STATE OF MICHIGAN

COURT OF APPEALS

In re Estate of Ronald Hayes

FRANCES M. HAYES,

Petitioner-Appellant,

v

RONALD MORRIS,

Respondent-Appellee.

UNPUBLISHED
July 29, 2014

No. 315586
Oakland Probate Court
LC No. 2012-344757-DA

Before: BOONSTRA, P.J., and METER and SERVITTO, JJ.

PER CURIAM.

Petitioner appeals as of right from an order granting respondent's motion for summary disposition in this case involving the distribution of the property of the deceased, Ronald Hayes (hereinafter "Ronald"). We reverse and remand for further proceedings.

The pertinent facts are not in dispute. Ronald and petitioner were proceeding with a divorce in circuit court when, on July 24, 2012, Ronald died. The parties had been ordered to domestic-relations mediation pursuant to MCR 3.216. A transcript of the audio recording of the mediation, which took place on June 5, 2012, reveals that the parties had reached a settlement that provided for a largely equal division of the marital estate. At a hearing on June 15, 2012, petitioner testified that there had been a breakdown of the marriage and that the parties had reached an equitable settlement. Ronald stated that he had been "wondering about the furniture in the home . . . ." Petitioner's attorney responded, "They're going to equitably divide that. If they can't resolve it they're going to go to . . . binding arbitration." The trial court stated that it "will grant an absolute Judgment of Divorce dissolving the bonds of matrimony. I'll sign the Judgment when I receive it . . . ." No relevant action took place on the divorce case until Ronald's death. At that point, the circuit court dismissed the case.

After Ronald's death, petitioner filed a petition in the probate court seeking to restrain respondent, Ronald's son and a beneficiary of his estate, from taking certain assets. Respondent filed a motion for summary disposition under MCR 2.116(C)(10), arguing that the oral settlement agreement was binding and that "[a]ssets awarded solely to Ronald . . . should therefore pass by operation of law to [Ronald's] beneficiary . . . ." Petitioner asked the court to

deny respondent's motion and to grant her summary disposition under MCR 2.116(I)(2), arguing that "[t]he mediation agreement does not have any binding effect standing on its own without an entry of judgment to give it effect."

The probate court ruled for respondent, stating that "there was a binding agreement existing" between Ronald and petitioner and "no genuine of material facts exists and [respondent] is entitled to a [j]udgment as a matter of law."

Petitioner now appeals. We review de novo a trial court's decision concerning a motion for summary disposition. *Yoost v Caspari*, 295 Mich App 209, 219; 813 NW2d 783 (2012). This appeal essentially concerns an issue of law, and we also review de novo issues of law. *Thomas v City of New Baltimore*, 254 Mich App 196, 201; 657 NW2d 530 (2002).

The trial court erred in granting summary disposition to respondent. As noted in *Wilson v Wilson*, 73 Mich 620, 621; 41 NW 817 (1889), the death of a spouse before divorce necessarily terminates divorce proceedings. Accordingly, when Ronald died, the divorce proceedings ended, and at that point, no judgment had been entered. MCR 3.216(H)(7), dealing with domestic-relations mediation, states:

> If a settlement is reached as a result of the mediation, to be binding, the terms of that settlement must be reduced to a signed writing by the parties or acknowledged by the parties on an audio or video recording. *After a settlement has been reached, the parties shall take steps necessary to enter judgment as in the case of other settlements*. [Emphasis added.]

Again, no judgment based on the agreement had been entered here. The Michigan Supreme Court case of *Tiedman v Tiedman*, 400 Mich 571; 255 NW2d 632 (1977), is highly instructive. In *Tiedman*, *id*. at 573, the divorcing parties reached a settlement and acknowledged the accuracy of the terms of the settlement in court. The trial court, as in the present case, stated that it would sign the judgment of divorce upon being presented with it. *Id*. The husband died before entry of the judgment. *Id*. The trial court refused to dismiss the divorce case and stated that its earlier oral statement regarding the divorce was binding and any further acts were "ministerial." *Id*. at 573-574. The Supreme Court rejected the trial court's view, stating, in part:

> After a judge's oral pronouncement that he will sign a judgment of divorce a dispute might arise regarding the meaning of the words used by the lawyers in stating the terms of a property settlement, or the parties might reconcile or, for other reasons, by mutual agreement abandon the action for divorce and resume the marriage relationship. They would not be divorced simply because the judge had said a divorce is or will be granted or that he would sign a judgment of divorce.
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> The rule is well established that courts speak through their judgments and decrees, not their oral statements or written opinions. Generally, a judgment or order is reduced to written form, as was contemplated in this case; until reduced

> to writing and signed, the judgment did not become effective and the parties remained married.
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> * * *
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> In the instant case, it was beyond the court's power after [the husband's] death to enter a judgment of divorce or to order a property settlement . . . . [*Id*. at 575-577.]

Respondent contends that *Kresnak v Kresnak*, 190 Mich App 643, 650-651; 476 NW2d 650 (1991), involving the upholding of a proposed separate-maintenance agreement after the death of one of the parties, essentially vitiates the import of *Tiedman*. The facts in *Kresnak* were similar to those in *Tiedman*, except the case involved a request for separate maintenance, not for a divorce. *Id*. at 644-645. The *Kresnak* Court stated that *Tiedman* appeared, at first blush, to control, but it then stated that *Tiedman* was distinguishable because it involved a divorce request and not a request for separate maintenance. *Id*. at 649. We fail to see how *Kresnak* controls in the present case, seeing as the present case, as in *Tiedman*, involves the proposed entry of a judgment for divorce, not for separate maintenance. *Tiedman* is the more applicable case.

In *Tokar v Albery*, 258 Mich App 350, 351-352; 671 NW2d 139 (2003), the parties, amidst divorce proceedings, submitted disputed property issues to binding arbitration. After the filing of the arbitration award but before entry of the judgment of divorce, the husband died. *Id*. at 352. This Court held that the trial court correctly denied the motion to enforce the arbitration award because "the trial court retains ultimate control over a divorce action" and "an arbitration award, standing alone, does not have full force and effect unless and until the trial court enters a judgment of divorce based on that award." *Id*. at 353. The Court mentioned two possible exceptions under which the award could be enforced: (1) if entry of judgment would have been merely "ministerial" and (2) if the decedent had acted in reliance on the award. *Id*. at 355. The Court found that entry of judgment would not have been "ministerial" because, in part, there were issues of household furnishings remaining and "before the judgment of divorce was entered, the parties had the option to reconcile or stipulate to an agreement entirely different from the arbitration award." *Id*. at 355-356. The same reasoning holds true in the present case. The Court also found no reliance by the decedent, stating that, to show reliance, "[m]eaningful proof of conduct indicating the parties themselves in good faith believed they were divorced is required." *Id*. at 356 (internal citation and quotation marks omitted). Such reliance has not been shown in the present case either.

A considered analysis of applicable published case law, as discussed above, indicates that the trial court erred in granting summary disposition to respondent.[1]

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[1] The court also cited MCL 700.2205 in finding for respondent. This statute states:

> The rights of the surviving spouse to a share under intestate succession, homestead allowance, election, dower, exempt property, or family allowance may be waived, wholly or partially, before or after marriage, by a written contract,

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Mark T. Boonstra
/s/ Patrick M. Meter
/s/ Deborah A. Servitto

> agreement, or waiver signed by the party waiving after fair disclosure. Unless it provides to the contrary, a waiver of "all rights" in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separate maintenance is a waiver of all rights to homestead allowance, election, dower, exempt property, and family allowance by the spouse in the property of the other and is an irrevocable renunciation by the spouse of all benefits that would otherwise pass to the spouse from the other spouse by intestate succession or by virtue of a will executed before the waiver or property settlement.

We find this statute inapplicable. There was no "waiver" here; there was, instead, an agreement that was to be incorporated into a divorce judgment—an agreement that, according to applicable case law, has become unenforceable.