UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

GARRETT BEAN and ANEILIA BEAN,	§	No. 5:14-CV-604
	§	
Plaintiff,	§	
	§	
vs.	§	
	§	
MINERVA ALCORTA	§	
	§	
Defendant.	§	

ORDER: (1) DENYING DEFENDANT'S MOTION FOR EXTENTION OF TIME TO FILE A RESPONSE (DKT. # 82); AND (2) GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT (DKT. # 80)

Before the Court are two pending motions: (1) Defendant Minerva Alcorta's ("Defendant" or "Alcorta") Second Motion for Extension of Time to Respond to Plaintiff's Fourth Amended Motion for Summary Judgment, filed on October 9, 2018 (Dkt. # 82); and (2) Plaintiffs Garrett Bean and Aneilia Bean's ("Plaintiffs") Fourth Amended Motion for Summary Judgment, filed on September 12, 2018 (Dkt. # 80). Pursuant to Local Rule CV-7(h), the Court finds this matter suitable for disposition without a hearing. After careful consideration of the motions, the Court—for the reasons that follow—(1) **DENIES** Defendant's Second Motion for Extension of Time to Respond (Dkt. # 82); and (2) **GRANTS** Plaintiffs' Fourth Amended Motion for Summary Judgment (Dkt. # 80).

BACKGROUND

Plaintiffs' father, Garry Bean ("Bean"), had basic life insurance and accidental death and dismemberment coverage in the amount of approximately $130,000 under a group policy (the "Policy") issued to his employer by The Guardian Life Insurance Company of America ("Guardian"). (Dkt. # 1 at 3.) On October 10, 2015, Bean named his Alcorta, his fiancé, as the primary beneficiary under the Policy and his children, Plaintiffs, each as 50% contingent beneficiaries. (Dkt. # 1-3, Ex. C at 4.) On November 22, 2013, within a month of completing the insurance enrollment form, Bean was killed by a gunshot wound. (Dkt. # 1-2, Ex. B at 2.)

Because Alcorta was accused of Bean's murder and/or causing his death, and because Plaintiffs made claims on the policy as contingent beneficiaries, Guardian filed a complaint in interpleader instead of paying the Policy benefits to the primary beneficiary, Alcorta. (Dkt. # 1 at 4.) After Guardian paid the Policy proceeds into the Court's registry, Guardian was dismissed from the action, and the parties were realigned. (Dkt. # 16.)

Alcorta was charged in the 290th District Court in Bexar County, Texas with manslaughter in the death of Bean, under Case No. 2014-CR-10551. The manslaughter charge was subsequently dismissed, as the charge was upgraded

to intentional and knowing first-degree murder, under Case No. 2015-CR-9807. (Dkt. # 80-1, Ex. 1 at 2.)

On April 28, 2015, Plaintiffs filed an amended complaint against Alcorta, requesting an order that Alcorta had forfeited her interest in the Policy and that they each be awarded 50% of the Policy proceeds that Guardian had paid into the Court's registry. (Dkt. # 32 at 4.) On January 12, 2016, the instant case regarding the insurance proceeds was stayed, pending the conclusion of the criminal proceedings against Alcorta. (Dkt. # 57.)

On June 13, 2016, Acorta was convicted, after a jury trial, of first-degree murder committed under the immediate influence of a sudden passion. (Dkt. # 80-1, Ex. 1.) Alcorta was sentenced to 15 years in prison. (Id.) This Court's stay was lifted on July 11, 2016. (Dkt. # 59.) Alcorta appealed her criminal conviction, and this Court's stay was reinstated. (Dkt. # 76.) On January 31, 2018, the criminal trial court's judgment of conviction was affirmed by the Texas Fourth Court of Appeals. (Dkt. # 80-2, Ex. 2.) Although Alcorta was granted two extensions of the time to file a petition for discretionary review with the Texas Court of Criminal Appeals (Dkt. # 80-3, Ex. 3), no petition was ultimately filed, and the time in which to do so eventually expired (Dkt. # 80-4, Ex. 4). Therefore, on September 4, 2018, the Fourth Court of Appeals issued a

mandate to the trial court, affirming the trial court's judgment of conviction. (Dkt. # 80-5, Ex. 5.)

The criminal proceedings against Alcorta having thus concluded, this Court, by text order, lifted the pending stay on September 12, 2018. On September 13, 2018, Plaintiffs filed their Fourth Motion for Summary Judgment. (Dkt. # 80.) Alcorta's response was due on September 27, 2018. Alcorta requested, and was granted, an extension—until October 11, 2018—of the time in which to file a response. (See Dkt. 81.) On October 9, 2018, Alcorta again requested an extension of the time in which to respond. (Dkt. # 82.) Plaintiffs opposed such an extension. (Dkt. # 83.)

DISCUSSION

I. Motion for Extension of Time in which to Respond

A. Legal Standard

Under Rule 6(b)(1)(A), when a request is made "before the original time or its extension expires" the Court may extend the time in which an act may or must be done "for good cause." Fed. R. Civ. P. 6(b)(1)(A). The grant or denial of an extension of time under Rule 6(b) "falls to the district court's discretion." McCarty v. Thaler, 376 F. App'x 442, 443 (5th Cir. 2010).

B. Analysis

At the time she filed the instant motion, Alcorta was—and had been—represented by counsel. Alcorta requests the extension of the time in which to respond so that she can adequately substitute her present counsel for new representation. (Dkt. # 82 at 2.) For the following reasons, this Court does not believe Alcorta has stated sufficient good cause under Rule 6(b)(1)(A).

Plaintiffs' current motion for summary judgment is essentially identical to the arguments put forward by Plaintiffs in their previous third motion for summary judgment, which was filed on August 22, 2016 at the conclusion of Alcorta's criminal trial. (See Dkt. 62.) Therefore, at the time the instant motion was filed, Alcorta had already had more than two years to find counsel who was capable of responding to Plaintiffs' summary judgment arguments in a manner that is satisfactory to her.

While Plaintiffs' previous motion for summary judgment was pending back in 2016, this Court twice granted Alcorta extensions of the time in which to respond. The second such order indicated that "[n]o further extensions of time will be granted." (See 9/27/2016 Text Order.) Nevertheless, when Plaintiffs filed a substantively identical summary judgment motion in September 2018 after the stay had been lifted, Alcorta again moved for an extension of the time in which to respond, and was granted an additional two-week extension. Yet instead of finally

responding, Alcorta now moves for an even longer extension, saying she wants to find new counsel. (See Dkt. 82.) Further, she provides no concrete reason for why a substitution of counsel is needed or warranted now, at this eleventh hour, or otherwise why continued representation by her present counsel is insufficient. (See id.)

Enough is enough. Alcorta has had more than two years to find counsel who can satisfactorily respond to Plaintiffs' summary judgment arguments. She will get no more. At this point, the Court suspects that Alcorta is simply trying to postpone the inevitable. Therefore, Defendant's Motion for Extension of Time in Which to File a Response is **DENIED**. (Dkt. # 82.)

II. Motion for Summary Judgment

A. Legal Standard

Summary judgment is proper if "there is no genuine dispute as to any material fact" and the moving party "is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); see also Meadaa v. K.A.P. Enters., LLC, 756 F.3d 875, 880 (5th Cir. 2014). A dispute is genuine only "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

The moving party bears the initial burden of demonstrating the absence of any genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S.

317, 323 (1986). If the moving party meets this burden, the nonmoving party must come forward with specific facts that establish the existence of a genuine issue for trial. Distribuidora Mari Jose, S.A. de C.V. v. Transmaritime, Inc., 738 F.3d 703, 706 (5th Cir. 2013) (quoting Allen v. Rapides Parish Sch. Bd., 204 F.3d 619, 621 (5th Cir. 2000)). "Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.'" Hillman v. Loga, 697 F.3d 299, 302 (5th Cir. 2012) (quoting Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986)).

In deciding whether a fact issue has been created, the court must draw all reasonable inferences in favor of the nonmoving party, and it "may not make credibility determinations or weigh the evidence." Tiblier v. Dlabal, 743 F.3d 1004, 1007 (5th Cir. 2014) (quoting Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 150 (2000)). At the summary judgment stage, evidence need not be authenticated or otherwise presented in an admissible form. See Fed. R. Civ. P. 56(c); Lee v. Offshore Logistical & Transp., LLC, 859 F.3d 353, 355 (5th Cir. 2017). However, "[u]nsubstantiated assertions, improbable inferences, and unsupported speculation are not sufficient to defeat a motion for summary judgment." United States v. Renda Marine, Inc., 667 F.3d 651, 655 (5th Cir. 2012) (quoting Brown v. City of Hous., 337 F.3d 539, 541 (5th Cir. 2003)).

B. Analysis

The following facts are undisputed: (1) Bean was insured under a life and accidental death and dismemberment insurance policy governed by the Employee Retirement Income Security Act of 1974 ("ERISA") (Dkt. # 1-1, Ex. 1 at 115, 125; Dkt. 1-3, Ex. C); (2) Alcorta was the primary beneficiary of the Policy (Dkt. # 1-3, Ex. C); (3) Plaintiffs were each 50% contingent beneficiaries under the Policy (Id.); (4) Alcorta has been convicted for the first-degree intentional and knowing murder of Bean (Dkt. # 80-1, Ex. 1); and (5) that murder conviction is final (Dkt. # 80-2, Ex. 2; Dkt. # 80-5, Ex. 5). There is no genuine issue as to these facts, and these undisputed facts are sufficient to dispose of this case.

Plaintiffs argue that they are entitled to summary judgment, because under both Texas' slayer statute and federal common law, a beneficiary who willfully or intentionally causes the death of the insured forfeits any right to collect under any life insurance policy. (Dkt. # 80 at 6.) As a threshold, the Court reiterates that it declines to resolve the question of whether state slayer statutes are preempted by ERISA because the outcome of the case is the same whether applying the Texas statute or federal common law. (See Dkt. 51 at 16–18.)

Under Texas law, "[a] beneficiary of a life insurance policy or contract forfeits the beneficiary's interest in the policy or contract if the beneficiary is a principal or an accomplice in wilfully [sic] bringing about the death of the

insured." Tex. Ins. Code § 1103.151. Upon such a forfeiture, "a contingent beneficiary named by the insured in the policy or contract is entitled to receive the proceeds of the policy or contract." Tex. Ins. Code § 1103.152.

The fact of Alcorta's criminal conviction triggers Texas's forfeiture rule as a matter of state law. Metropolitan Life Ins. Co. v. White, 972 F.2d 122, 124 (5th Cir. 1992). Further, the criminal jury's finding that Alcorta murdered Bean under the immediate influence of a sudden passion does not alter the application of the forfeiture rule. Greer v. Franklin Life, 221 S.W.2d 857, 859 –60 (Tex. 1949) (holding that the statement "where the beneficiary intends to kill the insured and the killing is illegal, the beneficiary loses his or her rights under the policy, even though the killing was done under the immediate influence of a sudden and violent passion from an adequate cause" is "a sound expression of the common law"), superseded by statute on other grounds as stated in State Farm Life Ins. Co. v. Martinez, 216 S.w.3d 799, 804 (Tex. 2007).

Essentially the same analysis holds in applying federal law. Because there is no provision of ERISA, or any other federal law, directly addressing this issue, federal common law applies. Coop. Benefit Adm'rs, Inc. v. Ogden, 367 F.3d 323, 329 (5th Cir. 2004) ("federal common law may be applied to fill 'minor gaps' in ERISA's text, as long as the federal common law rule created is compatible with ERISA's policies."). Federal common law in this regard mirrors state slayer

statutes because "federal common law . . . encompasses the equitable principle that a person should not benefit from his wrongs." Nale v. Ford Motor Co. UAW Ret. Plan, 703 F. Supp. 2d 714, 722 (E.D. Mich. 2010) (citing federal caselaw). Further, "in enacting ERISA, Congress could not have intended to ensure recovery of ERISA benefits when one spouse intentionally kills the other spouse" because "it has long been a principle of federal common law that such killers should not be rewarded with insurance benefits for taking a life." Admin. Comm. For the H.E.B. Inv. & Ret. Plan v. Harris, 217 F. Supp. 2d 759, 761 (E.D. Tex. 2002) (citing Mutual Life Ins. Co. v. Armstrong, 117 U.S. 591, 600 (1886)).

"Because of the existence of a higher standard of proof and greater procedural protections in a criminal prosecution," the fact of Alcorta's criminal conviction is "conclusive as to an issue arising against the criminal defendant in a subsequent civil action." United States v. Thomas, 709 F.2d 968, 972 (5th Cir. 1983). And just as under state law, that Alcorta was found to have murdered Bean under the immediate influence of a sudden passion does not alter the application of the foregoing equitable common law principle because Alcorta nevertheless still intended to kill Bean. See Metro Life Ins. Co. v. McDavid, 39 F. Supp 228, 232–33 (E.D. Mich. 1941); see also Laborers' Pension Fund v. Miscevic, 880 F.3d 927, 936 (7th Cir. 2018) (holding that even a defendant not guilty by reason of insanity could still be found to have intended to kill the insured).

Thus the Court concludes that under the undisputed material facts of the case, both Texas and federal law are clear that in killing Bean, Alcorta forfeited her right to any benefits under the Policy. The Court therefore **GRANTS** summary judgment in favor of Plaintiffs. (Dkt. # 80.)

CONCLUSION

For the reasons stated, Defendant's Second Motion for Extension of Time to Respond to Plaintiff's Fourth Amended Motion for Summary Judgment is **DENIED**. (Dkt. # 82.) Plaintiffs' Fourth Amended Motion for Summary Judgment is **GRANTED** (Dkt. # 80.)

Accordingly, the Court **ORDERS** the Clerk to release the funds that have been paid into the Court's registry in this case, in the following manner: one check in the full amount, with any interest that has accrued, to Garrett Bean, Aneilia Bean, and Jeffrey Dahl, as joint payees. The check shall be sent to their counsel, Jeffrey Dahl, at the Law Office of Jeffrey Dahl, 405 N. St. Mary's St. Suite 242, San Antonio, Texas 78205. It is further **ORDERED** that the payees submit their tax identification numbers to the attention of the Clerk, United States District Court, financial deputy within **ten (10) days** from entry of this order and before the check is released to the payees.

The Clerk is further **INSTRUCTED** to **ENTER JUDGMENT** and **CLOSE** the case.

IT IS SO ORDERED.

DATED: San Antonio, Texas, January 14, 2019.

David Alan Ezra
Senior United States Distict Judge