12-31-2019

Neustadt v. Colafranceschi Appellant's Brief Dckt. 47201

Electronically Filed
12/31/2019 12:27 PM
Idaho Supreme Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

JULIE ANN NEUSTADT, Petitioner-Appellant, vs. MARK D. COLAFRANCESCHI, Respondent-Cross-Appellant	SUPREME COURT NO.: 47201-2019

APPELLANT'S BRIEF

Appeal from the
District Court of the Fourth Judicial District of
the State of Idaho, in and for the County of Valley

Honorable Judge Jason D. Scott, Presiding

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STATEMENT OF CASE

Nature of the Case

This appeal involves the validity of a provision in the Premarital Agreement entered into by Appellant (Julie) and Respondent (Mark) on March 20, 2012. The provision at issue is found in subsection 4.8(b) of the Premarital Agreement. Subsection 4.8(a) of the Premarital Agreement required Julie to apply for a 30 year term life insurance policy in the amount of $2,000,000.00, and Julie was required to name Mark as the sole beneficiary. Pt. Exhibit 1, p.9. Subsection (b) of 4.8 states: "Wife must keep the policy in force after termination of the marriage unless Wife obtains a divorce from Husband under Idaho Code Section 32-603(1) through 32-603(7)." Pt. Exhibit 1, p.9.

Julie argued before the Trial Court that subsection 4.8(b) was void against public policy because Mark had no insurable interest in Julie's life post divorce. The Trial Court agreed with Julie and found that subsection 4.8(b) was void due to Mark's lack of an insurable interest in Julie's life. R., p. 282.

Mark appealed the Trial Court's decision and the District Court reversed the Trial Court's decision finding that the contractual insurance requirement in the agreement was not void to the extent it applied after the divorce. Also, because the Trial Court's decision awarding Julie attorney fees was partially based on the Trial Court's finding that the insurance provision was void the District Court reversed Julie's attorney fee award and remanded that issue back to the Trial Court for further consideration. R., pp. 389-413. The District Court subsequently amended its decision

as to the reason for upholding the insurance provision in the parties' Premarital Agreement. Julie appealed the District Court's opinion, and subsequently filed an amended appeal after the District Court issued its amended decision.

Course of the Proceedings

Julie filed a Petition for Divorce on May 6, 2016. R., pp. 22-24. There was no dispute between the parties that they had married on March 26, 2012. R., p. 22, ¶ I; R., p. 25, ¶ 1. There was also no dispute that the parties had entered into a Premarital Agreement on March 20, 2012. R., p. 23, ¶ V; R., p. 25, ¶ 2.

Mark filed a Response and Counterclaim to Julie's Petition on May 23, 2016. R., pp. 25-37. Julie filed a response to Mark's Counterclaim on May, 26, 2016. R., pp. 42-47.

Julie sought and was granted permission to file an Amended Petition for Divorce which was filed on August 11, 2016. R., pp. 230-232. Mark responded to Julie's filing on August 31, 2016. R., pp. 239-240.

On October 26, 2016, Julie filed a Motion in Limine seeking a ruling from the Trial Court that subsection 4.8(b) of the parties' Premarital Agreement be declared void and unenforceable as a matter of law because the section violated Idaho Code §41-1804 which requires that a beneficiary of a life insurance policy have an insurable interest in the individual insured. R., pp. 267-268; R., pp. 269-275.

On November 8, 2016, the Trial Court issued a "Decision Petitioner's Motion In Limine."

R., pp. 276-284. The Trial Court found as a matter of law that subsection 4.8(b) of the Premarital Agreement was void because: "Mark would have no insurable interest following divorce. Mark would have no interest in the life of Julie but would have a direct interest in her death. The insurance would be a mere wager." R., p. 284.

The divorce case proceeded to trial which was held on November 14-16, 2016. R., p. 290. On December 8, 2016, the Trial Court issued its Findings of Fact and Conclusions of Law. Of note for Julie's appeal are the Trial Court's findings regarding the insurance provision in the parties' Premarital Agreement. The Trial Court noted that in negotiating the insurance provision of the Premarital Agreement Mark had stated that a $2,000,000.00 life insurance policy on Julie's life with Mark being named the sole beneficiary would enable Mark to continue his lifestyle should Julie die before Mark. R., p. 301. The Trial Court found that during the marriage Mark did have an insurable interest in Julie's life because she was providing him financial support. R., p. 303. Julie paid for and provided for Mark's lifestyle and it was in Mark's interest that Julie continue to live. Id. Post divorce Julie was not going to provide any financial support to Mark and he no longer had a financial interest in Julie continuing to live. Mark's interest post divorce was that Julie would pass away and Mark would receive a windfall of $2,000,000.00. Id. "His interest is not in her life but in her death. The insurance policy has become a wager on Julie's death." Id.

On December 8, 2016 the Trial Court entered a Judgment and Decree of Divorce. R., pp. 305-306. The Judgment declared the life insurance provision in subsection 4.8(b) of the Premarital

Agreement void as a matter of law. R., p. 306, ¶ 13.

On January 18, 2017, Mark filed a Notice of Appeal. R., pp. 307-310. One of the issues Mark appealed was the Trial Court's decision regarding the life insurance provision. R., p. 309, ¶ 13.

On January 26, 2017, the Trial Court entered an Amended Judgment and Decree of Divorce. R., pp. 311-312. The Amended Decree found subsection 4.8 of the Premarital Agreement void. R., p. 312, ¶ 13.

On February 7, 2012, the Trial Court issued a decision regarding attorney fees and awarded Julie $50,000.00 in attorney fees. R., pp. 314-315; R., pp. 316-321. The Trial Court found that Julie was the prevailing party and pursuant to section 22 of the Premarital Agreement Julie was entitled to fees and costs in the amount of $50,000.00. R., pp. 320-321. Section 22 of the Premarital Agreement states: "If a party reasonably retains counsel for the purposes of enforcing or preventing the breach of any provision of this Agreement, for damages by reason of any alleged breach of any provision of it, for a declaration of his or her rights or obligations under it or for any other judicial remedy, then, if the matter is settled by judicial determination or arbitration, the prevailing party, whether at trial or appeal, may, in addition to the other relief granted, be reimbursed by the losing party for any cost or expense incurred, including, without limitation, any reasonable, itemized, and documented attorney's fees and costs for the services rendered to the prevailing party." Pt. Exhibit 1, § 22.

On February 21, 2017, Mark filed an Amended Notice of Appeal listing the issues as: "...all matters outlined in Notice of Appeal along with other frauds in this case and the motion for recusal that was denied". R., p. 351, ¶ 1.

On May 28, 2019, the District Court issued it's Opinion. R., pp. 389-413. The District Court ruled that the insurance provision was not void and it was enforceable. The District Court reasoned that Julie had voluntarily entered into the Premarital Agreement and at the time of the parties' marriage Mark did have an insurable interest in Julie's life. The District Court also reasoned that since Mark was not paying for the life insurance policy he was not wagering anything on Julie's life. The District Court reversed the Trial Court's award of attorney fees because part of the Trial Court's reasons for awarding fees was that Julie had prevailed on the insurance issue therefore the Trial Court should look at the attorney fee issue again in light of the District Court's decision regarding the validity of the life insurance section.

On July 8, 2019, Julie filed her Notice of Appeal seeking review of the District Court's decision regarding the validity of the life insurance provision and the reversal of the Trial Court's award of attorney fees. R., pp. 414-416. On the same date the District Court issued an Amended Opinion. R., pp. 417-440. The District Court continued to rely on the reasoning that there was not a wagering on Julie's life because it was Julie who was paying the premium, and the District Court added additional reasoning using Idaho's Probate Code that provides a will that bequeaths a spouse assets is automatically revoked by a divorce unless the written bequeath specifically states that the

bequeath survives a divorce. The District Court reasoned that since the Premarital Agreement specifically stated that Julie's obligation to provide life insurance on her life with Mark as the beneficiary survived divorce, the provision was valid pursuant to the Idaho Probate Code. R., pp. 426-431.

On August 1, 2019, Julie filed her Amended Notice of Appeal appealing the District Court's Amended Opinion. R., pp. 441-444.

Facts

Julie and Mark entered into a Premarital Agreement on March 20, 2012. Subsection 4.8(a) of the Premarital Agreement required Julie to apply for and if her application was accepted pay for a life insurance policy on her life in the amount of $2,000,000.00 for a term of 30 years. Mark was to be named as the sole beneficiary of this policy. Mark stated in writing the reason for this provision was to maintain his standard of living in the event that Julie were to pass away before he did. Mark earned very little income during the parties' marriage, and Julie and Mark were supported by approximately $1,200,000.00 that Julie received from a family trust during the marriage. R., p. 294, first paragraph under the section heading of FINDINGS AND CONCLUSIONS FROM TRIAL.

Subsection 4.8(b) of the Premarital Agreement required Julie to keep the life insurance policy in force after the parties were divorced unless Julie obtained a divorce from Mark under certain sections of Idaho Code regarding fault. In her Amended Petition for Divorce Julie alleged that she should be granted a divorce from Mark due to extreme cruelty or habitual intemperance. R., p. 231,

¶ III.

Julie and Mark were married on March 26, 2012. R., p. 294. They separated on April 29, 2016. Id. They have no children in common. Id. Mark was awarded no interest in the real property that was owned by Julie's family trust. R., p. 311, ¶ 5. Mark was to receive no spousal support from Julie. R., p. 312, ¶ 8.

The insurance provision requiring Julie to maintain the life insurance policy on her life with Mark as the sole beneficiary was declared void by the Trial Court. The Trial Court found that Julie was the prevailing party in the case and pursuant to section 22 of the Premarital Agreement Julie was entitled to $50,000.00 in fees and costs. The District Court reversed the Trial Court's decision regarding the life insurance policy being void, and remanded the attorney fee award back to the Trial Court for reconsideration based on the District Court's ruling that the life insurance policy section was valid.

ISSUES ON APPEAL

1. Did the District Court commit error in finding that subsection 4.8(b) of the parties' Premarital Agreement was valid and enforceable even though after the parties' divorce Mark had no insurable interest in Julie's life; and

2. If the District Court committed error in finding subsection 4.8(b) was valid and enforceable then it also committed error in reversing the Trial Court's award of attorney fees.

ATTORNEY FEES ON APPEAL

Julie should be awarded her fees and costs in this appeal pursuant to section 22 of the parties' Premarital Agreement.

ARGUMENT

Legal Standards

The liberty of contract is not an absolute and unlimited right, but upon the contrary is always subservient to the public welfare. The courts will not hesitate to declare void as against public policy contractual provisions which clearly tend to the injury of the public in some way. The usual test applied by courts in determining whether a contract offends public policy and is antagonistic to the public interest is whether the contract has a tendency toward such an evil. Public policy may be found and set forth in statutes, judicial decisions or the constitution. *Hill v. Am. Family Mut. Ins. Co.,* 150 Idaho 619, 623, 249 P.3d 812, 816 (2011).

Whether a contract is against public policy is a question of law for the court to determine from all the facts and circumstances of each case. *Quiring v. Quiring,* 130 Idaho 560, 566, 944 P.2d 695, 701 (1977).

A contract which is made for the purpose of furthering any matter or thing prohibited by statute is void. *Taylor v. AIA Servs. Corp.,* 151 Idaho 552, 564, 261 P.3d. 829, 841 (2011).

Idaho Code section 41-1804(1) states that no person shall procure or cause to be procured any insurance contract upon the life of another person unless the beneficiary has an insurable interest

at the time the contract was made. Under Section 41-1804, an insurable interest exists in the case of another person where there is:

> a lawful and substantial economic interest in having the life, health, or bodily safety of the individual insured continue, as distinguished from an interest which would arise only by, or would be enhanced in value by, the death, disablement, or injury of the individual insured

§ 41-1804(3)(b).

With respect to property insurance Idaho Code makes it clear that the beneficiary of the policy must have an interest in the property at the time of loss. I.C. §41-1806 (1).

The Purpose of the Insurable Interest Rule

In *Rhead v. Hartford Ins. Co.* this Court explained the insurable interest requirement:

> The purpose of the insurable interest doctrine is to prevent parties from insuring wagering or gambling...[the] [r]equirement of an insurable interest in insured property is for the purpose of preventing use of insurance as a means of wagering, since one who has no protectable interest in the insured project is not allowed to gamble on the possibility of its destruction.

135 Idaho 446, 450, 19 P.3d 760, 764 (2001) quoting *Nelson v. New Hampshire Fire Ins. Co.*, 263 F.2d 586 (9th Circ. 1959).

Common law and courts in other jurisdictions similarly stress the necessity that a beneficiary have an insurable interest in the insured.

In *Lakin v. Postal Life & Cas. Ins. Co.*, the Missouri Supreme Court explained the rationale behind the insurable interest doctrine as follows:

> It has uniformly been held that "A person cannot take out a valid and enforceable policy of insurance for his own benefit on the life of a person in which he has no insurable interest;

> such a policy or contract of insurance is void and unenforceable on the grounds of public policy, it being merely a wagering contract..." It has repeatedly been stated that for one to have an insurable interest in the life of another, "there must be a reasonable ground founded upon the relations of the parties to each other, either pecuniary or of blood or affinity, to expect some benefit from or advantage from the continuance of the life of the insured."

Lakin v. Postal Life & Cas. Ins. Co., 316 S.W.2d 542, 549 (Mo. 1958) (internal citations omitted).

In *Liss v Liss* the Florida Court of Appeals addressed issues that are similar to those that are before this Court. *Liss v. Liss,* 937 So.2d 760 (Fla. App. 2006). In *Liss* the former husband claimed that a provision in the parties' property settlement agreement (which was incorporated into the parties' divorce decree) that allowed the former wife to have a policy on his life was no longer enforceable because the ex wife no longer had an insurable interest in his life. *Liss,* 937 So.2d at 761-762. The former wife contended that she had an insurable interest at the time of the making of the agreement and once the settlement agreement was granted it became vested. Id. The lower court ordered the former husband to sign documents needed to prevent the termination of the life insurance policy on former husband's life because the settlement agreement had recognized the former wife's insurable interest and the agreement was not modifiable. *Liss,* 937 So.2d at 763. The Florida Court of Appeals reversed the lower court.

The Florida Court of Appeals first noted that the purpose of the provision was "directly tied to his responsibility to provide for his children and the former spouse." *Liss,* 937 So.2d at 763. The Court then went on to note that to accept the former wife's interpretation would create "a situation where she has a greater interest in a windfall she would enjoy at his demise than her interest in his

continued life." *Liss,* 937 So.2d at 764. Florida law required an insurable interest in any individual contracting for insurance on the life of another. Id. "The obvious purpose of that requirement is to prevent so-called wagering contracts. It is assumed that the existence of such an insurable interest will counterbalance any temptation that might otherwise exist for a beneficiary to murder the insured for insurance proceeds." Id. The Florida Court also noted that at least one state had held the insurable interest requirement extends beyond the inception of the agreement and extends during the duration of the coverage. *Liss,* 937 So.2d at 765. The concurring opinion in *Liss* noted that Florida's statutes regarding the insurance of property required that the beneficiary have an insurable interest at the time of the loss. *Liss,* 937 So.2d at 766. The Appellate Court reversed the lower court and remanded the case back to that court to hold a trial.

The case cited by the Trial Court in its decision, *Browning v. Browning* is instructive and persuasive regarding the issue of whether the insurable interest requirement applies beyond the initial application of the policy. *Browning v. Browning,* 366 S.C. 255, 621 S.E.2d 389 (S.C. App. 2005). Husband and wife entered into a property settlement agreement that was merged into their decree. Both husband and wife were allowed to take out a life insurance policy on the other party's life. *Browning,* 621 S.E.2d at 400. At the time of the making of the agreement wife had an insurable interest in husband's life. Id. The Appellate Court noted that once the husband's alimony obligation ended so did wife's insurable interest in husband's life. *Browning,* 621 S.E.2d at 400-401. The Appellate Court rejected the wife's claim that husband consented to a perpetual insurable interest

by entering into the agreement. Id.

The Texas Supreme Court in *Drane v. Jefferson Standard Life Insurance Co.* explained the insurable interest doctrine as follows:

> Bluntly expressed, insurable interest…is determined by monetary considerations, viewed from the standpoint of the beneficiary. Would he regard himself as better off from the standpoint of money, would he enjoy more substantial economic returns should the insured continue to live; or would he have more, in the form of the proceeds of the policy, should she die? Therefore it is said that if the situation is such that he might be led to conclude that he would profit by her death, the policy contract is void as to him since the public has a controlling concern that no person have an interest in the early death of another, an interest that may give rise to a temptation to destroy her life.

Drane v. Jefferson Standard Life Ins. Co., 139 Tex. 101, 104-05 (Tex. 1942) (superseded by statute in part).

In *Lakin v. Postal Life & Cas. Ins. Co.*, the Missouri Supreme Court explained the rationale behind the insurable interest doctrine as follows:

> It has uniformly been held that "A person cannot take out a valid and enforceable policy of insurance for his own benefit on the life of a person in which he has no insurable interest; such a policy or contract of insurance is void and unenforceable on the grounds of public policy, it being merely a wagering contract..." It has repeatedly been stated that for one to have an insurable interest in the life of another, "there must be a reasonable ground founded upon the relations of the parties to each other, either pecuniary or of blood or affinity, to expect some benefit from or advantage from the continuance of the life of the insured."

Lakin v. Postal Life & Cas. Ins. Co., 316 S.W.2d 542, 549 (Mo. 1958) (internal citations omitted).

The District Court Committed Error

In reversing the Trial Court's decision the District Court first found that Mark is not wagering anything because he does not have to pay the life insurance premiums. R., p. 427. What the District

Court does not discuss is that even though Mark is not paying anything for the policy he is forcing Julie to make those payments via the Premarital Agreement. Therefore, there is a wager on Julie's life, and she is the one being forced to pay for the wager that benefits only Mark.

The District Court then reasoned that Julie has the right to insure her life and name anyone she wants to as a beneficiary. R., p. 428. What the District Court did not address is the fact that Julie no longer is voluntarily maintaining this policy. She is maintaining it because the contract requires her to maintain it. The District Court did not address the fact that it was Mark who was causing Julie to procure the insurance policy post divorce. This is in violation of Idaho Code §41-1804(1) because Mark no longer has an insurable interest in Julie's life.

The District Court reasoned that Mark and Julie's divorce did not destroy the validity of the life insurance policy. No one is arguing that if Julie voluntarily wanted to maintain the policy on her life for the benefit of Mark she could do so and the policy would be valid. The issue here is that Julie no longer wants to maintain that policy, and that is why insurable interest post divorce is of import.

The final reason the District Court used to overturn the Trial Court was the Idaho Probate Code. The District Court noted that normally a divorce revokes any revocable disposition of property made by a divorced individual unless the express terms of a martial contract states that the beneficiary designation survives a divorce. R., pp. 430-431. The District Court then determined since the Premarital Agreement in this case provided for the survival of the insurance policy

requirement post divorce it was valid and did not violate public policy. It is true that Idaho Code §15-2-804(b) establishes an automatic revocation of any revocable disposition of property made by a divorced individual to their former spouse unless the express terms of a marriage contract state otherwise. However, this statute is not germane to the question at hand, and it does not establish public policy that maintaining a life insurance policy without an insurable interest on the life of a former spouse is valid. A divorced individual may agree that disposition of property survive a divorce but that does not mean they are forced to keep their former spouse as a beneficiary on their life insurance policy unless they want the former spouse to remain as the beneficiary.

The Trial Court's Decision was Correct

The purpose of the requirement of having an insurable interest in one who is procuring or causing to procure a life insurance policy on another's life is to prevent wagering on that person's life. Although Mark had an insurable interest in Julie's life at the time of the marriage, he no longer has an insurable interest in her life. Julie does not want to maintain a policy on her life for the benefit of Mark when he has no interest in her maintaining her life. That is the point the District Court did not address and the Trial Court did. As the Trial Court stated, Mark's interest during the marriage was to see that Julie survived because she was supporting him. R., p. 303. The continuation of the life insurance policy does not give Mark what he intended which was to "continue a similar lifestyle" because the only way Mark can obtain that lifestyle now is through Julie's death. "His interest is not in her life but in her death." Id. Idaho statutes require the

beneficiary of a property insurance policy to have an insurable interest in the subject property at the time of the loss. I.C. §41-1806(1). Certainly Idaho cares more about life than it does property. Requiring Julie to maintain a policy on her life for the benefit of Mark when he no longer has an insurable interest in her life is a wager. Mark is causing Julie to procure this insurance via the Premarital Agreement. Julie is no longer maintaining this policy voluntarily she is being forced to maintain the policy. Subsection 4.8(b) of the Premarital Agreement is no longer valid, and Julie requests this Court to reverse the District Court's decision and affirm the Trial Court's decision and reinstate the award of attorney fees because the District Court's decision on fees was based on its reversal of the decision on the life insurance provisions.

Attorney Fees

Section 22 of the Premarital Agreement provides for the award of fees and costs to the prevailing party on appeal. Pt. Exhibit 1, § 22. Julie requests this Court award her fees and costs on appeal if she prevails on the insurance issue.

DATED This 31 day of December, 2019.

LUDWIG ◆ SHOUFLER ◆ MILLER ◆ JOHNSON, LLP

By _____
Daniel A. Miller,
Attorneys for Petitioner/Appellant

CERTIFICATE OF SERVICE

I hereby certify that on this 31 day of December, 2019, I caused a true and correct copy of the foregoing document to be served upon the following as indicated:

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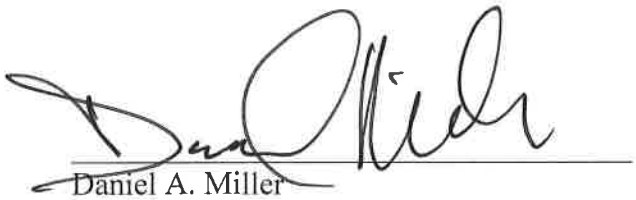

Daniel A. Miller