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JOHN HANCOCK LIFE INSURANCE COMPANY *v.* SUSAN CURTIN ET AL. (AC 45565)

Alvord, Elgo and Harper, Js.

Syllabus

The plaintiff sought an interlocutory judgment of interpleader to determine the proper distribution of the proceeds of a life insurance policy it had issued to the decedent, J. Several years earlier, the marriage between J and the defendant C had been dissolved and a separation agreement between J and C was incorporated into the dissolution judgment. J and C had no children issue of the marriage, but C had a daughter, the defendant S. The separation agreement contained a clause stating that J shall maintain life insurance in the face amount of $500,000 and shall designate S as a primary beneficiary and C as a secondary beneficiary. The agreement also provided that the failure of J to maintain such life insurance shall constitute a claim and charge against his estate by C in the face value amount of $500,000. Two months prior to the rendering of the judgment of dissolution, J obtained a life insurance policy in the face amount of $500,000, designated "Estate of John R. Curtin" as the primary beneficiary, and did not designate a secondary beneficiary. The plaintiff alleged that it was unable to determine which of the defendants, C, S, or G and E, the coexecutors of J's estate, were entitled to the proceeds. C and S filed an answer, a special defense and a statement of claim, in which they sought the proceeds of the policy to be awarded to S. G and E filed a motion for summary judgment, in which they argued that the proceeds of the policy should be disbursed to the estate in accordance with the policy. The trial court granted the motion for summary judgment filed by G and E, finding that enforcement of the separation agreement, including the remedy provision, was the appropriate result, denied a cross motion for summary judgment filed by C and S, and entered an order directing the clerk of the court to distribute the proceeds of the policy to the estate. On the appeal of C and S to this court, *held* that the trial court properly concluded that the estate was entitled to summary judgment as a matter of law, as the equitable remedy that C and S sought in the interpleader action was inconsistent with the remedy provided to C in the separation agreement; the provision negotiated between J and C expressly designated that the remedy C had for J's failure to comply with the insurance provision of the separation agreement was a claim against J's estate, and this court could not read out of the agreement that provision.

Argued April 6—officially released May 30, 2023

Procedural History

Action for interpleader to determine the defendants' rights to the proceeds of a certain life insurance policy, and for other relief, brought to the Superior Court in the judicial district of Stamford-Norwalk, where the court, *Clark, J.*, granted the motion for summary judgment filed by the defendant George L. Smith et al. and rendered judgment thereon, from which the named defendant et al. appealed to this court. *Affirmed.*

Brenden P. Leydon, with whom, on the brief, was *Kevin Collins*, for the appellants (named defendant et al.).

Thomas P. O'Connor, with whom was *Trevor J. Larrubia*, for the appellees (defendant George L. Smith et al.).

Opinion

ALVORD, J. The plaintiff, John Hancock Life Insurance Company, instituted this interpleader action to determine the proper distribution of the proceeds of a life insurance policy it had issued to the decedent, John R. Curtin (decedent). The defendants Susan Curtin (Curtin), the decedent's former spouse, and Deborah Schalm, Curtin's daughter, appeal from the summary judgment of the trial court rendered in favor of the defendants George L. Smith and Elizabeth Curtin (coexecutors), coexecutors of the estate of the decedent, and its attendant order distributing the proceeds of the life insurance policy to the estate of the decedent. On appeal, Curtin and Schalm claim that the court improperly determined that Schalm was not entitled to the insurance proceeds because a provision in the dissolution separation agreement, which required the decedent to maintain certain life insurance designating Schalm as the beneficiary, set forth Curtin's remedy for the decedent's failure to maintain such insurance. We affirm the judgment of the trial court.

The record reveals the following undisputed facts and procedural history. The marriage between the decedent and Curtin was dissolved on August 28, 2014, and their separation agreement dated the same day (separation agreement) was incorporated into the dissolution judgment. The decedent and Curtin had no children issue of the marriage. In article II of the separation agreement, governing alimony, the decedent and Curtin provided: "2.2 The Husband shall pay to the Wife non-taxable alimony in the semimonthly amount of two thousand five hundred ($2,500.00) dollars commencing on October 1, 2014. Payments shall be on the 1st and 16th day of the month, each and every consecutive month thereafter.

"The term of said alimony shall be until the soonest of one of the following events: the death of the Husband; the death of the Wife; the remarriage of the Wife; the cohabitation of the Wife pursuant to C.G.S. § 46b-86 (b) except that it shall not be considered cohabitation for the Wife to reside with family members, such as her daughter."

Also in article II of the separation agreement, the decedent and Curtin included the following provision: "2.3 The Husband shall maintain life insurance at his sole cost and expense in the face amount of $500,000 until the death or remarriage of the Wife. The Husband shall designate as primary beneficiary Deborah Schalm and designate as secondary beneficiary Susan Curtin. The Husband shall direct the life insurance policy company to send any and all notice, inclusive of payments owed and received, notice of the status of the life insurance policy, and proof that such life insurance remains in full force and effect to Wife. Further, the Wife shall

be listed on said policy as a person who shall receive notice from the carrier of any threatened cancellation of coverage.

"*The failure of Husband to maintain such life insurance pursuant to this paragraph shall constitute a claim and charge against his estate by the Wife in the face value amount of $500,000.*" (Emphasis added.)

Two months prior to the rendering of the judgment of dissolution, on June 18, 2014, the decedent obtained a life insurance policy from the plaintiff in the face amount of $500,000 (policy). The decedent designated "Estate of John R. Curtin" as the primary beneficiary. He did not designate a secondary beneficiary. The decedent died testate on January 28, 2020, and the coexecutors were appointed.

In July, 2020, the plaintiff commenced this interpleader action pursuant to General Statutes § 52-484.[1] In its complaint, the plaintiff alleged that it was "unable to determine to whom the amount due under the policy is payable and which of the defendants may be entitled thereto." As relief, the plaintiff sought an interlocutory judgment of interpleader, a discharge of its liabilities upon paying the proceeds of the policy into the court, and "such other relief as the court deems proper, together with the costs and disbursements of this action, including reasonable attorney's fees, to be paid out of the amount in dispute."

On January 29, 2021, Curtin and Schalm filed an answer, including a special defense,[2] and a statement of claim, in which they sought the proceeds of the policy to be awarded to Schalm. The plaintiff thereafter filed replies to Curtin and Schalm's special defense and their statement of claim. On February 3, 2021, the coexecutors of the estate also filed an answer including a special defense.[3] On January 19, 2022, the court entered an interlocutory judgment of interpleader and ordered the plaintiff to deposit the proceeds of the policy into court.

The parties filed cross motions for summary judgment. In their September, 2021 motion for summary judgment and memorandum of law in support, Curtin and Schalm argued, on equitable grounds, that the proceeds of the policy should be disbursed to Schalm in accordance with the separation agreement. On March 18, 2022, the coexecutors filed a motion for summary judgment and memorandum of law in support, wherein they argued that the proceeds of the policy should be disbursed to the estate in accordance with the policy. The coexecutors maintained that the separation agreement entitled Curtin to make a claim against the estate and that the court could not provide Curtin and Schalm with a different remedy than that specified in the separation agreement. In support of their motion for summary judgment, the coexecutors filed the affidavit of coexecutor Smith and attached thereto the decedent's certifi-

cate of death, the life insurance policy, the separation agreement, and Curtin's claim against the estate. The coexecutors also filed a statement of claim.

Curtin and Schalm filed a reply memorandum, in which they argued that their equitable claim is not barred by the language in the separation agreement providing for a claim against the estate because the decedent and Curtin did not intend for that provision to set forth an exclusive remedy. The coexecutors also filed a reply memorandum, in which they argued that "*Curtin's* rights and interests—defined by the terms of the separation agreement—are irreconcilable with the equitable relief that [Curtin and Schalm] now seek on behalf of . . . *Schalm*" and, accordingly, equitable relief must be denied. (Emphasis added.) The court held oral argument on May 9, 2022.

On June 7, 2022, the court issued its memorandum of decision on the cross motions for summary judgment, in which it stated: "While . . . Schalm and . . . Curtin present argument and authority for the court to remedy a situation where a party has failed to follow through on a court order, many of the cases to which they cite . . . are distinguishable in that those cases do not appear to have an available remedy within such order. This is simply not a case where the insurance policy was never taken out or funds were liquidated or diverted in some manner to eliminate claims for such proceeds. Rather, in this case the parties negotiated a consequence to a breach of the [separation] agreement in the form of a clear and specific remedy. A policy was purchased at exactly the value required. The proceeds for such policy remain available and have been deposited with the court. . . . Curtin may pursue her claim, including any related claim with . . . Schalm and press the priority of such claim(s) with the estate.

"While . . . Schalm may claim a constructive trust was created for her benefit through the separation agreement, a review of any such right must be considered in light of the entire terms of the separation agreement. By negotiating a provision within the separation agreement which grants a remedy for breach to . . . Curtin, the parties appear to have limited the rights of . . . Schalm accordingly."

The court concluded: "Given the clear language of the separation agreement which includes a remedy for a breach related to the life insurance that the parties negotiated and filed with the court, this court does not believe that equity requires it to rewrite the separation agreement or to ignore specific provisions that the parties agreed to as a remedy for breach. Based on the applicable law . . . the enforcement of the separation agreement, including the remedy provision, is, as a matter of law, the appropriate result." Accordingly, the court granted the coexecutors' motion for summary judgment and denied Curtin and Schalm's motion for

summary judgment. The court entered an order directing the clerk of the court to distribute the proceeds of the policy to the estate. This appeal followed.[4]

On appeal, Curtin and Schalm claim that the court erred in rendering summary judgment because it improperly determined that the separation agreement's specified remedy was an exclusive remedy. The coexecutors first respond that the separation agreement provides an exclusive remedy. They additionally argue in the alternative that, even if the agreement does not contain an exclusive remedy, Curtin and Schalm's equitable claim is precluded because it is inconsistent with the terms of the separation agreement and the separation agreement cannot be construed as granting enforcement rights to Schalm as a third-party beneficiary. We conclude that we need not determine whether the separation agreement's specified remedy afforded to Curtin constituted an exclusive remedy because we conclude that the court properly determined, as a matter of law, that Curtin and Schalm were not entitled to equitable relief in the form of distribution of the policy proceeds to Schalm.

Before we address Curtin and Schalm's claim on appeal, we set forth the general legal principles regarding interpleader actions pursuant to § 52-484. Section 52-484 provides in relevant part: "Whenever any person has, or is alleged to have, any money or other property in his possession which is claimed by two or more persons, either he, or any of the persons claiming the same, may bring a complaint in equity, in the nature of a bill of interpleader, to any court which by law has equitable jurisdiction of the parties and amount in controversy, making all persons parties who claim to be entitled to or interested in such money or other property. Such court shall hear and determine all questions which may arise in the case . . . ." "Actions pursuant [to] § 52-484 involve two distinct parts . . . . In the first part, the court must determine whether the interpleader plaintiff has alleged facts sufficient to establish that there are adverse claims to the fund or property at issue. . . . If the court considers interpleader to be proper under the circumstances, then the court may render an interlocutory judgment of interpleader. . . . Only once an interlocutory judgment of interpleader has been rendered may the court hold a trial on the merits, compelling the parties to litigate their respective claims to the disputed property." (Citations omitted; internal quotation marks omitted.) *Trikona Advisers Ltd.* v. *Haida Investments Ltd.*, 318 Conn. 476, 483–84, 122 A.3d 242 (2015); see also Practice Book § 23-44.

We next set forth the standard regarding summary judgment. "A trial court's decision on whether to grant a motion for summary judgment presents a question of law, and our review of that decision is plenary. . . . Summary judgment is appropriate when the record

before the trial court reveals that there is no genuine dispute of material fact and that the moving party is entitled to judgment as a matter of law." (Citation omitted.) *Martinez* v. *Empire Fire & Marine Ins. Co.*, 322 Conn. 47, 55, 139 A.3d 611 (2016). The material facts of the present case are undisputed; we therefore must determine whether, on the basis of those facts, the trial court properly determined that Curtin and Schalm were not entitled to the equitable relief they sought, given the terms of the separation agreement.

In making that determination, we must apply principles of contract interpretation. "Our Supreme Court has instructed that interpretation of a separation agreement incorporated into a dissolution decree is guided by the general principles governing the construction of contracts. . . . A contract must be construed to effectuate the intent of the parties, which is determined from the language used interpreted in light of the situation of the parties and the circumstances connected with the transaction. . . . [T]he intent of the parties is to be ascertained by a fair and reasonable construction of the written words and . . . the language used must be accorded its common, natural, and ordinary meaning and usage where it can be sensibly applied to the subject matter of the contract. . . . Where the language of the contract is clear and unambiguous, the contract is to be given effect according to its terms. A court will not torture words to import ambiguity where the ordinary meaning leaves no room for ambiguity . . . . Similarly, any ambiguity in a contract must emanate from the language used in the contract rather than from one party's subjective perception of the terms. . . .

"[T]he mere fact that the parties advance different interpretations of the language in question does not necessitate a conclusion that the language is ambiguous. . . . [A] contract is ambiguous if the intent of the parties is not clear and certain from the language of the contract itself. . . . The contract must be viewed in its entirety, with each provision read in light of the other provisions . . . and every provision must be given effect if it is possible to do so. . . . If the language of the contract is susceptible to more than one reasonable interpretation, the contract is ambiguous. . . .

"If contract language is definitive of the parties' intent, then the interpretation of the language becomes a question of law for the court. . . . Our review, in such a case, is plenary. . . . If, however, the language is not clear, then the intention of the parties as represented in the contract becomes a question of fact. . . . If the fact in question is genuinely material to the resolution of the issue, then it is not the proper subject of summary judgment." (Citations omitted; internal quotation marks omitted.) *Watkins* v. *Watkins*, 152 Conn. App. 99, 104–105, 96 A.3d 1264 (2014).

Finally, we set forth the relevant principles of law

governing a claim for a constructive trust because that doctrine is at the root of Curtin and Schalm's equitable claim to the policy proceeds. "A constructive trust arises contrary to intention and in invitum, against one who, by fraud, actual or constructive, by duress or abuse of confidence, by commission of wrong, or by any form of unconscionable conduct, artifice, concealment, or questionable means, or who in any way against equity and good conscience, either has obtained or holds the legal right to property which he ought not, in equity and good conscience, hold and enjoy. . . . The issue raised by a claim for a constructive trust is, in essence, whether a party has committed actual or constructive fraud or whether he or she has been unjustly enriched." (Internal quotation marks omitted.) *Mitchell* v. *Redvers*, 130 Conn. App. 100, 112–13, 22 A.3d 659 (2011).

In applying these principles, we first conclude that the provision of the separation agreement related to the life insurance policy is clear and unambiguous. Pursuant to that provision, the decedent was required to maintain life insurance in the face amount of $500,000 and to designate Schalm as the primary beneficiary and Curtin as the secondary beneficiary. The decedent breached the agreement by designating his estate as the beneficiary of the policy. The agreement provided that the failure of the decedent to maintain a policy in accordance with the agreement "shall constitute a claim and charge against his estate by [Curtin] in the face value amount of $500,000."

Curtin and Schalm's claim that the court should have awarded the policy proceeds to Schalm in this interpleader action is inconsistent with, and contrary to, the provision negotiated between the decedent and Curtin in their separation agreement. "[A] court simply cannot disregard the words used by the parties or revise, add to, or create a new agreement." (Internal quotation marks omitted.) *Nassra* v. *Nassra*, 139 Conn. App. 661, 669, 56 A.3d 970 (2012). The provision negotiated between the decedent and Curtin *expressly designated Curtin* as having a claim against the decedent's estate; we cannot read out of the agreement the provision specifically affording Curtin a remedy.[5] See *Isham* v. *Isham*, 292 Conn. 170, 182, 972 A.2d 228 (2009) ("in construing contracts, we give effect to all the language included therein, as the law of contract interpretation . . . militates against interpreting a contract in a way that renders a provision superfluous" (internal quotation marks omitted)).

The legal authority relied on by Curtin and Schalm to establish Schalm's claim to the policy proceeds does not compel a contrary conclusion. The Connecticut case on which Curtin and Schalm principally rely is *Kulmacz* v. *New York Life Ins. Co.*, 39 Conn. Supp. 470, 466 A.2d 808 (1983). In that case, the trial court rendered

a judgment dissolving the marriage of Bruno F. Kulmacz, the decedent, and his former spouse, Lydia C. Kulmacz, which included an order requiring the decedent to maintain " 'New York Life Insurance Co. policy No. 23176699 wherein the named beneficiaries are also irrevocable.' " Id., 471–72. "At the time of the dissolution the sole beneficiary of this policy was Lydia; the parties and the court, however, were under the mistaken belief that the four children of the marriage were beneficiaries." Id., 472. Prior to his death, the decedent wrote to the insurer to request that the beneficiaries of the policy be changed from Lydia to his siblings, but the insurer never acted on the request. Id. Following the decedent's death, a trial in an interpleader action was held and the court ruled that " '[s]ince the policy named [Lydia] . . . as the beneficiary the [life insurance] [c]ompany is ordered to turn over the net proceeds to Lydia . . . and she in turn is ordered to distribute the funds to her children equally.' " Id., 473.

On appeal in *Kulmacz*, the Appellate Session of the Superior Court affirmed the judgment of the trial court. The decedent's siblings argued, inter alia, that the decedent's request to change the beneficiaries constituted substantial compliance with the procedure set forth in the policy and therefore effectuated the change. Id., 474. The decedent's siblings further argued that "since [the decedent] effectively changed beneficiaries, Lydia and the children no longer have a claim to the proceeds, but nonetheless have a cause of action against the estate for breach of contract." Id., 475. They maintained that Lydia and the children were "merely creditors of the estate and that their claim to the proceeds of the policy is subordinate" to that of the decedent's siblings. Id. Rejecting the siblings' argument, the court determined that "Lydia and the children had a vested interest in the policy proceeds by virtue of the dissolution judgment," and the decedent's attempt to change the beneficiaries was ineffective. Id. The court explained: "If sufficient consideration appears to support the insured's promise to make the claimant the beneficiary or not to change the designation so as to deprive the named beneficiary of his interest therein, the claimant takes a vested interest in the proceeds. And this is true regardless of the fact that the policy gives the insured the right to change the designation. . . . A settlement of property rights arising from a contemplated divorce is satisfactory consideration for the acquisition of such a vested interest in a policy designation." (Citation omitted; internal quotation marks omitted.) Id.

Kulmacz is not controlling in the present case because *Kulmacz* did not involve a separation agreement pursuant to which a third party was to be designated as the beneficiary of the life insurance policy. Moreover, in *Kulmacz*, there was no additional provision affording the former spouse a claim against the estate.[6]

Curtin and Schalm have not provided this court with any authority, from this jurisdiction or any other, involving the precise factual situation present here. The cases on which they rely are distinguishable, as they all involve a decedent's former spouse or a decedent's child obtaining equitable relief following the decedent's breach of a separation agreement provision or noncompliance with a court order. See *Travelers Ins. Co.* v. *Daniels*, 667 F.2d 572, 573 (7th Cir. 1981) (decedent's minor child entitled to judgment in her favor where divorce decree required decedent to name her as beneficiary); *Rogers* v. *Rogers*, 63 N.Y.2d 582, 584, 473 N.E.2d 226 (1984) (former spouse entitled to summary judgment where separation agreement provided that decedent would continue present life insurance policy with former spouse and children as named equal irrevocable beneficiaries); *Wood* v. *Martin*, 299 Va. 238, 242, 848 S.E.2d 809 (2020) (former spouse entitled to judgment in her favor where separation agreement required decedent to maintain her as 50 percent beneficiary of specified policy as long as decedent had spousal support obligation or until youngest child graduated from college or reached twenty-third birthday). None of the cases on which Curtin and Schalm rely involve a separation agreement to designate a third party as the beneficiary of a life insurance policy and an accompanying provision affording a remedy for noncompliance to the decedent's former spouse rather than the third party.[7]

Schalm and Curtin argue that "as a direct result of the court's ruling Schalm will be getting much less of the proceeds due to the higher priority tax claims (and administration costs).[8] Courts addressing this issue have specifically noted that equity compels a direct payment of insurance proceeds outside of probate for this very reason." (Footnote added.) We recognize that courts have stated that, "[g]iven that a primary purpose of life insurance is the prompt payment of death claims, and that proceeds payable to a named beneficiary (as opposed to the estate) have the advantage of passing outside probate administration, we find no reason to require [the] defendant to file another costly action against the estate seeking proceeds for which she is equitably entitled and which [the] plaintiff holds, under equitable principles, as a trustee." *Bailey* v. *Prudential Ins. Co. of America*, 124 Ohio App. 3d 31, 39, 705 N.E.2d 389 (1997), appeal dismissed, 81 Ohio St. 3d 1443, 690 N.E.2d 15 (1998); see also *Kulmacz* v. *New York Life Ins. Co.*, supra, 39 Conn. Supp. 476 ("where, as here, the insurer did not make payment to either claimant, we hold that it is equitable and proper to award the proceeds to the party legally entitled to them, rather than to another and thereby necessitating further litigation against the estate"). We do not find the reasoning articulated in *Bailey* and *Kulmacz* applicable here because the separation agreement in this case expressly designated Schalm, a third party, as the primary benefi-

ciary but provided a remedy for noncompliance to Curtin.

Because the equitable remedy that Curtin and Schalm sought in this interpleader action is inconsistent with the remedy provided for in the separation agreement, the trial court properly concluded that the estate was entitled to summary judgment as a matter of law.

The judgment is affirmed.

In this opinion the other judges concurred.

[1] General Statutes § 52-484 provides: "Whenever any person has, or is alleged to have, any money or other property in his possession which is claimed by two or more persons, either he, or any of the persons claiming the same, may bring a complaint in equity, in the nature of a bill of interpleader, to any court which by law has equitable jurisdiction of the parties and amount in controversy, making all persons parties who claim to be entitled to or interested in such money or other property. Such court shall hear and determine all questions which may arise in the case, may tax costs at its discretion and, under the rules applicable to an action of interpleader, may allow to one or more of the parties a reasonable sum or sums for counsel fees and disbursements, payable out of such fund or property; but no such allowance shall be made unless it has been claimed by the party in his complaint or answer."

[2] The special defense stated: "[The] defendants contend that there is no basis for any dispute as it is uncontested that a valid court judgment requires this life insurance policy to be payable to one or both the defendants and not the estate. The flagrant breach of a court order by John R. Curtin, the decedent, and the defendant in the dissolution proceedings cannot legally or equitably inure to the benefit of his estate. [The] defendants thus object to [the] plaintiff paying the proceeds into court as that could have the unintended effect of subjecting the insurance proceeds to an IRS lien and to the claims of other creditors, if any. Therefore, the issue of whether there really is a material dispute as to the rightful beneficiary of the insurance policy should be resolved before the proceeds of the life insurance policy are released by [the] plaintiff."

[3] The special defense stated that an interlocutory judgment of interpleader should enter and the funds should be deposited into the court. It further stated: "The court should thereafter permit the parties to join and/or cite in any nonparties that have an interest in the outcome of this proceeding. For example, in their answer and special defense, [Curtin and Schalm] allege that the IRS has an interest in the disputed fund. . . . Thus the IRS and others will have an interest in the outcome of this proceeding, and the court should order that they be formally noticed and/or joined so that they may protect their rights. . . . Once the court is satisfied that all interested parties have been noticed and/or joined as appropriate, it should proceed 'as in other cases' to adjudicate the merits of the underlying dispute based upon the claims submitted by the parties."(Citations omitted.)

[4] On June 17, 2022, Curtin and Schalm filed a motion for reconsideration, and the coexecutors filed a memorandum in opposition thereto. The court denied the motion for reconsideration, and Curtin and Schalm thereafter amended their appeal. Curtin and Schalm do not brief any claim that the court improperly denied their motion for reconsideration and, therefore, they have abandoned any such claim. See *Updike, Kelly & Spellacy, P.C.* v. *Beckett*, 269 Conn. 613, 642–43, 850 A.2d 145 (2004) (claims not briefed on appeal are considered abandoned).

[5] As part of their argument that the court erred in rendering summary judgment in this interpleader action, because it improperly determined that the separation agreement's specified remedy was an exclusive remedy, Curtin and Schalm argue that the coexecutors "are literally acting in knowing contempt of the divorce judgment and seeking the court to validate their contemptuous conduct." Because we agree with the trial court's conclusion that Curtin and Schalm cannot prevail on their equitable claim to the policy proceeds, this argument necessarily fails.

[6] Curtin and Schalm's argument section of their principal appellate brief contains lengthy block quotes from Superior Court cases, which they describe as involving "similar situations." The cases cited, however, are factually distinguishable, in that they, like *Kulmacz* v. *New York Life Ins. Co.*, supra, 39 Conn. Supp. 470, do not involve a separation agreement

provision affording the former spouse with the specific remedy of a claim against the estate in the event that the decedent does not comply with a separation agreement provision requiring that the decedent designate a third party as a beneficiary.

[7] The secondary sources relied on by Curtin and Schalm likewise do not address this unique factual situation. See 3 Restatement (Second), Contracts § 330, comment (c), p. 51 (1981); id., illustration (6) ("As part of a property settlement in divorce proceedings A contracts with his wife C to make an irrevocable change in the beneficiary of a policy of insurance on A's life to D, their minor child. A fails to do so and later gratuitously makes his second wife E the beneficiary of the policy. On A's death B, the insurance company, pays the amount of the policy into court and interpleads C, D and E. D is entitled to the money."); 3 S. Plitt et al., Couch on Insurance (3d Ed. Rev. 2011) § 37:35, p. 37-35 ("[w]hen the insured is obligated by judicial decree to change the beneficiary under his or her policy, the law will regard him or her as having done that which he or she is obligated to do and will treat the policies as equitably assigned to the persons who should have been named as beneficiaries").

[8] The separation agreement also provided: "The Parties are presently liable for income tax returns (Federal and State) in an amount in excess of $200,000 and said amount continues to increase due to the accrual of interest and/or penalties. Despite the fact that said liabilities are the result of joint tax filings by the parties, the Husband hereby agrees to assume all responsibility for such liabilities and shall indemnify Wife and hold her harmless relative thereto. In the event that income tax refunds are received on any joint tax returns, the Husband would retain one-hundred percent (100%) of such refunds up to the amount of any taxes, penalties, and interest actually paid by the Husband on joint federal and state income tax returns from the date of the judgment of the dissolution of the parties' marriage. Once the Husband has been reimbursed for the payment of taxes, penalties and interest on joint income tax liabilities, the parties will then equally divide any refunds on joint federal and state income tax returns."