

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

LIFE INSURANCE COMPANY OF)
NORTH AMERICA,)

Plaintiff,)

v.)

CASE NO. 4:02-cv-0106-DFH-WGH

DAVID R. CAMM, JANICE RENN and)
FRANK RENN, as Personal Representative)
of the Estate of Kimberly S. Camm,)
ESTATE OF KIMBERLY S. CAMM,)
ESTATE OF BRADLEY R. CAMM,)
ESTATE OF JILL C. CAMM,)

Defendants.)

JANICE RENN and FRANK RENN, as)
Personal Representative of the Estate of)
Kimberly S. Camm,)

Cross-Claimants,)

v.)

DAVID R. CAMM,)

Cross-Defendant.)

ENTRY ON CROSS-CLAIMANT JANICE RENN'S
MOTION FOR SUMMARY JUDGMENT

In this interpleader action to resolve entitlement to life insurance proceeds governed by ERISA, cross-claimant Janice Renn has moved for summary

judgment. She contends she is entitled to the insurance proceeds because cross-claimant David Camm has been convicted of murdering the insured, Kimberly Camm, who was Mrs. Renn's daughter and David Camm's wife. As explained below, Mrs. Renn's motion for summary judgment is granted.

I. *Summary Judgment Standard*

Summary judgment must be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The motion should be granted so long as no rational fact-finder could return a verdict in favor of the non-moving party. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Thus, a court's ruling on a motion for summary judgment is akin to a ruling on a motion for a directed verdict. The question for the court on both is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Id.* at 251-52.

II. *Undisputed Facts and Procedural Background*

Kimberly Camm and her two children, Jill and Bradley Camm, were murdered on September 28, 2000. At the end of a trial in 2002, a jury found David Camm, the husband of Kimberly and the father of Jill and Bradley, guilty

of murdering all three. The Indiana Court of Appeals reversed the murder convictions and ordered a new trial. *Camm v. State*, 812 N.E.2d 1127 (Ind. App. 2004), transfer denied, 822 N.E.2d 980 (Ind. 2004). A new trial resulted in new convictions for murder on March 3, 2006. David Camm's appeal of the convictions from the second trial is now pending, but a decision is not necessarily imminent. The transcript was just filed with the Indiana Court of Appeals on June 4, 2007 in Cause No. 87 S 00-0612-CR-00499. Camm's brief is currently due to be filed on September 4, 2007.

Through an employee benefit plan governed by the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001 *et seq.*, Kimberly Camm had obtained life insurance through Life Investors Insurance Company of America ("LIICA") in an amount of \$171,000. At the time of her death, the effective designation of beneficiaries for the policy listed as primary beneficiaries: David Camm, 50%; Jill Camm, 25%; and Bradley Camm, 25%. Kimberly Camm designated as the secondary or contingent beneficiary her mother Janice Renn, 100%. The half of the proceeds of the LIICA policy to which Jill and Bradley Camm would have been entitled has been paid to Mrs. Renn pursuant to an earlier agreed judgment. Currently at issue with respect to the LIICA policy is the remaining half of the proceeds (\$85,500 plus interest), which would ordinarily be payable to David Camm as primary beneficiary. Those proceeds remain in possession of the clerk of court.

Kimberly Camm had also obtained life insurance coverage under a group policy issued by Life Insurance Company of North America (“LINA”) pursuant to an employee benefit plan also governed by ERISA. Under the plan, Kimberly Camm was entitled to death benefits of \$250,000 funded by LINA. Those proceeds were deposited with the clerk of this court pursuant to the November 15, 2002, Agreed Partial Judgment Order. At the time of Kimberly Camm’s death, she had designated the same combination of primary beneficiaries – David Camm, 50%; Jill Camm, 25%; and Bradley Camm, 25% – and her mother Janice Renn as the contingent beneficiary. Again, the half that would have gone to Jill and Bradley has already been paid to Mrs. Renn under an agreed partial judgment. Currently at issue with respect to the LINA policy is the remaining half of the proceeds (\$125,000 plus interest).

III. *Analysis*

Mrs. Renn’s motion for summary judgment argues that David Camm’s second conviction for the murder of Kimberly Camm makes him ineligible to take any of the proceeds of the LIICA or LINA policies pursuant to the “slayer’s rule” codified in Indiana Code § 29-1-2-12.1. David Camm argues that the probate exception to federal diversity jurisdiction is an obstacle to this court’s subject matter jurisdiction. Although the court must follow a different route through federal statutory and common law, the court ultimately agrees that Mrs. Renn is entitled to judgment as a matter of law.

A. *Subject Matter Jurisdiction*

The probate exception to the federal courts' diversity jurisdiction "reserves to state probate courts the probate or annulment of a will and the administration of a decedent's estate; it also precludes federal courts from endeavoring to dispose of property that is in the custody of a state probate court. But it does not bar federal courts from adjudicating matters outside those confines and otherwise within federal jurisdiction." *Marshall v. Marshall*, 547 U.S. 293, —, 126 S. Ct. 1735, 1748 (2006); see generally *Jones v. Brennan*, 465 F.3d 304, 306 (7th Cir. 2006) (noting that exception applies to diversity jurisdiction); *Storm v. Storm*, 328 F.3d 941, 943-44 (7th Cir. 2003) (explaining scope of exception). The two interpleader actions consolidated in this single action are each within the federal courts' federal question jurisdiction under 28 U.S.C. § 1331 because the disputes are over employee benefits subject to ERISA. This case falls squarely within the court's federal question jurisdiction. The probate exception could not bar exercise of that jurisdiction.

B. *Effect of the Agreed Partial Judgment Orders*

David Camm argues that the court's prior agreed partial judgment orders require the court to wait until all criminal appeals are concluded before taking any further action. The 2002 agreed orders by their terms stayed these proceedings while Camm pursued his original appeal. By their terms, those orders do not apply to an appeal after the second trial and second conviction.

C. *The Merits*

The case is deemed to arise under federal law because the dispute is over the distribution of benefits of employee benefit plans governed by federal law. The issue here is the effect of David Camm's murder conviction on his right to receive the proceeds from the policies that insured the life of one of the murder victims. The parties have briefed the issue on the assumption that the Indiana statutory version of the slayer's rule governs here.¹ However, because the court's

¹Indiana Code § 29-1-2-12.1 provides:

(a) A person is a constructive trustee of any property that is acquired by the person or that the person is otherwise entitled to receive as a result of an individual's death, including property from a trust, if that person has been found guilty, or guilty but mentally ill, of murder, causing suicide, or voluntary manslaughter, because of the individual's death. A judgment of conviction is conclusive in a subsequent civil action to have the person declared a constructive trustee.

(b) A civil action may be initiated to have a person declared a constructive trustee of property that is acquired by the person, or that the person is otherwise entitled to receive, including property from a trust, as a result of an individual's death, if:

(1) the person has been charged with murder, causing suicide, or voluntary manslaughter, because of the individual's death; and

(2) the person has been found not responsible by reason of insanity at the time of the crime.

If a civil action is initiated under this subsection, the court shall declare that the person is a constructive trustee of the property if by a preponderance of the evidence it is determined that the person killed or caused the suicide of the individual.

(c) If a constructive trust is established under this section, the property that is subject to the trust may be used only to benefit those persons, other than the constructive trustee, legally entitled to the property,
(continued...)

jurisdiction here depends on ERISA rather than diversity of citizenship, there is an extra wrinkle to the issue: whether ERISA preempts such state statutes, leaving the issue of the slayer's rule to federal common law?

Congress passed ERISA to establish a comprehensive scheme to protect the participants and beneficiaries of employee benefit plans. See *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 44 (1987). ERISA provides that it “shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan” covered by ERISA. 29 U.S.C. § 1144(a).² A state law relates to an ERISA plan when “it has a connection with or reference to such a plan.” *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 97 (1983).

Section 1144(a) is a “deliberately expansive” preemption provision, *Dedeaux*, 481 U.S. at 46, but the Supreme Court has recognized that the courts must draw some reasonable limits on its scope, especially in areas traditionally reserved for

¹(...continued)

determined as if the constructive trustee had died immediately before the decedent. However, if any property that the constructive trustee acquired as a result of the decedent's death has been sold to an innocent purchaser for value who acted in good faith, that property is no longer subject to the constructive trust, but the property received from the purchaser under the transaction becomes subject to the constructive trust.

²ERISA exempts from preemption any state law that “regulates insurance.” 29 U.S.C. § 1144(b)(2)(A). The Supreme Court has noted that “in order to regulate insurance, a [state] law must not just have an impact on the insurance industry, but must be specifically directed toward that industry.” *Dedeaux*, 481 U.S. at 50. Indiana's slayer's statute is not specifically directed toward the insurance industry, so the insurance exemption does not apply in this case.

state regulation. *E.g.*, *De Buono v. NYSA-ILA Medical and Clinical Services Fund*, 520 U.S. 806, 814 (1997) (holding that state law imposing tax on gross receipts of health care facilities was not preempted). In deciding preemption issues under § 1144(a), courts must go beyond the “unhelpful text and the frustrating difficulty” of defining the key term (“relate to”), and must look instead to the objectives of the ERISA statute as a guide to the scope of the state law that Congress understood would survive. *New York State Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 656 (1995).

In *Egelhoff v. Egelhoff*, 532 U.S. 141, 144 (2001), the Supreme Court applied this standard to hold that ERISA preempted a Washington state statute providing that a divorce would effectively supersede earlier designations of beneficiaries for death benefits, including benefits under employee benefit plans governed by ERISA. The Supreme Court concluded that ERISA preempted the state statute because: (1) it interfered with an ERISA plan administrator’s duty to administer the plan in accordance with the plan documents; and (2) it interfered with nationally uniform plan administration. 532 U.S. at 147-49. “Requiring ERISA administrators to master the relevant laws of 50 States and to contend with litigation would undermine the congressional goal of minimizing the administrative and financial burdens on plan administrators – burdens ultimately borne by the beneficiaries.” *Id.* at 149-50 (internal quotations and citations omitted). The Court concluded:

We recognize that all state laws create some potential for a lack of uniformity. But differing state regulations affecting an ERISA plan's system for processing claims and paying benefits impose precisely the burden that ERISA pre-emption was intended to avoid. And as we have noted, the statute at issue here directly conflicts with ERISA's requirements that plans be administered, and benefits be paid, in accordance with plan documents. We conclude that the Washington statute has a "connection with" ERISA plans and is therefore pre-empted.

Id. (internal quotations and citations omitted).

Opponents of preemption in *Egelhoff* had argued that a holding in favor of preemption would similarly require preemption of slayer's statutes like the Indiana statute at issue here. The Supreme Court was not troubled by the argument. The Court noted in *dicta* that the slayer's rule is "well established in the law and has a long historical pedigree predating ERISA," and that such statutes are "more or less uniform nationwide," so that their possible interference with the aims of ERISA would be "at least debatable." 532 U.S. at 152.

In the wake of *Egelhoff*, several district courts have faced questions similar to the one in this case. Those courts have concluded they did not need to decide whether the state slayer's statutes were actually preempted because federal common law would produce the same result as the state statutes. See *Hagedorn v. Metlife*, 2006 WL 1148230, *3-4 (W.D. Wash. 2006); *Atwater v. Nortel Networks, Inc.*, 388 F. Supp. 2d 610, 615 (M.D.N.C. 2005); *Connecticut General Life Ins. Co. v. Riner*, 351 F. Supp. 2d 492, 497 (W.D. Va. 2005) (explaining that "Congress could not have intended ERISA to allow one spouse to receive benefits

after intentionally killing the other spouse.”); *Administrative Comm for the H.E.B. Inv. and Ret. Plan v. Harris*, 217 F. Supp. 2d 759, 761-62 (E.D. Tex. 2002) (“Fortunately for the state of marital relations in America, a plethora of cases discussing ERISA preemption when one spouse kills another spouse does not exist. . . .”).

The Ohio Court of Appeals was unable to finesse the issue in this manner in *Ahmed v. Ahmed*, 817 N.E.2d 424, 430-31 (Ohio App. 2004), because a choice between federal and state law would result in distribution of the life insurance proceeds to different innocent claimants. Relying on the reasoning of *Egelhoff*, the *Ahmed* court held that ERISA preempted the Ohio slayer’s statute. The court reasoned that although slayer’s statutes throughout the country share a general purpose, they are not actually uniform when it comes to some details that can be important in particular cases, such as the nature of a killing that disqualifies the beneficiary, the standard of proof, the effect of pending appeals, the evidentiary weight and effect of the criminal judgment, and the statute’s relation to the common law. The *Ahmed* court concluded:

Given the variety of ways in which the different states enforce the general principle behind slayer statutes, the court’s description of the statute in *Egelhoff* perfectly describes [Ohio’s slayer statute’s] effect on ERISA plans and plan administrators. It implicates an area of core ERISA concern by obliging ERISA plan administrators to pay benefits to the beneficiaries chosen by state law, rather than those identified in the plan documents. Thus, slayer statutes interfere with nationally uniform plan administration, one of ERISA’s goals. Forcing plan administrators to master the relevant laws of 50 States and to contend with litigation does not foster the congressional goal of minimizing the administrative and financial burdens

on those administrators. Accordingly, we must conclude that ERISA preempts Ohio's slayer statute in this case.

Id. at 431 (internal quotations and citations omitted). The Ohio court therefore applied federal common law and the language of the insurance policy to hold that the proceeds should be treated as part of the decedent's estate. *Id.* at 433.

Where ERISA preempts state law but is itself silent on a topic, courts must develop a body of federal common law based on principles of state law. *Metropolitan Life Ins. Co. v. Johnson*, 297 F.3d 558, 567 (7th Cir. 2002), citing *Dedeaux*, 481 U.S. at 56; see also *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 110 (1989). In the matter of the slayer's rule, ERISA is silent, but federal common law denies David Camm the right to ERISA benefits under these life insurance policies. The Supreme Court has long held that the law may not allow a person to benefit financially from a murder he has committed: "It would be a reproach to the jurisprudence of the country if one could recover insurance money payable on the death of the party whose life he had feloniously taken." *Mutual Life Ins. Co. of New York v. Armstrong*, 117 U.S. 591, 600 (1886). The Seventh Circuit has explained: "The principle that no person shall be permitted to benefit from the consequences of his or her wrongdoing has long been applied to disqualify murderers from inheriting from their victims, whether the route of inheritance is a will, an intestacy statute, or a life insurance policy." *Prudential Ins. Co. of America v. Athmer*, 178 F.3d 473, 475-76 (7th Cir. 1999) (applying federal common law, which might be better understood as simply having courts fill in gaps left by

Congress). Under federal common law, a conviction for murder or reckless homicide is sufficient to apply the slayer's rule. *Metropolitan Life Ins. Co. v. White*, 972 F.2d 122, 124 (5th Cir. 1992); cf. *Metropolitan Life Ins. Co. v. Kelley*, 890 F. Supp. 746, 748 (N.D. Ill. 1995) (federal common law did not bar wife who killed husband in self-defense from receiving life insurance proceeds under federal employee life insurance program).

Thus, unlike the Ohio court in *Ahmed*, this court has the option of not deciding the preemption question because here the result would be the same under both the state statute and ERISA aided by federal common law. The murder of Kimberly Camm by David Camm defeats any claim he would have to the insurance proceeds. There is no dispute between innocent claimants, unlike the case in *Ahmed*.

In addition, there appears to be no difference between Indiana and federal law with respect to the effect of a pending appeal of a murder conviction for these purposes. David Camm argues that the court should not act while his appeal remains pending. He also argues he is innocent of the murders and is likely to prevail on his appeal. The general federal rule is that a judgment such as David Camm's murder conviction may be given *res judicata* effect against him even if an appeal remains pending. *Kurek v. Pleasure Driveway & Park District*, 557 F.2d 580, 595 (7th Cir. 1977), vacated on other grounds, 435 U.S. 992 (1978); see also *Erebia v. Chrysler Plastic Products Corp.*, 891 F.2d 1212, 1215 n.1 (6th Cir.

1989)(“the established rule in the federal courts is that a final judgment retains all of its preclusive effect pending appeal”); *Robi v. Five Platters, Inc.*, 838 F.2d 318, 327 (9th Cir. 1988) (same for issue preclusion). Similarly, under the Indiana slayer’s statute, a pending appeal does not prevent the operation of the statute. *Angleton v. Estate of Angleton*, 671 N.E.2d 921, 927-28 (Ind. App. 1996). David Camm’s pending appeal of the murder convictions therefore does not affect the outcome on the merits.

Conclusion

Regardless of whether ERISA preempts the Indiana slayer’s statute, David Camm’s conviction for the murder of Kimberly Camm bars him from taking any proceeds of the LICA or LINA policy. Those proceeds are to be distributed to Janice Renn because she is the contingent beneficiary of the entire sums under both policies. Cross-claimant Janice Renn’s motion for summary judgment is granted. Mrs. Renn is entitled to the proceeds of the two insurance policies currently held by the clerk of court. Mrs. Renn shall tender promptly a suitable form of final judgment. If David Camm believes a stay of the judgment is appropriate, he must act within the ten days after judgment is entered, as allowed by Rule 62(a) of the Federal Rules of Civil Procedure.

So ordered.

Date: August 6, 2007

DAVID F. HAMILTON, JUDGE
United States District Court
Southern District of Indiana

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