UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2350

September Term, 2011

SCOTT ANDOCHICK

v.

RONALD DUANE BYRD ET UX.

Meredith,
Woodward,
Davis, Arrie W.
(Retired, Specially Assigned),

JJ.

Opinion by Woodward, J.

Filed: July 23, 2015

Scott Andochick, appellant, was married to Erika Byrd ("Erika")[1] from 2005 to 2008. Prior to their separation and ultimate divorce, Erika designated appellant as her primary beneficiary under three employee benefit policies: a Venable LLP 401(k), a life insurance policy administered by Principal Life Insurance Company, and a life insurance policy administered by the Metropolitan Life Insurance Company (collectively, "Erika's policies"). In 2007, appellant and Erika executed a Marital Settlement Agreement ("the Agreement"), under which each party waived, among other things, "any future expectancies and any right, claim or interest as a beneficiary under any life insurance policy, IRA account, or any other beneficiary designation made prior to execution of this Agreement." Each party further agreed, "for themselves and their respective . . . personal representatives," to "promptly sign any documents" to carry out the terms of the Agreement. The Agreement was incorporated, but not merged, into their judgment of absolute divorce, which was entered on December 31, 2008.

After Erika passed away in 2011, her parents, Ronald and June Byrd, appellees, were appointed as co-administrators of Erika's estate. While appellees were resolving matters with Erika's estate, it became clear that Erika never changed her beneficiary designations on Erika's policies after executing the Agreement, thereby leaving appellant as the primary beneficiary. In June 2011, the respective plan administrators of Erika's policies determined

[1] Because this case involves both Erika Byrd and her parents, Ronald and June Byrd, we will, for the sake of clarity, refer to Erika by her first name.

that appellant was entitled to receive the distributed proceeds. On July 15, 2011, appellees filed in the divorce action between appellant and Erika in the Circuit Court for Montgomery County a Motion for Contempt and to Enforce Agreement, which requested the court, among other things, to order appellant to execute all necessary documents to waive his interests in the proceeds of Erika's policies. After hearing oral argument from the parties, the circuit court granted appellees' motion on December 27, 2011.

Appellant raises five questions before this Court on appeal,[2] which we have

[2] Appellant's questions, as presented in his brief, are as follows:

> I. Did the trial court err by determining that the appellees had standing to pursue the underlying action, as the appellees were not third party beneficiaries of the contract?
>
> II. Did the trial court err by determining that the appellees had standing as co-personal representatives of the decedent's estate, since the decedent, if she were still alive, would have no basis to pursue a contempt action?
>
> III. Did the trial court err by finding appellant in contempt without requiring the appellees to put on evidence to prove the elements of their claim?
>
> IV. Did the trial court err by finding appellant in contempt without affording appellant his due process right to present his defense?
>
> V. Did the trial court err in finding, without taking evidence, that appellant willfully violated a court order?

(continued...)

consolidated into three:

1. Did the trial court err by determining that appellees had standing?

2. Did the trial court err by finding appellant in contempt?

3. Did the trial court err by determining that appellant waived his rights to the proceeds of Erika's policies?

As we will explain, we answer "no" to the first and third questions and "yes" to the second question. We, therefore, affirm the order of the circuit court in part and vacate it in part.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant and Erika met in October 2002 and became engaged in August 2003. On February 25, 2005, appellant and Erika were married in Virginia.

When the couple first met, Erika was a partner at the law firm of McGuireWoods, LLP ("McGuireWoods") in McLean, Virginia. As a benefit of her employment, Erika

[2](...continued)

A. Federal law, namely ERISA, governs distribution of ERISA-covered plans, and ERISA provides that the funds must be distributed to Scott as Erika's designated beneficiary.

B. As to the non-ERISA MetLife Policy, Maryland law controls, Scott did not waive his right to receive benefits as a beneficiary and the facts indicate that Erika intended Scott to benefit from the life insurance policy.

maintained a life insurance policy with the Metropolitan Life Insurance Company ("the MetLife policy"). On February 6, 2005, before the couple married, Erika named appellant as the primary beneficiary, and her mother as the secondary beneficiary, on the MetLife policy. In March 2006, after she changed law firms from McGuireWoods to Venable, LLP ("Venable"), Erika signed beneficiary designation forms for her new employee benefits—a second life insurance policy, as well as a 401(k) plan ("the 401(k)"). Erika designated appellant as the sole beneficiary of her second life insurance policy ("the Principal policy"). On the 401(k) forms, Erika designated appellant as the primary beneficiary of 100% of the proceeds, and she designated her mother as the secondary beneficiary of 100% of the proceeds.

On July 7, 2006, the couple voluntarily separated. Both appellant and Erika hired attorneys to resolve issues with their marital property and, after attending mediation, the parties entered into the Agreement on August 20, 2007. The purpose of the Agreement was "to formalize [appellant's and Erika's] separation, to make a comprehensive property settlement, and to settle other financial and legal issues connected with their marital relationship and marital separation."

Paragraph 6.4(c) of the Agreement contains a "Waiver of Rights" provision, which states:

> Except for the rights provided in this Agreement, **each party hereby relinquishes and releases unto the other all** statutory,

> contractual, equitable and common law **rights** that each may have or in the future may acquire **to any property, real or personal, which the other now owns or may hereafter acquire, including but not limited to any future expectancies and any right, claim or interest as a beneficiary under any life insurance policy,** IRA account, **or any other beneficiary designation made prior to execution of this Agreement, and each agrees that he or she will, upon request of the other, execute and deliver such releases or assurances as may be desired by the other** to indicate, demonstrate or to carry out the release and relinquishment of such interests.

(Emphasis added).

In addition to the final clause in paragraph 6.4(c) above, paragraph 6.8 of the Agreement, entitled "Agreement to Execute Documents," further explains each party's obligation:

> The parties for themselves and their respective heirs, personal representatives and assigns, mutually agree to promptly sign any documents and to perform any acts as may be reasonably required to carry out the provisions of this Agreement, now or in the future. Unless otherwise agreed, time is of the essence. (This means that neither party will delay unnecessarily if he or she has agreed to do an act.)

On March 10, 2008, Erika filed a complaint in the circuit court for absolute divorce. On December 31, 2008, the circuit court granted the parties a Judgment of Absolute Divorce. In its order, the court stated that the Agreement was incorporated, but not merged, into the judgment.[3]

[3] On October 15, 2008, appellant and Erika executed an addendum to the Agreement, which was also incorporated, but not merged, into the judgment of absolute divorce. The (continued...)

On April 10, 2011, Erika passed away. Thereafter, appellees were appointed as co-administrators of Erika's estate. In June 2011, the respective plan administrators of Erika's policies independently determined that appellant was entitled to the proceeds of each policy, because he was the named primary beneficiary.[4]

On July 13, 2011, appellant filed a complaint against appellees in the United States District Court for the Eastern District of Virginia. *See Andochick v. Byrd*, No. 1:11-cv-739, 2012 WL 1656311 (E.D. Va. May 9, 2012), *aff'd*, 709 F.3d 296 (4th Cir. 2013), *cert. denied*, 134 S. Ct. 235 (2013). In his federal complaint, appellant sought, among other things, a declaratory judgment stating that appellees lacked standing to seek enforcement of the Agreement and that appellees' state law claims regarding the 401(k) and the Principal policy were preempted by the Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1001 *et seq* (2012).

Two days later, on July 15, 2011, appellees filed in the divorce action between appellant and Erika a line substituting themselves for Erika, pursuant to Maryland Rule

[3](...continued)
addendum does not contain any terms or provisions relevant to the instant appeal.

[4] Appellees appealed these determinations to the respective plan administrators. Venable denied the appeal for the 401(k). The plan administrator of the Principal policy was unable to determine the proper payee of the proceeds of the policy and as a result, interpleaded those proceeds into court. The record is silent as to any appeal of the MetLife policy, but the proceeds were not released to either party in accordance with the preliminary injunction issued by the circuit court on September 7, 2011.

2-241, along with a Motion for Contempt and to Enforce Agreement. On August 24, 2011, appellees filed an Amended Motion for Contempt and to Enforce Agreement ("the amended motion"). In the amended motion, appellees claimed that appellant was in violation of the Agreement, and requested that the court find appellant in contempt and order appellant to "execute any documents, and take all actions necessary, to effectuate his waivers of any interest in [Erika's] 401(k) and the proceeds of life insurance on her life," in accordance with the provisions of the Agreement. On August 30, 2011, appellant filed a motion to stay and an opposition to appellees' amended motion.

On the same day that they filed the amended motion, August 24, 2011, appellees filed a Motion for Temporary Restraining Order and Preliminary Injunction. On August 30, 2011, appellant filed an opposition to that motion. After a hearing held on August 30, 2011, the trial court granted appellees' motion for a temporary restraining order. After another hearing on September 7, 2011, the court issued a preliminary injunction based upon the parties' consent thereto. The preliminary injunction provided, *inter alia*, that, pending a final determination, appellant and appellees were "enjoined from accepting any portion" of Erika's 401(k) assets or the proceeds from the Principal policy and the MetLife policy.

On December 16, 2011, appellant filed a Trial Memorandum in Support of Opposition to Motion for Contempt and to Enforce Agreement with the circuit court. As he asserted in his federal complaint, appellant claimed in his memorandum that appellees lacked standing.

Appellant further argued, as he did in his federal complaint, that ERISA (1) preempted appellees' state law claims, (2) required that the plan administrators distribute funds to appellant, the designated beneficiary, and (3) prevented appellees from filing a claim in state court to require appellant to waive his interest in the ERISA benefits.

On December 21, 2011, the circuit court conducted a hearing on appellees' amended motion. At the hearing, the court determined that appellees had standing to prosecute their amended motion. The court, however, declined to reach the ERISA issue raised by appellant, describing the issue before the court as, "can I make [appellant] sign the paper [to waive his right to the proceeds of Erika's policies], not whether the paper does anybody any good once it is signed . . . ." At the close of the hearing, the circuit court found appellant in contempt. On December 27, 2011, the court issued an order stating:

> This matter came before the Court on December 21, 2011 on [appellees'] Amended Motion for Contempt and to Enforce Agreement. Upon consideration of the pleadings, argument of counsel for [appellees] and [appellant] and for the reasons set forth by the Court on the record, it is . . .
>
> ORDERED that [appellant] is found to be in contempt of this Court's Judgment of Absolute Divorce entered herein on December 31, 2008; and it is further,
>
> ORDERED that [appellant] shall forthwith execute any documents and take all actions necessary and required by Venable LLP, Principal Life Insurance Company and MetLife (Metropolitan Life Insurance Company), to waive and renounce any interest he has in the decedent, Erika Byrd's, Venable LLP 401(k) Plan and the life

insurance benefits payable as a result of her death from Principal Life Insurance Company and MetLife; and it is further,

* * *

ORDERED that this Order is a final order for purposes of appeal.

A timely appeal followed.[5] Additional facts will be set forth below as necessary to resolve the questions presented.

DISCUSSION

In addition to attacking the merits of the circuit court's December 27, 2011 order, appellant argues that the proceedings as a whole are invalid on the grounds that appellees lack standing to pursue a contempt and enforcement action against appellant. "One requirement of justiciability is that the plaintiff[s] have standing in the sense that the person[s are] entitled to invoke the judicial process in a particular instance." *Adams v. Manown*, 328 Md. 463, 480 (1992) (citation omitted). We, therefore, analyze this preliminary issue first.

1. Appellees' Standing

Appellant contends that the circuit court erred by concluding that appellees had standing to move for contempt and for enforcement. Appellant claims that appellees lack standing as the co-administrators of Erika's estate, because there was no evidence before the

[5] The parties do not dispute that the December 27, 2011 order is an appealable interlocutory order. *See* Md. Code (2006, 2013 Repl. Vol.), § 12-304(a) of the Courts & Judicial Proceedings (II) Article.

trial court that appellees were, in fact, Erika's co-administrators. Moreover, appellant argues, "Erika herself could ***not*** have filed her own action for contempt and enforcement against [appellant] if she were alive today." (Emphasis in original). Appellant argues that only Erika could have altered the beneficiary designation on Erika's policies. Therefore, appellant claims, Erika could not have sued appellant to compel him to alter his beneficiary status on these documents.

Appellees respond that they have standing as "Co-Administrators of the estate of Erika" pursuant to Md. Code (1974, 2011 Repl. Vol.), § 5-502(a) of the Estates and Trusts Article ("E&T"). Appellees argue that appellant's own federal complaint, which was submitted as an exhibit to the trial court in this case, names appellees as "Co-Administrators of the Estate of Erika L. Byrd." Appellees further respond that Erika could have maintained an action against appellant, because appellant is not, as he claims, "being asked to alter any beneficiary designation." Rather, appellees argue, their motion for contempt and for enforcement merely requests that appellant waive the benefits of Erika's policies pursuant to the Agreement.

The court's determination that appellees are the co-administrators of Erika's estate is a factual finding. We review this finding using the "clearly erroneous" standard, under which we defer to the trial court's ruling as long as there is "competent or material evidence in the record to support the court's conclusion." *Columbia Town Ctr. Title Co. v. 100 Inv.*

Ltd. P'ship, 203 Md. App. 61, 72 (2012) (citation omitted), *aff'd in part and reversed in part on other grounds*, 430 Md. 197 (2013).

Contrary to appellant's assertion, there is competent evidence in the record before the circuit court that appellees are the co-administrators of Erika's estate. On July 15, 2011, appellees filed a line with the circuit court entitled "Substitution of Party: Rule 2-241," in which they stated that, "June Elizabeth Byrd and Ronald Duane Byrd, the parents of the decedent, have been appointed as the Co-Administrators for the Estate of Erika Lynne Byrd." Attached to that line was a copy of the Certificate of Qualification from the Circuit Court of Fairfax County, Virginia, stating that appellees were "duly qualified in this court as Co-Administrators for the estate of Erika Lynn Byrd, deceased." In addition, appellant admitted in his trial memorandum that "on July 13, 2011, [he] filed a lawsuit in the United States District Court for the Eastern District of Virginia captioned as *Scott Andochick, M.D. v.* ***Ronald and June Byrd, as Co-Administrators of the Estate of Erika L. Byrd, et. al.***," and attached a copy of his federal complaint as an exhibit to the trial memorandum. (Bold emphasis added). Thus, although the circuit court did not take testimony at the December 21, 2011 hearing, appellant's admission in his trial memorandum and appellees' earlier line, with attachment, are evidence that appellees are the co-administrators of Erika's estate. *See Lieberman v. Mayavision, Inc.*, 195 Md. App. 263, 286 (2010) (noting that the "exhibits attached to the motion" constituted evidence). We, therefore, conclude that the circuit

court's factual finding that appellees are the co-administrators of Erika's estate is not clearly erroneous.

We further agree with the trial court's legal conclusion that appellees have standing. It is undisputed that appellees, as co-administrators ("personal representatives" in Maryland), "step[] into the shoes of [the] decedent," i.e., Erika, under the law. *AcandS, Inc. v. Asner*, 104 Md. App. 608, 644 (1995), *rev'd on other grounds*, 344 Md. 155 (1996). Pursuant to E&T § 7-401(v), personal representatives "may perform the contracts of the decedent that continue as obligations of the estate, and execute and deliver . . . documents under circumstances as the contract may provide." In addition, personal representatives have the power to prosecute "actions, claims, or proceedings . . . for the protection or benefit of the estate, including the commencement of a personal action which the decedent might have commenced or prosecuted." E&T § 7-401(y).

The relief that appellees seek before the trial court is not, as appellant claims, for appellant to alter his beneficiary status on Erika's policies. Thus it is immaterial that only Erika could have altered the beneficiary status on the policies themselves. Instead, appellees seek to enforce the Agreement between Erika and appellant. Paragraph 6.6 of the Agreement permits either party to file a court action "to enforce any provision of this Agreement."[6]

[6] The Agreement requires that the party ultimately bringing suit must first give fifteen days' notice to the party who is allegedly in breach of the Agreement; appellant does not present any argument that appellees failed to comply with this notice requirement.

Therefore, as a party to the Agreement, Erika clearly could have maintained suit against appellant, had she been alive, on the ground that he had breached his agreement to "promptly sign any documents" to carry out his waiver of his expectancies in her life insurance policies and interests in her 401(k).

Moreover, paragraph 6.8 of the Agreement, entitled "Agreement to Execute Documents," states that "[t]he parties for themselves *and their . . . personal representatives* . . . mutually agree to promptly sign any documents and to perform any acts as may be reasonably required to carry out the provisions of this Agreement." (Emphasis added). Because appellees are Erika's "personal representatives," and because the parties to the Agreement agreed "for themselves and their . . . personal representatives" "to perform any acts as may be reasonably required to carry out the provisions of this Agreement," we conclude that appellees have standing as co-administrators of Erika's estate to seek enforcement of the Agreement. Therefore, the trial court's conclusion was legally correct.[7]

2. The Trial Court's Contempt Finding

As an appellate court, we "may reverse a finding of civil contempt only upon a showing that a finding of fact upon which the contempt was imposed was clearly erroneous

[7] Appellant asserts, in addition, that appellees lack standing because they are not covered as third party beneficiaries under the Agreement, and, consequently, "have no standing to sue or to otherwise enforce the terms" of the Agreement. Because we have already concluded that appellees have standing as the co-administrators of Erika's estate, we need not reach this contention.

or that the court abused its discretion in finding particular behavior to be contemptuous." *Gertz v. Md. Dep't of the Env't*, 199 Md. App. 413, 424 (citations and internal quotation marks omitted), *cert. denied*, 423 Md. 451 (2011). "Abuse of discretion occurs . . . when the court acts 'without reference to any guiding rules or principles.'" *Powell v. Breslin*, 430 Md. 52, 62 (2013) (quoting *North v. North*, 102 Md. App. 1, 13-14 (1994)).

Appellant argues that the trial court's finding that he was in contempt was "clearly erroneous and an abuse of discretion," because there was insufficient evidence to support the court's finding. Specifically, appellant states that appellees did not present any evidence to the trial court to support their claim that appellant was in contempt of a court order. Because there was no evidence before the trial court, appellant asserts that the trial court erred by finding that his failure to comply with the court's order was willful. Furthermore, appellant claims that he was denied due process, because he was not given "an opportunity to challenge the alleged contempt."

Appellees respond that appellant is "mistaken" when he claims that they failed to present the trial court with the necessary evidence to support the court's finding that appellant was in contempt. Appellees assert that "Appellant's own trial memorandum, his Complaint filed in Federal Court and the exchanges between [the trial court] and Appellant's counsel on December 21, 2011, established all of the facts necessary to find Appellant in

contempt." In addition, appellees contend that there was sufficient evidence that appellant's failure to sign the requested waivers of benefits was willful.

The required procedures that a trial court must follow before imposing constructive civil contempt, as in the case *sub judice*, are clear. "[I]n constructive contempt proceedings, the court must give the accused contemnor an opportunity to challenge the alleged contempt and show cause why a finding of contempt should not be entered." *Fisher v. McCrary Crescent City, LLC*, 186 Md. App. 86, 119 (2009), *cert. denied*, 131 S. Ct. 637 (2010). After holding a show cause hearing, "[a] court must find civil contempt by a preponderance of the evidence." *Id.* at 120. "When a court . . . makes a finding of contempt, the court shall issue a written order that specifies the sanction imposed for the contempt. In the case of a civil contempt, the order shall specify how the contempt may be purged." Md. Rule 15-207(d)(2). Thus it is clear error for a court, in its written order, either not to make a finding of civil contempt or not to specify a purge provision. *See Fisher*, 186 Md. App. at 125-26.

In the case *sub judice*, we conclude that the contempt portion of the circuit court's December 27, 2011 order is facially deficient. Although the circuit court *orally* stated that appellant "can purge himself by signing these agreements," the court's written order does not contain any purge provision, in violation of Rule 15-207(d)(2). *See Fisher*, 186 Md. App. at 126 ("[T]he circuit court erred because it failed to state how [the party] could purge his

contempt."). Therefore, we conclude that the circuit court abused its discretion, and the portion of the circuit court's order finding appellant in contempt must be vacated.[8]

3. Erika's Policies

Although we vacate the finding of contempt against appellant, the circuit court's order also granted appellees' request that the court enforce the Agreement. In other words, because the Agreement was incorporated, but not merged, into the Judgment of Absolute Divorce, the Agreement remained a contract between appellant and Erika that could be enforced by the trial court as it could with any contract. *See Fultz v. Shaffer*, 111 Md. App. 278, 298 (1996) (stating that Section 8-105 of the Family Law Article "provides the court with power to enforce the provisions of a settlement agreement; an agreement that has been incorporated, but not merged, into the final decree, may be enforced as a judgment or as an independent contract. In the latter instance, a settlement agreement is subject to general contract law") (citations omitted).[9]

The court order stated in pertinent part that appellant

> shall forthwith execute any documents and take all actions necessary and required by Venable LLP, Principal Life Insurance Company and MetLife (Metropolitan Life Insurance Company), to waive and renounce any interest he has in the decedent, Erika Byrd's, Venable

[8] Because we vacate the circuit court's finding of contempt, we do not reach appellant's other contentions on this issue.

[9] In their motion and amended motion, appellees specifically sought relief in the form of both contempt *and* enforcement of the Agreement.

> LLP 401(k) Plan and the life insurance benefits payable as a result of her death from Principal Life Insurance Company and MetLife.

The parties do not dispute that ERISA governs two of Erika's policies: the Principal policy and the 401(k). Likewise, the parties agree that the MetLife policy, which Erika signed while working for McGuire Woods, is not governed by ERISA. We analyze the ERISA and non-ERISA policies separately.

A. ERISA-Covered Policies (the Principal Policy and the 401(k))

Appellant argues that "ERISA provides that the funds must be distributed to [appellant] as Erika's designated beneficiary." Relying on federal case law, he contends that "any waiver by [appellant], whether in the . . . Agreement or submitted to the Plan Administrator after Erika's death would have no impact on the distribution of funds by the plan administrator." As a result, appellant claims that appellees "should be precluded from pursuing their claims against [appellant] regarding the Venable 401(k) and Principal Policy in contravention of ERISA and Erika's designations."

In response, appellees assert that, "[a]ssuming *arguendo* that ERISA preemption law is relevant to the appeal of Appellant's contempt citation, such law does not serve to invalidate the [Agreement's] requirements concerning waivers." Appellees further contend that "[r]ecent case law makes it clear that private parties . . . or their estates[] are free to pursue contract actions or contempt proceedings in court where those agreements are violated." Additionally, appellees argue, appellant "has cited to no cases that hold that the

type of waivers present in this case are invalid under ERISA law, and the plaintiffs are aware of no such authority."

The federal courts have already decided the preemption issue between these parties. As described above, appellant filed a complaint in the United States District Court for the Eastern District of Virginia in July 2011, seeking a declaratory judgment that appellees' claims against him were preempted by ERISA. Explaining that "the critical issue before the Court is whether ERISA preempts [appellees'] enforcement of the waiver provision within the [Agreement] once the benefits are distributed, or in the alternative, if ERISA does not affect post-disbursement funds," the federal district court concluded that ERISA does not preempt all rights appellees have under the Agreement.[10] *Andochick,* 2012 WL 1656311, at *7, 11-12. The federal district court elaborated: "ERISA only controls the disbursement of the benefit proceeds at the plan administrator level. Once the proceeds are within [appellant's] control, he is obligated to fulfill his responsibilities under the [Agreement], as ordered by the [Montgomery County] Circuit Court." *Id.* at *10.

[10] Although appellant's federal complaint was initially stayed by the federal court in September 2011 while the case *sub judice* proceeded in circuit court, the federal court resumed its proceedings following the circuit court's decision on December 21, 2011. *See Andochick v. Byrd*, No. 1:11-cv-739, 2012 WL 1656311, at *2 (E.D. Va. May 9, 2012), *aff'd*, 709 F.3d 296 (4th Cir. 2013), *cert. denied*, 134 S. Ct. 235 (2013). Appellees then filed a motion to dismiss appellant's federal complaint, and appellant moved for partial summary judgment on standing and preemption grounds. *Id.* The federal court heard oral argument on March 23, 2012, before issuing its opinion on May 9, 2012. *Id.*

Thereafter, appellant appealed the district court's ruling on the ERISA issue.[11] The United States Court of Appeals for the Fourth Circuit affirmed the district court's ruling. *Andochick*, 709 F.3d at 301. The Fourth Circuit explained that it was "adopt[ing] the same view as every published appellate opinion to address the question" in holding that "ERISA does not preempt post-distribution suits against ERISA beneficiaries." *Id.*

We hold that appellant is collaterally estopped from raising the ERISA preemption issue before this Court.[12] In *Campbell v. Lake Hallowell Homeowners Ass'n*, this Court explained that the doctrine of collateral estoppel requires

> (1) the issue sought to be precluded is identical to one previously litigated; (2) the issue must have been actually determined in the prior proceeding; (3) determination of the issue must have been a critical and necessary part of the decision in the prior proceeding; (4) the prior

[11] The United States Court of Appeals for the Fourth Circuit made clear that appellant was only challenging "the district court's grant of the administrators' motion to dismiss the ERISA preemption claim," and not the standing issue. *See Andochick*, 709 F.3d at 297.

[12] We recognize that neither party argued for collateral estoppel in their respective briefs. Nevertheless, "in the interests of judicial economy," we may "sua sponte invoke res judicata or collateral estoppel to resolve a matter" pending before us. *Campbell v. Lake Hollowell Homeowners Ass'n*, 157 Md. App. 504, 529 (2004) (citation omitted); *see also Anne Arundel Cnty. Bd. of Educ. v. Norville*, 390 Md. 93, 103-05 (2005) ("Although the issue of res judicata was not raised directly in the certiorari petition, nevertheless, we may determine whether res judicata bars [petitioner's] claims."). "Th[is] result is fully consistent with the policies underlying res judicata [and collateral estoppel]: *it is not based solely on the defendant's interest in avoiding the burdens of twice defending a suit, but is also based on the avoidance of unnecessary judicial waste*." *Norville*, 390 Md. at 105 (emphasis in original) (citations and internal quotation marks omitted). Thus, "to avoid the expense and delay of another appeal," we raise the collateral estoppel issue *sua sponte*. Md. Rule 8-131(a).

> judgment must be final and valid; and (5) the party against whom estoppel is asserted must have had a full and fair opportunity to litigate the issue in the previous forum.

157 Md. App. 504, 519 (2004) (citations and internal quotation marks omitted).

First, the same parties in the instant appeal previously litigated the identical issue in federal court—namely, whether ERISA preempts the waiver provisions of the Agreement. *Andochick*, 709 F.3d at 299. Therefore, the first collateral estoppel criterion is clearly met. Second, the preemption issue was actually determined in the prior proceeding: in affirming the decision of the federal district court, the Fourth Circuit concluded that "ERISA does not preempt post-distribution suits against ERISA beneficiaries." *Id.* at 301. Third, as the federal district court noted, the ERISA preemption issue was "the critical issue before the Court." 2012 WL 1656311, at *7. Count II of appellant's federal complaint, which was dismissed by the federal district court, sought a declaratory judgment that "ERISA preempts the [Agreement] and any claim [appellees] might have to the ERISA plan benefits."[13] *Id.* at *5, 13. Fourth, the federal appellate court's judgment is valid and final: the United States Supreme Court denied certiorari on October 7, 2013. 134 S. Ct. 235. Lastly, appellant had a full and fair opportunity to litigate the preemption issue in federal district court: Count II

[13] The federal district court also dismissed Count I of appellant's complaint with prejudice and dismissed Count III without prejudice. *See* 2012 WL 1656311, at *13. In Count I, appellant sought a declaratory judgment that appellees lacked standing as to "the ERISA-governed proceeds." *Id.* at *4. Count III was a claim for conversion, alleging that appellees converted a BMW vehicle belonging to appellant. *Id.* at *12. There is no analogous conversion claim in the case *sub judice*.

of his complaint dealt squarely with the preemption issue, and the parties filed and argued opposing motions on the issue. Furthermore, appellant had a full and fair opportunity to litigate the issue on the appellate level: the federal district court's ruling was reviewed and affirmed by the Fourth Circuit. *Andochick,* 709 F.3d at 296. Thus appellant is barred from being heard on the preemption issue before this Court.

Finally, appellant claimed in the federal case that, even if ERISA did not preempt appellees' rights under the Agreement, the beneficiary designation in Erika's ERISA policies trumped the Agreement's waiver provisions. 2012 WL 1656311, at *11-12. The federal district court stated that the resolution of this issue turned on "the precise wording of the waiver provisions." *Id.* at *10. After considering the waiver provisions in the Agreement, the court concluded that "the language in the [Agreement] requires [appellant] to waive his right to the ERISA benefits," and thus the beneficiary designation on Erika's ERISA policies "does not supersede the [Agreement's] waiver provision." *Id.* at *10, 12. Appellant did not take an appeal on the issue of the Agreement's waiver provisions versus the beneficiary designation. Thus the federal district court's ruling constitutes a final ruling on the issue. For the same reasons discussed above regarding the application of the principles of collateral estoppel to the case *sub judice*, we conclude that appellant is barred from challenging the circuit court's ruling that he execute any documents and take all actions necessary to waive and renounce any interest that he has in the 401(k) and the Principal policy.

B. The MetLife Policy

As a preliminary matter, appellant contends that there was no evidence before the circuit court regarding the MetLife policy, which is not covered by ERISA. We disagree. Appellant attached a copy of the MetLife policy, and a copy of Erika's beneficiary designation form listing appellant as the beneficiary to that policy, as exhibits to his trial memorandum. Further, appellant referenced the amount of the MetLife policy ($500,000) in the memorandum itself. Therefore, we will analyze the merits of the parties' positions.

Appellant contends that, "[a]s to the non-ERISA MetLife Policy, Maryland law controls, [appellant] did not waive his right to receive benefits as a beneficiary and the facts indicate that Erika intended [appellant] to benefit from the life insurance policy." Appellant claims that paragraph 6.4(c) of the Agreement "actually provides for a relinquishment and release by [appellant] to claim an interest in any property right, real or personal, of Erika's existing then or that she would acquire in the future," not any designation by Erika that "might have made or might make in the future naming [appellant] as the beneficiary." (Emphasis omitted). In addition, relying extensively on *PaineWebber Inc. v. East*, 363 Md. 408 (2001), appellant argues that he did not waive an interest in the MetLife Policy and, therefore, "the funds should be paid to [appellant] as designated by Erika."

Appellees respond that paragraph 6.4(c) of the Agreement included a waiver by each party of "any [ ] beneficiary designation made prior to the execution of this Agreement."

Appellees then note that, "when he executed the [Agreement], Appellant was then designated beneficiary" of the MetLife policy. In addition, appellees contend, paragraph 6.4(c) of the Agreement "clearly includes any 'future expectancies' that Appellant might have (such as being the designated beneficiary of life insurance proceeds)." Lastly, appellees respond that,"[r]ather than help Appellant, *PaineWebber* demonstrates that his position has no merit."

The parties do not dispute that the Agreement is governed by Maryland law. In this State, interpretation of a separation agreement, like the one between appellant and Erika, "is a question of law for the court and, therefore, is subject to *de novo* review." *Id*. at 413-14 (citations omitted). As the Court of Appeals explained:

> Property settlement agreements, as all other contracts scrutinized under the law of this State, are subject to interpretation in light of the settled and oft-repeated principles of objective construction. **The written language embodying the terms of an agreement will govern the rights and liabilities of the parties**, irrespective of the intent of the parties at the time they entered into the contract, unless the written language is not susceptible of a clear and definite understanding[.] **Where a contract is plain and unambiguous, there is no room for construction, and it must be presumed that the parties meant what they expressed.** Thus, when interpreting a separation agreement, this Court is bound to give effect to the plain meaning of the language used.

Id. at 414 (alteration in original) (emphasis added) (citations and internal quotation marks omitted). We turn, therefore, to analyze whether the circuit court erred in its interpretation of the Agreement.

As discussed above, paragraph 6.4(c) of the Agreement contains a broad "Waiver of Rights" provision:

> [E]ach party hereby relinquishes and releases unto the other all statutory, contractual, equitable and common law rights that each may have or in the future may acquire to any property . . . including . . . any future expectancies and any right, claim or interest as a beneficiary under any life insurance policy . . . or any other beneficiary designation made prior to execution of this Agreement . . . .

Analyzing the above language of paragraph 6.4(c), the federal district court said:

> [T]his language clearly expresses that [appellant] is not entitled to retain the ERISA benefits, in spite of the fact that he remained the named beneficiary at the time of Erika's death. The [Agreement] requires [appellant] to waive his right to the ERISA benefits and to relinquish his rights to "the other," or Erika.
>
> The [Agreement] states, in clear terms, that [appellant] waives any rights resulting from a "beneficiary designation made prior to execution of this Agreement." The relevant beneficiary designations were made on March 6 and March 16, 2006. The [Agreement] was notarized on August 20, 2007, and incorporated into the December 31, 2008 Judgment of Absolute Divorce. The beneficiary designations in question were plainly "made prior to the execution of [the Agreement]," and the [Agreement] unquestionably requires [appellant] to waive his rights to those benefits.

Andochick, 2012 WL 1656311, at *11-12 (citation and footnotes omitted).

We agree with, and adopt, the reasoning of the federal district court on this point. Similar to the 401(k) and the Principal policy, the beneficiary designation for the MetLife policy was made on February 6, 2005, which was clearly before the execution of the

Agreement. Therefore, we hold that the unambiguous language of the Agreement requires appellant to waive his right to the proceeds of the MetLife policy.

Further, the plain language of two provisions of the Agreement obligates appellant to execute all necessary waiver documents or releases, as the circuit court ordered. Paragraph 6.4(c) requires appellant to "upon request of the other, execute and deliver such releases or assurances as may be desired by the other . . . *to carry out the release and relinquishment of such interests*." (Emphasis added). Paragraph 6.8 of the Agreement also requires the parties to "promptly sign any documents and to perform any acts" reasonably required to carry out the provisions of the Agreement. Accordingly, we conclude that the circuit court did not err by ordering appellant to "execute any documents and take all actions necessary and required . . . to waive and renounce any interest he has in [Erika's policies]."

Appellant's reliance on *PaineWebber* is misplaced. In *PaineWebber*, a husband and his first wife were married in 1985. 363 Md. at 411. The following year, the husband opened a PaineWebber IRA account and a completed beneficiary designation form in which he named his first wife as the beneficiary. *Id.* However, the terms of the agreement between the husband and PaineWebber allowed the husband to change the named beneficiary at any point during his lifetime. *Id.* Years later, the husband and first wife entered into a separation agreement and were subsequently divorced. *Id.* at 411-12. The husband then married his second wife two years later. *Id.* at 412. After three years of marriage, the husband died. *Id.*

A dispute followed between the first wife, who remained the named beneficiary on the husband's IRA, and the second wife, who was also personal representative of the husband's estate. *Id.* at 412 & n.1. Of particular relevance to the instant appeal, the "Property Division" section of the separation agreement[14] between the husband and first wife stated:

> As of the date of this Agreement, Husband acknowledges that the Wife has now in her possession personal property which belongs to the Wife. To the extent that Husband may have any interest in such property, the Husband for himself, his heirs, representatives and assigns quit claims any and all interest that the Husband may have in such property.
>
> As of the date of this Agreement, Wife acknowledges that all personal property now in husband's possession belongs to the Husband. To the extent that Wife may have any interest in such property, the Wife for herself, her heirs, representatives and assigns quit claims any and all interest that the Wife may have in such property.

Id. at 417. The circuit court granted summary judgment in favor of the husband's estate, concluding that the first wife waived her rights to the IRA proceeds under the terms of the separation agreement. *Id.* at 412. This Court reversed the circuit court, holding that "the [separation a]greement, by itself, does not operate as a waiver of [the first wife's] rights as the named beneficiary of the [ ] IRA." *East v. PaineWebber, Inc.*, 131 Md. App. 302, 316 (2000), *aff'd*, 363 Md. 408 (2001).

[14] The Court of Appeals also quoted and analyzed two additional provisions of the agreement not relevant to the instant appeal: the "Pension Waiver" provision and the "Waiver of Estate Claim" provision. *PaineWebber Inc. v. East*, 363 Md. 408, 415-17 (2001).

The Court of Appeals affirmed our holding that the husband's estate was not entitled to the proceeds of the IRA. *PaineWebber*, 363 Md. at 423. The Court explained that, in the context of a life insurance policy, the beneficiary "'ha[s] no vested or indefeasible interest under the policy during the lifetime of the insured, but only a revocable expectancy contingent upon being the beneficiary at the time of the insured's death.'" *Id.* at 419 (quoting *Chapman v. Prudential Life Ins. Co. Of Am., Inc.*, 215 Md. 87, 90 (1957)). Adopting that principle in the context of a named beneficiary of an IRA, the Court of Appeals stated that "[t]he interest is a revocable expectancy, contingent upon being the named beneficiary at the time of the holder's death." *Id.* at 420. The first wife thus "had no property interest in the IRA" when she executed the agreement; rather, the wife merely had an expectancy. *Id.* The Court concluded that "[t]he Agreement simply did not embrace [the first wife's] expectancy interest as the named beneficiary of the East IRA," and accordingly, the first wife did not waive her claim. *Id.* at 420-21.

The present case is distinguishable from *PaineWebber*. It is well-established that whether contractual waivers by named beneficiaries are operable "turns on the particular language in either the plan documents or the divorce decree or both." *Staelens v. Staelens*, 677 F. Supp. 2d 499, 508 (D. Mass. 2010). In the case *sub judice*, in contrast to the "Property Division" provision of the parties' separation agreement in *PaineWebber*, the Agreement between appellant and Erika contains an express waiver of expectancy interests.

In paragraph 6.4(c), appellant waived property that included "*any future expectancies* and any right, claim or interest *as a beneficiary under any life insurance policy*." (Emphasis added). Thus, even though appellant was the named beneficiary on the MetLife policy at the time of the execution of the Agreement, the language contained in paragraph 6.4(c) clearly covers appellant's expectancy in the MetLife policy. *See also Schultz v. Schultz*, 591 N.W.2d 212, 214-15 (Iowa 1999) (collecting cases and noting that a divorce decree may terminate "the other spouse's expectancy interest as the designated beneficiary of that asset" if there is language in the decree waiving the expectancy interest). Accordingly, we conclude that the circuit court did not err by ordering appellant to sign such documents that will effectuate his waiver as to the proceeds of the MetLife policy.[15]

ORDER OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY DATED DECEMBER 27, 2011 AFFIRMED IN PART AND VACATED IN PART. THAT PORTION OF THE DECEMBER 27, 2011 ORDER FINDING APPELLANT IN CONTEMPT VACATED; ORDER AFFIRMED IN ALL OTHER RESPECTS. COSTS TO BE PAID 2/3 BY APPELLANT AND 1/3 BY APPELLEES.

[15] Because the MetLife policy does not implicate ERISA, we note that, in contrast to the 401(k) policy and the Principal policy, there is nothing that precludes the documentation signed by appellant from being directly submitted to the plan administrator. The plan administrator will, in turn, issue the proceeds of the policy directly to Erika's estate, rather than distributing funds to appellant and the circuit court requiring appellant to turn over an amount equal to the proceeds to Erika's estate.