

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT

Carl Simpson,)
)
) Plaintiff,)
)
) vs.)
)
) Western National Life Insurance)
) Company & Renee H. Wilson, as co-)
) personal representative of the Estate of)
) Marian S. Maybank,)
)
) Defendants.)

Civil Action No. 2011-CP-10-4129

ORDER
DENYING PLAINTIFF'S
MOTION TO ALTER OR AMEND

2012 DEC 27 PM 2:27
JULIE J. ARHIS RONG
CLERK OF COURT

FILED

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JCS

On August 2, 2012, undersigned heard oral argument on Plaintiff's Rule 59 motion to alter or amend this Court's June 13, 2012 order granting summary judgment in favor of Defendant Western National. Having fully considered all submissions of the parties, the oral arguments from both sides, the prior briefing on summary judgment, and this Court's order on summary judgment, this Court **DENIES** the Plaintiff's motion.

Background

This case arises out of Plaintiff's claim that he is entitled to payment of one-half of the proceeds of the annuity policy at issue in this matter. Plaintiff originally filed suit claiming he was entitled to the entirety of the proceeds purportedly as an owner and beneficiary of the policy. (Compl. ¶ 4). Plaintiff subsequently amended his complaint to seek payment for only one-half of the proceeds. (Amend. Compl. ¶ 22). Plaintiff filed the amended suit in two capacities. Plaintiff alleged that he was the co-personal representative of the Estate. (Amend. Compl. ¶ 2). Plaintiff also alleged that he was a one-half beneficiary of the Estate. (Amend. Compl. ¶ 3). Plaintiff's amended complaint further alleged that he was an owner of the policy. (Amend. Compl. ¶ 15).

Plaintiff also noted that the other co-personal representative of the Estate did not consent to his bringing suit for the Estate in his capacity as co-personal representative. (Amend. Compl. ¶ 19). Therefore, Plaintiff named her as a defendant to the suit.

On May 29, 2012, undersigned heard oral arguments on cross-motions for summary judgment. In the summary judgment papers filed with this Court and at the oral argument, Plaintiff contended he was entitled to payment of the proceeds of the annuity policy as a beneficiary of the Estate. (Pl. Mot. for SJ at pp. 4-6). In contrast, Western National argued that: 1) Plaintiff did not have standing to maintain suit as a co-personal representative because the other co-personal representative did not consent and 2) that in any event, under the express language of the annuity policy, the Plaintiff, as a beneficiary, could not recover against Western National as a matter of law because Renee H. Wilson was the co-owner and primary beneficiary under the policy. (Western National Mot. for SJ). After consideration of the summary judgment arguments, this Court determined that Western National properly paid the proceeds to Renee H. Wilson. (Order at pp. 11-13). The Court also found that Plaintiff, in his capacity as the co-personal representative, did not have standing to maintain suit against Renee H. Wilson in circuit court as the dispute between the two co-personal representatives should be adjudicated by the South Carolina Probate Court. (Order at pp. 8-10). Plaintiff then moved to alter or amend the Court's Order based on the contention that the Court should not have reached the issues related to the policy interpretation in light of this Court's ruling that Plaintiff did not have standing to maintain his suit in circuit court with respect to his dispute with the co-personal representative.

Law/Analysis

The Court disagrees with Plaintiff's arguments in support of his motion to alter or amend. This Court properly decided the issues with respect to the policy interpretation and the dispute

Plaintiff filed against Western National. The Court's grounds articulated in its Summary Judgment Order in favor of Western National are incorporated fully herein. The additional support for the Court's prior decision, in light of Plaintiff's Rule 59 arguments, can be summarized as follows.

First, the Court must take the Complaint as it is filed and must view the facts alleged in the most favorable light to the Plaintiff. *See, e.g., Small v. Springs Industries, Inc.*, 300 S.C. 481, 388 S.E.2d 808 (1990). Further, a court must consider all of the allegations in a complaint. *See, e.g., Shirley's Iron Works, Inc. v. City of Union*, 397 S.C. 584, 596, 726 S.E.2d 208, 213 (Ct. App. 2010) ("In construing a complaint or responsive pleading, the court must review the entire pleading.") (citing *Doe ex rel. Legal Guardian v. Barnwell School Dist.* 45, 369 S.C. 659, 663, 633 S.E.2d 518, 520 (Ct. App. 2006); *Smith v. Nelson*, 83 S.C. 294, 300, 65 S.E. 261, 263 (1909) (construing the "complaint upon the whole")); *Parrish v. Allison*, 376 S.C. 308, 327, 656 S.E.2d 382, 392 (Ct. App. 2007) (same). Here, the Plaintiff presented the claim that he was entitled to immediate payment of one-half of the policy proceeds whether as a beneficiary or as an owner. (*See* Amend. Compl. ¶ 3, 15). Plaintiff made these allegations and continuously sought prosecution of the claim in this Court and in federal court during the brief time the case was in that venue. In fact, Plaintiff moved for summary judgment on the basis that he should get immediate payment of monies under the policy at issue. Thus, based on the manner in which the Plaintiff filed this action, it was proper for the Court to adjudicate the claims presented to it.

Second, Plaintiff pursued claims in two capacities. (Amend. Compl. ¶¶ 2, 3, 15). The law recognizes the ability of this Court to make the necessary determinations as they relate to each capacity. *Simmons v. Greenville Hospital System*, 355 S.C. 581, 584 fn. 1, 586 S.E.2d 569, 570 (2003) (noting the parents sued as the guardians of their minor child and on their individual

behalf). Further, a plaintiff may have standing in one capacity but not another. *See Hornady Transp. LLC v. McLeod Health Servs.*, 773 F.Supp.2d 622, 630-31 (D.S.C. 2011) (noting that plaintiff had standing only when acting in its fiduciary capacity); *Jeri M. Suber Credit Shelter Trust v. State Auto Property & Cas. Ins. Co.*, No. 3:08-03387, 2009 U.S. Dist. Lexis 113017, at *13 (D.S.C. Dec. 4, 2009) (holding that plaintiff lacked standing in capacity as trustee but "in his individual capacity, likely had standing to pursue these claims"). Moreover, the *Simmons* decision demonstrates that dismissal of claims pursued in one capacity may occur even if the claims in another capacity remain pending in court. *Simmons*, 355 S.C. at 584 fn. 1, 586 S.E.2d at 570. This Court ruled that the dispute between the co-personal representatives was not properly before the Court. On the other hand, based on the amended complaint as posited by the Plaintiff, this Court properly undertook consideration of the issues related to the policy interpretation as offered by Plaintiff. Alteration of the Summary Judgment Order is not warranted.

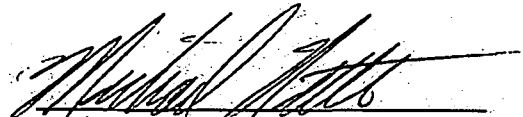
Finally, this Court determined that it did not have jurisdiction over the dispute between Plaintiff and the co-personal representative of the Estate, Renee H. Wilson, as to the ability of Plaintiff to seek one-half of those proceeds for the Estate. The Court made this ruling because Plaintiff did not have standing to pursue the claims in the capacity as a co-personal representative. Plaintiff is in no way prejudiced by this Court's Order with respect to his ability to pursue a claim against Renee H. Wilson in Probate Court. Plaintiff is now free to file a claim, in Probate Court, alleging that Ms. Wilson owes Plaintiff and/or the Estate one-half of the proceeds of the annuity. However, Plaintiff cannot present any claim against Western National

as it already paid the proceeds to Ms. Wilson under the annuity policy.¹ Whether Ms. Wilson should then pay half of those monies to the Estate and/or Plaintiff is for the Probate Court to determine as is whether Ms. Wilson had some duty as a co-personal representative to share the properly paid proceeds with the Estate.

Conclusion

Based on the above, the Plaintiff's motion is **DENIED**.

IT IS SO ORDERED.


The Honorable Michael G. Nettles
South Carolina Circuit Court Judge

Charleston, South Carolina
August 6, 2012

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¹ This is true because even if Plaintiff's theory were correct, Western National paid the entirety of the proceeds under the policy out in full. There are no other funds due and owing. Thus, if the Probate Court determines that Ms. Wilson, as a co-personal representative had an obligation to Plaintiff or the Estate to share those funds because she is also a co-personal representative, the Probate can make that determination and order her to pay half of the proceeds to Plaintiff as he desires.