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### Summary of Waldman v. Maini, 124 Nev. Adv. Op. No. 9

Shannon Rowe  
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Waldman v. Maini, 124 Nev. Adv. Op. No. 93 (Nov. 6, 2008)<sup>1</sup>

## **Wills, Trusts, and Estates- Life Insurance Distribution**

### **Summary**

Appeal and cross-appeal from a district court order granting partial summary judgment on issues pertaining to proceeds of a life insurance policy.

### **Disposition and Outcome**

Affirmed in part and reversed in part.

### **Factual and Procedural History**

Steven and Susan Maini, their two children, and Susan's parents all died in a plane crash at North Las Vegas Airport on December 6, 2006. Susan's brother ("Waldman") and Steven's brother ("Maini") were the administrators of Susan and Steven's estates, respectively. The property to be distributed under issue is a 95% interest in Steven's family's company ("MDI") and two life insurance policies in Susan's name. One policy through Prudential ("Prudential") was worth \$500,000 and an additional \$500,000 in the event of an accidental death. The other policy ("Jackson") was worth \$100,000. Premiums for both policies were paid for by MDI.

Steven received 90% of his ownership interest in MDI as a gift from his mother, and he received the other 5% through her will after she died. Susan worked for MDI as a CPA and bookkeeper, but never received a paycheck.

Maini claims that the proceeds of the life insurance policies should belong to MDI since MDI paid the premiums and Susan never reported the policies as income on any tax documents, or in the alternative that the proceeds are community property and half belong to Steven's estate. Waldman denies these claims.

Maini filed a complaint in district court and moved for summary judgment in favor of the life insurance policy proceeds belonging to MDI. When the court denied that motion, Maini filed a partial summary judgment motion that the Uniform Simultaneous Death Act did not apply to the Prudential or Jackson life insurance policies. The district court granted the partial summary judgment motion. After a bench trial the court ruled that the 95% ownership in MDI and the proceeds of the life insurance policies were community property and divided them equally between Susan and Steven's estates. Both parties appealed the decision.

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<sup>1</sup> By Shannon Rowe

The district court erred when it concluded that the ownership interest in MDI was community property.

The Supreme Court concluded that the district court applied the community property presumptions incorrectly. The district court held that Maini had not proven that the gift of a 90% ownership interest in MDI was not a gift to the community, and therefore it was presumed community property. The presumptions, however, state that anything a spouse receives as a gift is presumed separate property of that spouse. The presumptions also state that anything a spouse receives through a will is also presumed to be separate property of that spouse. Therefore, the district court erred when it ruled that the 90% gift of ownership in MDI and the 5% devised to Steven was community property. It was his separate property, and therefore not subject to division. The Court also stated that the separate property had not been transmuted into community property just because Susan worked for MDI.

The district court properly held that MDI did not acquire an ownership interest in Susan's life insurance proceeds.

Maini argued that since MDI had paid the premiums on both of Susan's life insurance policies, and Susan had not claimed the policies as income on her tax documents, MDI had acquired an ownership interest in the proceeds of the policies. Whether a corporation may acquire an ownership interest in life insurance policy proceeds by paying the policy premiums was an issue of first impression for the Court. The Court analyzed if either a constructive trust or a resulting trust had been made between Susan and MDI.

*A. The payment of insurance premiums by MDI did not create a constructive trust in favor of MDI.*

A majority of courts hold that a constructive trust occurs when a life insurance policy is obtained from a company through embezzlement or fraud. Nevada requires (1) a confidential relationship between the parties; (2) Susan keeping the proceeds over MDI would be inequitable; and (3) the existence of the trust is essential to serve justice.

The Court held that Maini had not provided any evidence of fraud. It also held that Nevada does not require a showing of fraud to create a constructive trust, but at the least it requires a showing of unjust enrichment. Maini failed to give evidence of either. Therefore, the Court held that a constructive trust was not created.

*B. The payment of insurance premiums by MDI did not create a resulting trust in favor of MDI.*

Some jurisdictions hold that a trust results when a corporation purchases life insurance with the intent to benefit the corporation. The Court held, however, that there was no evidence of intent that the proceeds would benefit MDI, and therefore a resulting

trust was not created. The Court relied on the facts that MDI was not a named beneficiary on the policies and that MDI did not treat the policies as its assets.

NRS 687B.040 precluded MDI from obtaining insurance on Susan's life.

NRS 687B.040 requires that a person obtaining a life insurance policy have an insurable interest in that person. An insurable interest is defined as “a lawful and substantial economic interest in having the life. . . of the person insured continue, as distinguished from an interest which would arise only by, or would be enhanced in value by, the death, disablement or injury of the person insured.”<sup>2</sup> The Court held that MDI did not have an insurable interest in Susan because, even though she worked at MDI, she was not paid for her work and hiring a new CPA and bookkeeper would not cost MDI nearly as much as the value of the life insurance proceeds.

The district court erred in its application of the Uniform Simultaneous Death Act and its division of Susan's life insurance proceeds.

The district court held that the proceeds of the life insurance policies were community property, and it had also ruled in granting the partial summary judgment motion that the Uniform Simultaneous Death Act (“Act”) did not apply. Although Nevada enacted the Act, there has been no case law on the subject. The Court had to decide if the Act applied to Susan, and if so, if the Act prevented the insurance proceeds from being community property.

*A. The district court erred when it determined that the Uniform Act did not apply to Susan's assets.*

The Act doesn't apply to property if a decedent provides for a different distribution of their property than the distribution in the Act. The Act states that in the case of simultaneous death of an insured and a beneficiary, there will be a presumption that the insured survived the beneficiary. Therefore, there is a presumption that Susan survived Steven.

The Court held that the Act applied to both life insurance policies because neither policy distributed property in a way that conflicted with the Act. The district court erred by holding that the Act did not apply to Susan's policies. Also, Susan's will did not conflict with the Act because both would treat Susan as the survivor in case of simultaneous death.

*B. Because the Uniform Act applies, the district court erred by dividing Susan's life insurance proceeds as community property.*

States applying the Uniform Act and following community property principles must determine whether the presumption of survivorship in the Act applies to distribution

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<sup>2</sup> NRS 687B.040(3)(b).

based on intestate succession principles or only to distribution as set forth in the insurance contract. Courts applying the Act have held that the presumption of survival extends to the estate under the insurance contract.

Since Susan and all her beneficiaries died simultaneously, Susan is presumed to be the survivor under the Act, and therefore the insurance company paid the benefits to her estate. The estate is considered community property, and was divided equally between Steven and Susan's estate. Steven, however, did not possess a valid will, and his estate had to be distributed through intestacy statutes. Since the presumption of Susan being the survivor extends to the underlying estate, Steven's half of the community property, including the life insurance proceeds, is passed through the intestacy statutes to Susan's estate. Therefore, the district court erred in holding that the life insurance proceeds were community property to be divided equally between the estates.

### **Conclusion**

The Court reversed the district court's holding that Steven's interest in MDI was community property, and held it was his separate property because it was received by gift and devise. The Court affirmed that MDI did not have an interest in Susan's life insurance proceeds because there was no evidence to support a constructive or resulting trust. The Court also held that the Act did apply to Susan's policies, and that the survival presumption carried on to the distribution of her estate.