

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

August 22, 2019

Elisabeth A. Shumaker
Clerk of Court

PHL VARIABLE INSURANCE
COMPANY,

Plaintiff,

v.

MICHAEL D. MAGNESS,

Defendant - Appellant,

and

GEORGE S. WILSON, JR.,

Defendant - Appellee.

No. 19-7005
(D.C. No. 6:16-CV-00125-RAW)
(E.D. Okla.)

ORDER AND JUDGMENT*

Before **BRISCOE**, **McHUGH**, and **MORITZ**, Circuit Judges.

This is an appeal from an order disbursing funds in a statutory interpleader action. See 28 U.S.C. § 1335. Appellant-Claimant Michael D. Magness, an

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Oklahoma state prisoner proceeding pro se,¹ is the primary beneficiary of the proceeds of a life insurance policy for the late Elizabeth Magness. Appellee-Claimant George Samuel Wilson, Jr., is the personal representative of Elizabeth's estate and the sole living contingent beneficiary on the policy.² The district court granted Wilson's motion to disburse funds; Magness asserts this was error.

Exercising jurisdiction pursuant to 28 U.S.C. § 1291, we affirm.

On March 15, 2015, Elizabeth died from a gunshot wound to the head, and her death was ruled a homicide. Magness was her husband and at the time was considered the primary suspect. Later that year, he was arrested and charged with first degree murder under Oklahoma law. PHL Variable Insurance Company had sold a life insurance policy to Elizabeth and realized that Magness and Wilson could have competing claims to her benefits under the policy. Accordingly, PHL initiated an interpleader action in the United States District Court for the Eastern District of Oklahoma on April 8, 2016, and named both Magness and Wilson as claimants.³ Magness was personally served on April 25, 2016. [ROA at 2.] He subsequently

¹ While we “construe a pro se appellant’s [filings] liberally,” “pro se parties [must still] follow the same rules of procedure that govern other litigants.” *Kay v. Bemis*, 500 F.3d 1214, 1218 (10th Cir. 2007) (internal quotations omitted).

² Carroll Michem Magness was another contingent beneficiary of the policy, but predeceased Elizabeth.

³ Statutory interpleader jurisdiction was proper because the claimants are diverse citizens (Magness is an Oklahoma citizen, Wilson is a Texas citizen), and the proceeds under the plan exceed \$500. *See* 28 U.S.C. § 1335.

filed various motions with the district court from the Okfuskee County Jail. [ROA at 2–3; *see* Aple. Resp. at 8.]

Magness remained at the Okfuskee County Jail during his jury trial for Elizabeth’s murder and was ultimately convicted of first-degree murder on November 7, 2018. [Aple. Resp. at 8; ROA at 64.] On November 11, 2018, Wilson filed a motion to disburse the interpleader funds with the district court and mailed a copy of the motion to Magness at his last known address, the Okfuskee County Jail. Magness did not respond. The district court granted the motion on December 10, 2018, because Magness did not respond and Oklahoma law barred Magness’s recovery of any of the insurance proceeds. [ROA at 65–66.]

Magness filed a motion with the district court on January 25, 2019, stating that he did not receive a copy of the motion for disbursement despite the attorney for Wilson “knowing [his] correct address,” and asking the district court if “it [was] possible to appeal” the decision to grant the motion to disburse. [Dist. Ct. Dkt. No. 34.] The district court construed the filing as a motion to extend the deadline for filing a notice of appeal and granted Magness his requested relief. Magness then filed his notice of appeal.

On appeal, Magness presents only one argument that is relevant to the interpleader action. He asserts that he was not properly served with a copy of the motion for disbursement and therefore he was not able to “present his case to the District Court.” Aplt. Opening Br. at 3. We first note that Magness appeared by his filings in the district court and has a duty to notify the district court of any change in

address. LCvR 5.6 (explaining that if a mailing address changes, attorneys and pro se litigants “must notify the Court by filing the form provided by the Clerk and serving a copy on opposing counsel”). The record does not reflect any attempts by Magness to update the district court of any change in address. Moreover, counsel for Wilson has represented to this court that he had confirmed with the Okfuskee County Jail that Magness was still housed at the jail before mailing a copy of the motion to disburse to him, and later mailed a copy of the motion to Magness at the Lawton Correctional Facility, where he is presently serving his sentence for Elizabeth’s murder. [Wilson Resp. Br. at 8–9.] We have no reason to doubt that Magness received *some* notice that the motion to disburse had been filed, otherwise Magness would not have asked the district court if its decision could be appealed.

But even if Magness had presented his argument to the district court—that he intends to appeal his first-degree murder conviction and that his appeal may be successful—the district court’s decision was proper. Under Oklahoma law, a designated beneficiary convicted of the insured’s murder is barred from recovery under the insurance policy. 85 O.S. § 231 (Oklahoma “slayer statute”). The Oklahoma Supreme Court has further clarified that a criminal conviction is not even required for the slayer statute to preclude a beneficiary from recovering from his victim’s estate. *State Mut. Life Assurance Co. of Am. v. Hampton*, 696 P.2d 1027, 1032–33 (Okla. 1985) (wife acquitted of husband’s murder denied recovery of insurance proceeds). So long as “the same facts” could support a finding that the designated-beneficiary murdered the victim by “a preponderance of the evidence,”

the slayer statute prevents recovery. *Id.* at 1033.⁴ Therefore, in this case, under the Oklahoma slayer statute, Magness’s conviction for the first-degree murder of Elizabeth, even if later overturned on appeal, prevents him from recovering any of the life insurance proceeds.

Magness presents four additional arguments on appeal, including: that the trial judge in his state murder trial committed “egregious misconduct” which means his criminal appeal will likely be successful; that he maintains his innocence; that premature disbursement of the funds would be “an extreme hardship” if his criminal appeal is successful; and that he has limited access to a law library. *Aplt. Opening Br.* at 2. None are relevant to this appeal. That said, he certainly remains free to pursue his criminal appeal and any subsequent action he may deem relevant.

Accordingly, we affirm the district court’s order. Appellant’s motion to proceed without prepayment of costs or fees is granted.

Entered for the Court

Mary Beck Briscoe
Circuit Judge

⁴ Federal common law supplies the same general rule. *See Mut. Life Ins. Co. of N.Y. v. Armstrong*, 117 U.S. 591, 600 (1886).