

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 16-cv-01136-RM-KLM

STATE FARM LIFE INSURANCE COMPANY,

Plaintiff,

v.

DONNA JEAN HOOPS, formerly known as Donna Jean Medsker, and
CODY ALAN MEDSKER,

Defendants.

RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

ENTERED BY MAGISTRATE JUDGE KRISTEN L. MIX

This matter is before the Court on the **Motion for Summary Judgment** [#19]¹ (the “Motion”) filed by Defendant Cody Alan Medsker (“Medsker”) and on the **Motion for Summary Judgment** [#51] filed by Defendant Donna Jean Hoops (“Hoops”). The parties filed Responses [#23, #47, #53] in opposition to each other’s Motions [#19, #51], and they filed Replies [#49, #54] in support of their own respective Motions [#19, #51]. They also filed Statements of Undisputed Facts [#21, #22, #44, #48]. The Motions [#19, #51] have been referred to the undersigned for Recommendation. See [#24, #52]. The Court has reviewed these filings, the entire case file, and the applicable law, and is sufficiently advised in the premises. For the reasons set forth below, the Court **RECOMMENDS** that Defendant Medsker’s Motion [#19] be **GRANTED in part and DENIED in part** and that

¹ “[#19]” is an example of the convention the Court uses to identify the docket number assigned to a specific paper by the Court’s case management and electronic case filing system (CM/ECF). This convention is used throughout this Recommendation.

Defendant Hoops's Motion [#51] be **GRANTED in part and DENIED in part**.

I. Summary of the Case²

During the period pertinent to adjudication of the underlying Motions [#19, #51], Defendant Hoops was first the wife and then the ex-wife of David Medsker. *Scheduling Order* [#33] at 5-6. Defendant Medsker was the son of David Medsker and apparently the stepson of Defendant Hoops.³ *Id.* at 5.

On March 21, 2002, State Farm Insurance Company ("State Farm") issued a life insurance policy (No. LF-1977-7988) (the "First Policy") to David Medsker. *Response to Statement of Undisputed Facts* [#48] at 1. The First Policy promised to pay Defendant Hoops as the primary beneficiary and Defendant Medsker as the successor beneficiary in the event of David Medsker's death. *Id.*

On November 27, 2006, State Farm issued a second life insurance policy (No. LF-2364-7033) (the "Second Policy") to David Medsker with a face value of \$275,000. *Id.* at 2. The Second Policy promised to pay Defendant Hoops as the primary beneficiary, and Defendant Medsker and Holly Rachelle Salsman as the successor beneficiaries in the event of David Medsker's death. *Id.* State Farm maintains that the Second Policy lapsed for non-payment on February 27, 2015, and the parties do not appear to dispute this. *Id.*

On October 8, 2014, David Medsker filed for divorce from Defendant Hoops. *Id.* On

² The parties agree that none of the facts presented are in dispute, but rather merely argue over the legal implication of those facts. See generally *Ellis v. J.R.'s Country Stores, Inc.*, 779 F.3d 1184, 1186 (10th Cir. 2015) ("We . . . recit[e] all summary-judgment evidence in the light most favorable to . . . the nonmovant.").

³ The parties do not explicitly state the relationship between Defendant Medsker and Defendant Hoops, but their precise relationship is not material to resolution of the Motions [#19, #51]. See, e.g., *Notice* [#34] at 1 (statement by Defendant Hoops that the judge "did know that assets had been moved by Dave and his son, Cody, and are still missing").

June 25, 2015, the divorce court in Huerfano County (the “State Court”) held a hearing on Permanent Orders, taking matters concerning spousal maintenance and property division under advisement. *Id.* at 3. On July 6, 2015, the State Court issued a decree dissolving the marriage of David Medsker and Defendant Hoops, although it reserved ruling on the Permanent Orders until a later date. *Id.* David Medsker passed away eight days later, on July 14, 2015. *Id.* The First Policy was in effect both on the date of the divorce and on the date of David Medsker’s death. *Id.* On November 30, 2015, the State Court issued Permanent Orders which were explicitly deemed retroactive to July 6, 2015, the date when the decree of dissolution of marriage was entered. *Id.* In relevant part, the Permanent Orders stated: “Petitioner [i.e., David Medsker] owns a life insurance policy with a face amount of \$365,000.00 and a cash surrender value of \$40,000.00. . . . Respondent [i.e., Defendant Hoops] shall be and is hereby awarded fifty-percent of the value of petitioner’s life insurance policy.” See [#21-3] at 4.

State Farm filed this lawsuit as an interpleader action, deposited into the registry of the Court \$71,675.33 of life insurance proceeds from the First Policy (the “Interpled Funds”) which each Defendant claims he or she is entitled to receive,⁴ and was dismissed as a party to this action, see [#1, #6, #7, #14, #31, #45]. The only issue remaining for determination in the cross motions for summary judgment is whether Defendant Medsker

⁴ The parties agree that at the time of David Medsker’s death, the relevant First Policy had a value of approximately \$69,605. *Response to Statement of Undisputed Facts* [#48] at 2. The remainder of the Interpled Funds consists of interest on the underlying amount. *Scheduling Order* [#33] at 6. The parties also agree that the divorce court twice misstated the “face amount” of the First Policy, once as \$345,000 and once as \$365,000, in the Permanent Orders, and that this statement should correctly read “face amount of \$69,605.” See *Motion* [#19] at 5-6; *Response* [#47] at 5. Finally, the parties appear to agree that this technical error in the Permanent Orders does not impact the legal analysis at issue in adjudication of the present Motions [#19, #51].

or Defendant Hoops is entitled to the Interpled Funds.

II. Standard of Review

The purpose of a motion for summary judgment pursuant to Fed. R. Civ. P. 56 is to assess whether trial is necessary. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). An issue is genuine if the evidence is such that a reasonable jury could resolve the issue in favor of the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A fact is material if it might affect the outcome of the case under the governing substantive law. *Id.*

The burden is on the movant to show the absence of a genuine issue of material fact. *Adler v. Wal-Mart Stores, Inc.*, 144 F.3d 664, 670-71 (10th Cir. 1998) (citing *Celotex*, 477 U.S. at 323). When the movant does not bear the ultimate burden of persuasion at trial, the “movant may make its prima facie demonstration [of the absence of a genuine issue of material fact] simply by pointing out to the [C]ourt a lack of evidence for the nonmovant on an essential element of the nonmovant’s claim.” *Id.* at 671. If the movant carries the initial burden of making a prima facie showing of a lack of evidence, the burden shifts to the nonmovant to put forth sufficient evidence for each essential element of his claim such that a reasonable jury could find in his favor. See *Anderson*, 477 U.S. at 248; *Simms v. Okla. ex rel. Dep’t of Mental Health & Substance Abuse Servs.*, 165 F.3d 1321, 1326 (10th Cir. 1999), abrogation recognized by *Eisenhour v. Weber Cty.*, 744 F.3d 1220, 1227 (10th Cir. 2014). Conclusory statements based merely on conjecture, speculation, or subjective belief are not competent summary judgment evidence. *Bones v. Honeywell Int’l, Inc.*, 366 F.3d 869, 875 (10th Cir. 2004). The nonmoving party’s evidence must be more than “mere reargument of [his] case or a denial of an opponent’s allegation” or it will

be disregarded. See 10B Charles Alan Wright, et al., Federal Practice and Procedure § 2738 at 356 (3d ed. 1998).

Only documents that adhere to the evidentiary requirements of Fed. R. Civ. P. 56 may be considered for purposes of summary judgment. Rule 56(c) provides that:

(1) A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

(A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials[.]

...

(3) Materials Not Cited. The court need consider only the cited materials, but it may consider other materials in the record.

(4) Affidavits or Declarations. An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.

Fed. R. Civ. P. 56(c)(1)-(4).

III. Analysis

As mentioned above, State Farm filed this lawsuit as a statutory interpleader action pursuant to 28 U.S.C. § 1335(a), which provides in relevant part:

The district courts shall have original jurisdiction of any civil action of interpleader . . . filed by any . . . corporation . . . having in . . . its custody or possession money . . . of the value of \$500 or more, or having issued a . . . policy of insurance . . . of value or amount of \$500 or more . . . if . . . [t]wo or more adverse claimants, of diverse citizenship . . . are claiming or may claim to be entitled to such money . . . or to any one or more of the benefits arising by virtue of any . . . policy

Here, the Court has jurisdiction under § 1335 because the amount of money interpled by State Farm is over \$70,000, and because Defendant Hoops is a citizen of Iowa and Defendant Medsker is a citizen of Maryland. *Compl.* [#1] ¶¶ 3-5; see *also* 28 U.S.C. § 1332(a)(1).

At the outset, the Court notes that, regardless of the precise amount of the benefits available from the First Policy, it is clear that the State Court intended to award Defendant Hoops fifty percent of the available proceeds. *See Permanent Orders* [#21-3] at 4 (stating that Defendant Hoops “is hereby awarded fifty-percent of the value of [David Medsker’s] life insurance policy”).

The State Court’s Permanent Orders were issued on November 30, 2015, nunc pro tunc July 6, 2015, which was the date the decree of dissolution of divorce was entered by the Court. [#21-3] at 5. “Nunc pro tunc judgments operate retrospectively and are given the same force and effect as if entered at the time the court’s decision was originally rendered.” *Casper v. Guarantee Trust Life Ins. Co.*, __ P.3d __, __, No. 14CA2423, 2016 WL 6803070, at *7 n.3 (Colo. App. Nov. 17, 2016) (quoting *Dill v. Cty. Court*, 541 P.2d 1272, 1273 (1975)).⁵ With a few exceptions irrelevant to the present matter, nunc pro tunc judgments are routinely issued and enforced in divorce cases. *In re Estate of Becker*, 32 P.3d 557, 559 (Colo. App. 2000). In fact, Colorado law does not require that disposition of marital property must be determined at the same time as dissolution of the marriage. Colo. Rev. Stat. § 14–10–106(b) (providing that “the entry of a decree with respect to . . . disposition of property may be deferred by the court until after entry of the decree of dissolution of marriage”). Therefore, as Defendant Hoops states, “the November 30, 2015

⁵ The parties appear to agree that Colorado law applies to this dispute for the following reasons. At the time of their divorce, both Defendant Hoops and David Medsker were residents of Colorado; the State Court was located in Huerfano County, Colorado; the State Court relied on Colorado law in the Permanent Orders; and David Medsker had both purchased the First Policy and paid its premiums through a State Farm agent located in Huerfano County, Colorado. *Response to Statement of Undisputed Facts* [#48] at 2-3. State court orders are generally interpreted under the law they purport to apply. *See generally, e.g., In re Flanders*, 657 F. App’x 808 (10th Cir. 2016).

Permanent Order[s] [are] deemed to have retroactive effect prior to Mr. [David] Medsker's death and contemporaneous with the Divorce Decree." *Motion* [#51] at 5. Defendant Medsker agrees, and thus there is no dispute over the effective date of the State Court's Permanent Orders, i.e., July 6, 2015. *See Response* [#53] at 2.

Defendant Hoops argues that "David Medsker knew that the life insurance policy would be considered by the [divorce] court in its then-forthcoming permanent order for the distribution of marital assets." *Motion* [#51] at 2. Thus, she states that there is no "surprise or unfairness to David Medsker with regard to the post-mortem court order distribution of assets." *Id.* She argues that "the Permanent Order[s] explicitly refer[] to the life insurance policy at issue and awards [Defendant] Hoops' [sic] fifty-percent of the value of that policy," and that she therefore must be awarded one-half of the Interpled Funds. *Id.* at 2, 4.

Defendant Medsker argues that, at the time the divorce court issued the Permanent Orders in November 2015, the Court was aware that David Medsker had died, that the cash surrender value of the life insurance policy had evaporated, and that only the face amount of the policy, i.e., the death benefits of \$69,605, were available for disbursement. *See, e.g., Response* [#53] at 3-4; *Permanent Orders* [#21-3] at 3, 5 (acknowledging David Medsker's death). Nevertheless, he further asserts that the death benefits did not exist on the effective date of the Permanent Orders, July 6, 2015, because David Medsker was still alive at that time. He thus concludes that only the cash surrender value of \$40,000 existed on the effective date of the Permanent Orders and, because the death benefits did not exist on that date, the State Court could not have intended to award Defendant Hoops half of the death benefits.

This Court agrees with Defendant Medsker. Unfortunately, the State Court's inartful

articulation of its intent in the Permanent Orders does not indicate the precise amount of life insurance benefits awarded to Defendant Hoops by dollar amount. *See Permanent Orders* [#21-3] at 4. The State Court appears to have been confused about the dollar amount of benefits available under the policy, as manifested by the inconsistent – and incorrect – recitation of the face amount of the policy in the Permanent Orders. Nevertheless, the State Court quite clearly “awarded fifty-percent of the *value* of [the] life insurance policy” to Hoops, and expressly tied that value to a date before the policyholder’s death by making the Permanent Orders nunc pro tunc to a date almost five months earlier than the date when the Permanent Orders were signed. [#21-3] at 4 (emphasis added). Hence, the only remaining question is what was the “value” of the policy on the effective date of the Permanent Orders.

There is no dispute that the “value” of the policy on the effective date of the Permanent Orders was its cash surrender value, or \$40,000. Despite the fact that the cash surrender value of the First Policy “evaporated when David Medsker died,” *Response* [#53] at 3, and that the Permanent Orders were signed after his death, the State Court’s deliberate indication that the Permanent Orders were retroactive to a date prior to his death makes the cash surrender value the critical amount here. *See Casper*, 2016 WL 6803070, at *7 n.3; *Dill*, 541 P.2d at 1273; *Becker*, 32 P.3d at 559. Moreover, although under Colo. Rev. Stat. § 15–11–804(2), designation of a spouse as a beneficiary of a life insurance policy does not survive dissolution of the marriage, exceptions to this statute may be voluntarily made “as provided by the express terms of a governing instrument, a court order, or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce, or annulment.” Colo. Rev. Stat. §

15–11–804(2). As Defendant Medsker points out, the State Court was aware of David Medsker’s death when the Permanent Orders were drafted, but nevertheless awarded fifty-percent of the value of the life insurance policy to Hoops. This combination of circumstances can only be construed to mean that the Court intended Defendant Hoops to receive half of the value of the policy despite the divorce; as previously stated, the value that existed as of the effective date of the Permanent Orders was its cash surrender value only. The State Court’s Permanent Orders therefore expressly provide for Defendant Hoops to receive “value” from the policy despite the divorce, as permitted by Colorado law.

The only issue determined in this Recommendation is the apportionment to which each Defendant is entitled to the benefits from the First Policy, and based on the foregoing, it is clear that Defendant Hoops is entitled to one-half of the cash surrender value, or \$20,000.00. The parties agree that under Colorado law, nunc pro tunc orders may not be collaterally attacked in a different court proceeding. *See Becker*, 32 P.3d at 559; *Reply* [#54] at 3. Thus, this Court does not, and indeed cannot, address, for example, whether the divorce court’s Permanent Orders were legally correct or whether the Permanent Orders should be amended on any basis.

The Court also does not address, as Defendant Hoops urges, whether her claim for \$20,500 of allegedly past due spousal maintenance should be enforced against the interpleaded life insurance proceeds. *See, e.g., Reply* [#54] at 4-5. As Defendant Medsker correctly points out, that claim is not at issue in this lawsuit, as it is neither included in the Complaint [#1] filed by State Farm nor asserted in any crossclaim filed by Defendant Hoops at any time in this litigation.

Thus, the Court finds that Defendant Hoops was awarded \$20,000.00 by the State

Court, i.e., one-half of the cash surrender value of \$40,000.00, and that Defendant Medsker is therefore entitled to the remainder of the death benefits interpled into the registry of the Court, i.e., \$49,605.00. The parties are entitled to an receive interest proportionate to the amounts awarded above. Accordingly, the Court **recommends** that Defendant Hoops be awarded \$20,000.00 plus proportionate interest from the Interpled Funds, and that Defendant Medsker be awarded \$49,605.00 plus proportionate interest from the Interpled Funds.

IV. Conclusion

For the foregoing reasons,

IT IS HEREBY **RECOMMENDED** that Defendant Medsker's Motion [#19] be **GRANTED in part and DENIED in part** and that Defendant Hoops's Motion [#51] be **GRANTED in part and DENIED in part**. The Court **recommends** that Defendant Hoops's Motion [#51] be **granted** to the extent that she be awarded \$20,000 plus proportionate interest from the Interpled Funds, and that the Motion [#51] be **denied** in all respects. The Court further **recommends** that Defendant Medsker's Motion [#19] be **granted** to the extent that he be awarded \$49,605.00 plus proportionate interest from the Interpled Funds, and that the Motion [#19] be **denied** in all other respects. The Court further **recommends** that this case be closed after entry of Final Judgment.

IT IS **ORDERED** that pursuant to Fed. R. Civ. P. 72, the parties shall have fourteen (14) days after service of this Recommendation to serve and file any written objections in order to obtain reconsideration by the District Judge to whom this case is assigned. A party's failure to serve and file specific, written objections waives de novo review of the

Recommendation by the District Judge, Fed. R. Civ. P. 72(b); *Thomas v. Arn*, 474 U.S. 140, 147-48 (1985), and also waives appellate review of both factual and legal questions. *Makin v. Colo. Dep't of Corr.*, 183 F.3d 1205, 1210 (10th Cir. 1999); *Talley v. Hesse*, 91 F.3d 1411, 1412-13 (10th Cir. 1996). A party's objections to this Recommendation must be both timely and specific to preserve an issue for de novo review by the District Court or for appellate review. *United States v. One Parcel of Real Prop.*, 73 F.3d 1057, 1060 (10th Cir. 1996).

Dated: February 27, 2017

BY THE COURT:

A handwritten signature in black ink, appearing to read "Kristen L. Mix". The signature is stylized with a large, flowing "K" and "M".

Kristen L. Mix
United States Magistrate Judge