

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT

R. Patrick Magrath
Alcorn Sage Schwartz & Magrath, LLP
Madison, Indiana

ATTORNEYS FOR APPELLEE

Matthew S. Tarkington
Thomas R. Jones
Lewis & Kappes, P.C.
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

The Estate of Phillip C.
Blackaby,
Appellant-Defendant,

v.

Sharon L. Neal f/k/a Sharon L.
Blackaby,
Appellee-Plaintiff

April 12, 2022

Court of Appeals Case No.
21A-CB-2362

Appeal from the Dearborn
Superior Court

The Honorable Sally A.
McLaughlin, Judge

Trial Court Cause No.
15D02-2106-CB-26

Crone, Judge.

Case Summary

- [1] The Estate of Phillip C. Blackaby (the Estate) appeals the dismissal of its proceedings supplemental to execution against Sharon L. Neal f/k/a/ Sharon

L. Blackaby to recover proceeds from Phillip C. Blackaby's life insurance policy (the Policy). The Estate claims that the trial court erred in determining that the Estate was not entitled to two-thirds of the Policy proceeds under Blackaby and Neal's divorce decree (the Divorce Decree). Finding no error, we affirm.

Facts and Procedural History

- [2] In 2019, Blackaby and Neal were divorced pursuant to the Divorce Decree, which was issued by a North Dakota court. The Divorce Decree provided that Blackaby was to maintain the Policy, which he had with his employer Hess Corporation, and designate Neal as beneficiary of one-third of the value of the Policy. Appellant's App. Vol. 2 at 8.
- [3] In January 2021, Blackaby died while a resident of Dearborn County, Indiana. In June 2021, the Estate filed a certified copy of the Divorce Decree in the trial court. The following month, the Estate filed a motion for proceedings supplemental against Neal, in which it claimed that the Divorce Decree provided that Neal was the beneficiary of one-third of the Policy proceeds, Neal had received the full amount of the proceeds payable under the Policy rather than one-third, the Estate had demanded that Neal return two-thirds of the Policy proceeds, and she had not done so. *Id.* at 12. The trial court ordered Neal to appear in court to answer as to any assets subject to execution.
- [4] In August 2021, Neal filed a motion to dismiss, alleging, among other things, that she was entitled to the life insurance proceeds as a matter of law because she was the sole named beneficiary of the Policy. *Id.* at 24-32. The Estate then

filed a notice of filing of foreign judgment, an amended verified motion to enforce judgment by proceedings supplemental to execution, and a response to Neal's motion to dismiss. The trial court denied Neal's motion to dismiss. In September 2021, Neal filed a motion to reconsider the motion to dismiss, attaching the affidavit of the employee benefits manager at Hess Corporation. *Id.* at 72. The manager attested that Blackaby was employed by the Hess Corporation until his death, that at all relevant times Neal was designated as the sole beneficiary of the Policy, that Blackaby never made any changes to his beneficiary designation after the divorce, and that nothing would have prevented him from changing his beneficiary designation if he had so desired. *Id.* at 80.

[5] The trial court held a hearing on Neal's motion to reconsider and the Estate's motion for proceedings supplemental. The parties presented argument on the motion to reconsider, and the trial court took the matter under advisement. Regarding the motion for proceedings supplemental, Neal testified that she had received full payment of the Policy proceeds. The trial court took judicial notice of the life insurance provision in the Divorce Decree. Following the hearing, the Estate filed a reply to Neal's motion to reconsider.

[6] In October 2021, the trial court issued its order, finding that the Divorce Decree did not entitle the Estate to two-thirds of the Policy proceeds. Accordingly, the trial court found that the Estate had no claim to the Policy proceeds as a matter of law and dismissed the action. This appeal ensued.

Discussion and Decision

- [7] The Estate argues that the trial court erred by dismissing its action for proceedings supplemental. In general, a trial court is vested with broad discretion in conducting proceedings supplemental. *Carter v. Grace Whitney Props.*, 939 N.E.2d 630, 634 (Ind. Ct. App. 2010). Here, the trial court’s decision was based on a question of law, which we review de novo. *Shorter v. Shorter*, 851 N.E.2d 378, 383 (Ind. Ct. App. 2006).
- [8] “[P]roceedings supplemental are a means to remedy a failure by a party to pay a money judgment.” *Williamson v. Rutana*, 736 N.E.2d 1247, 1249 (Ind. Ct. App. 2000). “Proceedings supplemental are a continuation of the underlying claim on the merits—not an independent action.” *Lewis v. Rex Metal Craft, Inc.*, 831 N.E.2d 812, 817 (Ind. Ct. App. 2005). “The filing of a motion for proceedings supplemental ‘speaks only to how the claim is to be satisfied, whereas the complaint in the original action speaks to whether the claim should be satisfied.’” *Gallant Ins. Co. v. Oswald*, 762 N.E.2d 1254, 1257 (Ind. Ct. App. 2002) (quoting *Gallant Ins. Co. v. Wilkerson*, 720 N.E.2d 1223, 1229 (Ind. Ct. App. 1999)), *trans. denied*. Indiana Trial Rule 69(E) provides that “proceedings supplemental to execution may be enforced by verified motion or with affidavits in the court where the judgment is rendered” alleging that “the plaintiff owns the described judgment against the defendant” and that the “plaintiff has no cause to believe that levy of execution against the defendant will satisfy the judgment[.]”

[9] This case is not a typical proceedings supplemental because the merit of the underlying claim was challenged. That is, Neal’s motion to dismiss presented the trial court with the threshold question of whether the Estate had a valid claim to the insurance proceeds under the Divorce Decree.¹ We note that the Estate asserts, and Neal does not dispute, that the Divorce Decree was the result of a settlement agreement entered into by her and Blackaby. When a settlement agreement requires that a specific person be designated as a beneficiary to a life insurance policy, that individual has a contractual right to receive the life insurance proceeds as provided for under the settlement agreement.² Property settlement agreements incorporated into a divorce decree are binding contracts and are “interpreted according to the general rules for contract construction.” *Ryan v. Ryan*, 972 N.E.2d 359, 363-64 (Ind. 2012) (quoting *Bailey v. Mann*, 895 N.E.2d 1215, 1217 (Ind. 2008)).

¹ In a footnote in her brief, Neal argues that the Divorce Decree is not a money judgment subject to a proceedings supplemental. Given the cursory attention to the issue, we consider it waived for failure to present a cogent argument. *See* Ind. Appellate Rule 46(A)(8)(a) (requiring that contentions in brief be supported by cogent reasoning and citations to authorities, statutes, and the appendix or parts of the record on appeal); *Loomis v. Ameritech Corp.*, 764 N.E.2d 658, 668 (Ind. Ct. App. 2002) (failure to present cogent argument waives issue for appellate review), *trans. denied*.

² We have held that where, as part of a settlement agreement, the decedent agreed to maintain a life insurance policy naming children of a previous marriage as beneficiaries but designated someone else as the beneficiary of the insurance policy, the children had a contractual right, as third-party beneficiaries to the settlement agreement, to recover the insurance proceeds from the designated insurance policy beneficiary. *See Miller v. Partridge*, 734 N.E.2d 1061, 1065 (Ind. Ct. App. 2000) (decedent’s daughter had enforceable contractual right as third-party beneficiary of settlement agreement to proceeds of decedent’s life insurance policy where divorce decree required decedent to maintain life insurance policy with daughter named as beneficiary), *trans. denied* (2001); *Meece v. Meece*, 495 N.E.2d 827, 827 (Ind. Ct. App. 1986) (decedent’s children from previous marriage were entitled to recover life insurance proceeds from decedent’s subsequent wife where decedent agreed to designate children as beneficiaries as part of negotiated property settlement agreement with ex-wife).

[U]nless the terms of the contract are ambiguous, they will be given their plain and ordinary meaning. Clear and unambiguous terms in the contract are deemed conclusive, and when they are present we will not construe the contract or look to extrinsic evidence, but will merely apply the contractual provisions.

Id. at 364 (quoting *Shorter*, 851 N.E.2d at 383).

[10] The Divorce Decree provided in relevant part as follows:

LIFE INSURANCE: [Blackaby] will maintain his current life insurance policy through his employment with Hess and [Neal] will be the beneficiary for 1/3 the value of that policy. [Blackaby] shall give the insurance company notice that [Neal] has permission to call and periodically check that she continues to be the beneficiary.

Appellant's App. Vol. 2 at 8. The Estate does not dispute that Neal is entitled to one-third of the proceeds of the Policy, but it maintains that the Divorce Decree was intended to divide all of the parties' assets between them, and thus the life insurance provision is ambiguous regarding the remaining two-thirds interest in the life insurance proceeds. We disagree.

[11] While the life insurance provision required Blackaby to name Neal as the beneficiary of one-third of the Policy proceeds, its silence regarding the remaining two-thirds simply allowed Blackaby to designate any beneficiary of his choosing. Blackaby was free to designate whomever he wished, including Neal, as a beneficiary of the remaining two-thirds of the proceeds. Blackaby was free to name his Estate as the beneficiary of the two-thirds proceeds. *See* Ind. Code § 27-1-12-14 (providing that any person whose life is insured by any

life insurance company may name as beneficiary any person or persons, natural or artificial, or his or her estate). He did not.

[12] There is no dispute that Neal was the sole named beneficiary of the Policy. “It is well-settled that a divorce decree alone will not prohibit the survivor, named as beneficiary, from taking the proceeds of an insurance policy on the life of the ex-spouse.” *Wolf v. Wolf*, 147 Ind. App. 246, 247, 259 N.E.2d 96, 97 (1970). The Divorce Decree left Blackaby free to designate whomever he saw fit regarding the remaining two-thirds Policy proceeds, and he chose Neal. Accordingly, the Estate is not entitled to two-thirds of the Policy proceeds under the Divorce Decree. As such, we affirm the dismissal of the Estate’s motion for proceedings supplemental.

[13] Affirmed.

Bradford, C.J., and Tavitas, J., concur.