

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2012).

**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0824**

In re:
Life Insurance Policy No. 1642947-2,
Issued to Brenda DeJoode (f/k/a Brenda Main)

**Filed January 13, 2013
Reversed and remanded
Rodenberg, Judge**

Isanti County District Court
File No. 30-CV-12-296

Leon R. Erstad, Nicholas H. Jakobe, Erstad & Riemer, P.A., Bloomington, Minnesota
(for appellant Gerald DeJoode as personal representative of the estate)

William G. Peterson, Peterson Law Office, P.A., Bloomington, Minnesota (for
respondent Mark Main)

Considered and decided by Rodenberg, Presiding Judge; Larkin, Judge; and
Chutich, Judge.

UNPUBLISHED OPINION

RODENBERG, Judge

Appellant Gerald DeJoode, as personal representative of the estate of Brenda DeJoode,¹ challenges the district court's grant of summary judgment in favor of respondent Mark Main, concluding that, as the named beneficiary, Main is entitled to the proceeds of his ex-wife's life insurance policy. Appellant argues that Minn. Stat.

¹ Appellant is the brother of decedent and the personal representative of her estate.

§ 524.2-804 (2012) automatically revokes a former spouse's beneficiary designation upon divorce. Because Minn. Stat. § 524.2-804 applies to this case and revoked Main's beneficiary status, we reverse and remand.

FACTS

Brenda DeJoode (DeJoode) married Main in 1991. On November 3, 1997, the couple purchased American Family Life Insurance Policy No. 1642947-2 insuring DeJoode's life and identifying "Mark D. Main (Husband)" as the primary beneficiary and DeJoode's estate as the contingent beneficiary under the policy. As the owner of the policy, DeJoode had the authority to change her listed beneficiaries at any time. She never changed the beneficiary designation.

In 2002, the Minnesota legislature amended Minn. Stat. § 524.2-804. 2002 Minn. Laws ch. 347, § 2, at 672-73. Before the 2002 amendment, the statute applied only to wills and not to beneficiary designations. 2002 Minn. Laws ch. 347, § 2. The statute now reads, in pertinent part: "Except as provided by the express terms of a governing instrument, . . . the dissolution or annulment of a marriage revokes any revocable disposition, beneficiary designation, or appointment of property made by an individual to the individual's former spouse in a governing instrument." Minn. Stat. § 524.2-804, subd. 1, 1(1). The 2002 amendment extended to beneficiary designations the rule that "[p]rovisions of a governing instrument are given effect as if the former spouse died immediately before the dissolution or annulment." Minn. Stat. § 524.2-804, subd. 2.

On May 25, 2011, Main and DeJoode's marriage was dissolved pursuant to an agreement, which was carried forward into a judgment and decree. In the findings of fact

section, the divorce decree stated that “[t]he parties each own a term-life insurance policy with no cash value.” However, the life insurance policies were not specifically discussed in the district court’s conclusions of law. The divorce decree contained no provision regarding beneficiary designations under the life insurance policies.

DeJoode died on December 26, 2011. In January 2012, Main contacted American Family to collect the life insurance proceeds. American Family determined that, due to Minn. Stat. § 524.2-804, “the designation of Mark Main as beneficiary might have been automatically revoked when the couple divorced in May 2011.” American Family therefore moved to deposit the life insurance proceeds into court pending a determination of the proper beneficiary. On May 29, 2012, the district court granted American Family’s motion, directed it to pay the proceeds into the court, and discharged it from all further claims and proceedings.

Main then moved for summary judgment, arguing that he was entitled to DeJoode’s life insurance proceeds. In his memorandum in support of the motion, Main stated that he “always paid the premiums on said insurance contract.” Furthermore, he claimed that “Brenda DeJoode knew Mark Main was the beneficiary on the Insurance Contract and wanted Mark Main to continue to be the beneficiary on that Insurance Contract after the divorce.” These statements were disputed by affidavits from DeJoode’s family members.

On March 11, 2013, the district court granted summary judgment for Main. The district court adopted Main’s proposed order for summary judgment in its entirety. The

district court's order did not discuss the effect of Minn. Stat. § 524.2-804 or the couple's 2011 divorce decree. This appeal followed.

DECISION

Summary judgment is appropriate when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law.” Minn. R. Civ. P. 56.03. “On appeal, we review a grant of summary judgment to determine (1) if there are genuine issues of material fact and (2) if the district court erred in its application of the law.” *Osborne v. Twin Town Bowl, Inc.*, 749 N.W.2d 367, 371 (Minn. 2008) (quotation omitted). “We view the evidence in the light most favorable to the party against whom summary judgment was granted.” *STAR Ctrs. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002). But “the party resisting summary judgment must do more than rest on mere averments.” *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997). No genuine issue of material fact exists “where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party.” *Id.* at 69.

Main contends that he is entitled to the insurance proceeds because both the United States and Minnesota Constitutions prohibit the impairment of preexisting contract obligations. Therefore, he argues, Minn. Stat. § 524.2-804 cannot be constitutionally applied to revoke his beneficiary status. A party challenging the constitutionality of a statute in an appellate proceeding must “notify the attorney general within time to afford an opportunity to intervene,” unless the state is a party to the case.

Minn. R. Civ. App. P. 144. Main failed to notify the attorney general of his intention to challenge the constitutionality of Minn. Stat. § 524.2-804 on appeal as required by Minn. R. Civ. App. P. 144. “A party is deemed to have waived any such challenge by failing to raise the issue and notify the attorney general in a timely manner.” *Irwin v. Surdyk’s Liquor*, 599 N.W.2d 132, 137 (Minn. 1999). Furthermore, the district court did not address the constitutionality of Minn. Stat. § 524.2-804. “This court will not rule on the constitutionality of a statute when the issue was not raised or ruled upon at the trial level.” *State v. Kager*, 357 N.W.2d 369, 370 (Minn. App. 1984). Therefore, we are precluded from considering Main’s constitutional arguments regarding Minn. Stat. § 524.2-804, and we apply the statute to the facts of the case.

Under the statute, an insured’s beneficiary designation of a spouse made during a marriage is revoked by operation of law upon the dissolution of the marriage. Minn. Stat. § 524.2-804, subd. 1(1). In such a case, upon the death of the insured, the surviving ex-spouse (and named beneficiary) is considered to have predeceased the insured. *Id.*, subd. 2. And the provisions of the policy “are given effect” without regard to the designation of the ex-spouse as beneficiary. *Id.* Here, even though Main is listed as the primary beneficiary, the statute requires that the death benefits be paid as if Main had died immediately before the divorce. Minn. Stat. § 524.2-804. Because DeJoode’s estate, as the contingent beneficiary, is presumptively entitled to the insurance proceeds, the district court erred in granting summary judgment to Main.

Main argues that Minn. Stat. § 524.2-804 cannot be applied retroactively to revoke his beneficiary status. “No law shall be construed to be retroactive unless clearly and

manifestly so intended by the legislature.” Minn. Stat. § 645.21 (2012). However, Minn. Stat. § 524.2-804 is not being applied retroactively in this case.

In *Midwest Family Mut. Ins. Co. v. Bleick*, the legislature amended a motor vehicle insurance statute 18 days before the car accident in question. 486 N.W.2d 435, 437 (Minn. App. 1992), *review granted in part on other grounds and denied in part* (Minn. July 27, 1992). Because the accident occurred after the statute’s effective date, the amended statute applied to the case. *Id.* at 438. The statute was not considered as having been applied retroactively because the plaintiffs had no claim until the date of the accident, after the effective date of the statute. *Id.* “The fact that a pre-existing insurance contract was affected does not make application of the statute to [the] accident and death occurring after the statute’s effective date a retroactive application of the statute.” *Id.*

Similarly, Main did not have a vested right in the insurance proceeds until DeJoode’s death. *See McCloud v. Aetna Life Ins. Co.*, 221 Minn. 184, 189, 21 N.W.2d 476, 478-79 (1946) (stating that a beneficiary on a life insurance policy has no vested rights until the death of the insured). Because Main had no claim as beneficiary under the policy until DeJoode’s death, well after the effective date of the statute, Minn. Stat. § 524.2-804 is being applied prospectively, not retroactively. *Bleick*, 486 N.W.2d at 438. “The fact that a pre-existing insurance contract was affected” is irrelevant. *Id.*

Main also argues that, under *Larsen v. Nw. Nat’l Life Ins. Co.*, 463 N.W.2d 777 (Minn. App. 1990), *review denied* (Minn. Feb. 6, 1991), he is entitled to his ex-spouse’s insurance benefits. In *Larsen*, we held that a “marriage dissolution does not affect the right of the named beneficiary. When an insured does not change the beneficiary of his

or her life insurance policy after a marriage dissolution, the ex-spouse beneficiary is entitled to the proceeds of the policy upon the death of the insured.” 463 N.W.2d at 779. But *Larsen* was decided before the 2002 amendment of Minn. Stat. § 524.2-804. The amended statute legislatively overrules the holding in *Larsen* that a “marriage dissolution does not affect the right of the named beneficiary.” *Id.* Now, a marriage dissolution automatically revokes any beneficiary designation “made by an individual to the individual’s former spouse.” Minn. Stat. § 524.2-804, subd. 1(1).

Finally, we note that the 2011 divorce decree did not limit DeJoode’s right to change beneficiaries under the subject policy. She was not required to retain Main as her designated beneficiary by the divorce decree. *See Head v. Metro. Life Ins. Co.*, 449 N.W.2d 449, 452 (Minn. App. 1989) (showing an example of a divorce decree that required the ex-husband to name his ex-wife as his life insurance beneficiary), *review denied* (Minn. Feb. 21, 1990). Because the 2011 divorce decree failed to address Main’s beneficiary status, Minn. Stat. § 524.2-804 applies to this case. Although DeJoode could have changed her beneficiary designation after the divorce so as to avoid the application of the statute, she did not.

Under Minn. Stat. § 524.2-804, Main lost his beneficiary designation when he and DeJoode divorced in May 2011. Because he is treated as if he died before the dissolution of marriage, DeJoode’s estate, as contingent beneficiary, is the named beneficiary under

the policy. Therefore, the district court erred in granting summary judgment to Main, and we reverse and remand for further proceedings consistent with this opinion.²

Reversed and remanded.

² DeJoode's estate attempted to present the district court with a cross-motion for summary judgment, but did not timely serve the motion papers. Minn. R. Gen. Pract. 115.03(a). The district court declined to consider the untimely motion. Because the district court did not consider that motion, issues raised by it are not properly before us and we do not consider them. See *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) ("A reviewing court must generally consider only those issues that the record shows were presented and considered by the [district] court in deciding the matter before it." (quotation omitted)). Whether there remain any genuine issues of material fact relating to the estate's entitlement to receipt of the policy proceeds is for the district court to consider on remand, should DeJoode's estate timely present a summary judgment motion.