

insurance policy (hereafter the "Akin Policy"). The purchasers of the Akin Policy were joined in the lawsuit as defendants, along with the Conservator. Prudential's complaint set forth the percentage interest of each purchaser in the proceeds of the policy. According to Prudential's records, American Title Company of Orlando ("ATCO") is entitled to 16.8% of the policy proceeds.

Because the Akin Policy matured prior to the sale of the policies to Infinity Capital, the purchasers of the Akin Policy will receive the amount to which they are entitled under their respective purchase request agreements. ATCO became a purchaser of the policy proceeds when ABC purchased various interests previously sold to purchasers who requested that they be allowed to rescind their investments.

The Conservator has taken the position that ATCO's 16.8% interest in the Akin Policy (held for the benefit of ABC) belongs to the Conservator under the terms of the Order. The terms of the Order provide that Tom Moran is appointed Conservator of certain "assets of ABC or its agents. . ." (Order at 1.) The only asset description contained in the Order that is pertinent to the instant motion states: "All life insurance policies owned or held beneficially, directly or indirectly, by or for the benefit of ABC and/or the ABC investors, that were purchased from the date of

inception of ABC through September 30, 2000. . . ." (Order at 2.) Indeed, the overriding purpose of the Conservatorship was to administer the life insurance policies.

The funds the Conservator has wrongfully refused to allow to be distributed to ATCO and ABC do not deal with the policy itself. Instead, the funds represent ABC's status as a purchaser by and through the reacquisition of other purchaser's interests in the Akin Policy. Throughout this case, the Conservator has maintained, and this Court has found, that any purchaser who has a right to policy proceeds upon the policy's maturity, does not own the life insurance policy by virtue of that fact. The Conservator has always advocated, and this Court has held, that the purchasers are not owners of the insurance policies. Now, that Defendants are entitled to proceeds of a maturity because of their status as purchasers, the Conservator has switched positions and argues that ABC and ATCO owned the Akin Policy, and thus, the Conservator is entitled to the proceeds thereof. The Order does not support the Conservator's position. The above-cited provision of the Order speaks only in terms of life insurance policies. In fact, consistent with the Order, the Akin Policy was turned over to the Conservator. Nowhere does the Order mention

interests in a policy owned by ATCO or ABC. Nothing in the Order alters ATCO or ABC's status as purchasers in a policy.

Accordingly, the provisions of the Order do not contemplate or require that any interest in policies held directly by ABC or ATCO become assets subject to forfeiture by the Conservator. The clear intent of the provision was simply to effectuate the transfer of the insurance policies to the Conservator so that he would be in a position to administer the policies and distribute proceeds to the purchasers upon maturity of the policies.¹ It was never the intent of the Order to strip ABC or ATCO of interests in policies held in their own right.

II. ARGUMENT AND AUTHORITIES

A. General Rules Applicable To Construction Of The Order.

In general, once a judgment has become final for want of an appeal or in consequence of an appellate court's decision, any controversy over the meaning

¹The Akin policy matured before the Court-ordered sale of the policy portfolio to Infinity Capital. As such, unlike the other purchasers, whose interest are limited by the provisions of the sale contract between the Conservator and Infinity Capital, the Akin purchasers will receive all benefits to which they are entitled because the policy is not encompassed by the sale order. The Conservator has acknowledged this and plans to distribute funds to the purchasers (except ABC and ATCO) in the amount of their respective percentage interests.

and effect of that judgment must be resolved by resorting solely to the face of the judgment roll. *Stork v. Stork*, 898 P.2d 732, 739 (Okla. 1995). Only if a judgment is ambiguous on the face of the record may a court reach it for construction. The meaning of a judgment is to be defined from the terms expressed in its text, which is to be construed with the other parts of the judgment roll. *Id.*

Even when it is proper to "construe" the judgment being considered, a court may not rewrite its provisions; its search for clarification is limited to the judgment roll. *Mills v. Mills*, 841 P.2d 624, 627 (Okla. Ct. App. 1992). The offending ambiguity must be shown by some inconsistency on the face of the record. *Dickason v. Dickason*, 607 P.2d 674, 678 (Okla. 1980).

Mere ambiguity will not affect a judgment's validity, unless none of its terms is susceptible to construction which will make it conformable to law. *Jackson v. Jackson*, 45 P.3d 418 (Okla. 2002). An unclear judgment should be construed so as to carry out its evident purpose and intent, rather than defeat it; and a court should consider the situation to which it was applied and the purpose it sought to accomplish. *Id.* at 428. The court has no authority to add new provisions to the decree or to change substantive provisions already in the decree, under the guise of

“construing” it. *Id.*; see also, *Frazier v. Bryan Mem. Hosp. Auth.*, 775 P.2d 281, 287-88 (Okla. 1989).

B. ATCO Owns The Policy For The Benefit Of The Investors.

The Conservator and the Department have repeatedly maintained in this case that the “investors do not own the policies in which they purchased an interest”; rather, “ATCO owns the policies for the benefit of the investors.” Therefore, the 16.8 percent beneficiary interest in the Akin Policy is not “owned” by ABC as the Conservator claims. When ABC subsequently purchased back some of the percentage interests in the Akin Policy, ABC became a “purchaser” in the policy like any other purchaser. And like the other purchasers, ATCO holds ABC’s percentage interest in the Akin policy for the benefit of ABC.

Therefore, the language in the Order stating that “all life insurance policies *owned* or held beneficially, directly or indirectly, by or for the benefit of ABC and/or ABC Investors,” is inapplicable. (Order at 2; emphasis supplied.) This provision was not drafted to require forfeiture of any interests in policies purchased directly by ABC or any other purchaser. Instead, the provision was drafted to ensure that the insurance policies “owned or held beneficially . . . by or for the benefit of

ABC and/or the ABC Investors" would be transferred to the Conservator. What was conveyed was not the proceeds of the policies; rather, it was the "insurance policies" that were conveyed. Clearly, it would be inequitable to order forfeiture of ABC's interests in policies that were acquired by ABC by virtue of having given recision to various purchasers – the very remedy which the Department sought for the Oklahoma investors.

Moreover, ABC and ATCO recently filed suit against Prudential contending that Prudential wrongfully lapsed the Isaac policy in the face amount of \$9.5 Million. There are over 150 purchasers who have invested in the Isaac policy, and Defendants are seeking to reinstate the policy to preserve the purchasers' investments. The Conservator has made no attempt to pursue Prudential on this matter even though he obviously has the resources and the duty to do so. Indeed, given that the sale of the policies to Infinity has been consummated, there is no reason why the Conservator needs the proceeds it seeks under the Akin Policy, nor has the Conservator offered any such reason.

On the other hand, ABC and ATCO are now essentially shell corporations and can ill-afford to foot the expense of a lawsuit against Prudential to

reinstate the Isaac policy. ABC and ATCO have offered the Conservator a compromise which would, in essence, allow ABC and ATCO to use the funds due under the Akin policy to pay for the expenses and attorney fees incurred in pursuing the action against Prudential over the Isaac policy. ABC and ATCO have also offered to return to the Conservator any amounts not expended. The Conservator rejected the proposal and gave no reason why the proposal was unacceptable. Apparently, the Conservator is content to take the Defendants' money, and leave over 150 purchasers with no meaningful chance to recoup the millions of dollars they invested in the Isaac policy.²

III. CONCLUSION

For the reasons set forth above, Defendants request an order denying the Conservator's motion and declaring that Defendants are entitled to the proceeds due them under the Akin Policy.

²Contrary to the Conservator's argument, Defendants' opposition to the Conservator's motion is not a violation of the Order. Defendants' have not hindered or obstructed the Conservator in the conduct of his duties or interfered in any manner. The Conservator does not have a right to ATCO's 16.8% interest in the Akin Policy, and Defendants cannot be said to be interfering with the Conservator's duties simply by seeking justice in a court of law.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 28th day of June, 2004,
 a true and correct copy of the foregoing was mailed by first class U.S. Mail, postage
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