‘Wife After Death,’ Securing the Decedent’s Support Obligation

By Vesselin Mitev

Husband and wife divorce. Of all the grating minutiae haggled over in their standard 45-page stipulation of settlement, the “emancipation events” portion goes over smooth as Booker’s on the rocks after a long day of Skype court. The standard events are listed: a child attaining the age of 21 (except if in college) then 22, entry into the armed forces, self-supporting, married, a change in custody, blah, blah, blah, and then “the death of either party.” So far so good.

Neatly tucked away two articles later is also the standard provision that the non-custodial parent agrees to maintain, unencumbered, a life insurance policy on their life, naming the other spouse irrevocable trustee and the parties’ two children as sole irrevocable beneficiaries of same, in the amount of $1 million (to secure the outstanding support obligation, for so long as one remains). So far so good.

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Husband, now freshly divorced, gets yoked quickly into a second marriage, this time to a much younger woman (shocked gasps in the audience). Second wife demands (and is successful) to be the named beneficiary on the policy (75 percent) with the remaining 25 percent being split amongst the husband’s two children. So far not so good.

Husband dies, but before he does, wife brings a show cause order for contempt, for, *inter alia*, the husband having (clearly) wrongfully and in violation of the stipulation and the judgment of divorce replaced her as the trustee and the children as sole beneficiaries of same. In betwixt the signing of the show cause order and the return date of same, the husband dies and the court (in its infinite wisdom) dismisses the proceeding on account of it being abated by death.

Now what? Since the second wife was a named beneficiary on the policy, the asset passes outside of probate and since the husband really didn’t own much else, on account of being cleaned out during the divorce, there is no need to form an estate, not even a small estate. Second wife’s lawyers staunchly insist that a clause in the parties’ agreement allowing the husband to permissively “may” reduce his life insurance amount obligation each year by the amount actually paid in child support should control (even though there is no proof that he actually did so).

First wife’s lawyers equally staunchly insist that this argument is a non-starter, since the husband was clearly forbidden in the first instance from encumbering the policy or removing the first wife or the children from their roles as trustee/sole beneficiaries. The usual flurry of letters to the insurance company follow and next thing you know, a federal interpleader action is commenced by the insurance company, where the insurance company basically deposits the money into federal court and leaves the first and second wives to fight out over who gets what.

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How, then, to avoid entangling oneself into a federal post-judgment matrimonial action? A simple fix would be to formulate language that follows the "death of a party" clause in a stipulation of settlement, to add that if any support obligation remains at the time of the death of the party, said amount will become a priority charge against that party's estate, whether or not an estate is probated, and the other party shall be entitled to summary judgment in any action, including an interpleader suit, for the greater of a) the aggregate death benefit of the policy or b) the amount of support still owed, with the parties further agreeing that this provision shall be binding on the personal representative of the decedent's estate.

Note: Vesselin Mitev heads MITEV LAW FIRM, P.C., a New York litigation firm with offices in Stony Brook Village. His practice is 100 % devoted to litigation, including trial, of all matters including criminal, matrimonial/family law, Article 78 proceedings and appeals.