

Does A Term In A Marital Settlement Agreement Where An Alimony Paying Spouse Must Provide Life Insurance Naming The Ex-Spouse As Beneficiary Support An Alimony Obligation Or Not?

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In a case which might, at first glance, be overlooked, the purpose of life insurance as it relates to alimony (and possibly as it might pertain to child support) is discussed clearly and succinctly. In *Wheeler v. Wheeler*, (A-4383-16T1), the parties divorced in 2007 and agreed that the ex-husband would provide \$250,000 in life insurance on his life naming his ex-wife as beneficiary. He also agreed to pay her \$50,000/year in alimony as they had been married for 27 years. They also agreed that the ex-husband would provide proof on an annual basis that the life insurance was in effect. This term was later modified to provide that the ex-wife could contact the life insurance company directly to assure herself that the life insurance was in effect.

In 2014, the ex-wife remarried and, in 2017, she found out her ex-husband had named his new wife as beneficiary of that policy. She moved to have the trial court enforce the life insurance provision of their Settlement Agreement.

The Appellate Division affirmed the trial court's ruling that the life insurance was connected to the ex-husband's alimony obligation and, therefore, once his ex-wife remarried, his obligation to provide life insurance coverage for her benefit ceased.

Citing *Konczyk v. Konczyk*, 367 N.J. Super. 551,556 (Ch. Div. 2003), aff'd, 367 N.J. Super. 512 (App. Div. 2004), which held that life insurance is security for a support obligation, the Appellate Division reaffirmed that ruling in *Wheeler* and stated that the purpose of life insurance is to provide a sufficient fund for the payor's support obligation should he or she predecease that responsibility. Thus, where the parties' agreement did not "demonstrate that there was an intent for the ex-husband to continue to support his ex-wife in the form of a life insurance benefit following her remarriage to another man", the

trial court correctly denied the ex-wife's application.

The practice pointer from this case is that if one wishes an ex-spouse to receive the proceeds of a life insurance regardless of whether or not alimony ceases, one should state that clearly in an agreement. And further, if one does not wish the ex-spouse to receive a windfall upon a payor's death, the provision as to how much of the life insurance proceeds should be distributed should be spelled out- that the ex-spouse should only receive the amount of the obligation, nothing more. Of course, this may be difficult if there is an open duration alimony term agreed upon but this potential "windfall" should, nonetheless, be addressed.