

2022 WL 16570615

NOTICE: THIS OPINION HAS NOT BEEN RELEASED FOR PUBLICATION IN THE PERMANENT LAW REPORTS. UNTIL RELEASED, IT IS SUBJECT TO REVISION OR WITHDRAWAL.

Supreme Court of Oklahoma.

Arnold H. JOHNSON, Plaintiff/Appellee,

v.

Dirk M. SNOW, an individual, and Duff M. Snow, an individual, Defendants/Appellants,
and

Investment Centers of America, Inc., a foreign corporation, and LPL Financial, LLC, a limited liability company and successor in interest to Investment Centers of America, Inc., Defendants.

No. 119,794

I

Filed November 1, 2022

Synopsis

Background: Following abatement of divorce action, resulting from wife's death, husband brought declaratory judgment action, seeking to enforce temporary automatic injunction entered in divorce action. The District Court, Grady County, Kory Kirkland, J., determined that wife's actions in changing primary beneficiary of individual retirement account (IRA) from husband to her children and in creating new individual transfer on death (TOD) account for which she designated such children as primary beneficiaries, while divorce proceedings were pending, violated injunction, and granted summary judgment in favor of husband. Wife's children appealed.

Holdings: The Supreme Court, Kane, V.C.J., held that:

death of wife, and resulting abatement of divorce proceeding, deprived District Court of subject matter jurisdiction to enforce automatic temporary injunction entered in divorce proceeding; overruling *Deleon v. Avery*, 170 P.3d 1043;

District Court was permitted to enter judgment as to TOD account; and

revocation upon divorce statute did not apply.

Reversed and remanded with instructions.

Rowe, J., concurred in result.

ON APPEAL FROM THE DISTRICT COURT OF GRADY COUNTY, STATE OF OKLAHOMA; HONORABLE KORY KIRKLAND, DISTRICT JUDGE

¶0 While divorce proceedings between Plaintiff/Appellee Arnold H. Johnson (Husband) and Jacquelyn K. Johnson (Wife) were pending, Wife changed the primary beneficiary of her individual retirement account (IRA) from Husband to her adult children, Defendants/Appellants Dirk M. Snow and Duff M. Snow (collectively, Children). She also opened a new individual transfer on death (TOD) account and designated Children as the primary beneficiaries. Wife died before the divorce was granted, and the action abated. Thereafter, Husband filed the underlying declaratory judgment action to enforce the automatic temporary injunction entered in the divorce action. The district court concluded that the IRA and the funds used to open the TOD account were marital property and, therefore, Wife's acts violated the automatic temporary injunction, 43 O.S.2011 § 110(A)(1)(a), and were ineffective. The district court granted summary judgment to Husband and ordered that he be reinstated as the primary beneficiary of Wife's IRA and awarded the proceeds of the TOD account. Children appealed. We hold that when the dissolution of marriage action abated, the district court was deprived of its jurisdiction to enforce the automatic temporary injunction. It is undisputed that Children were designated as the primary beneficiaries at the time of Wife's death and, therefore, they are entitled to judgment as a matter of law.

JUDGMENT OF THE DISTRICT COURT REVERSED; CAUSE REMANDED WITH INSTRUCTIONS TO GRANT SUMMARY JUDGMENT IN FAVOR OF APPELLANTS.

Attorneys and Law Firms

Paul M. Kolker, Edmond, Oklahoma, and Christian M. Zeaman, Oklahoma City, Oklahoma, for Appellants.

George H. Brown, Oklahoma City, Oklahoma, for Appellee.

Opinion

KANE, V.C.J.:

*1 ¶1 The threshold issue on appeal is whether the district court can enforce the automatic temporary injunction, 43 O.S. O.S.2011 § 110(A)(1), after a dissolution of marriage action abates due to the death of one spouse. We hold that it cannot.

FACTS AND PROCEDURAL HISTORY

¶2 The material facts are not in dispute. Plaintiff/Appellee Arnold H. Johnson (Husband) and Jacquelyn K. Johnson (Wife) were married in 1996. In 2015, Wife designated Husband as the primary beneficiary of her traditional individual retirement account (IRA) with Investment Centers of America, Inc (ICA). On February 9, 2017, Husband filed a petition for dissolution of marriage. The automatic temporary injunction restrained the parties from “transferring, encumbering, concealing, or in any way disposing of, without the written consent of the other party or an order of the court, any marital property, except in the usual course of business” 43 O.S. § 110(A)(1)(a). An Agreed Temporary Order was entered on April 12, 2017. The Agreed Temporary Order provided that the automatic temporary injunction should remain in full force and effect.

¶3 On September 5, 2017, Wife opened an individual transfer on death account (TOD account) with ICA. Using a check from their joint checking account, Wife made an opening deposit of \$32,000.00. Wife designated her adult children, Defendants/Appellants Dirk M. Snow and Duff M. Snow (collectively, Children), as the primary beneficiaries of the TOD account.

¶4 On September 8, 2017, Wife changed the beneficiary designation of her IRA by removing Husband and designating Children as the primary beneficiaries.

¶5 Wife died on November 2, 2017, and the divorce action abated. It is undisputed that Husband and Wife were still married when she died. No divorce had been granted by the court. At the time of Wife's death, Children were designated as the primary beneficiaries of both the IRA and the TOD account.

¶6 On July 24, 2018, Husband filed the underlying declaratory judgment action against Children and Defendants ICA and

LPL Financial, LLC, as successor in interest to ICA.¹ Husband sought declaratory and injunctive relief as to his rights in Wife's IRA. Husband and Children filed competing motions for summary judgment. Husband's position was that Wife's acts of changing the beneficiary of the IRA and opening the new TOD account with joint funds violated the automatic temporary injunction, 43 O.S. § 110(A)(1)(a), and the Agreed Temporary Order. Husband argued Wife's acts were void and that the trial court should “right a wrong and remedy an injustice based upon equitable considerations” by reinstating him as beneficiary of the IRA and awarding him the proceeds of the TOD account. Children argued they were entitled to summary judgment because the court had no authority to enforce the automatic temporary injunction or divide the marital estate after the divorce action abated. Children also argued that, even if the court had jurisdiction to enforce the automatic temporary injunction, changing the beneficiary of the IRA and opening the TOD account did not violate the automatic temporary injunction.

*2 ¶7 The trial court granted summary judgment in favor of Husband, finding that the IRA and TOD account were marital property; that “there is no sole owner of said marital property, particularly in the midst of a divorce where there is a temporary injunction in place”; that Wife's actions of changing the beneficiary of the IRA and opening the TOD account were “ineffective”; that, as a result, Husband remained the primary beneficiary of the IRA; that Husband is the owner of all funds in the IRA and the TOD account; and that Husband is entitled to immediate possession of all the funds. Children appealed. This Court retained the appeal on its own motion.

STANDARD OF REVIEW

¶8 Summary judgment is reviewed *de novo*. *Rickard v. Coulimore*, 2022 OK 9, ¶ 4, 505 P.3d 920, 922. Summary judgment is appropriate only when there is no genuine controversy as to any material fact, and the moving party is entitled to judgment as a matter of law. *Id.* In this case, the material facts are not in dispute.² Therefore, only a question of law is involved. Appellate courts have plenary, independent and nondeferential authority to determine whether the trial court erred in its legal rulings. *See Fanning v. Brown*, 2004 OK 7, ¶ 8, 85 P.3d 841, 845.

ANALYSIS

¶9 Children submit eighteen issues on appeal in their Amended Petition in Error. However, this Court can resolve all allegations of error by addressing just four questions.

¶10 First, did Wife's death and the abatement of the dissolution of marriage action deprive the district court of jurisdiction to enforce the automatic temporary injunction? The threshold issue is not whether Wife violated the automatic temporary injunction; it is whether the trial court could enforce the automatic temporary injunction after the divorce action abated.³

¶11 It has long been understood in Oklahoma that a cause of action for dissolution of marriage abates upon the death of either spouse before the entry of a final decree or final judgment. *See, e.g., Pellow v. Pellow*, 1985 OK 88, ¶ 23, 714 P.2d 593, 597-98; *Chastain v. Posey*, 1983 OK 46, ¶ 6, 665 P.2d 1179, 1181; *Mabry v. Baird*, 1950 OK 132, ¶ 13, 203 Okla. 212, 219 P.2d 234, 239. This Court has said that “[a] cause of action for a divorce is purely personal, and it has been held that such a cause of action terminates on the death of either spouse before the entry of the final decree.” *Pellow*, 1985 OK 88, ¶ 23, 714 P.2d at 597. Fairly recently, this Court clarified that the parties' divorce or dissolution of marriage is immediately effective at the time it is pronounced by the court even if property issues remain undecided and a journal entry has not been filed. *See Alexander v. Alexander*, 2015 OK 52, ¶¶ 2, 12, 357 P.3d 481, 482-84 (interpreting 12 O.S.2011 § 696.2(E)). It follows that a cause of action for dissolution of marriage abates if either spouse dies before the divorce is pronounced.

¶12 When one spouse dies *before* the divorce is granted, “the trial court is deprived of its jurisdiction.” *Pellow*, 1985 OK 88, ¶ 23, 714 P.2d at 597. That is because death dissolved the marriage. *Id.*; *Mabry*, 1950 OK 132, ¶ 13, 219 P.2d at 239. There are two ways to dissolve a marriage: the death of one spouse or a decree of dissolution of marriage. Dissolution of marriage or divorce is a status determination. *See Pellow*, 1985 OK 88, ¶ 25, 714 P.2d at 598. Death, rather than a decree, determined the surviving spouse's unmarried status. Because there is no longer a marriage for the court to dissolve by decree, there is no longer a justiciable controversy. The court is no longer able to grant the relief requested. As a result, the district court is deprived of its jurisdiction.⁴

*3 ¶13 If, on the other hand, one party dies *after* the divorce has been granted, the cause of action does not abate, and the court retains jurisdiction to divide marital property. *See Alexander*, 2015 OK 52, ¶¶ 7, 18, 357 P.3d at 483, 486; *Swick v. Swick*, 1993 OK 151, ¶ 7, 864 P.2d 819, 821. The party's death has no legal effect on the status determination of divorce. *See Swick*, 1993 OK 151, ¶ 6, 864 P.2d at 821 (citing *Pellow*, 1985 OK 88, ¶¶ 23-25, 714 P.2d at 597-98).

¶14 Critical to our analysis is the undisputed material fact that Husband and Wife were married at the time of Wife's death. The trial court never granted a divorce.⁵ The parties agree—and we reach the same legal conclusion—that when Wife died the dissolution of marriage action abated as a matter of law. When the action abated, the court was deprived of its jurisdiction to proceed with the dissolution of marriage.

¶15 The parties disagree, however, as to whether the district court was also deprived of its jurisdiction to enforce the automatic temporary injunction.⁶ Other courts addressing this issue are split. Some states follow a bright-line approach that when a dissolution of marriage action abates due to the death of a party, the court also loses jurisdiction to enforce the temporary injunction or temporary order requiring the parties to preserve marital assets.⁷ Other states maintain that the court has the inherent equitable power to enforce the automatic injunction and temporary orders after the divorce action abates.⁸

*4 ¶16 We find the more principled approach is to first inquire into the district court's jurisdiction.⁹ The Supreme Court of Alabama's analysis in *Ex Parte Thomas*, 54 So. 3d 356 (Ala. 2010), is persuasive. *Thomas* addressed the same question of law presented in this case—whether a temporary restraining order (TRO), which required parties to a divorce action to preserve their assets before division of the marital property, can be enforced after one spouse dies while the divorce action is pending. *See id.* at 360-61. The Alabama Supreme Court recognized the issue was purely a matter of civil procedure. The court clarified that the threshold issue on appeal was whether the court had subject matter jurisdiction over the underlying declaratory judgment action, not whether the deceased spouse violated the temporary restraining order by transferring marital property. *See id.* at 358-59. The Alabama Supreme Court held:

[A]n interlocutory order that affects the property rights of the parties to a divorce action may not be enforced after

the death of one of the parties due to the abatement of that action. Here, upon the husband's death and the subsequent abatement of the divorce action in the family court, the TRO became a nullity, which could no longer be enforced. Because the subject matter of this action is an alleged violation of a nullity (the TRO), the trial court lacked subject-matter jurisdiction over this action; therefore, the judgment of the trial court is void.

Id. at 361-62 (quotations omitted) (citation omitted).

¶17 We agree with the Alabama Supreme Court that upon Wife's death and the abatement of the divorce action, the automatic temporary injunction, 43 O.S. § 110(A)(1), became a nullity that could no longer be enforced. In Oklahoma, the death of one spouse prior to the granting of a divorce “leaves the parties as though the action had never been brought.” *Mabry*, 1950 OK 132, ¶ 13, 203 Okla. 212, 219 P.2d at 239. If an action for dissolution of marriage had never been brought, then it must certainly be as though the automatic temporary injunction had never been entered. It is, after all, the filing of a petition for dissolution of marriage that triggers the automatic temporary injunction. *See* 43 O.S. § 110(A)(1). Simply put, when the cause of action abates, the court's temporary orders and the automatic temporary injunction also terminate. *See also Rader v. Rader*, 2020 OK 106, ¶¶ 20, 27-28, 478 P.3d 438, 444, 446 (recognizing that the parties' joint dismissal terminated the divorce action and nullified the court's prior temporary orders as to child custody). Husband seeks to enforce a nullity. The trial court cannot grant the relief requested. We hold that the trial court was without jurisdiction¹⁰ to enforce the automatic temporary injunction after the dissolution of marriage action abated.

¶18 The trial court was without jurisdiction to declare that Wife's IRA and the funds used to open the TOD account were marital property. When Wife died and the action abated, the district court lost jurisdiction over the entire dissolution of marriage action, including property division.¹¹ Whether the IRA and the funds used to open the TOD account were marital or separate property for purposes of dissolution of marriage became a non-issue. When Wife died, they were legally married. Husband's rights in Wife's estate are the same as if they never filed for divorce. Wife's property either became a part of her probate estate with title passing under the terms of a will or by intestate succession¹² or it is non-probate property that passes to another person by operation of law or contract. The assets in the IRA and the TOD account are non-probate property that are to be distributed according to the terms of the respective contracts between Wife and ICA. It

is undisputed that, at the time of Wife's death, Children were designated as the primary beneficiaries of the IRA and the TOD account. Therefore, Children are entitled to judgment as a matter of law.

*5 ¶19 We expressly overrule *Deleon v. Avery*, 2007 OK CIV APP 91, 170 P.3d 1043, insofar as the Court of Civil Appeals found the district court had jurisdiction to enforce the automatic temporary injunction after the divorce action abated. *Deleon* involved similar facts. While the dissolution of marriage action was pending, the husband changed the beneficiary of a life insurance policy from his wife to his sister. *See id.* ¶ 6, at 1044-45. The husband died, and the divorce action abated. *Id.* The wife subsequently filed a declaratory judgment action asserting that she had a right to the proceeds of the policy, because any change of beneficiary was in violation of the automatic temporary injunction and the court's temporary order. *Id.* ¶¶ 2, 6, at 1044-45. The Court of Civil Appeals affirmed the trial court's denial of her petition. *Id.* ¶¶ 1, 15, at 1044, 1046. The Court of Civil Appeals did not, however, inquire into the district court's jurisdiction to enforce the automatic temporary injunction and temporary order. Rather, it reviewed the merits of the district court's decision.¹³ Based on today's opinion, the trial court in *Deleon* was without jurisdiction to enforce the automatic temporary injunction and temporary order, and the appellate court should not have reached the merits.

¶20 We hold that the trial court lacked jurisdiction to enforce the automatic temporary injunction after the dissolution of marriage action abated. Because we hold the trial court does not have jurisdiction to enforce the automatic temporary injunction, we need not determine whether the IRA and the TOD account were marital property for purposes of property division in the dissolution of marriage action or whether Wife's acts of changing the beneficiary of the IRA and/or opening the new TOD account violated the automatic temporary injunction.¹⁴ We acknowledge that *if* Wife violated the automatic temporary injunction, our holding that the court is without jurisdiction to grant relief may seem inequitable—as though Wife's death wipes away any wrongdoing and there are no consequences. But, as one court so poignantly stated, “while it is regrettable that [deceased spouse] violated the automatic orders and seems to have reached beyond the grave to thwart [surviving spouse's] efforts to recover his share of her assets, this Court is unable to remedy the violation in this proceeding.” *A.V.B. v. D.B.*, 44 Misc.3d 331, 985 N.Y.S.2d 840, 845 (N.Y. Sup. Ct. 2014).

*6 ¶21 The second question to be answered by this Court is whether the trial court erred by entering a judgment as to the TOD account when Husband's petition does not reference the TOD account. The trial court granted summary judgment in favor of Husband as to both the IRA and the TOD account. Husband's Amended Petition for Declaratory Judgment seeks declaratory and injunctive relief as to Wife's IRA only. However, both parties, in their respective motions for summary judgment and responses argue they are entitled to the proceeds of the TOD account. We find it was proper for the trial court to consider the pleadings as having been amended to conform to the evidence and arguments presented on summary judgment.

¶22 Third, Children take issue with paragraphs 7 and 10 of the trial court's order:

7. Further, in her execution of the Traditional IRA Application on September 8, 2017, [Wife] indicated her marital status as divorced. That [Wife] was not divorced.

...

10. That in her execution of the paperwork necessary to open the said non-IRA TOD account, [Wife] indicated her marital status as divorced. That [Wife] was not divorced. Children argue the trial court erred by determining Wife's intent to commit fraud. They contend that evidence of Wife's intent to commit fraud has been disputed by their affidavit from Wife's financial advisor indicating her/his office prepared the paperwork. Our review of the record on appeal reveals Husband, at most, alludes to fraud, but he has not alleged fraud and the trial court did not grant summary judgment as to a claim for fraud. In any event, whether Wife had the intent to commit fraud is immaterial to the underlying declaratory judgment action and the jurisdictional question that resolves this appeal.

Footnotes

- 1 Investment Centers of America, Inc. (ICA) was acquired by LPL Financial LLC in 2017. LPL moved to interplead the funds, and the trial court ordered LPL to hold the funds until ordered otherwise. LPL claims no interest in the funds. Children have dismissed their claims against ICA and LPL.
- 2 Whether Wife's IRA and the funds used to open the TOD account were marital or separate property for purposes of the dissolution of marriage action are hotly disputed facts but, for reasons explained in this opinion, not material to the dispositive jurisdictional issue.
- 3 Only if the district court has jurisdiction to enforce the automatic temporary injunction after a dissolution of marriage action abates, do we need to review whether Wife's acts of removing Husband as the primary beneficiary of her IRA

¶23 Finally, Children's allegations of error that the trial court did not give effect to the revocation upon divorce statute, 15 O.S.2011 § 178(A), are misplaced. The revocation upon divorce statute does not apply in this case, because it is undisputed that at the time of Wife's death 1) no divorce had been granted and 2) Husband was not the person designated as the primary beneficiary of the IRA or the TOD account. *See id.*¹⁵ As such, there was not a beneficiary designation to revoke.

CONCLUSION

¶24 When the dissolution of marriage action abated, the district court was deprived of its jurisdiction to enforce the automatic temporary injunction. The material facts are not in dispute, and Children are entitled to judgment as a matter of law. Accordingly, the trial court's judgment is reversed, and the cause remanded with instructions for the trial court to grant summary judgment in favor of Defendants/Appellants Dirk M. Snow and Duff M. Snow.

JUDGMENT OF THE DISTRICT COURT REVERSED; CAUSE REMANDED WITH INSTRUCTIONS TO GRANT SUMMARY JUDGMENT IN FAVOR OF APPELLANTS.

CONCUR: DARBY, C.J., KANE, V.C.J., KAUGER, WINCHESTER, EDMONDSON, COMBS, GURICH, and KUEHN, JJ.

CONCUR IN RESULT: ROWE, J.

All Citations

--- P.3d ----, 2022 WL 16570615, 2022 OK 86

and/or transferring funds to open the TOD account violated the automatic temporary injunction; whether those acts are void; and whether Husband should be reinstated as the primary beneficiary of the IRA and awarded the proceeds of the TOD account.

- 4 This Court has said that if there is not a justiciable controversy, the court lacks jurisdiction. The Oklahoma Constitution grants district courts “unlimited original jurisdiction of all justiciable matters” Okla. Const. art. 7, § 7. We recognize that while subject matter jurisdiction and constitutional justiciability are separate concepts, they both involve the court's constitutional power to adjudicate. See *Dutton v. City of Midwest City*, 2015 OK 51, n. 69, 353 P.3d 532, 547. A justiciable controversy “is (a) definite and concrete, (b) concerns legal relations among parties with adverse interests and (c) is real and substantial so as to be capable of a decision granting or denying specific relief.” *Application of State ex rel. Dep't of Transp.*, 1982 OK 36, ¶ 6, 646 P.2d 605, 609. When Wife died, the marriage dissolved. There was no longer a justiciable controversy, because the court was no longer capable of granting relief, i.e. a decree of dissolution of marriage. The district court has subject matter jurisdiction over an action for dissolution of marriage. However, similar to the justiciability analysis, when Wife's death dissolved the marriage, the district court no longer had the power to grant the relief sought. See *State ex rel. Okla. Bar Ass'n v. Mothershed*, 2011 OK 84, ¶ 47, 264 P.3d 1197, 1215 (describing subject matter jurisdiction as the court's “power to proceed in a case of the character presented, or power to grant the relief sought”).
- 5 Courts frequently bifurcate the issues, granting a divorce but then reserving jurisdiction to decide other issues, such as property division, at another time. See *Alexander v. Alexander*, 2015 OK 52, ¶ 15, 357 P.3d 481, 485. This was not a bifurcated proceeding.
- 6 Husband did not file an application for indirect contempt citation, pursuant to 43 O.S.2011 § 111, prior to Wife's death. Whether the district court is deprived of its jurisdiction to rule on a pending application for contempt is not an issue presented in this appeal. See 43 O.S.2011 § 110(C) (“The court may reserve jurisdiction to rule on an application for a contempt citation for a violation of a temporary order or the automatic temporary injunction which is filed any time prior to the time the temporary order or injunction terminates.”); *Deleon v. Avery*, 2007 OK CIV APP 91, ¶ 15, 170 P.3d 1043, 1046 (Buettner, J., specially concurring) (suggesting the only method for determining a penalty for an automatic temporary injunction violation is a citation for contempt filed prior to the spouse's death and a retention of jurisdiction by the trial court).
- 7 See, e.g., *Ex Parte Thomas*, 54 So. 3d 356, 361 (Ala. 2010) (holding that when the action abates, the temporary restraining order becomes a nullity, which can no longer be enforced); *Milewski v. Milewski*, 351 Ill.App. 158, 114 N.E.2d 419, 421 (1953) (holding the court could not enforce temporary injunction in a separate maintenance suit, because death deprived the court of its power to restore the status quo); *A.V.B. v. D.B.*, 44 Misc.3d 331, 985 N.Y.S.2d 840, 845 (N.Y. Sup. Ct. 2014) (holding that after the divorce action abates, the court cannot exercise jurisdiction to enforce prior automatic orders entered in the case); *In re Estate of Knickerbocker*, 912 P.2d 969, 977 (Utah 1996) (noting that the divorce proceeding and the order prohibiting the parties from “selling, encumbering or mortgaging” their marital assets died with the spouse); see also *Socha v. Socha*, 183 Wis.2d 390, 515 N.W.2d 337, 339 (Wis. Ct. App. 1994) (holding the court had no jurisdiction to find deceased spouse in contempt for violating a temporary order).
- 8 See, e.g., *Northwestern Mut. Life Ins. Co. v. Hahn*, 713 N.W.2d 709, 712 (Iowa Ct. App. 2006) (“Although ... death precludes a remedy at law in the form of a contempt proceeding, it did not prevent the district court from resorting to its equity powers for a fair resolution of the issue.”); *In re Estate of Corrigan*, 2014 MT 337, ¶ 20, 377 Mont. 364, 341 P.3d 623, 626 (citing *Briese v. Mont. Pub. Employees' Ret. Bd.*, 2012 MT 192, ¶ 41, 366 Mont. 148, 285 P.3d 550, 559) (recognizing the district court has the discretionary authority to void a change of beneficiary when the spouse violating the statutory TRO has died “if equitable principles demanded it”); *Coleman v. Olson*, 551 S.W.3d 686, 697 (Tenn. 2018) (“Simply put, a trial court should have the authority to 'right a wrong' and remedy an injustice based on equitable considerations when a party violates a statutory injunction and later dies while the divorce action is pending.”); *Aither v. Estate of Aither*, 2006 VT 111, ¶¶ 8-12, 180 Vt. 472, 476-79, 913 A.2d 376, 379-81 (holding the court's jurisdiction extends to post-abatement enforcement of pre-abatement orders); *Standard Ins. Co. v. Schwalbe*, 110 Wash. 2d 520, 526, 755 P.2d 802, 805-06 (1988) (recognizing that because no remedy at law in the form of a contempt proceeding is available, the trial court can resort to its equity powers).

- 9 An appellate court has a duty to inquire into its own jurisdiction and the jurisdiction of the court below. See *Hall v. GEO Grp., Inc.*, 2014 OK 22, ¶ 12, 324 P.3d 399, 404. Notably, the jurisdictions relying on the court's equitable authority to enforce a temporary injunction in an abated divorce action do not make the duty-bound jurisdictional inquiry. Rather, they jump immediately to whether the deceased spouse violated the temporary injunction and then fashion an equitable remedy for the surviving spouse.
- 10 Just as there is no marriage to dissolve, there is no automatic temporary injunction to enforce. The district court lacks subject matter jurisdiction, and there is no justiciable controversy. See *supra* note 4.
- 11 Property division is tethered to the dissolution of marriage. See 43 O.S.Supp.2012 § 121(B) (requiring that marital property be divided in the decree); *Nicholas v. Nicholas*, 277 Kan. 171, 83 P.3d 214, 221 (2004) (“[W]here there is no divorce, there is no division of property.”); *A. V. B.*, 985 N.Y.S.2d at 845 (recognizing that when one spouse dies, the matrimonial action abates, and the surviving spouse cannot obtain equitable distribution of marital assets); *Thorson v. Thorson*, 541 N.W.2d 692, 696 (N.D. 1996) (“In a divorce action, the equitable distribution of property is incidental to a judgment of divorce.”).
- 12 Duff Snow opened a probate proceeding for Wife's estate on April 30, 2021. See *In re Estate of Johnson*, Grady County District Court, PB-2021-89. Husband was appointed Personal Representative on June 18, 2021. On May 5, 2022, the probate court entered an order of summary administration of mineral interests, automobiles, and personal property, but specifically reserved jurisdiction as to property addressed in this case.
- 13 The Court of Civil Appeals determined that even if changing the beneficiary violated the automatic temporary injunction, the change was harmless because the wife, as beneficiary, did not have a vested interest in the proceeds of the life insurance policy. See *Deleon v. Avery*, 2007 OK CIV APP 91, ¶¶ 12-15, 170 P.3d 1043, 1045-46. We offer no opinion as to the correctness of this part of the appellate court's analysis in *Deleon*.
- 14 We note that the automatic temporary injunction statute specifically restrains the parties from “changing or in any manner altering the beneficiary designation on any *life insurance policies* on the life of either party or any of their children” 43 O.S. § 110(A)(1)(b)(4) (emphasis added). There is no equivalent statutory provision for retirement accounts. Rather, Husband argues changing the beneficiary of the IRA violated 43 O.S. § 110(A)(1)(a) of the automatic temporary injunction statute, which restrains “the parties from transferring, encumbering, concealing, or in any way disposing of, without the written consent of the other party or an order of the court, any marital property” Relying on the Oklahoma Uniform TOD Security Registration Act, Children argue changing the beneficiary designation on an IRA does not transfer, encumber, conceal, or any way dispose of the property:

The designation of a TOD beneficiary on a registration in beneficiary form has no effect on ownership until the owner's death. A registration of a security in beneficiary form may be canceled or changed at any time by the sole owner or all then surviving owners without the consent of the beneficiary. The designation of a TOD beneficiary on a registration in beneficiary form shall be subject to the provisions of Section 178 of Title 15 of the Oklahoma Statutes.

71 O.S.Supp.2020 § 907; see *In re Estate of Westfall v. Westfall*, 942 P.2d 1227, 1230 (Colo. App. 1996) (finding that changing POD beneficiary altered surviving spouse's rights as heir but did not “encumber” any marital property).

Furthermore, nothing in today's opinion prevents the district court from issuing temporary orders that prohibit the parties from changing the beneficiaries of retirement accounts while the divorce is pending. See 43 O.S. § 110(A)(7) (“Nothing in this subsection shall preclude either party from applying to the court for further temporary orders, pursuant to this section, an expanded automatic temporary injunction, or modification or revocation thereto.”). In this case, the Agreed Temporary Order did not contain a provision specifically prohibiting Wife from changing the beneficiary of her IRA.

- 15 The revocation upon divorce statute provides, in part:

If, after entering into a written contract in which a beneficiary is designated or provision is made for the payment of any death benefit (including life insurance contracts, annuities, retirement arrangements, compensation agreements, depository agreements, security registrations, and other contracts designating a beneficiary of any right, property, or money in the form of a death benefit), the party to the contract with the power to designate the beneficiary or to make provision for payment of any death benefit *dies after being divorced from the person designated as the beneficiary*

or named to receive such death benefit, all provisions in the contract in favor of the decedent's former spouse are thereby revoked. ...

15 O.S.2011 § 178(A) (emphasis added). Nor does this Court's recent decision *Ghoussoub v. Yammine*, 2022 OK 64, 518 P.3d 110, apply to these facts.

End of Document

© 2023 Thomson Reuters. No claim to original U.S.
Government Works.