

As a Matter of Law

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Insurance not always meant to be security for support

In *Turner v. DiDonato et al.* 2009, 95 O.R. (3d) 147 (C.A.), the Ontario Court of Appeal considered the provisions of a separation agreement to determine whether the insurance policy was merely security for a diminishing support obligation or whether it was an independent obligation.

Albert DiDonato and Dilia DiDonato were married for 26 years. They separated and entered into an agreement in 1995. That separation agreement contained provisions for spousal and child support. The agreement specified that Mr. DiDonato was to pay spousal support until Dilia reached the age of 65. It also obligated Mr. DiDonato to maintain a life insurance policy in the amount of \$100,000, with Dilia as irrevocable beneficiary, until the support obligation no longer existed.

When Mr. Di Donato died in 2004, Dilia was 56 years old. The amount designated to her was only \$43,507.15. Dilia sued Mr. DiDinato's estate and his second wife, Carol Turner, claiming she was entitled to the shortfall in insurance proceeds. At trial, Dilia was successful but Carol Turner appealed.

Carol Turner argued that the Trial Judge erred in her interpretation of the agreement. Her position was that the "likely intention" of the DiDonatos when they entered into the agreement was that the \$100,000 life insurance benefit was not to extend beyond the support obligation specified in the agreement. She argued that to provide Dilia DiDonato with the full \$100,000 of proceeds would be a windfall extending beyond the bargain between the parties.

The Court of Appeal did not agree with Ms. Turner, citing that if the parties had intended the insurance policy to merely be security for the support payments and nothing more, this would have been addressed within the agreement. The agreement, however, specifically precluded Mr. DiDonato from adjusting the amount of insurance designated in favour of Mrs. DiDonato to account for diminishing future support obligations or for any other reason. The Court of Appeal concluded that the insurance policy was a separate obligation and not security for the support obligation. The appeal was dismissed.



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The case is important from the perspective of what should be included in a separation agreement. If the parties truly want the insurance policy to be tied to the support obligation as security, then the agreement should state this clearly and also contain provisions that allow for the amount of the insurance to be adjusted as the support obligation diminishes.

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