

**IN THE COURT OF APPEALS OF IOWA**

No. 7-091 / 06-1274  
Filed March 28, 2007

**IN THE MATTER OF THE ESTATE OF  
MARIE V. HARMON, Deceased,**

**JOHN A. WALKER,**  
Appellant/Cross-Appellee.

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Appeal from the Iowa District Court for Story County, Timothy J. Finn,  
Judge.

Co-executors of the Estate of Marie V. Harmon appeal and cross-appeal  
the district court's declaratory judgment ruling regarding two annuity contracts.

**REVERSED AND REMANDED.**

Richard O. Parker of Parker Law Firm, Nevada, for appellant/cross-  
appellee.

Samantha J. Kain of Handley, Block, Lamberti, Zinno & Gocke, P.C.,  
Ankeny, for appellee/cross-appellant.

Craig Hastings of Clark & Hastings, Ames, for the Estate of Marie  
Harmon.

Brian J. Humke, Ames, for American Investors Life Insurance Co., Inc.

Heard by Vogel, P.J., and Vaitheswaran and Eisenhauer, JJ.

**VAITHESWARAN, J.**

Co-executors of an estate disagree on who should receive the proceeds of two annuity contracts. In a declaratory judgment ruling, the district court awarded the proceeds of one to the estate and the proceeds of the other to a nephew. We reverse and remand.

***I. Background Facts and Proceedings***

Marie Harmon died on June 5, 2003. Her nephew, John A. Walker, was named co-executor of her estate, along with her niece, Doris M. Benson.

At the time of her death, Marie owned three annuities. Walker and Benson disagreed on the proper distribution of two of the three annuities. A declaratory judgment was sought, “directing distribution of [American] Investors Life Annuity Policy No. 218426 and Life Investors Annuity Policy No. 01-0100Y130920.”

The parties stipulated to the pertinent facts. Following a hearing, Benson attached additional evidence to her post-trial brief. Walker moved to strike this evidence and the district court granted the motion. Based on the stipulated facts, the court ruled that the estate was the owner of the American Investors annuity and John Walker was entitled to the Life Investors annuity payments. After the court ruled on a post-trial motion, Walker appealed and Benson cross-appealed.

***II. Scope of Review***

The parties disagree on the proper scope of review, with Walker arguing it is for corrections of errors at law, and Benson arguing for de novo review. We review declaratory judgment actions according to how they were tried in the district court. *Owens v. Brownlie*, 610 N.W.2d 860, 865 (Iowa 2000). We

examine the pleadings, the relief sought, and the nature of the case. *Junkins v. Branstad*, 421 N.W.2d 130, 131 (Iowa 1988).

The application for declaratory judgment sought a declaration of rights under two insurance contracts. This is typically a law action. *American Family Mut. Ins. Co. v. Peterson*, 679 N.W.2d 571, 574 (Iowa 2004). Additionally, the district court ruled on evidentiary objections, suggesting the case was tried at law. See *Harrington v. University of N. Iowa*, 726 N.W.2d 363, 365 (Iowa 2007). For these reasons, we conclude our review is on error. *Okoboji Camp Owners Co-Op v. Carlson*, 578 N.W.2d 652, 653-54 (Iowa 1998).

### **III. Analysis**

#### **A. American Investors Life Insurance Company Annuity**

The American Investors policy listed Harmon as the owner of the American policy, Walker as the annuitant, and the Estate of Marie V. Harmon as the beneficiary. The annuity carried a maturity date of April 18, 2000.

In ruling for the estate, the district court relied on a clause in the general provisions on ownership. That clause is as follows:

If an Owner who is a natural person dies during the Annuitant's lifetime, the Contingent Owner (named in the application), if any, will become the Owner. If there is no Contingent Owner, ownership will pass to the estate of the Owner.

As there was no contingent owner, the court concluded ownership passed to the estate.

Walker contends the district court should, instead, have looked to the lead paragraph of the policy and the annuity provision in the policy. The lead paragraph states that American Investors "will pay to the annuitant a monthly

annuity commencing on the Maturity Date in accordance with the annuity provision as provided in the policy.” The annuity provision states:

If the Annuitant is living on the Maturity Date, the Total Accumulated Value will be applied to provide a 10 Year Certain and Life Annuity to the Annuitant, unless an optional type of Annuity is selected during the lifetime of the Annuitant and prior to the Maturity Date.

Walker maintains that, under this provision, he should have received the total accumulated value as of the maturity date of April 18, 2000. He specifically argues he “is entitled to a lump sum payment for the accrued arrearage in monthly annuity payments and then continued monthly annuity payments for the ten years certain and life period.”

Benson counters that the maturity date of the policy is actually April 18, 2010, rather than April 18, 2000. In support of this position, she relies on one of the documents attached to her post-trial brief. This document suggests the Benson sought to extend the maturity date of the policy to April 18, 2010. However, as noted, the district court granted Walker’s motion to strike the document. The court pointed out that the letter was not offered at the hearing. Additionally, the court stated the policy was unambiguous, rendering resort to extrinsic evidence unnecessary to determine intent. To the extent Benson challenges the court’s ruling on the motion, we conclude there was no abuse of discretion, as the letter was not cited in the stipulated facts or offered at the hearing. *Cf. Bradbury v. Chicago, R.I. & P. Ry. Co.*, 149 Iowa 51, 65, 128 N.W. 1, 6 (1910) (holding court did not abuse discretion in sustaining motion to strike amendment to answer filed after evidence was adduced and sustaining motion to strike other evidence).

Benson also maintains that Walker's "course of conduct" was inconsistent with a maturity date of 2000. She notes that American Investors did not establish Walker as the annuitant in 2000 or at any time thereafter and did not begin making payments to him. In her view, these actions support her contention that the policy's maturity date was extended. This argument, while facially appealing, requires us to consider evidence outside the record. Consistent with the policy, the stipulated facts list the maturity date as 2000. Additionally, the stipulated facts make no reference to the cited "course of conduct" or any efforts to modify the maturity date.

Examining only the policy language and the stipulated facts, we agree with Walker that the policy matured on April 18, 2000, he was the listed annuitant, and he was entitled to payment under the policy. Walker concedes that "the total accumulated value of the contract on April 18, 2000, was not determined by the evidence." Although he contends we may calculate the amount due based on the minimum value set forth in the contract, we believe Benson and the district court should have an opportunity to adduce evidence, if necessary, and consider the amount of any judgment. Accordingly, we reverse and remand for entry of judgment in an amount to be determined by the district court, consistent with this opinion.

***B. Life Investors Insurance Company of America Annuity***

The Life Investors policy listed Harmon as the owner, Walker as the annuitant, Harmon as the primary beneficiary, and the Estate of John A. Walker as the contingent beneficiary. The annuity's maturity date was August 15, 2014.

The district court concluded Walker was entitled to receive all annuity payments under this policy based on the language of the policy's "payee" provision. That provision listed the order of payment and listed "the annuitant" as the first payee.

Benson argues that the payee provision is not triggered until the "Annuity Commencement Date" which, in this case, is August 15, 2014. She asserts that the applicable provision is that pertaining to a "successor owner" of the policy.

This provision states:

A successor owner can be named in the application, or in a notice you sign which gives us the facts that we need. The successor owner will become the new owner when you die, if you die before the annuitant. *If no successor owner survives you and you die before the annuitant, your estate will become the new owner.*

(Emphasis added). A successor owner was not named in the application. Therefore, in Benson's view, the estate is the owner of the annuity.

We agree with Benson that the payee provision was not triggered. We also agree with her that, under the "successor owner" provision, the estate became the owner.

We turn to Benson's argument concerning the method of distribution. Benson maintains that "the only option under the contract is to pay out the Cash Value within five years of Ms. Harmon's death." Because Walker and the district court have not had an opportunity to consider this argument, we again believe it is more appropriate to remand this matter. Accordingly, we reverse and remand for entry of judgment in favor of the estate in an amount to be determined by the district court, consistent with this opinion.

**REVERSED AND REMANDED.**