

STATE OF MICHIGAN
COURT OF APPEALS

ANNETTE BOSCHER, f/k/a ANNETTE SINCIC,

Plaintiff-Appellant,

v

CHRISTOPHER SINCIC and FIRST COLONY
LIFE INSURANCE COMPANY,

Defendants-Appellees.

UNPUBLISHED

July 1, 2008

No. 276284

Livingston Circuit Court

LC No. 06-022048-CZ

Before: Gleicher, P.J., and Fitzgerald and Hoekstra, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order denying her motion for summary disposition and granting summary disposition in favor of defendants. We affirm.

I

Plaintiff Annette Boscher, f/k/a Annette Sincic, and defendant Christopher Sincic (Sincic), are the parents of Nicholas Sincic. In 1989, plaintiff filed a product liability action on behalf of herself and as next friend of Nicholas.¹ Sincic was later added as an individual plaintiff. The action, which alleged that the failure of medical monitoring equipment caused severe brain damage to Nicholas, was settled and, on April 22, 1991, the terms of the settlement agreement were placed on the record. The terms were as follows:

A) Initial payment of \$1,500,000.00 payable to all parties.

B) Structured payments payable to and for the benefit of Nicholas Boscher, as follows:

i. Ten payments of \$70,000 per year commencing 01/01/92 and annually thereafter and including 01/01/01 guaranteed in the event of Nicholas' death.

¹ Before the filing of the action, defendant filed a divorce action against plaintiff.

ii. Payments of \$80,000 per year commencing 01/01/02 payable only during the life of Nicholas.

iii. Guaranteed lump sum payments as follows:

100,000.00 on 04/01/96

200,000.00 on 04/01/01

300,000.00 on 04/01/06

400,000.00 on 04/01/11

The settlement agreement further provided in paragraph 9, labeled “Plaintiff’s Beneficiary,” that:

Any payments to be made after the death of Plaintiff, Nicholas Boscher, a minor, in accordance with the terms of this Agreement shall be made to the beneficiary as designated herein or to such beneficiary as may be requested in writing by Christopher Sincic, as Conservator of the Estate of Nicholas Boscher, a minor, acting in that capacity on behalf of Nicholas Boscher, a minor, to the owner of the annuity. If no beneficiary is designated herein or requested by Christopher Sincic, as Conservator of the Estate of Nicholas Boscher, a minor, the payments shall be made to the Estate of Nicholas Boscher, a minor. No request made under this section nor any revocation thereof shall be effective unless it is in writing and delivered to the owner of the annuity. Payments due after the death of Nicholas Boscher, a minor, shall be made in equal amounts to Annette Sincic and Christopher Sincic, individually, if living, otherwise to their respective estates. [Emphasis in original.]

The liability to make payments was subsequently assigned to Jamestown Life Insurance Company and an annuity was purchased through defendant First Colony Life Insurance Company in accordance with the 1991 settlement agreement. The payment schedule reflected the terms of the 1991 settlement agreement, and further indicated that “Payments should be made to NBD Bank . . . while Nicholas Sincic is living; otherwise, in equal amounts to Annette Sincic Ashley and Christopher Sincic, individually, if living; otherwise to their respective Estates.”

In 1996, as a result of ongoing proceedings following plaintiff and Sincic’s divorce, as well as the fact that the 1991 consent order effectuating the 1991 settlement agreement “made no distribution allotment for the Consent Judgment proceeds among the three separate Plaintiff parties,” plaintiff and Sincic reached an agreement regarding “distribution allotment for the Consent Judgment proceeds” and a consent order was entered (the 1996 consent order). The order was precipitated in part by plaintiff’s motion to settle her right to share in the proceeds. At the hearing on the motion, the following colloquy occurred between plaintiff and Sincic’s attorney:

Q. . . . under the present personal injury action and the recovery there, you had the right to received some portion of that income and to inherit upon Nicholas’ death, and you have agreed to receive \$100,000.00 now and that a result, you would also –you would then waive your right to receive any further monies as a result of your status as a plaintiff in Case Number 89-10189-NP. And you are also waiving your right to inherit upon Nicholas’ death, and that will

represent a full and final distribution to you as a result of your relationship to Nicholas. Do you understand that?

A. Yes.

Q. All right. And you've had a chance to consult with Mr. Turnwald in regard to this, and you understand what rights you had and what rights you're releasing, is that right?

A. Yes.

Q. And you – you have agreed that you will sign any amendments that are necessary to the trust of Nicholas that would be required to release your rights to inherit upon his death. And there may be some documents that you would have to sign to accomplish that, and those documents would then state and provide that all future monies would – would go to the support of Nicholas and/or to Mr. Sincic at Mr. Sincic's sole discretion. That he can basically design a trust amendment, and you will sign it waiving and releasing any rights you would have to inherit and any future income from this estate. Is that right?

A. Yes.

Q. And any future lump sum payments from the estate.

A. Yes.

The 1996 consent order entered after the hearing provided, in part, that in exchange for \$100,000, plaintiff

forever and irrevocably releases, disclaims, and waives the following:

a. any and all claims she has, had, or may have, now or in the future, as a Plaintiff Party to this action;

b. any claim she has, had, or may have, now or in the future, to inherit from Nicholas under the law of intestate succession or otherwise;

c. any right or claim she has, had, or may have, now or in the future, to be compensated in any manner whatsoever for visiting Nicholas or providing services to him of any kind; and

d. any right or claim she has, had, or may have, now or in the future, to recover any damages from any person or any entity based on her relationship to Nicholas, including without limitation a right to recover damages as a result of medical malpractice, product liability action, general negligence, wrongful death, or any other cause of action that causes or caused damage to Nicholas.

In 1999, Sincic filed a petition in the products liability action to assign the unassigned proceeds of the 1991 settlement agreement and close the custodial account. The petition alleged

that there were unresolved issues regarding the allocation of the 2001, 2006, and 2011 lump-sum payments among the plaintiffs to the product liability action. It also alleged that plaintiff had relinquished any claim to the settlement proceeds by virtue of the 1996 consent order. Sincic requested that the future lump sum payments be allocated to him as damages under the product liability action and close the NBD account.² A hearing was held on the petition on April 14, 1999. The resultant 1999 consent order “allocated and assigned” to Sincic the three future lump sum payments that were “previously unallocated among the Plaintiffs” under the 1991 settlement agreement. It further ordered that no portion of the remaining settlement proceeds were to be “distributed or allocated” to plaintiff based on the effect of the 1996 consent order.³

After Nicholas died in October 2000, plaintiff filed this action asserting her right to share in the lump sum payments. Sincic asserted that plaintiff had waived her beneficiary rights pursuant to the 1996 consent order or the 1999 consent order entered in the underlying action. The parties filed cross motions for summary disposition. The trial court determined that the 1996 consent order established that plaintiff had waived her beneficiary rights. The court denied plaintiff’s motion for summary disposition and granted summary disposition to defendants.

II

A motion under MCR 2.116(C)(10) tests the factual sufficiency of a claim. In reviewing the motion, a court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted in the light most favorable to the nonmoving party. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). Summary disposition is proper if “there is no genuine issue as to any material fact, and the moving party is entitled to judgment . . . as a matter of law.” MCR 2.116(C)(10). Conversely, the court may grant summary disposition to the party opposing the motion if it determines that the opposing party is entitled to judgment as a matter of law. MCR 2.116(I)(2). This Court reviews a trial court’s decision regarding a motion for summary disposition de novo. *Feyz v Mercy Mem Hosp*, 475 Mich 663, 672; 719 NW2d 1 (2006). This Court also reviews de novo issues of contract interpretation. *Archambo v Lawyers Title Ins Corp*, 466 Mich 402, 408; 646 NW2d 170 (2002).

III

Plaintiff argues that the trial court erred in concluding that plaintiff waived her beneficiary rights by virtue of the 1996 consent order. Judgments entered pursuant to the agreement of parties are in the nature of a contract and are to be construed and applied as contracts. *In re Lobaina Estate*, 267 Mich App 415, 417-418; 705 NW2d 34 (2005). The fundamental goal of contract interpretation is to determine and enforce the parties’ intent by reading the agreement as a whole and applying the plain language used by the parties to reach their agreement. *Dobbelaere v Auto-Owners Ins Co*, 275 Mich App 527, 529; 740 NW2d 503

² Neither plaintiff nor an attorney appeared on her behalf at the hearing on the motion.

³ The trial court stated that, based on an affidavit from plaintiff’s attorney, that it was satisfied that plaintiff had received notice of the April 14, 1999, hearing.

(2007). Whether a contract is ambiguous is a question of law. *UAW-GM Human Resource Ctr v KSL Recreation Corp*, 228 Mich App 486, 491; 579 NW2d 411 (1998). A contract is ambiguous when it may be reasonably interpreted in more than one way. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 467; 663 NW2d 447 (2003).

Plaintiff argues that the 1996 consent order is unambiguous because there is no reference to her beneficiary rights, and the rights she waived clearly did not encompass beneficiary rights. Conversely, Sincic argues that the consent order clearly indicates that plaintiff waived all of her rights.

Plaintiff and Sincic do not dispute that the 1996 consent order does not explicitly refer to beneficiary rights. The question is whether the order can reasonably be understood as including a waiver of such rights. Looking at the order as a whole, the first page reflects the parties' intent. The order states that plaintiff "now desires to reach a full and final settlement regarding her share of the Consent Judgment proceeds *and* any personal injury claims, rights, and/or damages she has or might have had as a result of the allegations set forth in the Complaint" A plain reading of this language indicates that the order resolves plaintiff's right to share in the settlement proceeds.

The hearing held before the order was entered also supports a finding that plaintiff intended for the 1996 consent order to foreclose her beneficiary rights. Parol evidence may be used to prove the existence of an ambiguity. *Meagher v Wayne State Univ*, 222 Mich App 700, 722; 565 NW2d 401 (1997). At the hearing, plaintiff answered yes to the question, "And you understand that this is intended to be a final resolution of all the claims that you and Mr. Sincic had with regard to each other and Nicholas and any money that comes in as a result of Nicholas's disability or his death, right?" The lump sum annuity payments were the only monies that were to be received after Nicholas's death. This suggests that plaintiff intended to give up her beneficiary rights to those payments. Plaintiff also answered yes when asked if she was "waiving and releasing any rights you would have to inherit and any future income from this estate. . . ." including "any future lump sum payments from the estate." This exchange speaks of a waiver of plaintiff's right to inherit. Further, plaintiff answered yes when asked if she knew that "there will be no further funds that you would receive other than this \$100,000.00 that we expect you to get in the next month or so." We view plaintiff's answers at the hearing as clear evidence of her intent to waive her beneficiary rights, as did the trial court.

Plaintiff also argues that the trial court's summary disposition decisions were erroneous because Sincic failed to substantially comply with the settlement agreement requirements for changing a beneficiary. She asserts that the consent orders did not satisfy these requirements and, therefore, she is still a named beneficiary entitled to her share of the proceeds. However, a named beneficiary is not entitled to retain benefits that were waived or divested under a judgment. In that circumstance, the failure to remove the beneficiary's name is of no consequence. *Sweebe v Sweebe*, 474 Mich 151, 155, 158; 712 NW2d 708 (2006); *Thomas v Detroit Retirement Sys*, 246 Mich App 155, 160-162; 631 NW2d 349 (2001). Therefore, whether plaintiff has beneficiary rights depends on whether she waived her rights under the 1996 consent order. Sincic's alleged non-compliance with the settlement agreement procedures is of no moment.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ E. Thomas Fitzgerald
/s/ Joel P. Hoekstra