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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

SHARON POWERS,

Plaintiff and Appellant,

v.

CYNTHIA ROSS et al.,

Defendants and Respondents.

A134761

(Humboldt County
Super. Ct. No. FL060571)

Sharon Powers appeals from a judgment denying her claim to half of the proceeds of an insurance policy on the life of her ex-husband, Charles Ross. She argues that the trial court erred in concluding that following the couple's divorce, the policy was Ross's separate property and that he had the right to change the beneficiaries. We find no error in the judgment and therefore shall affirm.

Factual and Procedural History

When Powers and Ross divorced in February 2007, the judgment of dissolution identified the couple's equity in the life insurance policy, or its cash surrender value, as community property and awarded one-half of the value of the equity to each of the parties. Following the divorce, Ross removed Powers as the beneficiary on the policy and named defendants Cynthia Ross and Cathleen Nelson as the beneficiaries. Ross died in March 2008.

On July 26, 2010, Powers filed a complaint for declaratory relief seeking one-half of the proceeds of the insurance policy.¹ The complaint alleges that “the proceeds of the policy are an omitted asset subject to [Powers’s] community property rights to one-half thereof.”

In April 2011, the trial court denied Powers’s request for declaratory relief. The court explained in its written decision, “During the marriage the community paid premiums for a whole life policy on each spouse. If Charles Ross had died during the period the policy had been paid with community funds the proceeds of the policy would be community property. When, however, Charles Ross died after separation and dissolution, and the policy premiums were paid from post-separation separate property funds, the policy is Charles Ross’ separate property.”

Following the denial of Powers’s motion for new trial, a final judgment was entered. Powers filed a timely notice of appeal.

Discussion

In dissolution proceedings, a whole life insurance policy² is valued at its cash surrender value. To the extent the cash value is community property, it is divided between the parties. (See *In re Marriage of Holmgren* (1976) 60 Cal.App.3d 869, 871; Hogoboom and King, Cal. Practice Guide: Family Law (The Rutter Group 2012)

¹ Although the parties describe the considerable litigation that took place between them prior to the filing of the present complaint, we have omitted much of this information from the recitation of the factual and procedural history because it does not bear directly on the issue that is dispositive of this appeal. Insofar as respondents’ motion to augment seeks to include in the record documents submitted in the prior litigation, it is denied on the ground of relevancy. Respondents’ motion to augment is granted solely with respect to the answer to Powers’s complaint for declaratory relief filed on December 17, 2010.

² Black’s Law Dictionary (8th ed. 1999) page 946 defines “whole life insurance” as “Life insurance that covers an insured for life, during which the insured pays fixed premiums, accumulates savings from an invested portion of the premiums, and receives a guaranteed benefit upon death, to be paid to a named beneficiary.” “Term life insurance” is defined as “Life insurance that covers the insured for only a specified period. It pays a fixed benefit to a named beneficiary upon the insured’s death but is not redeemable for a cash value during the insured’s life.” (*Ibid.*)

¶ 8:1415.) There is no dispute in this case that the cash value of the policy was properly divided in the 2007 judgment of dissolution. If Powers has not been paid her share of the cash value pursuant to that judgment, this failure does not affect the community's interest in the proceeds of the policy.³

Powers relies on *Biltof v. Wootten* (1979) 96 Cal.App.3d 58, 61-62 for the proposition that she is entitled to half of the insurance proceeds as her share of the omitted community asset. In that case, which involved a term life insurance policy, the court held that the decedent's ex-wife was entitled to a portion of the proceeds of his term life insurance policy in proportion to the ratio of the premiums that were paid with community funds and the amount of premiums paid from separate property following their divorce. (*Id.* at p. 62.) The court rejected the argument that the community had no interest in the policy or its proceeds following expiration of the term paid for with community funds. The court explained that although after dissolution separate property was used to pay the premiums, the extended term of the policy did not constitute a new insurance contract. "[I]f the decedent had waited until separation to purchase the . . . policy, it is unlikely that he would have been able to obtain the same coverage for the same premium on the same terms of eligibility. The rights of the beneficiaries with respect to this policy were dependent on the fact that the decedent secured the policy during the marriage. The decedent's community efforts for the 20 years prior to the separation maintained the policy in force." (*Id.* at p. 61.)

The reasoning in *Biltof* was expressly rejected in *Estate of Logan* (1987) 191 Cal.App.3d 319, 325 on the ground that it is based on "unsupported and erroneous assumptions about the nature of term life insurance and the availability to the insured of other comparable insurance." Rather, as explained in *Logan*, following dissolution, when

³ We express no opinion concerning Powers's rights at this time to enforce obligations imposed by the judgment of dissolution against Charles Ross's estate.

the insured remains insurable, the community retains no interest in the proceeds of the policy beyond the period for which community funds were used to pay the premium. (*Ibid.*) “Term life insurance policies typically contain two elements, dollar coverage payable in the event of death and a right to renewal for future terms without proof of current medical eligibility. [¶] As to the element of dollar coverage, term life insurance simply provides for protection against the contingency of the death of the insured during the term of the policy. If the premium for the next term is not paid, the policy is not renewed. In this respect, it is the same as automobile or health insurance. Thus when the premium is paid with community funds, the policy is community property for the period covered by that premium. This is true whether the premium is paid as a fringe benefit by the insured’s employer, paid for by the insured, or a combination of both. The policy provides dollar coverage only for the specific term for which the premium was paid. Thus, as to dollar coverage, term life insurance upon which premiums were paid from community funds has no value after the term has ended without the insured having become deceased. [¶] With respect to the element of the right to renew coverage for additional terms, term life insurance has either a significant value or no value at all. The right to renewal upon payment of the premium for the next term is significant because the insured possesses the right even if he or she has become uninsurable in the meantime. Usually, as Markey points out, policies require increasing premiums and/or decreasing amounts of coverage as the insured gets older. If, as is usually the case, the insured is insurable at the end of the term purchased with community funds, the renewed policy, that is, the term policy purchased by the payment of the premium with postseparation earnings which are separate property pursuant to Civil Code section 5118, or by the employer as a postseparation fringe benefit, changes character from community to separate property. [¶] At this time, if the insured is insurable, the community has fully received everything it bargained for, dollar protection against the contingency of death during the term paid for with community funds and the right to renew without proof of

insurability for an additional term. If the insured remains insurable, the right to renew the policy has no value since the insured could obtain comparable term insurance for a comparable price in the open market. The community having received everything it bargained for, there is no longer any community property interest in the policy and no community asset left to divide.” (*Id.* at pp. 324-325, fns. omitted.)

The reasoning and conclusion of *Logan* has subsequently been adopted and followed in *In re Marriage of Spengler* (1992) 5 Cal.App.4th 288, 297. However, *Spengler* goes even farther in rejecting the exception recognized in *Logan* when the insured spouse becomes uninsurable during the marriage. Under *Spengler*, a term life insurance policy is not a community property asset after expiration of the term for which coverage was acquired with community funds, whether or not the spouse remains insurable. (See also *In re Marriage of Elfmont* (1995) 9 Cal.4th 1026, 1035 [applying same rule to disability insurance benefits].)

While *Logan* and *Spengler* address term life insurance, their reasoning is equally applicable to whole life policies. The whole life policy merely adds the additional element of an accrued cash value which, as noted above, was properly divided as a community asset in the dissolution proceedings. Had Ross failed to pay the premiums on the whole life policy following dissolution of the marriage, coverage would have terminated. Once Ross began making premium payments with his separate property assets, the community no longer had an interest in the proceeds of the policy. The community received everything it bargained for: the accrued cash value and protection against the contingency of death during the period coverage was paid for with community funds.

Moreover, were we to reject the reasoning of *Logan* and *Spengler*, at a minimum evidence establishing lack of the decedent’s insurability before termination of the marriage would be necessary for the community to establish an interest in the proceeds of a policy for which the community once paid premiums but did not do so for the period

during which the decedent died. Based on the record before us, it does not appear that Powers made any such allegation or presented any such evidence in the trial court.

Thus, we conclude that the trial court correctly held that Powers is not entitled to any portion of the proceeds of the whole life policy upon the death of her former husband during a period for which coverage was purchased with separate funds of the husband.

Disposition

The judgment is affirmed. Respondents shall recover their costs on appeal.

Pollak, Acting P.J.

We concur:

Siggins, J.

Jenkins, J.