

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

In re Estate of RONALD L. ADAMS.

---

KAREN ASH, Personal Representative for the  
Estate of RONALD L. ADAMS,

UNPUBLISHED  
October 23, 2012

Appellee,

v

LORRAINE B. ADAMS,

No. 307033  
Osceola Probate Court  
LC No. 11-000081-DA

Appellant.

---

Before: MURPHY, C.J., and SAWYER and HOEKSTRA, JJ.

PER CURIAM.

Appellant appeals as of right from an order of the probate court requiring her to tender proceeds from a life insurance policy to the decedent's estate. We affirm in part, but remand this case to the probate court for further proceedings.

The decedent and appellant were legally married but lived under a consent judgment of separate maintenance entered in 2010. The judgment decreed that appellant "shall hereafter have no further interest as beneficiary or otherwise in and to any life insurance policies, endowment or annuity contracts, retirement or pension plans standing in the name of or insuring the life of the [decedent]."

The decedent died in May 2011. At the time of his death, the decedent had an employer-provided life insurance policy that fell within Employee Retirement Income Security Act (ERISA) regulation. Appellant was the designated beneficiary on the policy.

Appellee submitted a claim for the proceeds, but the insurer denied it on the ground that under ERISA they were required to pay only the designated beneficiary. Appellee filed a motion to compel the insurer to pay the proceeds to the estate or, alternatively, to compel appellant upon receipt of the proceeds to pay the estate in kind.

Appellant challenged the probate court's jurisdiction on the grounds that ERISA presented a federal issue which belonged in federal court. However, the court determined this

was not a question of determining the ERISA beneficiary but instead one of whether appellant had waived her rights in the matter, and so rejected the challenge.

The probate court went on to conclude that appellant had validly waived her rights to the proceeds by way of the pertinent provision in her and the decedent's judgment of separate maintenance, and ordered her to pay over the proceeds to the estate. This appeal followed.

First, appellant argues that the probate court did not have jurisdiction because federal courts have exclusive jurisdiction over claims arising under ERISA. See 29 USC 1144(a). We disagree.

Whether a court has subject-matter jurisdiction is a question of law that is reviewed de novo on appeal. *In re Haque*, 237 Mich App 295, 299; NW2d (1999). The probate court has "the exclusive legal and equitable jurisdiction of matters that 'relate[] to the settlement of a deceased individual's estate, whether [the decedent died] testate or intestate . . . .'" *In re Leete Estate*, 290 Mich App 647, 661; 803 NW2d 889 (2010), quoting MCL 700.1302(a). In addition, MCL 700.1303(1)(a) confers upon the probate court "concurrent legal and equitable jurisdiction to . . . in regard to an estate . . . [d]etermine a property right or interest."

In this case, the probate court properly recognized its jurisdiction to settle the estate of the decedent and to determine the property rights or interests of an estate. The court was not determining whether the ERISA benefits were to be paid to appellant, but instead acknowledged that federal law required the plan administrator to pay appellant. The court was determining the estate's interest in those proceeds. For these reasons, appellant's jurisdictional challenge must fail.

Next, appellant argues that the beneficiary designation under an ERISA-governed life insurance policy may not be modified except through appropriate plan documents, and that because she was the named beneficiary under such a plan in this instance she remained the only person entitled to the proceeds of the policy. We disagree.

The trial court's interpretation of a contract is reviewed de novo. *Wright v Wright*, 279 Mich App 291, 297; 761 NW2d 443 (2008). However, whether a party has waived a legal right is subject to a mixed standard of review. *Sweebe v Sweebe*, 474 Mich 151, 154; 712 NW2d 708 (2006). "The definition of a waiver is a question of law, but whether the facts of a particular case constitute a waiver is a question of fact." *Id.*

*Sweebe* presented a very similar situation. The decedent had life insurance benefits under ERISA and the plaintiff was named as the beneficiary under the plan. 474 Mich at 153. However, the plaintiff and the decedent had divorced, and the judgment of divorce contained a clause that indicated each party agreed to relinquish any rights in the life insurance of the other. *Id.* The decedent's new wife, who was personal representative of the estate, sought to have the waiver in the judgment of divorce enforced. *Id.*

Our Supreme Court observed that "the plan administrator distributed the proceeds to the named beneficiary, as required by ERISA," but determined that "after the plan administrator distributed the proceeds as required by ERISA, a claim could then be filed against the named beneficiary alleging that she waived her right to retain the proceeds." *Sweebe*, 474 Mich at 158-

159. The Court continued that “the benefits were properly paid to plaintiff under ERISA, but plaintiff has no legal right to retain the proceeds under the waiver provision in the judgment of divorce.” *Id.* at 159.

The waiver language at issue in *Sweebe* was very similar to the waiver at issue here. See 474 Mich at 153. That *Sweebe* concerned a judgment of divorce instead of one for separate maintenance presents a distinction without a difference. *Sweebe* is thus on point and directly applicable.

In the instant case, the probate court determined that the judgment for separate maintenance included a valid waiver, and that appellant “received consideration for that waiver,” adding, “The waiver was explicit, voluntary, and made in good faith. She was represented by Counsel at the time she signed that waiver.” Those findings were not clearly erroneous. Appellant signed the judgment for separate maintenance, and, as the probate court pointed out, she was represented by counsel in the matter. A contract should be interpreted according to the ordinary meaning of the language used. *Woodington v Shokoohi*, 288 Mich App 352, 373; 792 NW2d 63 (2010). If only one reasonable interpretation is possible then a contract is not ambiguous. *Id.* at 374.

A waiver is a voluntary relinquishment of a known right and must be made explicitly, voluntarily, and in good faith. *Sweebe*, 474 Mich at 157. The waiver provision here at issue clearly stated that appellant was to have no further interest in any life insurance policies of the decedent, as beneficiary or otherwise. Accordingly, the probate court properly took instruction from *Sweebe* in holding that, although the ERISA benefits must be paid to appellant, appellant validly waived her rights to the proceeds and so must tender them to the estate.

Finally, appellant argues that the probate court failed to address whether appellant and the decedent entered into a subsequent agreement to remain each other’s beneficiaries that superseded any waiver in their judgment of separate maintenance. This argument has merit.

To preserve an issue for appellate review it must be raised in the trial court. *Walters v Nadell*, 481 Mich 377, 387; 751 NW2d 431 (2008). “By limiting appellate review to those issues raised and argued in the trial court, and holding all other issues waived, appellate courts require litigants to raise and frame their arguments at a time when their opponents may respond to them factually.” *Id.* at 388. Appellant apparently first raised this issue in her motion for reconsideration, which is too late to preserve it for appellate review. See *Vushaj v Farm Bureau Gen Ins Co*, 284 Mich App 513, 519; 773 NW2d 758 (2009). However, this Court may overlook preservation requirements to prevent a miscarriage of justice. See *Walters*, 481 Mich at 387. This Court may also choose to review an unpreserved issue if it is necessary to the proper resolution of a case. *Klooster v City of Charlevoix*, 488 Mich 289, 310; 795 NW2d 578 (2011).

A trial court’s interpretation of a contract is reviewed de novo. *Wright*, 279 Mich App at 297. However, the trial court’s finding that a contract was formed in the first place is reviewed for clear error. *Id.* A clear error exists if “the reviewing court, on the whole record, is left with the definite and firm conviction that a mistake has been made.” *46th Circuit Trial Court v Crawford Co*, 476 Mich 131, 140; 719 NW2d 131 (2006) (internal quotation marks and citation

omitted). But, a trial court's decision in regard to a motion for reconsideration is reviewed for an abuse of discretion. *Yoost v Caspari*, 295 Mich App 209, 219; 813 NW2d 783 (2012).

In this case, the probate court denied the motion for reconsideration on the grounds that “the instant petition merely presents the same issues it has previously ruled on, either expressly or by reasonable implication and, further, that the moving party has failed to demonstrate palpable error.”

Generally, a trial court has discretion when deciding a motion for reconsideration and may decline to address new legal theories or evidence. See *Yoost*, 295 Mich App at 220. But the probate court did not indicate that it was declining to review a new legal theory or new evidence, having stated only that the motion for reconsideration “merely presents the same issues.”

The probate court thus did not address whether appellant and the decedent entered into a new postjudgment agreement, or whether the judgment's waiver provision remained effective in the face of any new such agreement. But a valid agreement reached after entry of the judgment of separate maintenance would potentially change the outcome of the case. We conclude that this issue should be fully explored by the probate court.

Affirmed in part and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William B. Murphy

/s/ David H. Sawyer

/s/ Joel P. Hoekstra