err by granting Appellee’s motion for summary judgment, because more than mere ministerial acts remained to process Ms. Neely’s request, and the beneficiary change

request form was not in substantial compliance with Provident Life's procedures. Appellee was thus entitled to judgment as a matter of law as the named beneficiary under Ms. Neely's life insurance policy.

C. Appellants' Motion for Summary Judgment

¶ 16 For the same reasons stated above, in the light most favorable to Appellee, the trial court did not err in denying Appellants' motion for summary judgment.

III. Conclusion

¶ 17 We therefore hold that the trial court did not err in granting summary judgment in favor of Appellee, because Ms. Neely's life insurance policy named Appellee as the beneficiary, and the beneficiary change request form attempting to name Appellants as beneficiaries did not substantially comply with Provident Life's contractual procedures.

AFFIRMED.

Judges ARROWOOD and COLLINS concur.

Report per Rule 30(e).