

VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 24-CV-00380

Victoria diMonda v. Lincoln National Corp d/b/a Lincoln Financial Group et al

ENTRY REGARDING MOTION

Titles: Motion for Summary Judgment; Motion for Judgment on the Pleadings; Motion for Interpleader Relief; Motion for Judgment on the Pleadings; Motion for Summary Judgment; (Motions 9; 10; 11; 12; 13)

Filers: Bernard D. Lambek; Michael S. Munson and Alexander M. Dean; Evan James

O'Brien; Jenny H. Wang; Chris S. Dodig

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This case involves an ex-wife (diMonda) suing her deceased husband's wife (Barrows) and two life insurance companies, for which she is seeking declaratory relief that she is entitled to the payouts of his life insurance policies. diMonda and her late husband had a Divorce Order and Stipulation Agreement that husband would maintain his current SGLI life insurance policy or a policy with the same minimum death benefit of \$400,000 with diMonda as beneficiary for fifteen years or when his spousal maintenance was paid off, whichever is later. Husband let his SGLI policy expire and obtained a USAA policy and Lincoln policy that he held until his death. Additionally, Vermont 504, a corporation that Husband assigned his USAA policy to as collateral for a loan, has intervened in this suit.

There are several motions pending before this Court. diMonda has moved for Summary Judgment on her request for declaratory relief that she is entitled to one or both of Husband's policies. Vermont 504 has moved for Summary Judgment claiming that it is entitled to the USAA policy payout because of the loan agreement. Lincoln and Barrows moved for Judgment on the Pleadings, contending that diMonda has no right to recover from the policies.

The rulings on the motions, for the reasons herein, are:

1. Plaintiff's Motion for Summary Judgment (#13) is denied.
2. Defendant Barrows' Motion for Judgment on the Pleadings (#10) is granted.
3. Defendant USAA's Motion for Interpleader Relief (#11) is granted.
4. Defendant Lincoln's Motion for Judgment on the Pleadings (#12) is granted.
5. Defendant Vermont 504's Motion for Summary Judgment (#9) is granted.

Facts

The following facts are undisputed. Plaintiff diMonda is the ex-wife of deceased Husband, who was married to Defendant Barrows at the time of his death on December 8, 2023. At the time of their divorce in 2011, Husband had an SGLI life insurance policy in the face amount of \$400,000 with diMonda as beneficiary. As part of their divorce, diMonda and Husband stipulated, and the Family Court ordered, that Husband keep that policy or a similar policy in effect for 15 years or once spousal maintenance was paid off, whichever is later. The Family Court Order provides the following in pertinent part:

[Husband] shall maintain in place his present life insurance policy with SGLI with a payable on death benefit of \$400,000, or a policy which has the same minimum death benefit, at his option. [Husband] shall name [diMonda] as primary, 100% beneficiary on this life insurance policy for at least the next fifteen (15) years or until such time as [Husband] has paid his spousal maintenance obligation in full, whichever is later.

The Family Court also ordered that Husband pay a spousal maintenance obligation of \$4,000 per month until September 30, 2018, and \$2,500 per month beginning October 2018 until September 30, 2025. Husband married Barrows in 2013.

Husband let his SGLI policy lapse and obtained the USAA policy with a face value of \$400,000 and then the Lincoln policy with a face value of \$250,000. Husband also assigned his USAA policy as collateral for a business loan to Vermont 504 in June 2020. In addition to the USAA policy, Husband used five other interests in collateral to secure the Vermont 504 loan.

Barrows is the named beneficiary on both policies. Husband died on December 8, 2023. USAA has not yet paid out the insurance payout. Lincoln paid Barrows the entire death benefit on its policy.

Discussion

1. diMonda Motion for Summary Judgment for Declaratory Relief

In diMonda's Second Amended Complaint, diMonda asserts that, upon the SGLI policy's expiring, Husband obtained a policy with Lincoln and then another with USAA. Pl.'s Second Am. Compl. at 3 (filed Mar. 26, 2024). diMonda seeks declaratory judgment that she is the rightful beneficiary of one or both of these policies, be paid \$400,000 from the policies, and be awarded other costs. *Id.* at 4–5.

diMonda then moved for Summary Judgment pursuant to V.R.C.P. 56 on her claim for declaratory relief. Pl.'s Mot. for Summ. J. at 1 (filed Sep. 16, 2024). In her motion, diMonda avers that Husband violated the Order and Stipulation to keep a life insurance policy naming her as beneficiary, the Family Court Order is valid, the Stipulation is enforceable, her claim to the policies is superior to Barrows and Vermont 504, and that she should get paid \$400,000 from the policies and not just the amount that is her spousal maintenance not yet received. Pl.'s Mem. in Supp. of Mot. for Summ. J. at 4–14 (filed Sep. 16, 2024).

Summary judgment is appropriate when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law, after giving all reasonable doubts and inferences to the nonmoving party. *Sabia v. Neville*, 165 Vt. 515, 523 (1996).

A. diMonda has no equitable claim to the policies based on the Family Court Order or the Stipulation Agreement.

diMonda insists that she is entitled to the life insurance policies at issue based on principles of equity. That said, diMonda fails to identify any Vermont caselaw enforcing a family court order based on principles of equity under similar circumstances. Rather, diMonda cites to precedent of the Court of Appeals of New York and the United States Court of Appeals for the Seventh Circuit. See *Simonds v. Simonds*, 380 N.E.2d 189, 195 (N.Y. 1978); *Travelers Ins. Co. v. Daniels*, 667 F.2d 572, 576 (7th Cir. 1981). However, this Court is not persuaded by these cases because the facts here are readily distinguishable from those cases. As will be discussed, this case involves an invalid Family Court Order provision and a Stipulation with no indication that it was meant to be enforced outside of the Family Court Order. The above cases cited by diMonda involved either a valid separation agreement or a valid divorce decree. Because those factors are not present here, diMonda has no equitable claim to the policies in dispute.

B. The Family Court Order is unenforceable because Vermont prohibits Family Courts from ordering spouses to maintain or buy life insurance to secure spousal maintenance directly or indirectly.

The first issue before the court is whether the Family Court could order a spouse to maintain or purchase a life insurance policy to secure spousal support under Vermont law. The Supreme Court of Vermont has held that family courts do not have authority to order maintenance to continue beyond the life of the obligor spouse. *Narwid v. Narwid*, 160 Vt. 636, 638 (1993) (citing *Justis v. Rist*, 159 Vt. 204, 244 (1992)). There, the Court found that the Family Court did not have the authority to order a divorcing spouse to maintain a life insurance policy because the plaintiff would realize benefits from the policy only upon the death of the defendant, and the benefits would function as a form of continued maintenance that the plaintiff would no longer be entitled to. *Id.* As a result, the Court struck that portion of the Family Court order. *Id.* Additionally, the Court has held that while Family Courts may order an insured spouse to maintain an existing policy for the benefit of the other spouse, they cannot do so for the benefit of the other spouse to assure continued maintenance payments following the death of the obligor spouse. *Theise v. Theise*, 164 Vt. 577, 581 (1996). The Court noted that the Family Court cannot use life insurance to secure the maintenance award either directly or indirectly. *Id.* at 580. Again, the remedy was to strike that portion of the Family Court order. *Id.* at 581. Thus, Family Courts may order a spouse to maintain a policy for the benefit of the other spouse, but this cannot be done to secure maintenance directly or indirectly. The proper interpretation of a previous court order is a matter of law for the trial court to determine. See *Youngbluth v. Youngbluth*, 2010 VT 40, ¶ 8, 188 Vt. 53.

diMonda argues that this order is valid because the requirement for Husband to maintain his existing policy is not being used to secure maintenance, but rather is an asset of the divorce that is subject to equitable division. Pl.'s Mem. in Supp. of Mot. for Summ. J. at 5–6. In response, Lincoln argues that this part of the Family Court Order is invalid because it requires Husband to maintain his policy to secure his spousal maintenance obligation to diMonda. Lincoln's Reply in Supp. of Mot. for J. on the Pleadings at 5–7 (filed Aug. 28, 2024).

Based on a plain reading of the Family Court Order, the Family Court invalidly ordered Husband to maintain his policy, or another policy with the same benefit, that has diMonda as the beneficiary until his spousal support obligation is paid off. If fifteen years passed, and Husband had not paid off his support, he would have to maintain the policy until the support was paid in full. This indicates an intention to use this policy to directly secure maintenance if the maintenance was not yet paid to diMonda in full. The timing of when Husband no longer has to maintain the policy is tied to the date when his spousal maintenance is paid off in full. This is at least an indirect attempt to secure spousal maintenance through the policy, which is not allowed.

diMonda also argues that the policy was a marital asset that was subject to equitable distribution by the Family Court, however, as stated, the policy length is intrinsically tied to the maintenance obligation, not the value of the policy itself. Therefore, the provision is invalid, and this Court will not enforce it. Alternatively, even if the SGLI policy was an asset that was equitably distributed by the Family Court, then there is no SGLI policy to be distributed. Additionally, the USAA and Lincoln policies are not impacted by that asset distribution because they are separate policies that were not in existence at the time of the Family Court Order. Thus, this provision of the Family Court Order is invalid, and does not give diMonda any rights to the policies in dispute.

C. diMonda has no recovery under the Stipulation Agreement between her and Husband because there are no facts to suggest that they intended to be bound by the Stipulation Agreement independent of the Family Court Order.

diMonda further claims that even if the Family Court Order is not enforceable, then she can recover under principles of contract based on the Stipulation Agreement. A postnuptial contract incident to separation may be enforceable outside the divorce action if the agreement reflects the parties' mutual intent to be bound by the agreement wholly independent of the divorce action. *Maier v. Maier*, 2021 VT 88, ¶ 30, 216 Vt. 33. Other states have ruled that a separation agreement can create an equitable remedy apart from a family court order. See *Foster v. Hurley*, 826 N.E.2d 719, 724–25 (Mass. 2005); *Simonds v. Simonds*, 380 N.E.2d 189, 195 (N.Y. 1978); *Hundertmark v. Hundertmark*, 93 A.2d 856, 858 (Pa. 1952). Thus, the Stipulation Agreement can be enforced as a contract outside of the Family Court Order if the parties intended to be bound by the Stipulation Agreement wholly independent of the divorce action.

diMonda asserts that, even if the Family Court Order is invalid, the Stipulation Agreement between diMonda and Husband is enforceable concerning the life insurance policy provision. Pl.'s Mem. in Supp. of Mot. for Summ. J. at 7–10.

Here, the Stipulation Agreement does not contain any language about the parties intending to be bound by the agreement outside of the Family Court Order. The Stipulation only says that the parties “stipulate and agree that the Court shall issue a Final Divorce Order that provides as follows.” Exhibit G at 1 to Pl.’s Mot. for Summ. J. Vermont courts presume that the parties to a contract intended to be bound by the plain language of the instrument and extrinsic evidence may be used to construe a contract only upon the court finding an ambiguity in the agreement. See *Meier v. Meier*, 163 Vt. 608, 609 (1994). Whether a provision is ambiguous is a question of law for the court to decide. *Id.* When the plain language of a contract is clear, the contract is unambiguous and the plain language controls as a matter of law. *Beldock v. VWSD, LLC*, 2023 VT 35, ¶ 27 (citing *Southwick v. City of Rutland*, 2011 VT 105, ¶ 5, 190 Vt. 324). If the plain language of the contract, when reviewed alone, is unclear, courts may look to “limited extrinsic evidence of circumstances surrounding the making of the agreement” to help resolve whether the contract provision is ambiguous. *Id.* ¶ 28 (citing *Kipp v. Chips Est.*, 169 Vt. 102, 107 (1999)).

The Stipulation Agreement is not ambiguous, and therefore this Court will not consider extrinsic evidence when interpreting it. The language of the Stipulation Agreement is clear that it is meant to be incorporated into the binding Family Court Order, and there is no intent that this contract should be enforceable on its own wholly independent of the divorce action. Even if there was an ambiguity, no other evidence has been submitted to claim that the parties intended the Stipulation Agreement to be enforceable on its own wholly independent of the divorce action¹. There is no language in the Stipulation that supports a conclusion that it was intended to be enforceable outside of the Family Court Order, and no evidence outside of the Stipulation of any such intent.

Importantly, the Stipulation Agreement has the same fatal flaw that the Family Court Order does: it does not give diMonda any right to the policies at issue because they are separate policies that are not impacted by the Order or the Stipulation Agreement. Even if Husband breached the Stipulation Agreement, it would not give diMonda a claim to the separate policies that Husband later bought and assigned. Thus, this Motion is denied because there is no evidence to suggest that the Stipulation Agreement should be enforced outside of the Family Court Order, which is invalid. diMonda has not demonstrated a right to recover from either policy. The Motion is denied.

2. Barrows’s Motion for Judgment on the Pleadings

In Barrows’ Amended Answer, Barrows asserted a counterclaim against diMonda for declaratory relief, a crossclaim against Lincoln for declaratory relief, and a crossclaim against USAA for declaratory relief. Def.’s Am. Answer to the First Am. Compl., Countercl., and Cross-cls. at 3–5 (filed Apr. 24, 2024). Later, Barrows moved for Judgment on the Pleadings pursuant to V.R.C.P. 12(c) on these claims and requested that this Court enter judgment for her on these claims, order that the entire \$250,000 death benefit of the Lincoln policy be distributed

¹ If a party fails to properly support an assertion of fact, the court may issue any appropriate order. V.R.C.P. 56(e)(4).

to her, and order that the \$400,000 death benefit of the USAA policy be placed in trust with the Court until final determination of Vermont 504's lien, with any remainder of the policy distributed to her. Def. Marsha Barrows's Mot. for J. on the Pleadings at 10 (filed Jul. 8, 2024). Barrows argues in her motion that diMonda would be unjustly enriched if she received money from the policies because the Family Court Order is invalid and that even if diMonda does have some equitable interest in the death benefits, that amount, at most, is the amount that diMonda is entitled to pursuant to the maintenance obligation owed to her from Husband. *Id.* at 5–9. Again, diMonda does not have an equitable interest in either policy, and is not entitled to the payouts.

Judgment on the pleadings is appropriate when “the movant is entitled to judgment as a matter of law on the basis of the pleadings.” *Huntington Ingalls Industries, Inc. v. Ace American Insurance Company*, 2022 VT 45, ¶ 17, 217 Vt. 195 (citing *Messier v. Bushman*, 2018 VT, 93, ¶ 9, 208 Vt. 261). When reviewing, the court assumes that “all well pleaded factual allegations in the nonmovant's pleadings and all reasonable inferences that can be drawn therefrom” are true and “all contravening assertions in the movant's pleadings are false.” *Id.* (citing *Thayer v. Herdt*, 155 Vt. 448, 456 (1990)).

As described above, diMonda has no path to recover the life insurance policies payouts from Barrows. Judgment on the Pleadings in favor of Barrows is appropriate. Barrows is entitled to the Lincoln policy in whole because she is the rightful beneficiary of the policy and there is no party other than diMonda claiming an interest in that policy.

Turning to the USAA policy, as discussed below, the parties shall stipulate where the death benefit of the policy may be deposited and held until further order of this court after determination and/or stipulation of who is entitled to what portions of the USAA policy payout based on Vermont 504's interest in the policy and the other collateral used for the Loan. Thus, the Motion is granted².

3. USAA Motion for Interpleader Relief

In response to the competing claims for the USAA policy payout, USAA filed a Counterclaim and a Crossclaim in Interpleader in this case regarding diMonda, Barrows, and Vermont 504. USAA Life Insurance Company's Assented-To Mot. for Interpleader Relief at 2 (filed Jul. 12, 2024). Accordingly, USAA requests that this Court order USAA to deposit the policy payout with the Court and dismiss USAA with prejudice from the action. *Id.*

V.R.C.P. 22 permits a defendant to obtain interpleader relief if there is a sum of money to which different parties make claim, and the person bringing the bill is a mere stakeholder that has no interest in the matter. This rule is particularly suited for situations where several parties claim a fund. See *Selected Listings Co., Inc. v. Humiston*, 135 Vt. 106, 110 (1977). V.R.C.P. 22 is identical to Federal Rule 22(1).

² Because the Court finds that a hearing on this Motion is unnecessary, Barrow's request for a hearing on her Motion is denied. See *Shaw v. Barnes*, 166 Vt. 610, 619 (1997) (mem.) (holding that civil rules give court discretion to decline oral argument on motions in all cases). Still, the Court will hold a hearing on the rights of the affected parties concerning the interpleader action as to the amount of Vermont 504's claim, and the respective payouts.

The protection afforded by interpleader takes several forms. Most significantly, it prevents the stakeholder from being obliged to determine at his peril which claimant has the better claim, and, when the stakeholder has no interest in the fund, it forces the claimants to contest what essentially is a controversy between them without embroiling the stakeholder in the litigation over the merits of the respective claims. Even if the stakeholder denies liability, either in whole or in part, to one or more of the claimants, interpleader still protects the stakeholder from the vexation of multiple suits and the possibility of multiple liability that could result from adverse determinations in different courts. Thus, interpleader can be employed to reach an early and effective determination of disputed questions with a consequent saving of trouble and expense for the parties.

7 Wright & Miller, Federal Practice & Procedure: Civil § 1702 (3d ed.).

Interpleader relief is appropriate in this case. USAA recognizes that the payout from the policy is payable, but it is unable to determine the person(s) entitled to the policy proceeds. USAA Life Insurance Company's Assented-To Mot. for Interpleader Relief at 3–4. Interpleader relief will prevent USAA from having to litigate multiple disputes for the payout where it does not have an interest in who gets the payout. Additionally, the other parties in this lawsuit are agreeable to this relief. *Id.* at 2. Accordingly, the motion for interpleader relief is granted.³ The parties shall stipulate where the death benefit of the policy may be deposited and held until further order of this court. After making that deposit, USAA is dismissed from the action.

4. Lincoln's Motion for Judgment on the Pleadings

Lincoln asserts that it is entitled to judgment on the pleadings pursuant to V.R.C.P. 12(c) because the Family Court Order is invalid and that, in the alternative, if the Order was valid, the Order plainly does not encompass the Lincoln Policy. Lincoln Mot. for J. on the Pleadings at 1 (filed Jul. 15, 2024).

Lincoln maintains that the Family Court Order is the only possible way for diMonda to receive damages from the Lincoln policy. See *id.* at 4–7. As discussed above, the Family Court Order is invalid, and diMonda cannot recover based on it. The Lincoln policy did not exist at the time of the divorce, and the Family Court Order would not have been able to reach that policy in any event.

Moreover, diMonda cannot recover based on the Stipulation Agreement, separate from the Family Court Order, because there is no intent by the parties to be bound by the Stipulation Agreement outside of the Family Court Order.

Thus, diMonda has no equitable claim to the policies.

Because of this, diMonda has no path to recover from the Lincoln policy, and judgment on the pleadings in favor of Lincoln is appropriate. Therefore, the Motion is granted, and diMonda's claims against Lincoln are dismissed with prejudice.

³ The court is unable to hold the funds itself.

5. Vermont 504's Motion for Summary Judgment

Vermont 504 moved to intervene in this case pursuant to V.R.C.P. 24(a)(2) because Husband used his USAA policy as collateral to obtain a loan from Vermont 504. Mot. to Intervene at 1–2 (filed Mar. 28, 2024). The Court granted that Motion. Entry Regarding Mot. (filed Apr. 9, 2024). Then, Vermont 504 moved for Summary Judgment pursuant to V.R.C.P. 56, arguing that the Loan is in default in the amount of \$127,560.60 and that the USAA death benefit of \$400,000 be paid to it to satisfy the loan under the Assignment executed in accordance with 8 V.S.A. § 3713(a). Intervenor's Mot. for Summ. J. at 1–4 (filed Jun. 11, 2024). In its argument, Vermont 504 cites to provisions of Vermont's U.C.C. statutes to assert that it is a good faith purchaser. See *id.* at 3–4.

In response to Vermont 504's Motion, diMonda filed a Memorandum in Opposition, arguing that it is premature for this Court to make a ruling on this issue because more discovery is needed and that, in the alternative, the Family Court Order gives her priority over the USAA policy. Pl.'s Mem. in Opp. To Intervenor's Mot. for Summ. J. at 2–7 (filed Jul. 11, 2024).

A. Assignments of life insurance policies in Vermont.

Vermont's U.C.C. does not cover life insurance policies. See 9A V.S.A. § 2–102; 9A V.S.A. § 3–104(a); 9A V.S.A. § 9–109(d)(8). Thus, Vermont's U.C.C. is inapplicable, and life insurance policies are viewed as contracts. Therefore, life insurance policies are governed by contract common law and Vermont statutes.

Generally, contracts are freely assignable unless (a) the substitution of a right of the assignee for the right of the assignor would materially change the duty of the obligor, or materially increase the burden or risk imposed on him by his contract, or materially impair his chance of obtaining return performance, or materially reduce its value to him, or (b) the assignment is forbidden by statute or is otherwise inoperative on grounds of public policy, or (c) assignment is validly precluded by contract. Restatement (Second) of Contracts § 317(2).

Under Vermont law, life insurance policies are freely assignable so long as the policy itself does not prohibit assignments. 8 V.S.A. § 3713. A proper assignment of a life insurance policy is binding on the assignor and assignee. See *Belknap v. Northwestern Mut. Life Ins. Co.*, 108 Vt. 421 (1937) (holding that the beneficiary of a life insurance policy only holds an expectancy interest that can be defeated by an assignment made with valid consideration).

B. Because Vermont 504 has a valid claim to the policy based on the Loan Agreement, the Motion is granted, and the Court will hold a hearing on the interpleader.

Again, diMonda has no right to recover from either policy. Here, Husband was allowed to use his policy as collateral pursuant to 8 V.S.A. § 3713. There is nothing in the record to suggest that the policy was not freely assignable, and Vermont 504 became the holder of the policy pursuant to the Loan Agreement. Additionally, the assignment is supported by consideration because it was made pursuant to a valid loan agreement, with Vermont 504's consideration being the loan and Husband's consideration being the multiple assets that Vermont

504 took an interest in to secure the loan. Exhibits J and K to Pl.'s Mot. for Summ. J. diMonda does not have a claim to an asset that has been validly assigned to another party.

Pursuant to *Belknap*, Vermont 504 is entitled to some of the proceeds of the policy. However, the proceeds of the USAA death benefits shall be escrowed as provided above until the court determines and/or the parties agree what portion Vermont 504 is entitled to based on the other collateral in the Loan Agreement and what portion Barrows is entitled to as the listed beneficiary. Thus, Vermont 504's Motion is granted, and the rights of Vermont 504 and Barrows concerning the policy will be determined while the proceeds are held in escrow.

ORDER

The Court concludes that diMonda is not entitled to any portion of the USAA or Lincoln life insurance policies. Thus, diMonda's Motion for Summary Judgment is denied, and Lincoln's Motion for Judgment on the Pleadings is granted.

Moreover, because it still must be determined what portion of the USAA policy Vermont 504 is entitled to, the proceeds of the USAA policy will be kept in escrow until it is determined how much is paid to Vermont 504 and how much is paid to Barrows. Thus, Barrows' Motion for Judgment on the Pleadings is granted, USAA's Motion for Interpleader Relief is granted, and Vermont 504's Motion for Summary Judgment is granted.

The Court will schedule a hearing on the interpleader action to determine the rights of each party concerning the USAA policy payout, unless the parties come to an agreement before then.

1. Plaintiff's Motion for Summary Judgment (#13) is denied.
2. Defendant Barrows' Motion for Judgment on the Pleadings (#10) is granted.
3. Defendant USAA's Motion for Interpleader Relief (#11) is granted.
4. Defendant Lincoln's Motion for Judgment on the Pleadings (#12) is granted.
5. Defendant Vermont 504's Motion for Summary Judgment (#9) is granted.

Signed Electronically on October 28, 2024 pursuant to V.R.E.F. 9(d).



David Barra
Superior Court Judge