No. 94,572.

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

Terry E. WEBER n/k/a Brady,
Appellee,

v.

Emanuel M. WEBER and Jerilyn Weber,
Appellants,

and

UNION INSURANCE COMPANY,
Defendants.

Appeal from Doniphan District Court; James A. Patton, judge. Opinion filed September 15, 2006. Affirmed.

Alan M. Boeh, of Reeder & Boeh, Chartered, of Troy, for the appellants.

William R. McQuillan, of Troy, for the appellee.

Before MARQUARDT, P.J., PIERRON, J., and LARSON, S.J.

MEMORANDUM OPINION

PER CURIAM.

Emanuel Weber and his daughter Jerilyn Weber appeal from the district court's award of a prorated share of casualty insurance proceeds to Terry E. Weber n/k/a

Brady for her loss of personal property in a house fire. At the time of the fire Emanuel and Terry were married and shared the house with Jerilyn. To reach its conclusion, the court interpreted the couple's antenuptial agreement and the casualty insurance policy Emanuel purchased covering the house.

On December 19, 2001, Emanuel and Terry entered into an antenuptial agreement in anticipation of their impending wedding. Each party agreed to maintain separate ownership of existing real and personal property in the event of divorce or annulment.

After the wedding, Union issued a farmowners/ranchowners insurance policy on a house Emanuel owned effective March 14, 2002, to March 14, 2003. Emanuel and Terry lived upstairs in the house, and Jerilyn lived in a basement apartment. Emanuel was the named insured on the policy which provided, in relevant part, $105,000 coverage for the house and $73,500 coverage for personal property.

On February 19, 2003, a fire destroyed the house and all of the personal property inside. Claimed personal property losses totaled $272,188 and broke down as follows: Emanuel ($27,444), Terry ($202,106), and Jerilyn ($42,638). After the fire but before Union paid a settlement on the losses, Emanuel filed for divorce. Prior to its finalization, Terry brought suit against Emanuel, Jerilyn, and Union to determine her rights to any insurance proceeds resulting from the policy's coverage. On July 13, 2004, the divorce became final, but division of the insurance proceeds on the personal property destroyed in the fire was left to be determined at trial.

Before trial, Union paid Emanuel $8,000 and Terry $2,000 as a partial

settlement for the loss of personal property under the policy with the balance of $63,500 paid to the district court to be held for distribution after trial. At some point Union also paid Emanuel $105,000 for loss of the house and other monies for loss of use of the house under the policy. Those payments were uncontested by Terry.

The district court heard arguments from Emanuel, Terry, and Jerilyn in October 2004. Having previously paid the limits of the policy, Union did not appear. The court announced its findings and conclusions of law in a 12-page memorandum where it examined the antenuptial agreement and the insurance policy. The court found the agreement did not contemplate or address insurance coverage and that Terry was covered under the policy. Based on the filed claim, the court awarded her a prorated share of 74.25% of the personal property insurance proceeds which amounted to $54,573.75. Emanuel and Jerilyn received the remainder in amounts prorated to their claims. On appeal, Emmanuel and Jerilyn note that due to the payment to Terry, they were not compensated for some of their losses.

When the district court has made findings of fact and conclusions of law, the function of an appellate court is to determine whether the trial court's findings of fact are supported by substantial competent evidence and whether the findings are sufficient to support the trial court's conclusions of law. Substantial evidence is such legal and relevant evidence as a reasonable person might accept as sufficient to support a conclusion. *U.S.D. No. 233 v. Kansas Ass'n of American Educators,* 275 Kan. 313, 318, 64 P.3d 372 (2003). An appellate court's review of conclusions of law is unlimited. *Nicholas v. Nicholas,* 277 Kan. 171, 177, 83 P.3d 214 (2004).

Emanuel argues that he and Terry contractually chose to relinquish certain property rights in the antenuptial agreement that included Terry's right to claim benefits under the insurance policy that covered the house and the personal property inside. Emanuel contends he secured the policy and it did not cover Terry.

The Kansas Uniform Premarital Agreement Act (KUPAA) governs antenuptial agreements executed after July 1, 1988. K.S.A. 23-801 *et seq.* Under KUPAA, parties may contract the rights and obligations of the property of either, or both, and the disposition of property upon separation or marital dissolution. K.S.A. 23-804(a)(1)-(3). " '[P]roperty' means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings." K.S.A. 23-802(b).

" 'The general rule in this state is that contracts, made either before or after marriage, the purpose of which is to fix property rights between a husband and wife, are to be liberally interpreted to carry out the intentions of the makers and to uphold such contracts where they are fairly and understandably made, are just and equitable in their provisions, and are not obtained by fraud or overreaching. Generally speaking, such contracts are not against public policy, although a different rule obtains where the terms of the contract encourage a separation of the parties." ' In re Marriage of Adams, 240 Kan. 315, 318, 729 P.2d 1151 (1986).

" 'Where an antenuptial contract is clear and unambiguous, the terms thereof must be construed in such manner as to give effect to the intention of the parties at the time they entered into the contract, and this must be determined from the four corners of the instrument itself without the aid of parol evidence. Words cannot be read into the

agreement which impart an intent wholly unexpressed when it was executed.' [Citation omitted.]" In re Estate of Murdock, 213 Kan. 837, 845, 519 P.2d 108 (1974).

At issue is the following paragraph found in the antenuptial agreement:

> "Terry, by her execution of this instrument, agrees that she will make no claim to any part of what is now Emanuel's separate property and estate in the event their marriage is terminated by divorce or annulment, and she hereby waives and relinquishes all rights and/or claims to the property, real or personal, (specifically including all farm land and farm equipment) which Emanuel now owns or controls or hereafter individually owns or controls. In the event the parties' marriage terminates by divorce, dissolution or annulment rather than by death, Terry understands and hereby agrees that she will receive only that property which is referred to in this instrument as her separate property and one-half of that property hereinafter referred to as 'marital property' plus $2,500 for moving expense should she elect to return to and change her residence to the state of Illinois and that she will make no claim against Emanuel for support, maintenance or alimony; and that she will request and consent to any decree thus providing."

According to Emanuel, insurance policies are contracts, contracts are property, and if the insurance policy is property, by any interpretation the recited clause dictates that all property he acquired was to remain his own. As such, he contends the proceeds from the policy should be paid to him.

Our analysis begins with interpreting the insurance contract.

"The interpretation and legal effect of written instruments are matters of law, and an

appellate court exercises unlimited review. Regardless of the construction given a written contract by the trial court, an appellate court may construe a written contract and determine its legal effect. [Citation omitted.]" Unrau v. Kidron Bethel Retirement Services, Inc., 271 Kan. 743, 763, 27 P.3d 1 (2001).

"An interpretation of a contractual provision should not be reached merely by isolating one particular sentence or provision, but by construing and considering the entire instrument from its four corners. The law favors reasonable interpretations, and results which vitiate the purpose of the terms of the agreement to an absurdity should be avoided. [Citation omitted.]" Johnson County Bank v. Ross, 28 Kan.App.2d 8, 10-11, 13 P.3d 351 (2000).

Generally, if a written instrument has clear language and can be carried out as written, the rules of contract construction are not necessary. *Decatur County Feed Yard, Inc. v. Fahey,* 266 Kan. 999, 1005, 974 P.2d 569 (1999).

"[I]n the procuring of protection against fire by the issuance of an insurance policy one party may enter into a contract with the insurance company the benefits of which will inure to a third person and furnish him with the basis for a cause of action against the company even though he has had no part in the actual transaction and such action is taken without his request or knowledge." Lattner v.. Federal Union Ins. Co., 160 Kan. 472, 474-75, 163 P.2d 389 (1945).

In the instant case, Emanuel is the named insured on the policy which was effective March 14, 2002, to March 14, 2003. The fire occurred February 19, 2003. The policy provided coverage of $105,000 for the dwelling and $73,500 for personal property. The policy also insured Emanuel's relatives against loss and specifically

covered personal property owned or used by any insured. It is undisputed Emanuel and Terry were married at the time of the loss which makes Terry a relative of Emanuel. The unmistakable conclusion is that Terry's property was covered under the policy.

The critical question becomes whether Terry waived any claim to the insurance proceeds when she signed the antenuptial agreement.

In an action between rival claimants to insurance policy proceeds "where rights are claimed by reason of a contract made with the assured, the contest involves the relative rights of the claimants and may become one purely of equitable cognizance and determination." *Tivis v. Hulsey,* 148 Kan. 892, 895, 84 P.2d 862 (1938). Under the circumstances here, equity and common sense dictate that this court should interpret the agreement's language to read that anything related to the division of property was effective only upon divorce or annulment, and the only logical conclusion is the one reached by the district court.

First, the parties deleted language in the boilerplate agreement by striking through text referring to the division of property in the event their marriage was terminated by death. Elsewhere in the agreement are references to separate property and marital property entitlements if the marriage terminates by divorce or annulment, but not death. By negative implication, Terry and Emanuel agreed each was entitled to the other's property if the marriage was terminated by death. Hence, the agreement cannot be read as an all-encompassing waiver by the parties of property rights they might have as husband and wife as Emanuel claims.

Second, under Kansas law all property acquired during the course of marriage

is owned by the person who acquired it and only becomes marital property at the time of commencing a divorce action. K.S.A.2005 Supp. 23-201. Consequently, there would be no need for a property division clause in the antenuptial agreement to cover the time Emanuel and Terry were married because each person's property was already statutorily their own. Both parties were represented by counsel in the drafting of the agreement, and the attorneys were--or should have been--aware of the statute protecting their client's property. It is not likely counsel would include a redundant clause reiterating that protection.

We conclude that under the circumstances here, Terry did not waive a claim to the proceeds from insurance coverage on her personal property during the marriage when she signed the agreement. The district court's findings of fact are supported by substantial competent evidence and are sufficient to support its conclusions of law.

Affirmed.