

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ANN OTTO,

Third-Party Plaintiff,

v.

OPINION and
ORDER

00-C-0171-C

ESTATE OF MARVIN MOEN,
GARY KAHL, PERSONAL REPRESENTATIVE;
GARY KAHL, PERSONALLY and
GLORIA KAHL,

Third-Party Defendants.

This is an interpleader action brought by Lutheran Brotherhood against Ann Otto, f/k/a Ann Moen, Gloria Kahl and Gary Kahl, the named beneficiaries of decedent Marvin Moen's life insurance contracts and annuities, in order to determine the appropriate disbursement of death benefit contract proceeds. Ann Otto is Moen's former wife; Gloria Kahl is Moen's sister; and Gary Kahl is Moen's brother-in-law. In an order entered September 1, 2000, Lutheran Brotherhood was dismissed from the case after it agreed to deposit the total value of Moen's death benefit contracts into an escrow account. At that point, Otto filed a third-party complaint against third-party defendants Estate of Marvin Moen, Gary Kahl, personal

representative; Gary Kahl, personally and Gloria Kahl, demanding the proceeds of Moen's three life insurance contracts and two annuities. (For the remainder of the opinion, I will refer to third-party plaintiff Otto as plaintiff and third-party defendants Estate of Moen, Gary Kahl and Gloria Kahl as defendants.) This court has jurisdiction pursuant to 28 U.S.C. § 1332. The case is before the court on plaintiff's motion for summary judgment.

The only issue in the case is a legal one: whether Moen's life insurance policies and annuity contracts are subject to Wis. Stat. § 854.15, which works an automatic revocation of the designation of a former spouse as a beneficiary following divorce or annulment. If the statute does apply, it revokes plaintiff's status as beneficiary. Plaintiff contends that the statute cannot be applied because it was not enacted until after her former husband had named her as his beneficiary; applying it now to revoke her status would be an unconstitutional impairment of contract. Defendants oppose plaintiff's request for summary judgment, arguing that judgment should be entered for them on the ground that as a matter of law § 854.15 revoked plaintiff's interests in the death benefit contracts.

I conclude that § 854.15(3) is not an unconstitutional retroactive impairment of contract and that there is no reason not to apply it in this case. The statute has no retroactive application to contracts already in existence and it does not prevent anyone from choosing his or her beneficiaries up until the date of death, subject only to the exceptions contained in the

statute, none of which apply in this case. Therefore, I will deny plaintiff's motion for summary judgment and grant summary judgment in favor of defendants.

For the sole purpose of deciding this motion, I find from the parties' proposed findings of fact that the following material facts are undisputed.

UNDISPUTED FACTS

A. The Parties

Interpleader plaintiff Lutheran Brotherhood is a fraternal benefit society duly organized and existing under the laws of Minnesota with its principal place of business in Minneapolis, Minnesota. Lutheran Brotherhood is licensed and authorized by the State of Wisconsin to sell life and health insurance contracts and annuities.

Third-party plaintiff Ann Otto is a resident of the state of Wisconsin and is the designated beneficiary on five death benefit contracts taken out by Marvin Moen.

Third-party defendants Gary Kahl and Gloria Kahl are residents of the State of Wisconsin. Gloria Kahl is Moen's sister and Gary Kahl is Moen's brother-in-law.

Marvin Moen died on June 24, 1999.

B. The Divorce

On February 25, 1998, the Circuit Court for Polk County, Wisconsin, entered an order of divorce between plaintiff and Moen. Pursuant to the judgment, neither party was obligated to carry life insurance for the benefit of the other party or any third party. Each party was awarded ownership of any life insurance policy or annuity insuring his or her life.

C. The Statute

Wis. Stat. § 854.15 took effect on May 12, 1998, and applied to deaths occurring on or after January 1, 1999. In pertinent part, the law provides:

3. Except as provided in subs. (5) and (6), a divorce, annulment or similar event does all of the following:

a. Revokes any revocable disposition of property made by the decedent to the former spouse or a relative of a former spouse in a governing instrument.

(The exceptions specified in subsections (5) and (6) are inapplicable in this case. They include such things as express orders of a court providing for one spouse to maintain life insurance for the other or an express term in a contract made between the decedent and the former spouse.)

D. The Death Benefit Contracts

Before his divorce from plaintiff, Moen made the beneficiary designations on his three

life insurance contracts and two annuities. At the time of his death, Moen owned Lutheran Brotherhood life insurance contracts with beneficiaries and death benefits as follows:

<u>Contract Number</u>	<u>Beneficiary</u>	<u>Death Benefit</u>
2551773	Primary: Ann M. Moen, wife First Contingent: Loraine Seeler, sibling (predeceased insured) Gloria Kahl, sibling	\$ 31,248.95
0249633	Primary: Ann M. Moen, wife First Contingent: Gary Kahl, brother-in-law Gloria Kahl, sibling Second Contingent: Brian Kahl, nephew Christopher Kahl, nephew Mark Kahl, nephew Charlton Kahl, nephew	\$ 3,978.18
0337458	Primary: Ann M. Moen, wife First Contingent: Gary Kahl, brother-in-law Gloria Kahl, sibling Second Contingent: Brian Kahl, nephew Christopher Kahl, nephew Mark Kahl, nephew Charlton Kahl, nephew	\$ 10,087.29

At the time of his death, Moen owned Lutheran Brotherhood individual retirement annuities with beneficiaries and death benefits as follows:

<u>IRA Number</u>	<u>Beneficiary</u>	<u>Death Benefit</u>
B2080062	Primary: Ann M. Moen, wife First Contingent: Gary Kahl, brother-in-law Gloria Kahl, sibling Second Contingent: Brian Kahl, nephew Christopher Kahl, nephew Mark Kahl, nephew Charlton Kahl, nephew	\$ 6,732.87
B2095317	Primary: Ann M. Moen, wife First Contingent: Gary Kahl, brother-in-law Gloria Kahl, sibling Second Contingent: Brian Kahl, nephew Christopher Kahl, nephew Mark Kahl, nephew Charlton Kahl, nephew	\$ 37,667.17

On or about July 12, 1999, defendants Gary Kahl and Gloria Kahl wrote to Lutheran Brotherhood, saying that § 854.15 had the effect of revoking Moen's designation of plaintiff as the primary beneficiary on the Lutheran Brotherhood insurance contracts and annuities. On or about November 22, 1999, and December 14, 1999, plaintiff demanded that Lutheran Brotherhood pay her the proceeds of Moen's life insurance policies and annuities in accordance with the terms of the contracts and the beneficiary designations. Lutheran Brotherhood refused to disburse the proceeds to any person without a court order.

E. The Lawsuit

On March 28, 2000, Lutheran Brotherhood filed an interpleader complaint against Ann Otto, Gloria Kahl and Gary Kahl. Subsequently, Lutheran Brotherhood was dismissed from the interpleader action after it deposited the total value of Moen's death benefit contracts into an escrow account with the court pending final determination of the proper beneficiary.

OPINION

To succeed on a motion for summary judgment, the moving party must show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. See Fed. R. Civ. P. 56(c); see also Celotex v. Catrett, 477 U.S. 317, 324 (1986). Summary judgment may be awarded against the non-moving party only if the court concludes that a reasonable jury could not find for that party on the basis of the facts before it. See Hayden v. La-Z-Boy Chair Co., 9 F.3d 617, 618 (7th Cir. 1993).

The parties agree that there is no genuine issue of material fact precluding the court from granting summary judgment. The only dispute is the legal effect of Wis. Stat. § 854.15 (3)(a). Plaintiff contends that applying § 854.15(3)(a) in this case would have the effect of

impairing contracts in violation of Article 1, Section 10 of the United States Constitution and Article I, Section 12 of the Wisconsin Constitution because the statute did not take effect until after the contracts had been formed. In support of her argument, she cites Wipperfurth v. U-Haul Co. of Western Wisconsin, Inc., 101 Wis. 2d 586, 304 N.W.2d 767 (1981), a case in which the Wisconsin Supreme Court held that the Wisconsin Fair Dealership Law retroactively impaired contractual obligations and that the retroactive application was unconstitutional because the law did not serve a vital governmental purpose.

Wipperfurth is relevant precedent only if plaintiff can establish that § 854.15 affects a contractual obligation and that it has retroactive application. Plaintiff has not alleged the existence of any contract between herself and her former husband that gave her a right to remain the designated beneficiary. (If she had, this case would be over; § 854.15 does not apply when there is a showing of the decedent's contrary intent.) Rather, her "contract" claim derives from Wisconsin law to the effect that beneficiaries of life insurance policies have an entitlement to the death benefit under principles of contract law. See In re Marriage of Lang v. Lang, 161 Wis. 2d 210, 223, 467 N.W.2d 772 (1991); Bersch v. VanKleeck, 112 Wis. 2d 594, 597, 334 N.W.2d 114, 116 (1983). Defendants argue that plaintiff cannot challenge the application of § 854.15: when her former husband died, the statute had worked a revocation of her status as a beneficiary of his death benefits.

Defendant's argument begs the question. Plaintiff is no longer a beneficiary of the insurance policies and annuities only if the statute is valid and applicable. If it is not, she is a beneficiary entitled to claim the death benefits under principles of contract. Therefore, it is necessary to consider plaintiff's argument, although it should be plain from the fact that any "contract" plaintiff had did not exist until the decedent's death that § 854.15 cannot be challenged for its asserted retroactive effect.

"Retrospective operation is not favored by the courts . . . and a law will not be construed as retroactive unless the act clearly, by express language or necessary implication, indicates that the legislature intended a retroactive application." Id. at 590, 304 N.W.2d at 769 (quoting Swanke v. Oneida County, 265 Wis. 92, 99, 60 N.W.2d 756 (1953)). In Wipperfurth, the court determined that the law was intended to be retroactive by looking at the legislative history in which the drafters had stated their intent that the fair dealership law was to "govern all dealerships, including any renewals or amendments." Id.

Unlike the fair dealership law, § 854.15 was drafted to apply only to contracts that went into effect in the future. The legislature provided that the statute "first applies to deaths occurring on January 1, 1999, except with respect to irrevocable governing instruments executed before that date." 1997 Act 188, § 233(1).

It is doubtful that plaintiff can assert her former husband's rights of contract. Such

claims belong to his estate. Even if she could, it would not change the analysis of the statute's retroactivity. Although § 854.15(3) revokes Moen's designation of his ex-wife as beneficiary on the date of his death, the statute did not work any impairment of Moen's ability to designate beneficiaries of his life insurance contracts and annuities. Up until his death Moen was free to make any designation he wanted in the way of beneficiaries, including his former wife. All he would have had to do to provide for his former wife to receive the proceeds of his death benefit contracts was to amend the designation of beneficiary forms to make it express that she was to remain as his beneficiary. See Wis. Stat. § 854.15(5)(a) (revocation of former spouse as beneficiary does not occur if "[t]he express terms of a governing instrument provide otherwise." Wis. Stat. § 854.15 is nothing more than a default position: if, before his death, Moen did not add express language to his beneficiary forms or declare the intent that his former wife remain his beneficiary, his previous designation of his former spouse as beneficiary would be revoked automatically. It is evident that Wis. Stat. § 854.15(3) operates prospectively only and that it impairs no existing contracts.

I conclude that application of § 854.15(3) to Moen's life insurance contracts and annuities is not an unconstitutional retroactive impairment of contract. Plaintiff has not advanced any other reason why the statute should not apply. Therefore, judgment will be granted in favor of defendants.

ORDER

IT IS ORDERED that summary judgment is GRANTED in favor of defendants Estate of Marvin Moen, Gary Kahl, personal representative; Gary Kahl, personally and Gloria Kahl. FURTHER, IT IS ORDERED that the motion for summary judgment filed by third-party plaintiff Ann Otto is DENIED. IT IS DECLARED that Wis. Stat. § 854.15 effectively revoked Marvin Moen's designation of his former wife, Ann Otto, as beneficiary of his death insurance and annuities. The \$93,495.27 placed in escrow by Lutheran Brotherhood is to be distributed to Gary Kahl and Gloria Kahl.

The clerk of court is directed to enter judgment for third-party defendants and close this case.

Entered this 29th day of November, 2000.

BY THE COURT:

BARBARA B. CRABB
District Judge