

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

J.C. PENNEY LIFE INSURANCE CO. : CIVIL ACTION
:
v. :
:
CHRISTOPHER PAUL WONS and :
WENDY LEE WONS and KAREN PEREZ :
and PAUL WONS, JR. and :
MICHAEL WONS : No. 99-6412

MEMORANDUM ORDER

This is an interpleader action to settle the distribution of proceeds of the accidental death and dismemberment policy issues by plaintiff to Paul F. Wons ("Wons"). At issue is the claim of Michael Wons that he is entitled to an equal share of the proceeds with Christopher and Wendy Wons and their claim that they alone are entitled to share the proceeds.¹

Christopher and Wendy Wons have moved for summary judgment on their claim of entitlement to the policy proceeds and on their cross-claim against Michael Wons for tortious interference with contract. Michael Wons has moved for summary judgment on his claim of entitlement to a one third share of the proceeds.

¹Karen Perez entered an appearance but has filed no response to the interpleader or summary judgment motions. Paul Wons, Jr. was served but has not entered an appearance. He testified in a deposition that he is not entitled to any proceeds from the policy and is not pressing a claim.

In considering a motion for summary judgment, the court must determine whether "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247 (1986); Arnold Pontiac-GMC, Inc. v. General Motors Corp., 786 F.2d 564, 568 (3d Cir. 1986). Only facts that may affect the outcome of a case are "material." Anderson, 477 U.S. at 248. All reasonable inferences from the record must be drawn in favor of the non-movant. Id. at 256.

Although the movants has the initial burden of demonstrating the absence of genuine issues of material fact, the non-movant must then establish the existence of each element on which it bears the burden of proof. J.F. Feeser, Inc. v. Serv-A-Portion, Inc., 909 F.2d 1524, 1531 (3d Cir 1990) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986)). The non-moving party may not rest on his pleadings but must come forward with competent evidence from which a reasonable jury could return a verdict in his favor. Anderson, 479 U.S. at 248; Williams v. Borough of West Chester, 891 F.2d 458, 460 (3d Cir. 1989); Woods v. Bentsen, 889 F. Supp. 179, 184 (E.D. Pa. 1995).

While the parties differ as to the legal consequences, the pertinent facts are uncontroverted.

Paul Wons and Elizabeth Busza were married in 1966. Elizabeth had three children from a prior marriage, Paul ("Paul Jr."), Michael and Karen. Paul Jr.'s date of birth is unknown, but he was the oldest child of the three. Michael was born on October 22, 1961. Karen was born in 1964.

After the marriage, Paul Jr., Michael and Karen lived with Ms. Busza and Mr. Wons. On his employment application to SEPTA on June 7, 1969, Mr. Wons listed Mr. Busza's children's ages under the heading "Ages of Dependent Children."

Paul Wons never legally adopted Ms. Busza's children.² Although Mr. Wons never asked Mr. Busza's children to use his name, they used the surname Wons for some time after the marriage. From seventh grade on, Michael has used the Wons surname. Mr. Wons and Ms. Busza were listed as "parents/guardians" in Michael's second grade school records. Michael was baptized in 1967 as Michael Council Wons.

Wendy Wons was born in 1970, and Christopher Wons was born a year later. Wendy and Christopher are the natural children of Mr. Wons and Ms. Busza.

Karen moved out of the family house in 1980 at the age of sixteen. Michael moved out in 1986, at age twenty-four. It is unclear when Paul Jr. left the home.

²There is no evidence regarding the relationship between Michael, Paul Jr. and Karen and their biological father or whether he is still living.

Mr. Wons and Ms. Busza divorced in 1992. The ground for divorce was listed as "irretrievable breakdown - three year separation."

Mr. Wons attended Michael's 1993 wedding. Michael visited Mr. Wons approximately thirty-six times annually between 1993 and his death in 1998.

Mr. Wons took out a life insurance policy with Equitable Life Insurance on November 4, 1988. He listed as beneficiaries "Wendy - daughter" and "Chris - son" "in equal parts."

Mr. Wons also took out an accidental death and dismemberment policy, certificate number #74AW637505, in the amount of \$100,000 with plaintiff (the "Policy"). The Policy became effective on April 11, 1996. Mr. Wons did not name his beneficiaries. The Policy stated that if the insured does not name a beneficiary, the proceeds would be "paid to spouse if living; otherwise equally to your then living lawful children, if any (including stepchildren and adopted children); otherwise equally to your then living parents or parent; otherwise to your Estate." There is no other language in the Policy defining these terms.

Mr. Wons was injured in a car accident on October 31, 1998. Michael visited him in the hospital over the five days Mr. Wons was hospitalized after the accident. Mr. Wons died on

November 4, 1998.

Plaintiff has paid to Wendy and Christopher Wons \$20,000 each from the Policy proceeds. The remaining \$60,000 has been deposited with the Clerk of Court.

To be eligible to receive equal shares of the proceeds, Michael, Karen and Paul Jr. would have to be Paul Wons' lawful children under the Policy, that is, either "adopted" children or "stepchildren." The principles which govern interpretation of a contract of insurance under Pennsylvania law are well settled.³ The task of interpreting an insurance contract is generally performed by the court by reading the insurance policy as a whole and construing it according to the plain meaning of its terms. See Allstate Ins. Co. v. Brown, 834 F. Supp. 854, 856 (E.D. Pa. 1993); Nationwide Ins. Co. v. Horace Mann Ins. Co., 762 A.2d 346, 352 (Pa. Super. 2000) (intent of parties to be discerned from plain language of contract). See also Bateman v. Motorists Mut. Ins. Co., 590 A.2d 281, 283 (Pa. 1991); Standard Venetian Blind

³Under Pennsylvania choice of law rules, the interpretation of insurance contracts is governed by the law of the state in which the contract was made. Travelers Indem. Co. v. Fantozzi, 825 F. Supp. 80, 84 (E.D. Pa. 1993) (citing Crawford v. Manhattan Life Ins. Co., 221 A.2d 877, 880 (Pa. Super. 1966)). The place of making an insurance contract is the place of delivery. Travelers Indem., 825 F. Supp. at 804. It is unclear where the Policy was delivered, but the insured resided in Pennsylvania. See id. ("In the absence of proof as to the place of delivery, there is a presumption of delivery at the residence of the insured"). Also, the parties all rely on Pennsylvania law throughout their briefs. See Mellon Bank, N.S. v. Aetna Business Credit, 619 F.2d 1001, 1005 n.1 (3d Cir. 1980).

Co. v. American Empire Ins. Co., 469 A.2d 563, 566 (Pa. 1983); Williams v. Nationwide Mut. Ins. Co., 750 A.2d 881, 886 (Pa. Super. 2000).

Both the terms "stepchild" and "adopted child" are words of common usage with clearly established meanings. See Mellon Bank, N.A. v. Aetna Business Credit, Inc., 619 F.2d 1001, 1013 (3d Cir. 1980) ("Common words of accepted usage should be interpreted in accordance with their accepted usage unless such an interpretation would produce irrational results, the contract documents or terms are internally inconsistent, or proof of fraud, duress, mistake or subsequent oral modification vary the terms used."); Sherman v. Medicine Shoppe Int'l, Inc., 581 F. Supp. 445, 451 (E.D. Pa. 1984).

Adoption means to take into one's family through legal means and raise as one's own child. See American Heritage Dictionary of the English Language (4th ed. 2000); Webster's II: New Riverside University Dictionary 79 (1st ed. 1988); Random House Dictionary of the English Language 27 (2d ed. 1987).⁴ It is uncontroverted that Paul Wons neither legally adopted Paul Jr., Karen or Michael nor even took any steps to initiate such an

⁴Common usage of terms may be determined from dictionary definitions. Madison Const. Co. v. Harleysville Mut. Ins. Co., 735 A.2d 100, 108 (Pa. 1999); Fayette County Housing Auth. v. Housing & Redevelopment Ins. Exchange, 2001 WL 238436, *2 (Pa. Super. Mar. 12, 2001).

adoption. Paul Jr., Karen and Michael are not "adopted children" under the Policy.

The term "adopted child" is not ambiguous and the court cannot accept Michael's invitation to construe the term "broadly." A court should not torture the language of the policy to create ambiguities, and indeed should avoid creating ambiguities when construing the policy. See Eastern Assoc. Coal Corp. v. Aetna Cas. & Sur. Co., 632 F.2d 1068, 1075 (3d Cir. 1980); Continental Cas. Co. v. National Steel Corp., 533 F. Supp. 369, 374 (W.D. Pa. 1982). The court has found no reported case from any jurisdiction to support Michael's suggestion that an adult "adopts" a child when he stands in loco parentis to the child. To conflate the in loco parentis relationship with the adoptive parent relationship would be anomalous given the many Pennsylvania statutes that differentiate between parents and persons standing in loco parentis. See, e.g., 18 Pa. C.S.A. § 3206 (adult consent to minor's abortion); 24 Pa. C.S.A. § 15-1546 (release of pupils for religious instruction); 35 Pa. C.S.A. § 521.14a (treatment of minors for venereal disease); 50 Pa. C.S.A. § 4402 (commitment of minors to mental health institution); 77 Pa. C.S.A. § 562 (Pennsylvania Workers Compensation Act).⁵

⁵In contrast, Pennsylvania does not differentiate between adoptive and natural parents. See 20 Pa. C.S.A. § 2108 (rules of succession when person dies intestate); 23 Pa. C.S.A. § 2102 (adoption statute definitions).

The common meaning of "stepchild" is one's spouse's child by a former marriage. See American Heritage Dictionary of the English Language (4th ed. 2000); Webster's II: New Riverside University Dictionary 1137 (1st ed. 1988); Random House Dictionary of the English Language 1866 (2d ed. 1987). A divorce legally dissolves the marital relationship. See Black's Law Dictionary 480 (6th ed. 1990). Ms. Busza's children were not Paul Wons' "stepchildren" after the divorce. The term "stepchildren" in an insurance policy does not apply to children of a former spouse. See Evans v. Safeco Life Ins. Co., 916 F.2d 1437, 1441 (9th Cir. 1990) (former spouse's child not insured's stepchild under ERISA); Brotherhood of Locomotive, Firemen & Enginemen v. Hogan, 5 F. Supp. 598, 604-05 (D. Minn. 1934) (affinity relationship between insured and former wife's son from previous marriage terminated upon divorce); 4 G. Couch, Couch on Insurance § 27:128 (2d ed. 1984) (divorce terminates affinity relationship between wife's child by former marriage and insured and such child thus may not claim under policy as "stepchild" of insured). Paul Jr., Michael and Karen are not stepchildren within the meaning of the Policy.

To sustain a claim for tortious interference with contractual relations, a claimant must prove the existence of a contractual relation between himself and a third party; a purpose or intent to harm claimant by interfering with the existing

relation or preventing it from occurring; the absence of privilege or justification on the part of the defendant; and, actual legal damage as the result of defendant's conduct. See Birl v. Philadelphia Electric Co., 167 A.2d 472 (Pa. 1960); Neish v. Beaver Newspapers, Inc., 581 A.2d 619, 625 (Pa. Super. 1990).

There is no evidence that Michael's claim to the proceeds was not privileged or justified. See Ruffing v. 84 Lumber Co., 600 A.2d 545, 551 (Pa. Super. 1991) (plaintiff must prove defendant's lack of justification). There also is no evidence that Michael's claim to the proceeds harmed Wendy and Christopher. Any harm from the need to establish their claims or the delay in receiving their shares appears to result from plaintiff's action. In any event, the counterclaim will be dismissed pursuant to 28 U.S.C. § 1367(c).⁶

⁶Christopher, Wendy, Paul Jr. and Michael are all citizens of Pennsylvania. Also, the amount in controversy does not appear to exceed \$75,000, particularly with the award of the disputed \$60,000 herein to the counterclaimants. See Aldens, Inc. v. Packel, 524 F.2d 38, 52 (3d Cir. 1975) (counterclaims must be dismissed absent independent basis for federal jurisdiction after claims are dismissed). See also Federman v. Empire Fire & Marine Ins. Co., 597 F.2d 798, 812-13 (2d Cir. 1979) (same); Cohen v. Wolgin, 1995 WL 33095, *6 (E.D. Pa. Jan. 25, 1995) (same).

ACCORDINGLY, this day of March, 2001, **IT IS**
HEREBY ORDERED that the Motion of Michael Wons for Summary
Judgment (Doc. #28) is **DENIED**; the Motion of defendants Wendy and
Christopher Wons for Summary Judgment (Doc. #15) is **GRANTED** as to
their claim for payment of benefits and **DENIED** as to their
counterclaim against Michael Wons, Paul Wons, Jr. and Karen Perez
for intentional interference with contractual relations and the
counterclaim is **DISMISSED** without prejudice pursuant to 28 U.S.C.
§ 1367(c); and, all claims herein having been disposed of, this
case is closed.

BY THE COURT:

JAY C. WALDMAN, J.