

STATE OF MICHIGAN
COURT OF APPEALS

JOY BROWN, Personal Representative of the
Estate of EDWIN E. SANGER, Deceased,

UNPUBLISHED
September 15, 2009

Plaintiff-Appellee,

v

KATHLEEN R. WRIGHT, f/k/a KATHLEEN R.
SANGER,

No. 285509
Macomb Circuit Court
LC No. 2007-002448-CK

Defendant-Appellant.

Before: O’Connell, P.J., and Talbot and Stephens, JJ.

PER CURIAM.

Defendant Kathleen R. Wright appeals as of right from a circuit court order granting plaintiff’s motion for summary disposition pursuant to MCR 2.116(C)(10) and ordering defendant to turn over life insurance proceeds in the amount of \$26,849 to plaintiff in her capacity as the personal representative of Edwin Sanger’s estate. We affirm.

Defendant married Edwin Sanger in September 1990. In October 1990, Sanger named defendant as beneficiary under an employer-provided life insurance policy with Metropolitan Life Insurance Company (Metropolitan Life). Defendant and Sanger divorced in 1992. The judgment of divorce contained a provision providing that “any of the rights of either party in any policy or contract of life, endowment or any insurance of the other as beneficiary or otherwise, is hereby extinguished unless specifically preserved by this Judgment.” Sanger never changed the beneficiary designation in the Metropolitan Life policy. Sanger died in November 2006, and Metropolitan Life thereafter paid the insurance policy benefits to defendant, in accordance with the beneficiary designation. Plaintiff, as the personal representative of Sanger’s estate, subsequently filed this action against defendant, requesting a declaratory judgment that defendant had no right to retain the insurance proceeds and that defendant’s retention of the proceeds was a breach of the divorce judgment. The trial court rejected defendant’s argument that plaintiff’s action was governed by the Employee Retirement Income Security Act (ERISA), 29 USC 1001 *et seq.*, granted plaintiff’s motion for summary disposition, and ordered defendant to turn over the insurance proceeds to plaintiff. Defendant now appeals.

We review *de novo* a trial court’s decision on a motion for summary disposition. *Trost v Buckstop Lure Co, Inc*, 249 Mich App 580, 583; 644 NW2d 54 (2002). The trial court granted plaintiff’s motion pursuant to MCR 2.116(C)(10), which tests the factual support for a claim.

Lewis v LeGrow, 258 Mich App 175, 192; 670 NW2d 675 (2003). The court ““must consider the available pleadings, affidavits, depositions, and other documentary evidence in a light most favorable to the nonmoving party and determine whether the moving party was entitled to judgment as a matter of law.”” *Michigan Ed Employees Mut Ins Co v Turow*, 242 Mich App 112, 114-115; 617 NW2d 725 (2000), quoting *Unisys Corp v Comm’r of Ins*, 236 Mich App 686, 689; 601 NW2d 155 (1999).

We agree with plaintiff that this case is controlled by *Sweebe v Sweebe*, 474 Mich 151; 712 NW2d 708 (2006). As in *Sweebe*, because Metropolitan Life properly distributed the insurance proceeds to defendant as mandated by ERISA, and plaintiff does not challenge that distribution, this case does not involve ERISA preemption. See *id.* at 155. Plaintiff’s action seeks to enforce a divorce judgment. Defendant and Sanger’s divorce judgment explicitly extinguishes defendant’s right to retain the insurance proceeds as the designated beneficiary under the Metropolitan Life policy. The divorce judgment is enforceable in contract, see *In re Lobaina Estate*, 267 Mich App 415, 417-418; 705 NW2d 34 (2005), and defendant’s retention of the insurance proceeds, in contravention of the divorce judgment, constitutes a breach of that judgment. *Sweebe, supra* at 156; see also *Moore v Moore*, 266 Mich App 96, 98; 700 NW2d 414 (2005). Therefore, the trial court did not err in granting plaintiff’s motion for summary disposition and in ordering defendant to turn over the life insurance proceeds to plaintiff.¹

Affirmed.

/s/ Peter D. O’Connell
/s/ Michael J. Talbot
/s/ Cynthia Diane Stephens

¹ We note that our decision does not conflict with the United States Supreme Court’s recent decision in *Kennedy v Plan Administrator for DuPont Savings & Investment Plan*, ___ US ___; 129 S Ct 865; 172 L Ed 2d 662 (2009). In that case, the Supreme Court expressly declined to consider whether a decedent’s estate might bring an action in state court to obtain benefits after they are properly distributed pursuant to ERISA. *Id.* at ___; 129 S Ct at 875 n 10. Thus, our Supreme Court’s decision in *Sweebe* controls on this issue.