

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

LEE VOULTERS

APPELLANT

VS.

CASE NO. 2014-CA-00745

LESLIE DAYLE VOULTERS

APPELLEE

APPEAL FROM THE CHANCERY COURT OF WARREN COUNTY, MISSISSIPPI

BRIEF OF APPELLANT

Oral Argument Not Requested

**J. MACK VARNER, MSB #6599
DAVID M. SESSUMS, MSB #6714
PENNY B. LAWSON, MSB #103450
VARNER, PARKER & SESSUMS, P.A.
1110 Jackson Street
Vicksburg, Mississippi 39183
Telephone: 601-638-8741
Facsimile: 601-638-8666**

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

LEE VOULTERS

APPELLANT

VS.

CASE NO. 2014-CA-00745

LESLIE DAYLE VOULTERS

APPELLEE

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following persons have an interest in the outcome of this case:

1. Honorable Vicki Roach Barnes
Chancery Court of Warren County
2. Lee Voulters, Appellant
3. J. Mack Varner, Esquire
David M. Sessums, Esquire
Penny B. Lawson, Esquire
VARNER, PARKER & SESSUMS, P.A.
Attorneys for Appellant
4. Leslie Dayle Voulters, Appellee
5. William Wright, Esquire
WRIGHT LAW FIRM, P.A.
Attorney for Appellee

THIS the 19th day of December, 2014.

Respectfully submitted,

/s/ Penny B. Lawson
J. Mack Varner, MSB #6599
Penny B. Lawson, MSB #103450
Attorneys for Appellant

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS i

TABLE OF AUTHORITIES iii

AUTHORITIES iii

RULES iii

STATEMENT OF ISSUES 1

I. The trial court erred in finding that the absence of any language regarding termination of Lee’s obligation to maintain a life insurance policy, means the opposite and is a continuing obligation. 1

II. The trial court erred in not finding the provision regarding the life insurance policy was ambiguous because it lacked any express terms of duration and failed to harmonize the provisions in accord with the parties apparent intent. 1

III. Once Lee’s obligation for payment of the lump sum alimony had been satisfied, Leslie no longer held an insurable interest in Lee’s life. ... 1

STATEMENT OF CASE 1

STANDARD OF REVIEW 2

SUMMARY OF THE ARGUMENT 3

ARGUMENT 3

CONCLUSION 16

CERTIFICATE OF SERVICE 18

TABLE OF AUTHORITIES

AUTHORITIES

East v. East, 493 So.2d 927, 931-32 (Miss. 1986) 2

Warwick v. Gautier Utility Dist., 738 So.2d 212, 215 (Miss. 1999) 2

McLeod v. McLeod, 84 So.3d 804, (Miss. Ct. App. 2011) 2

(*Meek v. Warren*, 726 So.2d 1292, 1293-94 (Miss. Ct. App. 1998)) 2

Reffatt v. Reffatt, 94 So.3d 1222 (Miss. 2011) 2

Sheppard v Pace, 757 So.2d 173, 174, 176 (Miss. 2000) 4, 5, 6, 7, 13

D’Avignon v D’Avignon, 945 So.2d 401 (Miss. 2006) (citing *In re Estate of Hodges*, 807 So.2d 438,445 (Miss. 2002)) 8

Beezley v Beezley, 917 So.2d 803, 807 (Miss. 2005) (citing *Webster v Webster*, 566 So.2d 214, 215 (Miss. 1990)) 8, 9

In re Estate of Hodges, 807 So.2d 438 (Miss. 2002) 8

Necaise v. U.S.A.A. Casualty Co., 644 So. 2d 253 (Miss. 1992) 14

North American Co. For Life and Health Ins. v. Lewis, 535 F. Supp. 2d 755 (S.D. Miss. 2008) 14

Martin v. Ealy, 859 So.2d 1034 (Miss. 2003) 15

First Colony Life Ins. Co. v. Sanford, 555 F.3d 188 (5th Cir. 2009) 15

RULES

Miss. Code Ann. §83-5-251(1) 14

STATEMENT OF ISSUES

- I. **The trial court erred in finding that the absence of any language regarding termination of Lee's obligation to maintain a life insurance policy, means the opposite and is a continuing obligation.**
- II. **The trial court erred in not finding the provision regarding the life insurance policy was ambiguous because it lacked any express terms of duration and failed to harmonize the provisions in accord with the parties apparent intent.**
- III. **Once Lee's obligation for payment of the lump sum alimony had been satisfied, Leslie no longer held an insurable interest in Lee's life.**

STATEMENT OF CASE

On April 2, 2004, a divorce was granted on the grounds of irreconcilable differences to Appellant Lee Voulters (hereinafter "Lee") and Appellee Leslie Voulters (hereinafter "Leslie"). The parties executed an Agreement for Custody and Maintenance of Minor Child and Settlement of Property Rights (hereinafter "Agreement") which was incorporated into the Judgment of Divorce.

On March 26, 2013, Leslie filed a Petition for Citation of Contempt alleging Lee had contumaciously failed and refused to pay the monthly lump sum alimony for February and March of 2013, and refused to provide proof of the life insurance coverage. (R.E. 3).

On April 19, 2013, Lee filed his Answer and Cross Complaint countering that Leslie failed to honor the Agreement when she removed virtually all of the furniture and fixtures of the marital home, requesting that Leslie reimburse him for the \$30,000.00 that he had advanced her on the sale of the martial home when no net proceeds from the sale were realized, and to correctly interpret the intent of the parties regarding Lee's obligation to maintain a life insurance policy in the amount of \$1,080,000.00, Lee contending that such

insurance was to protect Leslie's lump sum payments and that she no longer had an insurable interest once the lump sum was paid in full. (R.E. 4).

Trial was held on January 30, 2014, on Leslie's Petition for Contempt and Lee's Cross-Complaint. On May 12, 2014, the Chancellor entered a Memorandum Opinion and Final Judgment holding that Leslie was ordered and directed to pay Lee the \$30,000.00 for the prior advance, that Lee was in contempt of Court for his failure to pay Leslie the \$20,000.00 in alimony payments, that Lee was to maintain a life insurance policy, in effect in perpetuity, in the amount of \$1,080,000.00 naming Leslie as beneficiary and to provide proof and Lee was ordered and directed to pay \$5,000.00 in attorney's fees. (R.E. 2).

Lee timely filed his Notice of Appeal on May 23, 2014, on the issue of maintaining life insurance policy in the amount of \$1,080,000.00 naming Leslie as beneficiary. (R.E. 5).

STANDARD OF REVIEW

A property settlement agreement is a contractual obligation. *East v. East*, 493 So.2d 927, 931-32 (Miss. 1986). Contract interpretation, as a matter of law, is reviewed *de novo*. *Warwick v. Gautier Utility Dist.*, 738 So.2d 212, 215 (Miss. 1999). The Court's "task is to view the terms of the document, find their legal meaning, and adjudicate their enforceability. . . . [O]ur review is *de novo*, provided only that we read the entire settlement agreement/divorce judgment and in the best light possible, attributing to its provisions the most coherent and reasonable scheme they may yield." *McLeod v. McLeod*, 84 So.3d 804, (Miss. Ct. App. 2011) (quoting *Meek v. Warren*, 726 So.2d 1292, 1293-94 (Miss. Ct. App. 1998)) (internal citations omitted). Whether a property settlement agreement is ambiguous is a question of law to be addressed *de novo*. *Reffatt v. Reffatt*, 94 So.3d 1222 (Miss. 2011).

SUMMARY OF THE ARGUMENT

At issue in this appeal is the trial court's interpretation of the Agreement holding that the absence of any language regarding termination of the obligation to maintain a life insurance policy, means the opposite, and maintenance of the policy is a continuing obligation. As the insurance provision is ambiguous, the trial court was obligated to pursue the intent of the parties by receiving parol evidence, evidence of the construction the parties placed on the Agreement and what the parties did as it relates to the Agreement as the best evidence to be considered.

The testimony and evidence presented at the trial of this matter clearly demonstrated that the sole purpose of the life insurance policy was to protect the payment in full of the lump sum alimony in the amount of \$1,080,000.00. Due to the lack of any express language regarding duration of the insurance policy, the Court should have found that it was ambiguous and taken the testimony of the parties, as well as harmonizing all of the provisions along with the parties' apparent intent, and found that the sole purpose of the policy was to protect payment in full of the lump sum alimony.

In order for Leslie to have an insurable interest, she must suffer an economic loss if the subject of the insurance (Lee) is lost or destroyed. As the payment obligation of the lump sum alimony had been satisfied, Leslie no longer holds any insurable interest in Lee's life.

ARGUMENT

- I. The trial court erred in finding that the absence of any language regarding termination of the Lee's obligation to maintain life insurance policy, means the opposite, and is a continuing obligation.

At issue in this appeal is the trial court's interpretation of the Agreement that the absence of any language regarding termination of the obligation to maintain a life insurance policy, means the opposite, and is a continuing obligation in addition to Lee's obligation to pay lump sum alimony. The provisions at issue in the Agreement are as follows:

8.

LUMP SUM ALIMONY/SPOUSAL SUPPORT

Lee shall pay spousal support to Leslie, in the form of lump sum alimony, the total sum of \$1,080,000.00, payable in monthly installments of \$10,000.00 each for a period of nine years. Such payments for support shall be due and payable by automatic bank transfer from Lee's checking or other account directly into Leslie's checking account, commencing on the fifth day of April, 2004, and shall so continue for one hundred and seven consecutive months thereafter. Lee's obligation to pay such support to Leslie shall be fully vested upon the entry of a *Final Judgment of Divorce* in this cause, and shall not be modifiable. Lee's obligation to pay such support shall not terminate upon Leslie's death or remarriage, nor shall it terminate upon Lee's death. However, despite the conventional definition of lump sum alimonies articulated by the Mississippi Supreme Court and otherwise, these payments by Lee to Leslie under this *Agreement* shall be taxable to Leslie, and deductible by Lee, for state and Federal income tax purposes.

9.

LIFE INSURANCE

Lee agrees to maintain life insurance in an amount not less than one million, eighty thousand dollars (\$1,080,000.00), naming Leslie as primary beneficiary thereon. Proof of such insurance coverage shall be furnished to Leslie within fifteen (15) days following the date of execution of this *Agreement*. Furthermore, Lee shall direct his insurance carrier to provide coverage information to Leslie at least twice a year if requested by Leslie.

The trial court relied upon the opinion held in *Sheppard v Pace*, 757 So.2d 173, 174, 176

(Miss. 2000). In the Memorandum and Opinion, the trial court held:

“In the present case Lee's obligation to maintain life insurance for Leslie's benefit is not tied to his obligation to pay lump sum alimony to Leslie. Rather, these separate obligations are set forth in two separate paragraphs, and most importantly, the parties' *Agreement* does not provide that Lee's obligation to

provide life insurance terminates when his obligation to pay lump sum alimony is fulfilled. Moreover, the Agreement specifically states that Lee's obligation to pay lump sum alimony does not terminate upon Lee's death. Therefore, Leslie did not need a policy of life insurance to insure her lump sum alimony payments after Lee's death because she would have had a claim against Lee's estate for any unpaid alimony payments. Like in *Sheppard*, this Court should find that the absence of any language regarding termination of Lee's life insurance obligation means the opposite - that this is a continuing obligation in addition to Lee's obligation to pay lump sum alimony to Leslie." (R.E.2).

It is obvious that the lower court missed the fact that while Leslie would have a claim against Lee's estate that without the life insurance Leslie would have no assurance the estate would have sufficient assets to pay any claim made by her.

The trial court applied the ruling in *Sheppard* to find that the absence of language regarding the termination of life insurance means just the opposite, that Lee is obligated to maintain the policy in perpetuity. However, the facts in *Sheppard* are distinguishable from the facts of this case and therefore, the trial court applied an erroneous legal standard.

The facts in *Sheppard*, involved a probate dispute regarding a divorce settlement agreement entered into by the parties Margaret and Buddy. Margaret and Buddy were married for twenty-five (25) years during which time, Buddy became a very successful and wealthy businessman, while Margaret was a stay at home mother. A divorce was granted and the property agreement was incorporated into the Final Judgment of Divorce. The agreement provided that Buddy would pay to Margaret, in the form of permanent alimony, a sum every month "until the death or remarriage of the wife." Thereafter, Buddy remarried and following his death, Margaret filed a claim in the probate proceedings demanding \$412,853.95 as the current value of the future payments based upon her life expectancy of 21.25 years. The Executor of the estate filed a petition to deny the claim and the chancery court concluded that

the alimony payments best fit under the label “periodic” and applied the statutory conditions for cessation of periodic alimony and denied Margaret’s probate claim.

The estate argued that the life insurance policy was intended to take the place of alimony payments upon the husband’s death, because surely the parties had contemplated that the alimony would cease upon the husband’s death. The trial court apparently reasoned that because the provision regarding alimony was subject to modification, it was not lump sum, but periodic, and therefore it terminated upon the death of the ex-husband. That trial court failed to take into consideration that the Agreement expressly stated that it was binding upon the parties, their administrators, executors or assigns and therefore, such agreement only terminated as stated by its terms, upon the death or remarriage of the wife.

The monthly alimony payments in *Sheppard* provided for in the divorce settlement agreement did not terminate upon death of the ex-husband. The agreement provided that monthly alimony payments terminated upon the death of or remarriage of the ex-wife. The crux of that case was centered around whether the Agreement regarding the monthly alimony payments was binding upon the estate upon the death of the ex-husband. The Supreme Court in *Sheppard* held that the chancery court failed to specifically consider whether the Agreement was sufficient to bind Buddy’s estate, and held that the Agreement created periodic alimony. The Supreme Court held that where there is no language that ties the insurance policy to the alimony payments, or any proof of an intent to do so contained in the Agreement, the Agreement cannot be deemed to provide the insurance policy in lieu of alimony to fulfill the estate’s alimony obligation. *Id.* at 176.

In the present matter the trial court's application of the holding in *Sheppard* is in error, as it relies upon absence of language to hold that Lee's obligation to maintain the life insurance policy is a continuing obligation. The lower court's decision also fails to consider that the provision for lump sum and the immediately following provision for life insurance are tied together. The lower court was in error in disregarding the testimony to support such interdependence. The factual scenario here is different as there is no dispute that the alimony is lump sum and that it is binding upon the estate of Lee. The provision regarding the life insurance does not mention any express terms regarding duration, nor does it mention any exception. The issue here, unlike *Sheppard*, is not whether Leslie would have had a valid claim against the estate for any remaining unpaid alimony. The issue here involves the event of Lee's untimely death before all the alimony is paid and Leslie's ability to collect the unpaid alimony through the insurance proceeds.

The provision in the Agreement regarding the lump sum alimony/spousal support is clear that the total sum of \$1,080,000.00 is payable in monthly installments of \$10,000.00 each for a period of nine (9) years (108 months). One hundred eight (108) months multiplied by \$10,000.00 a month yields \$1,080,000.00. The payments were fully vested upon the entry of the *Final Judgment of Divorce*, were not modifiable, did not terminate upon Leslie's death or remarriage, and did not terminate upon Lee's death.

The odd life insurance amount was in the exact same amount as the total of the lump sum payments. This was no coincidence. Once all lump sum payments were made there would no longer exist any need for Leslie's alimony to be protected by insurance. Once Leslie was

paid in full she would have no claim against Lee's estate. Further, once Leslie was paid in full she would no longer have any insurable interest in either Lee or Lee's estate.

- II. The trial court erred in not finding that the provision regarding the life insurance policy was ambiguous because it lacked any express terms of duration and failed to harmonize the provisions in accord with the parties apparent intent.

The provision regarding the life insurance policy is ambiguous. It obviously lacks any express terms of duration. Testimony of the parties regarding the purpose that the life insurance policy serves to demonstrate its ambiguous nature. The policy provision does not state that it terminates upon the death of Leslie nor does it state that in the event of her death the policy is to be maintained naming her estate as the beneficiary. For these reasons, Lee asserted at trial that the provision regarding life insurance was ambiguous requiring a determination of the intent of the parties and purpose for this provision.

The Supreme Court has held that a property settlement agreement creates contractual obligations. See *D'Avignon v D'Avignon*, 945 So.2d 401 (Miss. 2006) (citing *In re Estate of Hodges*, 807 So.2d 438,445 (Miss. 2002)). Therefore, provisions of a property settlement agreement must be interpreted according to contract principals. *Id.*

Courts are bound by what the parties have said, "provided only that we read the entire settlement agreement/divorce judgment and in the best light possible, attributing to its provisions the most coherent and reasonable scheme they may yield." *Beezley v Beezley*, 917 So.2d 803, 807 (Miss. 2005) (citing *Webster v Webster*, 566 So.2d 214, 215 (Miss. 1990)). In *Beezley*, a husband and wife were granted a divorce, neither party was represented by counsel and the wife drafted the parties' child custody and property settlement. The agreement required the husband to pay \$5,000.00 per month in spousal support "without limitations."

The agreement stipulated that these spousal support payments were not be considered alimony and that husband was not to deduct the expense for income tax purposes. Two weeks after the divorce was finalized, the wife informed the husband that she planned on remarrying and thereafter the husband filed a motion to terminate the spousal support. *Id.* 805.

The trial court, in *Beezley* denied the ex-husband's motion, finding that the spousal support obligations were in the nature of a property settlement and therefore unmodifiable. The ex-husband appealed claiming that the trial court erred in ruling that the spousal support payments were in the nature of a property settlement. At trial, the husband testified that the spousal support was for the purpose of supporting the wife after the divorce, and was not intended to continue if she remarried. He further claimed that the "no limitations" phrase meant no specific time but that phrase was not intended for him to pay after his death or upon remarriage of the wife. The wife, testified that the purpose of the spousal support arrangement was for husband to provide support to her for the rest of her life. Both testified that the life insurance provision was intended for the spousal support payments upon the husband's death.

The court, in *Beezley* found that the parties' child support and property division agreement was ambiguous, as the provision for spousal support payments were in one section, while the property division was in another, that there was no provision for duration and whether or not the support obligation would continue after the death of the husband. The court affirmed the rule that where a contract is ambiguous, courts are obligated to pursue the intent of the parties by resorting to parol evidence. *Id.* 807.

In the case at hand, the provision for lump sum alimony and provision for the life insurance policy follow each other, and are connected by the same exact, and odd, dollar amounts, but fails to state any terms if Leslie predeceased Lee. It would follow that if, the life insurance was an asset of the marital property awarded to Leslie, then the policy would remain in place with the estate of Leslie stepping into the shoes of the beneficiary upon her death, yet this provision is silent in the event that Leslie predeceased Lee.

At trial, Lee testified that it was the intention of the parties for Lee to maintain a life insurance policy to insure full payment of the lump sum alimony in the amount of \$1,080,000.00. In support of this intent of the parties, Lee testified that the policy was in the face amount of \$1,500,000.00 and that Leslie received a collateral assignment in the exact amount of the lump sum alimony (ie:\$1,080,000.00). This very collateral assignment has been in place since August 6, 2004, which is compelling evidence to support the fact that the purpose was to protect payment in full of the lump sum alimony. (R.E. 6)

Lee Voulters - Direct Examination:

(T.T. Page 13, Lines 5-13; R.E. 7)

- A. Yes, there was. That was the intent of this life insurance policy. It's quite clear from this divorce agreement that -- the discussion of the lump sum alimony payment and the life insurance following it is for a \$1,080,000. My life insurance policy was not for \$1,080,000; it was for \$1,500,000. It was clear -- I would never have agreed to give her life insurance in perpetuity. It was purely for the purposes of the alimony payment.**

Lee further testified:

(T.T. Page 14, Lines 7-15; R.E. 7)

A. There isn't specifically. But, again, it's for \$1,080,000, which is the same as the amount of the payment, the lump sum payment. That's what it's for.

Q. All right.

A. And the amounts match.

Q. Okay.

A. Paragraph 8 and paragraph 9 match. One follows the other. It's clear they're linked.

(T.T. Page 30, Lines 18-25; R.E. 7)

A. Well, you know, again, I explained to you before, we have -- we have the lump sum agreement. Right underneath it is life insurance for exactly the same amount. It's clear. The intent is clear. We all discussed it at the time. You discussed it with Mr. Varner at the time. This was protection for Leslie for the purposes of the alimony payment, period. The end.

On cross examination of Leslie, she also testified that the life insurance policy was to protect the alimony.

(T.T. Page 60, Lines 19-25; R.E. 7)

Q. Okay. And if you're -- it was your intention or belief that the insurance policy was not in order to protect that alimony payment, but was a separate asset?

A. No, I believed it was to protect the alimony, and I was beneficiary of -- in that amount. That's how I understood it.

J. Mack Varner, Attorney for Dr. Voulters during the negotiations of the Agreement in 2004, testified as follows:

(T.T. Page 102, Line 19-29; Page 103, Line 1-20; R.E. 7)

Q. And you've heard testimony, the amount of alimony was supposed to be \$1,000,080 (sic); is that correct?

A. One million --

Q. 80,000.

A. -- eighty-thousand.

Q. Yeah, 80,000 payable in 10,000 over a period of nine years?

A. That's correct.

Q. And the next provision of paragraph 9 is the life insurance?

A. That's correct, also for the same amount of alimony, \$1,080,000.

Q. Okay. And does it have or does it state any length of time that that policy is to remain in place?

A. No. It definitively states – definitively, the amount of the life insurance, as I've already testified, being exactly the same amount of alimony. But the agreement does not state in either way that it's to continue for the rest of Dr. Voulters' life or does it state to be terminated upon the termination of the alimony. It is silent as to the term.

Q. And at the time this was done, what was your understanding that the purpose of the life insurance policy?

A. I negotiated with William Wright about this life insurance policy. And once we agreed on the amount of the alimony, Mr. Wright also said, Well, Ms. Voulters has to have some reason to protect herself.

The provision regarding the life insurance in the Agreement lacks express any language of duration regarding any terms or conditions upon which the obligation to maintain the policy would terminate. The parties, disagreed about the purpose of the policy, as well as to the duration that the policy was to remain in effect.

Leslie testified:

(T.T. Page 56, Lines 4-9; R.E. 7)

Q. Okay. And how long was that policy supposed to remain?

A. Forever.

Q. Does it say that in the agreement?

A. No. But I understood that there's nothing saying that it ends.

(T.T. Page 56, Lines 23-29; R.E. 7)

Q. And if you would, just tell the Court, is there any language within that paragraph that states the length that the policy is to be maintained?

A. No.

Q. It doesn't say for your life or his life or anybody's life. Is that correct?

A. No. But it doesn't say it ends.

(T.T. Page 57, Lines 1-3; R.E. 7)

Q. But it's silent as to the length of the policy. Is that correct?

A. Yes.

In *Sheppard*, the Supreme Court held that there was no language in the Agreement which tied the insurance policy to the alimony payments and concluded that the policy should not be deemed to be have provided in lieu of the alimony payments. Here, the paragraph addressing the issue of lump sum alimony is followed immediately by the paragraph addressing the life insurance policy. In *Sheppard*, the amount of alimony differed greatly from the amount of the insurance policy of \$160,000.00. Here, the lump sum alimony was for \$1,080,000.00 and the life insurance coverage was for \$1,080,000.00. Clearly, this language and matching dollar amounts in the agreement ties the insurance policy to the alimony payments. \$1,080,000.00 is an unusual amount for insurance coverage. Also lending support to the obvious is that the original life insurance policy was for \$1,500,000.00, not for

\$1,080,000.00, and after the divorce was granted, Lee executed a collateral assignment in the amount \$1,080,000.00 to which Leslie obviously agreed since August 6, 2004. Lee maintained that collateral assignment until the trial in this matter in January of 2014. (T.E. PLT 2; R.E. 6)

While both parties agree that the insurance policy was to protect the lump sum alimony, Leslie erroneously asserts that it was to remain in place in perpetuity. Taking the agreement as a whole and harmonizing that with the parties apparent intent, and given the fact that the policy was in the same amount of the lump sum alimony, it was the plain intent of the parties to protect Leslie's lump sum alimony in case of Lee's death prior to satisfaction of all alimony. Once the obligation was met, Lee was no longer obligated to maintain a policy for such a large sum.

III. Once Lee's obligation for payment of the lump sum alimony had been satisfied, Leslie no longer held an insurable interest in Lee's life.

In order for an insurable interest to exist the insured must suffer an economic loss if the subject of the insurance is lost or destroyed. *Necaise v. U.S.A.A. Casualty Co.*, 644 So. 2d 253 (Miss. 1992). See also *North American Co. For Life and Health Ins. v. Lewis*, 535 F. Supp. 2d 755 (S.D. Miss. 2008) [Mississippi follows general rule that buyer of insurance policy must have an insurable interest in the life insured to be entitled to policy proceeds.]

Pursuant to the Agreement Item (8), Lee was to pay Leslie in the form of lump sum alimony a total of \$1,080,000.00, payable in monthly installments of \$10,000.00 each for a period of nine years. Immediately following in Item (9) Lee agreed to maintain a life insurance policy on his own life in the same amount as the lump sum alimony of \$1,080,000.00 naming Leslie as primary beneficiary. The value of the life insurance policy is the same as the total

amount of alimony awarded. This was put in place to protect Leslie if Lee failed to make any alimony payments and if he should die prior to that obligation being satisfied.

Without the insurance Leslie would have no assurance of payment should Lee have died insolvent or if his estate was without sufficient assets to pay Leslie's claim.

This intent is memorialized under Item (8) which states that Lee's obligation to pay such support shall not terminate upon Leslie's death or remarriage, and shall not terminate upon Lee's death. Once the alimony obligation was satisfied, Leslie had no insurable interest in the life of Lee as required pursuant to Miss. Code Ann. §83-5-251(1) which states "that no person shall procure or cause to be procured any insurance contract upon the life or body of another individual unless the benefits under such contract are payable to the insured or his personal representatives or to the person having, at the time when such contract was made, an insurable interest in the insured."

While, the aforesaid statute does state that the insurable interest must exist at the time the contract is made, it also stands to reason that once the financial obligation is met, an insurable interest no longer exists and Lee's obligation to maintain life insurance policy is extinguished. Clearly, once the financial obligation has been satisfied, Leslie does not have an insurable interest in Lee's life and any insurance policy is void.

While the Supreme Court has held that divorce alone does not divest one of the right to receive life insurance proceeds under a former spouse's policy, the Court stated that the life insurance beneficiary directive in determining whether the life insurance beneficiary directive is in the nature of alimony or property division, the property settlement agreement should be reviewed and a "fundamental consideration is the intention of the parties based upon a reasonable construction of the entire settlement agreement." See *Martin v. Ealy*, 859 So.2d

1034 (Miss. 2003). In *Martin*, the court held that the husband had to continue to maintain the life insurance policy as it was given in lieu of and in exchange for (ie: consideration) a waiver of alimony. *Emphasis added*. Here, there was no such waiver. The agreement was that Lee would pay to Leslie the lump sum alimony in the total sum of \$1,080,000.00 payable in 108 monthly installments of \$10,000 each for a period of nine (9) years. Once the obligation was paid in full Leslie had no further claim or cause of action against Lee or his estate.

Under Mississippi law, for there to be an insurable interest in the life of another, there must be a reasonable ground founded upon the relations of the parties to each other either pecuniary or of blood or affinity, to expect some benefit or advantage from the continuance of the life of the assured. See *First Colony Life Ins. Co. v. Sanford*, 555 F.3d 188 (5th Cir. 2009). Once Lee satisfied his obligation of the lump sum alimony in the amount of \$1,080,000.00, Leslie can longer expect any benefit or advantage for the continuation of the life of Lee. There remains no possibility or expectation of a future economic or other relationship of blood or affinity to maintain an insurable economic interest. Finally, as Lee is now remarried, it seems repugnant that a life insurance policy be maintained in such a large amount claiming an insurable interest in the life of another woman's husband.

CONCLUSION

In harmonizing the provisions of the Agreement, along with the parties' obvious intent, this Court should find that the life insurance policy for the amount of \$1,080,000.00 was clearly put in place to protect the payment of the lump sum alimony. This Court should reverse the trial court's finding that the absence of any language regarding termination of Lee's obligation to maintain the life insurance policy means the opposite and is a continuing obligation, as such ruling clearly conflicts with the parties' intent. Lee's obligation to maintain

the life insurance policy is now extinguished and there is no reasonable ground founded upon the relations of the parties, either pecuniary or, by blood or affinity to expect any continued benefit or advantage of the continuation of the insurance policy.

As Lee's obligation for payment of lump sum alimony has been satisfied, Leslie no longer holds an insurable interest in Lee's life and, therefore, the obligation to maintain it should be reversed and a judgment entered granting Lee relief from maintaining the life insurance policy in perpetuity.

Respectfully Submitted,

LEE VOULTERS

**By: /s/ Penny B. Lawson
J. Mack Varner, MSB #6599
David M. Sessums, MSB #6714
Penny B. Lawson, MSB #103450**

**OF COUNSEL:
VARNER, PARKER & SESSUMS, P.A.
1110 Jackson Street
Vicksburg, Mississippi 39183
Telephone: 601-638-8741
Facsimile: 601-638-8666**

CERTIFICATE OF SERVICE

I, PENNY B. LAWSON, attorney for Appellant, Lee Voulters, certify that I have this day served a copy of the foregoing via the MEC on the following persons at these address:

**William R. Wright, MSB #7404
WRIGHT LAW FIRM, P.A.
1062 Highland Colony Parkway, Suite 250
Ridgeland, Mississippi 39157
Post Office Box 12745
Jackson, Mississippi 39236
*Attorney for Leslie Dayle Voulters***

**Honorable Vicki Barnes
Warren County Chancery Court Judge
Post Office Box 351
Vicksburg, Mississippi 39181-0351**

This the 19th day of December, 2014.

***/s/ Penny B. Lawson* _____
Penny B. Lawson**