IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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PRINCIPAL LIFE INSURANCE COMPANY,

Plaintiff,

v.

GILLIANNE M. FIELDS, LUCINDA E. FIELDS, ARIANNA M. FIELDS and JOY BOWERS,

Defendants.

OPINION and ORDER

01-C-0710-C

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This interpleader action was initiated by plaintiff Principal Life Insurance Company to establish the rights of various parties to proceeds from a life insurance policy issued by plaintiff on the life of Stuart M. Fields, who died in 1998. Plaintiff has deposited the proceeds into the court and has been dismissed from the case. The remaining issue is to determine which of the defendants is entitled to the insurance proceeds. Fields's wife, Joy Bowers, contends that she is entitled to 90% of the proceeds of the policy because Fields changed the beneficiary designation in her favor about six months before he died. Fields's daughters, Lucinda and Arianna Fields, contend that they are entitled to all of the proceeds

because their father was under court orders to obtain life insurance to cover his support obligations to his daughters and violated those orders when he submitted the change in beneficiary form to plaintiff.

Jurisdiction is present. The life insurance policy was issued pursuant to an employee benefit welfare plan covered by the provisions of the Employee Retirement Income Security Act, § 1001-1461.

I conclude that when Stuart Fields changed his beneficiary designation, he acted in violation of orders issued by courts in Oregon and in Wisconsin requiring him to obtain a life insurance policy to cover his court-ordered support requirements. I cannot determine whether his violation of the court orders entitles his two younger daughters to equitable relief in the form of a constructive trust imposed on the policy proceeds because the record is devoid of any evidence that Joy Bowers had either actual or constructive notice of her husband's change of beneficiaries and of the wrongfulness of his act. It will be necessary to proceed to trial on that issue. If the daughters can make the showing that Joy Bowers had the requisite knowledge, they will have an opportunity to prove up the amount of the proceeds to which they are entitled.

UNDISPUTED FACTS

At the time of his death, Stuart M. Fields, was the named insured under a life

insurance policy issued by plaintiff Principal Life Insurance Company under an employee benefit welfare plan, pursuant to ERISA. The policy had a face value of $50,000 and was in full force and effect. Fields was married to Joy Bowers and was the father of Gillianne, Lucinda and Arianna, by a prior marriage. Gilliane was born October 6, 1977, Lucinda was born December 7, 1979 and Arianna was born April 23, 1982.

When Fields died, his daughter Gillianne was 21 years old; Lucinda was 18 and Arianna was 16. When he divorced his first wife, Gloria Jean, on March 31, 1991, the Circuit Court for the County of Union, Oregon, entered an order awarding custody of the three children to Gloria Jean and directing Fields to pay child support for each until the child reached 18 or was otherwise emancipated, unless the child was attending school as defined by Oregon law, in which case the support was to continue until the child reached 21. In addition, Fields was ordered to apply for any life insurance policies available to him through his employment and maintain a policy naming the children as beneficiaries and Gloria Jean as trustee to cover his child support obligation as specified in the decree. He was to pay all of the premiums for his children's health insurance and 75% of all of their medical expenses not covered by insurance.

Sometime after his divorce, Fields married Joy Bowers and moved to Eau Claire, Wisconsin. After he had moved, Yuma County, Arizona applied to the courts in Eau Claire County for help with the collection of child support arrears and future child support

payments from Fields. On February 11, 1993, the Circuit Court for Eau Claire County determined that because Fields had come forward with money to satisfy his Oregon child support order and his child support arrears in Yuma County and was willing to accept an income assignment if he should miss any future payments, the court would dismiss an income assignment directed to Fields's employer, dated February 3, 1993, and order Fields to pay $300 a month in child support. On April 13, 1995, the court held another hearing at which it found that Fields's health had improved greatly, that he was earning money as a chiropractor and that he could pay 29% of his income for child support. The court ordered him to split the costs of his daughters' unreimbursed medical expenses equally with his first wife. On August 4, 1998, the court held a hearing on Fields's motion to discontinue his support payments because of his health condition. The court refused to discontinue the payments altogether but reduced them to 15%.

As directed in the divorce decree and affirmed by the Circuit Court for Eau Claire County in an order entered January 23, 1996, Fields made his children beneficiaries of a life insurance policy in the amount of $50,000 and named his former wife as trustee. On July 21, 1998, he executed a form naming Joy Patricia Bowers the beneficiary of 90% of the policy proceeds and Arianna as beneficiary of 10%. This form was received by plaintiff on July 28, 1998. Fields did not obtain the permission of any court to make the change.

When Fields died, he owed his first wife $1,714.14 for the 75% of his children's

unreimbursed medical expenses he was obligated to pay through April 25, 1995; $2,728.79 for 50% of his children's unreimbursed medical expenses from April 26, 1995 through December 1998; and $7,680.00 for health insurance premiums from January 1995 through December 1998, for a total of $12,122.93.

OPINION

Stuart Fields's life insurance policy was provided to him through an employee welfare plan regulated by ERISA. ERISA contains a general preemption clause providing that ERISA's provisions "shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan." 29 U.S.C. § 1144(a). There is an exception to this preemption, added by the Retirement Equity Act of 1984, for "Qualified Domestic Relations Orders." 29 U.S.C. § 1144 (b)(7). This provision excludes from ERISA preemption a domestic relations order that "assigns to an alternate payee the right to . . . receive all or a portion of the benefits payable with respect to a participant under a plan." 29 U.S.C. § 1056(d)(3)(B)(i). To qualify, the order must "clearly specif[y]" three things: the mailing address of each alternate payee, "the amount or percentage of the participant's benefits to be paid by the plan to each such alternate payee, or the manner in which such amount or percentage is to be determined," and "each plan to which such order applies." 29 U.S.C. §§ 1056(d)(3)(C)(i), (ii), (iv).

The Oregon decree contains the information necessary for a qualified domestic relations order: the names of the children and the mailing address of the children's mother, to whom custody of the children was awarded; the amount of benefits to be paid by the plan (up to $100,000 of life insurance obtained through Fields's employer); the number of payments or period to which such order applies (until the last child is 18 or 21, if attending school); and each plan to which the order applies (the welfare benefit plan made available to Fields through his employer).

Because ERISA is preempted with respect to qualified domestic relations orders such as the divorce decree setting out Stuart Fields's support obligations and because issues of family law are matters of state concern, Hisquiedro v. Hisquierdo, 439 U.S. 572, 581 (1979), I will apply state law to the interpretation of the decree and the remedy. Wis. Stat. § 769.604(1) provides that the law of the issuing state applies to determinations of support obligations. Because Oregon is the law in which the divorce decree was issued, its law governs the case.

Under the terms of the divorce decree, Fields was required to obtain and maintain a life insurance policy naming his children as beneficiaries "to cover his child support obligation." He breached this provision by changing the beneficiary designation to exclude one of his children and add his second wife. The question is whether his two younger daughters are entitled to the remedy of a constructive trust. (Fields's oldest daughter,

Gillianne, was 21 when he died.) Oregon does not encourage the imposition of such trusts. In a recent case, Oregon Pacific State Ins. Co. v. Jackson, 986 P.2d 650 (Or. Ct. App. 1999), the Court of Appeals of Oregon denied a request for a constructive trust, holding that the facts of the case did not justify the imposition of such a trust on life insurance proceeds to remedy a decedent's breach of his court-ordered obligation to obtain and maintain a life insurance policy for the benefit of his children. The court began with the proposition that "a constructive trust may be imposed only when the defendant holds property that rightfully belongs to another and is thereby unjustly enriched," id. at 658, and noted that the decedent had changed the names of his beneficiaries to delete his children *before* the court ordered him to obtain life insurance and the new beneficiary did not have actual or constructive notice that it was wrong for the decedent to have made the change. In the court's view, at the time the decedent changed the beneficiaries, the policy did not belong irrevocably to his children. The court cited with approval an earlier case, McDonald v. McDonald, 643 P.2d 1280 (Or. Ct. App. 1982), in which it had denied the imposition of a constructive trust on the proceeds of life insurance policies that the decedent had purchased for the benefit of his second wife after he had agreed to maintain a $10,000 life insurance policy for the benefit of his children from a prior marriage but had allowed the policy to lapse.

The court of appeals has not denied all attempts to impose constructive trusts. In

Sinsel v. Sinsel, 614 P.2d 115 (Or. Ct. App. 1980), the court approved the imposition of a trust on insurance proceeds payable to a second wife when the decedent had designated his daughter as beneficiary during divorce proceedings, thus identifying it as satisfying the requirement of the judgment, the divorce decree required him to continue "an insurance policy as good or better than presently carried," id. at 117, and his second wife was aware of the requirement, knew that he intended to change the beneficiary designation on his policy in her favor and knew that her husband had no other policy naming his daughter as beneficiary.

This case meets one of the two factors that distinguish Sinsel from McDonald and Jacksona: it concerns a policy that was changed to name the decedent's wife as beneficiary after the divorce decree was entered, unlike Jackson, 986 P.2d 650, in which the decedent deleted his children's names from his insurance policy before judgment was entered, or McDonald, 643 P.2d 1280, in which the decedent allowed the policy covered by the decree to lapse. However, there is no evidence in the record from which I could find that Joy Bowers had either actual or constructive notice that her husband's change of beneficiary was a wrongful act. Cf. Sinsel, 614 P.2d at 117 (decedent's second wife knew of requirement in divorce decree, knew of her husband's intention to make her the beneficiary and knew of no other policy he carried that would meet his obligations under the decree). An internal memorandum of plaintiff dated May 2, 2000, suggests that Bowers had some knowledge that

Fields changed the beneficiaries. This evidence is hearsay as it relates to Bowers so I cannot consider it.

If Lucinda and Arianna wish to pursue the remedy of a constructive trust rather than look to their father's estate for relief, they will have to adduce evidence at trial that Joy Bowers had actual or constructive notice of her husband's act and of its wrongfulness. If they can make this showing, on which they will have the burden of proof, I will impose a constructive trust on the life insurance proceeds equal to the amount that Stuart Fields owed in unreimbursed medical expenses and the child support he would have paid had he lived until his child support obligations expired. Although Lucinda and Arianna have asked only for medical expenses incurred to the time of their father's death, at trial they will have an opportunity to show that they are entitled to reimbursement for these expenses up until the time that their father's child support obligations would have terminated. Joy Bowers will have an opportunity to introduce relevant evidence and make any arguments she has in opposition to Lucinda and Arianna's case.

ORDER

IT IS ORDERED that this matter will be set on for trial to the court on 9:00 a.m., Central Standard Time, November 25, 2002, in Courtroom 250, United States Courthouse, Madison, Wisconsin. The two issues to be decided will be whether Joy Bowers had actual

or constructive notice of her husband's change of beneficiary form and of the wrongfulness of that act and, if so, the amount of the proceeds of the life insurance policy on Stuart Fields's life to which Lucinda Fields and Arianna Fields are entitled. A final pretrial conference will be held on November 25, 2002, immediately before the start of trial, at 8:30 a.m., in Courtroom 250.

If any party wishes to conduct discovery, that is, take depositions of witnesses or serve requests for admission or interrogatories, she must plan her discovery so that it is completed no later than October 25, 2002. Information on discovery may be found in the Federal Rules of Civil Procedure, Rules 26 through 37. If the parties have disputes about discovery, they are to make a good faith attempt to resolve the dispute informally before asking the court to intervene. Any request for court intervention must be accompanied by an affidavit setting forth the efforts the parties have made to settle the dispute among themselves.

No later than September 9, 2002, the parties are to exchange lists of all witnesses whom they intend to call at trial. When the parties and counsel appear for trial, they should have with them for the court's use: 1) a list of all witnesses; 2) a list of all exhibits they intend to use at trial; and 3) copies of all written exhibits. They should also have all of their

exhibits. Witnesses must be present and ready to testify on the first day of trial.

Entered this 29th day of July, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge