IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

MIDLAND NATIONAL LIFE INSURANCE COMPANY, Plaintiff, v. ANTONIO VILLALOBOS, et al., Defendants.	CIVIL ACTION FILE NO. 1:22-CV-1117-TWT

OPINION AND ORDER

This is an interpleader action. It is before the Court on Defendants Antonio Villalobos, Mary Anne Baker, Maria Zambrano Beltran, and Javier Pestana's Motion for Summary Judgment [Doc. 35]; Defendants Monica Wilhelm, David Wilhelm, Cristina Villalobos, and P.C.V.'s Cross-Motion for Summary Judgment [Doc. 36]; and Defendants Antonio Villalobos, Mary Anne Baker, Maria Zambrano Beltran, and Javier Pestana's Motion to Strike [Doc. 42]. For the reasons set forth below, the Court GRANTS Defendants Antonio Villalobos, Mary Anne Baker, Maria Zambrano Beltran, and Javier Pestana's Motion for Summary Judgment [Doc. 35]; DENIES Defendants Monica Wilhelm, David Wilhelm, Cristina Villalobos, and P.C.V.'s Cross-Motion for Summary Judgment [Doc. 36]; and DENIES Defendants Antonio Villalobos, Mary Anne Baker, Maria Zambrano Beltran, and Javier Pestana's Motion to Strike [Doc. 42].

I. Background

This case involves competing claims to the proceeds of a life insurance policy among its named beneficiaries. On March 28, 2019, the Plaintiff Midland National Life Insurance Company ("Midland") issued a $1,000,000 life insurance policy bearing number 1508044318 (the "Policy") to Juan Villalobos (the "Deceased"). (Non-Trust Defs.' Statement of Undisputed Material Facts ¶ 1.) On the Policy application, the Deceased named his children, Cristina Villalobos and P.C.V. (a minor), as co-equal primary beneficiaries. (*Id.* ¶ 2.) More than two years later, on May 28, 2021, Midland received a beneficiary change form which listed Cristina Villalobos as 35% primary beneficiary, P.C.V. as 35% primary beneficiary, Antonio Villalobos as 14% primary beneficiary, Mary Anne Baker as 5% primary beneficiary, Maria Zambrano as 5% primary beneficiary, and Javier Pestana as 6% primary beneficiary. (*Id.* ¶ 4.) The Deceased then committed suicide on June 1, 2021, and Midland sent the required claim forms to all of the Policy's primary beneficiaries by the following week. (*Id.* ¶ 5.)

On August 11, 2021, Midland received a copy of the divorce settlement agreement (the "Divorce Agreement") between the Deceased and his former wife Monica Wilhelm, dated June 10, 2009. (*Id.* ¶ 6.) The Divorce Agreement provides in relevant part:

> The Husband agrees to maintain a life insurance policy on his life with a death benefit of $1,000,000.00, naming the children as beneficiaries and the Wife as Trustee for the benefit of the

> children as long as he shall be obligated to pay child support hereunder.

(*Id.*) Following the Deceased's death, Midland paid $700,000 plus applicable interest to the Villalobos Children Trust for the benefit of Cristina Villalobos and P.C.V. (*Id.* ¶ 7.) Midland also initiated this interpleader action to determine which of the named beneficiaries are entitled to the remaining $300,000 owed under the Policy. (Compl. ¶¶ 29-33.) Now pending before the Court are two motions for summary judgment filed by opposing factions of claimants. On the one hand, Defendants Antonio Villalobos, Baker, Beltran, and Pestana (collectively, the "Non-Trust Defendants") ask the Court to honor the changes that the Deceased made to his designated beneficiaries in the days leading up to his death. On the other hand, Defendants Cristina Villalobos and P.C.V.—joined by the trustees for the Villalobos Children Trust, Defendants Monica Wilhelm and David Wilhelm (collectively, the "Trust Defendants")—argue that the Divorce Agreement granted them a vested interest in the full amount of the Policy.

II. Legal Standard

Summary judgment is appropriate only when the pleadings, depositions, and affidavits submitted by the parties show that no genuine issue of material fact exists and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a), (c). The court should view the evidence and draw any inferences in the light most favorable to the nonmovant. *See Adickes v.*

S.H. Kress & Co., 398 U.S. 144, 158-59 (1970). The party seeking summary judgment must first identify grounds that show the absence of a genuine issue of material fact. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986). The burden then shifts to the nonmovant, who must go beyond the pleadings and present affirmative evidence to show that a genuine issue of material fact exists. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 257 (1986).

III. Discussion

The central question before the Court is whether, under the Divorce Agreement, Cristina Villalobos and P.C.V. acquired a vested interest in the Policy such that the Deceased could not change the beneficiaries and dilute his children's share of the proceeds. This question, the parties agree, is governed by Georgia law. In general, if an insured names a beneficiary by revocable designation, the beneficiary does not acquire a vested right or interest in the insurance policy, and the insured may change the beneficiary at will. *See Sparks v. Jackson*, 289 Ga. App. 840, 841 (2008). It is possible, however, for an insured to forfeit this right by contract. In the context of a divorce settlement, "[t]he terms of a property settlement agreement may preclude the insured from making a change of beneficiary even though he is given this right by terms of the insurance policy." *Reeves v. Reeves*, 236 Ga. 209, 211-12 (1976). So, "where a divorce decree requires the husband to name his children or his former wife as beneficiaries of his life insurance policy and to keep the policy in force, the children or former wife obtain a vested interest in the policy proceeds." *Sparks*,

289 Ga. App. at 841-42. This interest is limited to whatever insurance is "provided by the contract at the time of the entry of the divorce judgment." *Reeves*, 236 Ga. at 212.

For a beneficiary to claim a vested interest by divorce decree, the insurance policy must be identified in the decree. *See Talcott Resol. Life & Annuity Ins. Co. v. Phoenix Printing Grp., Inc.*, 2022 WL 1072915, at *5 (S.D. Ga. Mar. 24, 2022); *Unum Life Ins. Co. of Am. v. Sides*, 2014 WL 6085696, at *2 (N.D. Ga. Nov. 13, 2014). The decree need not specify the policy number or issuer to meet this identification requirement; "even absent language expressly identifying a policy, Georgia courts have been fairly generous in their interpretation of divorce decrees and whether a policy is adequately identified." *Jackson Nat'l Life Ins. Co. v. Lineberry*, 2019 WL 6042274, at *3 (N.D. Ga. Sept. 10, 2019). To illustrate, the Georgia Supreme Court in *Reeves* found a vested interest based on the following settlement provision: "The husband shall also continue to maintain in full force and effect the life insurance policies upon his life *now in effect*[.]" *Reeves*, 36 Ga. at 210, 212 (emphasis added). Similarly, in *Sparks*, the divorce settlement required the husband "to maintain *his current level of life insurance* on his life *through his employment* which *at the present time is $220,000.00*, with [w]life being named as the irrevocable beneficiary[.]" *Sparks*, 289 Ga. App. at 840 (emphasis added). When the husband died and his widow sued for the insurance payout, the Georgia Court of Appeals held that his former wife, although not named as a beneficiary, had

a vested right in the policy by virtue of the settlement. *See id.* at 842-43.

Here, the Divorce Agreement states that the Deceased must maintain "a" life insurance policy with a death benefit of $1,000,000. (Non-Trust Defs.' Br. in Supp. of Non-Trust Defs.' Mot. for Summ. J., Ex. F ¶ 12.) In the Court's view, nothing in this language can be interpreted to refer to a particular insurance policy—much less the Policy that the Deceased purchased almost 10 years after the Divorce Agreement was finalized. *See Reeves*, 236 Ga. at 212 (holding that a beneficiary can only "acquire[] a vested interest in the proceeds of the insurance contracts *as those contracts existed on the date of the entry of the court decree*" (emphasis added)). Unlike in *Reeves* and *Sparks*, the Divorce Agreement does not designate the source, the amount, or even the bare existence of a policy that the Deceased may have held during the divorce. This case is thus more analogous to *Sides*. There, the divorce decree required "[e]ach party [to] maintain life insurance on his or her life in an amount not less than $250,000, naming the children as beneficiaries and the other parent as trustee." *Sides*, 2014 WL 1207616, at *1 (emphasis omitted). Finding that this language did not name a specific policy, the court could not say that the insured had contracted away his right to change the beneficiaries on his life insurance policy. *See id.* at *4.

In response, the Trust Defendants claim that the Deceased held a term life insurance policy at the time of the Divorce Agreement and that the 2019 Policy was intended to replace the original one upon expiration. (Trust Defs.'

Br. in Supp. of Trust Defs.' Cross-Mot. for Summ. J., at 6.) Any rights that Cristina Villalobos and C.R.V. held in the original policy, the Trust Defendants argue, must carry over into the new Policy. (*Id.* at 5-6.) Although correct on the law, the Court concludes that this argument falls short on the facts in the record.

In Georgia, "where a policy of life insurance replaces a policy or amount specified in . . . a separation agreement, the minors' interest in the prior policy applies to the replacement policy." *Curtis v. Curtis*, 243 Ga. 611, 612 (1979). Unfortunately for the Trust Defendants, their evidence of a prior life insurance policy rests on the hearsay affidavit of Monica Wilhelm. In it, Monica Wilhelm states that "at the time of our divorce, [the Deceased] told me he had a term life insurance policy for $1,000,000 and our two daughters were named as the beneficiaries." (Wilhelm Aff. ¶ 5.) In the years after their divorce, she continues, "[the Deceased] told me repeatedly that he maintained a term life insurance policy for $1,000,000 and our two daughters were named as the beneficiaries." (*Id.* ¶ 6.) He allegedly assured Monica Wilhelm that when the term of insurance ended, he would purchase another term policy as a replacement. (*Id.* ¶ 6.) Finally, she asserts that in the fall of 2020, the Deceased chided her for converting her own life insurance policy to permanent because "term life insurance is better, like the term life insurance policy he had for $1,000,000 where our two daughters continued to be named as the beneficiaries." (*Id.* ¶ 7.) The Deceased also allegedly bragged that "he got a

great rate because he consistently maintained life insurance since around the time our divorce was finalized." (*Id.*)

These out-of-court statements, as recounted by Monica Wilhelm, are not admissible to prove that the Deceased carried life insurance before the present Policy. *See United States v. Hart*, 841 F. App'x 180, 182 (11th Cir. 2021) (describing inadmissible hearsay as "an out-of-court statement offered into evidence to prove the truth of the matter asserted in the statement" (quotation marks and citation omitted)). The Trust Defendants do not argue that Monica Wilhelm's affidavit is admissible under an exception to the hearsay rule, nor do they offer admissible evidence to corroborate her allegations, such as a copy of the original policy, the insurer's name, or bank statements showing payments on the policy. Even if the Court could consider the affidavit, and even if the alleged prior policy did exist, the Divorce Agreement still did not identify that policy with enough clarity to create a vested interest in it. Again, the Divorce Agreement refers only to "a" life insurance policy. As in *Sides*, this language "is too vague for the Court to determine whether it was referring to an existing life insurance contract, or whether it obligated the [I]nsured to go out and purchase a new policy." *Id.* at *2. Beyond the death benefit of $1,000,000, there are no facts from which a jury could connect the policy required by the Divorce Agreement to the policy described in Monica Wilhelm's affidavit.

In a last-ditch effort to avoid summary judgment, the Trust Defendants

also offer an affidavit from Fabian Mercado, who claims to have worked with the Deceased in the life insurance business since 2004. (Mercado Aff. ¶ 2.) This affidavit was not attached to the Trust Defendants' Cross-Motion for Summary Judgment but was filed more than two weeks later to "supplement" the Cross-Motion. (Trust Defs.' Suppl. to Trust Defs.' Cross-Mot. for Summm. J., at 2.) Because Mercado was not disclosed as a fact witness during the discovery period, the Non-Trust Defendants move to strike his affidavit on the grounds that his non-disclosure is neither substantially justified or harmless under Rule 37(c)(1). (Non-Trust Defs.' Br. in Supp. of Non-Trust Defs.' Mot. to Strike, at 2.)

As an initial matter, a motion to strike may only be directed at a pleading, and Mercado's affidavit is not among the kinds of pleadings listed in Rule 7(a). *See Sum of $66,839.59 v. IRS*, 119 F. Supp. 2d 1358, 1359 n.1 (N.D. Ga. 2000). Accordingly, the Court has no choice but to deny the Motion to Strike, regardless of its underlying merit. The Court also need not consider whether to exclude the affidavit on other grounds because, even if allowed, it would not create a fact issue as to Cristina Villalobos and C.R.V.'s interest in the Policy. In his affidavit, Mercado recalls that the Deceased was "very happy" in 2008 because "he was able to qualify as a non-smoker for a life insurance policy." (Mercado Aff. ¶ 3.) He also attests that the Deceased's first trainer, Madhukar Gandhi, likely wrote the Deceased's life insurance policies between 2008 and 2014. (*Id.* ¶ 4.) Finally, Mercado claims that the Deceased attended

training camps for life insurance salespeople each year from 2007 to 2012 and that all attendees were required to have a life insurance policy on their own lives. (*Id.* ¶ 5.)

According to the Trust Defendants, these facts show that the Deceased held a life insurance policy at the time of the Divorce Agreement, which he replaced with the Policy when the term of insurance expired. (Trust Defs.' Suppl. in Supp. of Trust Defs.' Cross-Mot. for Summ. J., at 3.) But by his own statements, Mercado has no personal knowledge to support that the Deceased owned a life insurance policy prior to the one at issue in the case. Instead, Mercado reaches this conclusion through pure speculation—based on the Deceased's status as a non-smoker, his relationship with his job trainer, and his attendance at industry conferences. *See Cordoba v. Dillard's, Inc.*, 419 F.3d 1169, 1181 (11th Cir. 2005) ("[U]nsupported speculation does not meet a party's burden of producing some defense to a summary judgment motion. Speculation does not create a *genuine* issue of fact; instead, it creates a false issue, the demolition of which is a primary goal of summary judgment." (citation and alteration omitted)). In any event, as explained, the existence of a prior policy is not dispositive since the Divorce Agreement made no mention of that policy. The Court thus determines that Cristina Villalobos and C.R.V. have no vested interest in the Policy and that summary judgment should be granted in favor of the Non-Trust Defendants.

IV. Conclusion

For the foregoing reasons, the Court GRANTS Defendants Antonio Villalobos, Mary Anne Baker, Maria Zambrano Beltran, and Javier Pestana's Motion for Summary Judgment [Doc. 35]; DENIES Defendants Monica Wilhelm, David Wilhelm, Cristina Villalobos, and P.C.V.'s Cross-Motion for Summary Judgment [Doc. 36]; and DENIES Defendants Antonio Villalobos, Mary Anne Baker, Maria Zambrano Beltran, and Javier Pestana's Motion to Strike [Doc. 42]. In accordance with Local Rule 67.1(C)(3), the Clerk is authorized and directed to draw checks on the funds on deposit in the registry of this Court in the principal amounts stated below plus all accrued interest on a pro rata basis, minus any statutory users fees, payable to:

- Antonio Villalobos in the principal amount of $149,410.79;
- Mary Anne Baker in the principal amount of $53,361.00;
- Maria Zambrano Beltran in the principal amount of $53,361.00; and
- Javier Pestana in the principal amount of $64,033.20.

All checks are to be mailed or delivered to:

Gary S. Freed
Freed Grant LLC
101 Marietta Street, NW
Suite 3600
Atlanta, Georgia 30303

SO ORDERED, this 14th day of February, 2023.

TO THE COURT:
is hereby certified that
rule 67 has been complied
with and that there is on
deposit in the Registry of
this Court
$320,165.99
plus interest of 2660.12
as of 2/14/2023
C:\Users\sewellk\AppData\Loc
Deputy Clerk
Financial Intake Section

Thomas W. Thrash

THOMAS W. THRASH, JR.
United States District Judge