

NOT DESIGNATED FOR PUBLICATION

No. 98,616

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

CYNTHIA R. TULEY,
Appellant,

v.

VALERI TULEY,
Appellee.

MEMORANDUM OPINION

Appeal from Shawnee District Court; FRANK J. YEOMAN, JR., judge. Opinion filed July 18, 2008. Affirmed.

Christopher F. Burger and Burke W. Griggs, of Stevens & Brand, L.L.P., of Lawrence, for appellant.

John R. Kurth, of Kurth Law Office Inc., P.A., of Atchison, for appellee.

Before HILL, P.J., ELLIOTT and PIERRON, JJ.

Per Curiam: Cynthia Tuley appeals the trial court's order creating a constructive

trust on her behalf in the amount of \$13,131. Cynthia claims the trust should have been funded in the amount of \$135,992, which represents all insurance proceeds paid to widow Valeri Tuley following the death of her husband, Charles Tuley. We affirm.

In 1995, Charles and Cynthia entered into a property settlement agreement as part of their divorce proceedings. As part of that agreement, Charles agreed to pay spousal maintenance to Cynthia in the amount of \$1459 per month for 121 months. The obligation would cease at the death of either Charles or Cynthia, or upon Cynthia remarrying.

Charles also agreed to maintain currently existing life insurance policies with Cynthia as the primary beneficiary until all of the spousal maintenance obligation was satisfied.

The agreement further provided that Charles

"shall have the right of free substitution of said insurance but shall not be allowed to cancel or terminate his life insurance until such time as [Charles] is no longer legally financially responsible to either [Cynthia] or the minor child of the marriage In the event [Charles] dies and for any reason whatsoever, the amount of insurance currently in effect is not paid to the beneficiary, then said beneficiary shall have a claim against the insured's estate for the difference between the amount of the insurance paid to the

said beneficiary and the amount currently in effect. The provisions of this paragraph *shall be null and void at such time as [Charles] no longer owes any legal obligation to financially support [Cynthia] or the parties' minor child.*" (Emphasis added.)

Charles died having paid all but 9 months of the spousal maintenance obligation, amounting to \$13,131. Valeri, as the widow and named beneficiary on life insurance policies, received \$135,992 in life benefits; Cynthia received no life insurance benefits.

In granting Cynthia partial summary judgment, the trial court, in a lengthy opinion, determined the parties' intent was for the life insurance provisions in the property settlement agreement to act as a "guarantee" that Cynthia receive the full amount of spousal maintenance should Charles die before fulfilling his financial obligation to her.

Thus, the trial court ruled the clause in the agreement ending Charles' obligation on his death was trumped by the life insurance provisions. And the clause granting Cynthia a claim for all the life insurance proceeds was trumped by the sentence making the provisions null and void once the maintenance obligation was satisfied.

We have unlimited review with respect to the interpretation of written contracts. *Conner v. Occidental Fire & Cas. Co.*, 281 Kan. 875, 881, 135 P.3d 1230 (2006). The

primary rule for interpreting a written contract is to ascertain the parties' intent. *Anderson v. Dillard's, Inc.*, 283 Kan. 432, 436, 153 P.3d 550 (2007).

The law favors reasonable interpretations and interpretations amounting to an absurdity are to be avoided. See *Johnson County Bank v. Ross*, 28 Kan. App. 2d 8, 10-11, 13 P.3d 351 (2000).

In the present case, in determining the parties' intent, the trial court gave meaning to each clause and phrase of the separation agreement. The trial court did not favor one clause over another; rather, it applied all of the language to conclude the intent was to protect or "guarantee" Cynthia's interest in receiving all of the spousal maintenance owed, even if Charles died before fulfilling that obligation.

We agree with the trial court's interpretation. Affirmed pursuant to Supreme Court Rule 7.042(e) (2007 Kan. Ct. R. Annot. 55).