NOTICE
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2025 IL App (5th) 240566-U

NO. 5-24-0566

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

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| *In re* ESTATE OF TIMOTHY C. BEDINGER, Deceased | ) | Appeal from the Circuit Court of Christian County. |
| (Bradley C. Bedinger, Independent Executor, | ) | |
| Petitioner-Appellant, | ) | |
| v. | ) | No. 20-P-26 |
| Lee Ann Bedinger, | ) | Honorable Christopher B. Hantla, |
| Respondent-Appellee). | ) | Judge, presiding. |

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JUSTICE VAUGHAN delivered the judgment of the court.
Presiding Justice McHaney and Justice Sholar concurred in the judgment.

**ORDER**

¶ 1 *Held*: Denial of the executor's petition for citation to discover assets is affirmed where the executor's requested relief is precluded as a matter of law.

¶ 2 Petitioner, Bradley C. Bedinger, as executor of the estate of Timothy Bedinger, appeals the trial court's March 18, 2024, order denying the executor's petition for recovery citation against Lee Ann Bedinger. For the following reasons, we affirm the trial court's order.

¶ 3 I. BACKGROUND

¶ 4 Timothy Bedinger died on March 29, 2020, leaving a last will and testament dated April 7, 2019. On April 3, 2020, a petition for probate of will and letters testamentary was filed. The petition listed an estate value of $350,000 comprised of $150,000 in personal property and

$200,000 in real property. The petition listed decedent's three children, Bradley Bedinger, Lyndsey Ringler, and Stefan Bedinger, as well as decedent's wife, Lee Ann Bedinger, as the heirs. The petition requested Bradley Bedinger be named as executor.

¶ 5 Attached to the petition was Timothy's will that left 25% of all his personal property to each heir listed except for four race cars that would be divided between Bradley Bedinger, Stefan Bedinger, Mitchell Ringler, and Connor Klay. The will further directed how Timothy's 401(k), that was valued at $600,000, should be disbursed. According to the will, one-half of the 401(k)—that would have gone to Timothy's first wife, Lori, who predeceased Timothy after 35 years of marriage—was to be split with one-third to each of Timothy's children. The remaining half of the 401(k) was to be split with 25% to each of the above-named heirs. Timothy's financial assets (Morgan Stanley stock, his life insurance, and any savings account balances) would be split with 25% to each named heir. The residue of the estate, wherever situated, was to be divided with 25% to each heir. On May 21, 2020, the court named Bradley Bedinger as executor of Timothy's estate.

¶ 6 On November 19, 2020, Lee Ann filed a motion for an accounting, stating she had not yet received her widow's award. The next day she filed a motion for determination of spousal award pursuant to section 15-1 of the Probate Act of 1975 (755 ILCS 5/15-1 (West 2020)). The motion alleged that Timothy's annual income was $300,000 and she had received nothing to live on from the estate since his passing.

¶ 7 On November 25, 2020, the executor filed a three-count verified petition for citation to discover assets and recover property against Lee Ann. Count I alleged that the real property located at 4119 Lincoln Trail was titled in joint tenancy between Timothy and his first wife, Lori. The petition alleged that Lee Ann presented a warranty deed to Timothy on March 26, 2020, transferring the real property held solely in Timothy's name to both Timothy and Lee Ann, without

the advice of counsel, three days before Timothy died on March 29, 2020. The petition further alleged that on March 30, 2020, either Lee Ann or someone at her direction filed the warranty deed in the Christian County recorder of deeds. The petition claimed that Lee Ann exercised undue influence over Timothy who was dying of metastatic lung cancer and that Timothy was incompetent to make any decision regarding his real estate due to the medications he was taking for lung cancer at that time. The petition further alleged that Lee Ann was selling the house—solely in her name—and was prohibiting the executor from entering the property to take possession of various items of personal property. Count II provided allegations related to the personal property located within the 4119 Lincoln Trail property for the same reasons as set forth in count I. Count III alleged that Timothy's 401(k) was divided in the will; however, Lee Ann applied for and received a transfer of ownership in her name alone as the surviving spouse. The executor stated that Lee Ann's actions were contrary to the provisions of decedent's will. Attached to the petition were copies of the warranty deeds for the real property along with a list of personal property located at the house.

¶ 8 On November 28, 2022, the executor's inventory and accounting was filed. The inventory included the real property at 4119 Lincoln Trail, the personal property therein, and Timothy's 401(k). As to the real property, Lee Ann quitclaimed the real property back to the estate, and the executor sold the property for $215,000. However, there were two mortgages totaling $186,795.10, and the second mortgage was subject to another estate claim ($25,812.25) with the bank, leaving net proceeds of $9,898.48 following the sale of the real of property. The inventory listed personal property provided to the executor from Lee Ann that was located at 4119 Lincoln Trail. The inventory indicated the personal property was sold at auction and provided the amount of funds received from the auction. The inventory also indicated continuing ownership disputes related to

Timothy's 401(k) and other pieces of personal property. The accounting alleged that Timothy's estate had $55,000 debt, $600,000 in unresolved claims, and $33,497.56 cash in the bank.

¶ 9 On February 1, 2023, Lee Ann moved to dismiss[1] count III related to the 401(k). Therein, she argued that she was the lawful beneficiary pursuant to 26 U.S.C. § 401(a)(E)(ii)(I) (2018) of the United States Internal Revenue Code, which provided that 401(k) proceeds go to the surviving spouse unless the surviving spouse waived them.[2] The motion alleged that Timothy's 401(k) plan required the spouse to sign a written waiver declining the benefits and Lee Ann signed no waiver of her rights to the proceeds. She argued that she had no legal duty to turn over the proceeds to the estate and the citation provided no basis for which she would be required to do so. Lee Ann also filed a response to count II of the citation denying most of the allegations and arguing that the items were purchased by her and Timothy.

¶ 10 On March 20, 2023, an amended petition for probate was filed that included Mitchell Ringler and Connor Klay as legatees due to being named as recipients of personal property as stated in Timothy's will. The estate also filed a response to Lee Ann's motion to dismiss denying most of the allegations, although it admitted that Lee Ann did not sign any waiver related to the 401(k) benefits. Thereafter, the case was continued so the parties could negotiate a settlement. No settlement was reached.

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[1]The motion to dismiss cites to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2020)). However, the contents of the motion reveal that the basis of the motion is both a failure to allege sufficient facts which would be properly classified as a section 2-615 motion but also includes facts related to an affirmative defense which would be a section 2-619 motion (see *id.* § 2-619(a)(9)) and therefore should have cited section 2-619.1. See *id.* § 2-619.1.

[2]This is Lee Ann's interpretation of the section. However, for the sake of clarity, we note that the Seventh Circuit previously determined that there was no basis under ERISA "to find that the provisions of IRC § 401—which relate solely to the criteria for tax qualification under the Internal Revenue Code—are imposed on pension plans by the substantive terms of ERISA." (Internal quotation marks omitted.) *Reklau v. Merchants National Corp.*, 808 F.2d 628, 631 (7th Cir. 1986); see also *Dean v. National Production Workers Union Severance Trust Plan*, 46 F.4th 535, 544 (7th Cir. 2022).

¶ 11 On June 7, 2023, the executor filed a memorandum in opposition to Lee Ann's motion to dismiss count III based on unjust enrichment. The memorandum argued that Lee Ann was only married to Timothy for 1½ years and her receipt of the 401(k) benefits left his children with nothing and his estate underfunded. It further argued that Timothy's will stated how the 401(k) benefit proceeds were to be disbursed, and the will was written one month after he received his lung cancer diagnosis in July 2019. The memorandum argued, citing *In re Estate of Anderson*, 195 Ill. App. 3d 644 (1990), that the 401(k) plan administrators correctly gave the money to Lee Ann but that state law applied as to whether she should be allowed to keep it under an unjust enrichment theory.

¶ 12 On August 23, 2023, the estate filed an amended verified citation to discover assets. It contained the same three counts but added additional language alleging conversion and unjust enrichment in count III.

¶ 13 On November 20, 2023, Lee Ann again responded to amended count III stating she was the lawful beneficiary of the 401(k) benefits and there was no proof that the benefits were the property of Timothy's estate. The objection further argued that the executor was barred by ERISA (Employee Retirement Income Security Act of 1974, Pub. L. 93-405, codified in part at 29 U.S.C. § 18) from alienating Lee Ann's beneficiary distribution and ERISA preempted state law that conflicted with ERISA. It further argued that Lee Ann's beneficiary rights were protected under the Illinois Third Party Beneficiary Contract Act (Third Party Beneficiary Act) (755 ILCS 30/0.01 *et seq.* (West 2020)). Regarding the claim of unjust enrichment, the pleading argued that Timothy's 401(k) contract was a specific contract so an implied contract could not be created for any such claim. The pleading alleged that Timothy left his Allied employment in December 2019, could have opted out of his ERISA agreement and the required beneficiary provisions, but decided to stay in the plan and therefore, the 401(k) benefits were subject to ERISA's surviving spouse

provisions. It further claimed that the will was not prepared by an attorney, was created at the home of the executor who was a witness to the will, and those actions nullified any bequests to the executor. The objection argued that *In re Estate of Hopkins*, 214 Ill. App. 3d 427 (1991), was more relevant than *Anderson* and cited *Boggs v. Boggs*, 520 U.S. 833 (1997), as further support. Copies of those decisions were attached. The pleading was not verified and contained no affidavit by Lee Ann. Lee Ann also filed a separate response as to count II denying most of the executor's allegations. That response was verified by Lee Ann.

¶ 14 On December 29, 2023, the executer filed a reply stating that *Anderson* was "unreliable." It further contended, citing *Hohu v. Hatch*, 940 F. Supp. 2d 1161 (N.D. Cal. 2013), and other federal court decisions cited therein, that *Hopkins* supported the executor's position and *Boggs* was distinguishable. Finally, the executor argued that the Third Party Beneficiary Act was inapplicable because the contract was under ERISA and the estate did not dispute that Lee Ann properly received the benefits pursuant to the contract. It clarified that the estate's position was based on unjust enrichment and the elements were met by the facts of the case.

¶ 15 The parties argued the motion on March 1, 2024, and the court took the matter under advisement. On March 18, 2024, the court issued an order stating the following:

> "That the deceased was married to Lee at the time of his death. There is also no dispute that Lee was named as the beneficiary of the 401(k). The issue is whether the fact that the decedent did not change the beneficiaries in his 401(k) is determinative or if failing to change the beneficiary led to the Unjust Enrichment of Lee. The Court cannot substitute its judgment for that of Mr. Bedinger. However, it appears that Mr. Bedinger was aware of the different categories of assets and that the 401(k) benefits were different than other asserts he owned as [he] specifically mentions the 401(k) in the Will. Federal law is clear

that money contained in the 401(k) shall go to the wife of the deceased. The fact that Mr. Bedinger did not change the beneficiary along with the fact that Brad Bedinger was one of the witnesses to the Will convince this Court that Mr. Bedinger chose to not make the Estate the beneficiary of his 401(k) and instead wished for the full balance of the 401(k) to be inherited by Lee."

¶ 16 The court denied the executor's petition for a recovery citation. The executor timely filed an interlocutory appeal on April 15, 2024.

¶ 17 II. ANALYSIS

¶ 18 On appeal, the executor raises three issues. It first argues that the trial court's ruling that Timothy had authority to unilaterally change the beneficiary of his retirement account was error, as a matter of law. It then argues that the trial court's finding that Timothy did not intend for the provisions of his will to control the distribution of his retirement account because he did not change the beneficiary of 401(k) account, was against the manifest weight of the evidence. Finally, the estate argues that the trial court had jurisdiction over the proceeds of Timothy's retirement account and was not preempted by federal law. However, before we address the merits of this appeal, this court must first address whether jurisdiction is proper.

¶ 19 A. Jurisdiction

¶ 20 Neither party objected to this court's jurisdiction. However, this court has an obligation to determine whether it has jurisdiction. *In re Estate of Devey*, 239 Ill. App. 3d 630, 632 (1993). The executor's initial verified petition for citation to discover assets contained three counts that addressed (1) the marital residence based on Lee Ann's warranty deed placing the real property in Timothy's and her name three days before Timothy died and then filing the warranty deed the day

after he died; (2) personal property that was in the house that she would not turn over to the heirs in Timothy's will; and (3) the 401(k) benefits.

¶ 21 The pleadings indicate that the estate advised the trial court that counts I and II were settled. However, after making that representation, the estate filed an amended verified petition for citation to discover assets that continued to include three counts involving the real and personal property set forth above. Further, Lee Ann filed pleadings that related to both the second and third counts of the petition. Nothing in the trial court's order addresses what appears to be a pending issue related to the personal property in count II.

¶ 22 Illinois Supreme Court Rule 304(b) allows for the automatic appeal of an interlocutory ruling for "[a] judgment or order entered in the administration of an estate, guardianship, or similar proceeding which finally determines a right or status of a party." Ill. S. Ct. R. 304(b)(1) (eff. Mar. 8, 2016). However, "[n]ot every order entered in an estate proceeding may be immediately appealed." *In re Estate of Nicholson*, 268 Ill. App. 3d 689, 693 (1994).

¶ 23 In *Nicholson*, the issue involved both a will contest and the creation of a trust. *Id.* at 692. The court initially dismissed all but one count of the complaint, and the plaintiff appealed. *Id.* After the trial court dismissed the final count, plaintiff filed a second appeal. *Id.* The appellate court found the appeal of counts I, II, III, IV, and VIII in the first appeal were not properly before the court under Rule 304(b)(1) because they did not involve proceedings similar to administration of an estate or a guardianship. *Id.* at 693. The court also found the first appeal premature as to counts VI and VII involving the will because count V, that also involved the will, was still pending. *Id.* The court found that there was no final order as to the first appeal because plaintiff's status remained undetermined until the last count addressing the will was determined. *Id.* "Because dismissal of these [all but one] counts did not finally establish plaintiff's status in regard to the

administration of decedent's estate, the appeal under Rule 304(b)(1) was premature and cannot be sustained." *Id.*

¶ 24 Here, we have a three-count citation to discover and recover assets brought against Lee Ann. While the trial court's order addressed count III, the record is devoid of any ruling on counts I and II of the amended petition, leaving Lee Ann's liability to the estate for those items under the will at issue. The purpose of Rule 304(b)(1) is to promote efficiency and provide certainty "by allowing appeal as to some issues as those issues are resolved during the lengthy procedure of estate administration." *In re Estate of Mueller*, 275 Ill. App. 3d 128, 139 (1995). However, for "purposes of appellate jurisdiction, only those orders which 'finally' determine the right or status of a party are subject to Rule 304(b)(1)." *Id.*

¶ 25 In *Thorp*, the court addressed the committee comments that stated (b)(1) applies to orders that "are final in character although entered in comprehensive proceedings that include other matters. Examples are an order admitting or refusing to admit a will to probate, appointing or removing an executor, or allowing or disallowing a claim." (Internal quotation marks omitted.) *In re Estate of Thorp*, 282 Ill. App. 3d 612, 616 (1996). It noted that the Rule was "designed to prevent multiple lawsuits and piecemeal appeals, while encouraging efficiency and granting certainty as to specific issues during the often lengthy process of estate administration." *Id.* Without the exception, "an appeal would have to be brought after an estate was closed, the result of which may require reopening the estate and marshalling assets that have already been distributed. That result would be both impractical and inefficient." *Id.* at 616-17

¶ 26 Due to the perceived pending nature of counts I and II, the estate was questioned during oral argument as to the status of the counts. The estate confirmed the other two counts were settled. As the other two counts are not pending, we find we have jurisdiction to consider this appeal.

¶ 27 B. Timothy's Ability to Change the Beneficiary

¶ 28 The executor argues that the trial court's finding that Timothy had the ability to change the beneficiary was erroneous as a matter of law because the evidence revealed that the beneficiary status could only be changed by Lee Ann waiving the benefits. The executor's argument is based on the phrase in the order stating that "Mr. Bedinger did not change the beneficiary."

¶ 29 Given this record, we cannot disagree with the executor's argument. While Lee Ann argued that Timothy left his prior employment, and therefore could have exited the plan to avoid the beneficiary designation, the argument was not supported by anything in the record. The argument was presented as part of her objection to count III. However, no affidavit by Lee Ann was submitted in support of the argument.

¶ 30 Lee Ann's motion to dismiss count III was essentially a motion under section 2-619(a)(9) of the Code of Civil Procedure (735 ILCS 5/2-619(a)(9) (West 2020)), in that it claimed that some other affirmative matter defeated the claim. The affirmative matter must appear on the face or be established by external submission. *Jones v. Brown-Marino*, 2017 IL App (1st) 152852, ¶ 20. The external submissions must be supported by affidavit or other evidentiary material. *Strauss v. City of Chicago*, 2022 IL 127149, ¶ 54 (citing *Van Meter v. Darien Park District*, 207 Ill. 2d 359, 377 (2003)). When ruling on a section 2-619 motion to dismiss, the court must interpret all pleadings and supporting documentation "in the light most favorable to the nonmoving party." (Internal quotation marks omitted.) *Id.* Here, Lee Ann's arguments that Timothy left his employment and had other options to address his 401(k) due to changing employers were not supported by affidavit or evidentiary material. Accordingly, we agree with the executor that the trial court erred by relying on the alleged claim that Timothy did not change the beneficiary of the 401(k) as a basis for granting the dismissal, where the only verified evidence revealed that a change in the beneficiary

could only occur if Lee Ann affirmatively waived the benefits, which both parties agreed, did not occur.

¶ 31 C. Testator's Intent

¶ 32 The executor also argues that the trial court's finding that Timothy did not intend the provisions of his will to control the distribution of his retirement account because he did not change the beneficiary of the account was against the manifest weight of the evidence. He supports the argument by citing *Norton v. Jordan*, 360 Ill. 419, 427 (1935), which stated, "A testator's intention must be obtained from the words of the will itself." In response, Lee Ann argues that Timothy could have acted on his 401(k) when he left his employment and therefore, the court's finding is not against the manifest weight of the evidence.

¶ 33 "The cardinal rule of will construction, to which all other rules yield, is the ascertainment of a testator's intention from the will itself." *In re Estate of Kirchwehm*, 211 Ill. App. 3d 1015, 1018 (1991) (citing *Vollmer v. McGowan*, 409 Ill. 306, 311 (1951)). The testator's intent is established by "perusing the words used in the will for actual meaning before applying rules of construction." *Id.* (citing *Hoge v. Hoge*, 17 Ill. 2d 209, 212 (1959)). Here, there is no allegation that Timothy's will was ambiguous. Accordingly, interpretation of Timothy's will is a question of law reviewed *de novo*. *In re Estate of Siedler*, 2019 IL App (5th) 180574, ¶ 24. In construing a will, the testator's intent "must be ascertained and given effect if not prohibited by law." (Internal quotation marks omitted.) *Id.* ¶ 22.

¶ 34 As noted above, Lee Ann's argument relying on Timothy's alleged employment status has no merit where no evidence or affidavit was submitted to support the argument. The lack of evidence, however, is not determinative of the issue. Here, the language in Timothy's will clearly establishes that he intended for his will to distribute his 401(k) benefits following his death. While

Lee Ann and the trial court relied on the fact that one of the named beneficiaries of the 401(k) in the will was also a witness, an act that would void any benefit to said witness by section 4-6 of the Probate Act (755 ILCS 5/4-6 (West 2020)), such action does not render the will itself void (see *In re Estate of Meskimen*, 84 Ill. App. 2d 471, 481 (1967)) and the record is barren of any evidence indicating Timothy was aware of said preclusion. Accordingly, Timothy's intent to distribute his 401(k) benefits via his will is clear, leaving only a determination as to whether such interpretation is prohibited by law.

¶ 35 D. ERISA and the Third Party Beneficiary Act

¶ 36 "Congress enacted ERISA for the express purpose of providing safeguards to protect the interests of participants in employee benefit plans." *Scholtens v. Schneider*, 173 Ill. 2d 375, 383 (1996). Section 514(a) of ERISA contains a preemption clause that "reflects Congress' intent to establish regulation of employee benefit plans as an exclusively federal concern." *Id.* The "basic purpose of the preemption provision in ERISA (29 U.S.C. § 1144(a) (1982)) is to 'avoid a multiplicity of regulation in order to permit the nationally uniform administration of employee benefit plans.' " *Id.* at 384 (quoting *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Insurance Co.*, 514 U.S. 645, 657 (1995)). In addition to the preemption provisions, ERISA includes provisions that address the payment of plan benefits to a surviving spouse or even an ex-spouse. See 29 U.S.C. §§ 1055, 1056 (2018).

¶ 37 Here, the executor argues that the trial court had jurisdiction over the proceeds of Timothy's retirement account pursuant to the citation provisions of the Probate Act and was not preempted by federal law. He argues that section 16-1 of the Probate Act (755 ILCS 5/16-1 (West 2020)) provided the trial court with jurisdiction to address the proceeds of Timothy's 401(k) account because the benefits were already distributed to Lee Ann and the executor was alleging

that Lee Ann had in her possession property belonging to the estate. In support, the executor relies on *In re Estate of Anderson*, 195 Ill. App. 3d 644 (1990), *In re Estate of Hopkins*, 214 Ill. App. 3d 427 (1991), and *Hohu v. Hatch*, 940 F. Supp. 2d 1161 (N.D. Cal. 2013).

¶ 38 In *Anderson*, the decedent's federal employee life insurance policy was purchased by his employer and, since the policy contained no designated beneficiary, payment was made to the surviving spouse. *Anderson*, 195 Ill. App. 3d at 648. However, decedent and the surviving spouse entered into a prenuptial agreement that precluded the surviving spouse's receipt of anything other than what was provided to her in the prenuptial agreement. *Id.* at 647-48. The estate filed a petition for citation to discover assets against the surviving spouse to obtain the funds she received pursuant to the life insurance policy. *Id.* at 648. The trial court agreed with the estate and ordered the surviving spouse to turn the proceeds over to the estate. *Id.* On appeal, the court found that "decedent failed to designate by written document his beneficiary of the life insurance," the prenuptial agreement did not include the life insurance policy, "the proceeds were payable to respondent by operation of law," and affirmed the trial court's decision. *Id.* at 651-52.

¶ 39 In *Hopkins*, the issue involved distribution of the decedent's pension benefits. *Hopkins*, 214 Ill. App. 3d at 429-30. However, in that case, an antenuptial agreement was at issue because the agreement provided "that each party would retain his or her separate property and would not have any rights to the estate or property of the other when the marriage was terminated by death or legal proceedings." *Id.* at 430. Decedent's investment plan named decedent's daughter from an earlier marriage as the beneficiary and named decedent's sister as the trustee if the daughter was a minor at the time of decedent's death. *Id.* Due to amendments to ERISA, the surviving spouse argued that she never waived her right to benefits and therefore, she was the rightful owner of decedent's investment account because decedent never responded to correspondence from the plan

stating that she would be the beneficiary, even if another beneficiary was previously designated. *Id.* at 430-31. After the case was dismissed from federal court, the parties returned to state court where decedent's sister filed a motion for summary judgment which was granted by the trial court. *Id.* at 431. On appeal, the appellate court enforced the antenuptial agreement and affirmed the trial court's decision. *Id.* at 432-33.

¶ 40 The decision in *Hohu* provides additional support for *Anderson* and *Hopkins* after addressing the anti-alienation provisions of ERISA. *Hohu*, 940 F. Supp. 2d at 1174; see also 29 U.S.C. § 1056(d) (2018). *Hohu* noted, citing *Kennedy v. Plan Administration for DuPont Savings & Investment Plan*, 555 U.S. 285, 300 n.10 (2009), that the "Supreme Court has expressly left it open whether the estate of a deceased participant may bring an action in state or federal court against the designated beneficiary to obtain the benefits *after* they are distributed." (Emphasis in original.) *Hohu*, 940 F. Supp. 2d at 1174. *Hohu* followed numerous cases which concluded that ERISA did not preempt post-distribution suits against ERISA beneficiaries. *Id.* at 1175.

¶ 41 Accordingly, we agree that case law supports the executor's position that post-distribution litigation may not be preempted by ERISA. See *id.*; *Hopkins*, 214 Ill. App. 3d at 432-33; *Gelschus v. Hogen*, 47 F.4th 679, 685-86 (8th Cir. 2022); *Metlife Life & Annuity Co. of Connecticut v. Akepel*, 886 F.3d 998, 1007 (11th Cir. 2018) ("[A] party who is not a named beneficiary of an ERISA plan may not sue the plan for any plan benefits. A party, however, may sue a plan beneficiary for those benefits, but only after the plan beneficiary has received the benefits."). We note, however, that most of these decisions are distinguishable because they involve contractual obligations, *i.e.*, prenuptial agreements, antenuptial agreements, or other legal obligations. In the present case, there is no such contractual obligation. Lee Ann was the named beneficiary under the

401(k) plan and ERISA controls Lee Ann's retention of 401(k) benefits. Therefore, we find no basis for the executor's contention.

¶ 42 Regardless, we do not find the ERISA argument dispositive of this case. In addition to the ERISA arguments presented by both parties, Lee Ann also argued that the executor's position was contrary to Illinois law, specifically citing the Illinois Third Party Beneficiary Act (755 ILCS 30/0.01 *et seq.* (West 2020)). Section 1 of the Act states, *inter alia*,

> "The *** designation under a pension, [or] retirement *** of any person to be a beneficiary, payee or owner of any right, title or interest thereunder upon the death of another, *** shall not be subject to or defeated or impaired by any statute or rule of law governing the transfer of property by will, gift or intestacy, even though such designation or assignment is revocable or the rights of such beneficiary, payee, or owner or assignee are otherwise subject to defeasance." *Id.* § 1.

¶ 43 The executor contends that the trial court did not rely on the Act in its decision and further argues that Lee Ann did not cross-appeal the decision as if to claim we have no jurisdiction to consider the Act. We disagree. This court may affirm a trial court for any reason supported by the record, regardless of the particular basis relied upon by the trial court. *Petta v. Christie Business Holding Co.*, 2023 IL App (5th) 220742, ¶ 26. As noted above, the court must ascertain the intent of the testator and give effect to the language unless it is prohibited by law. *In re Estate of Siedler*, 2019 IL App (5th) 180574, ¶ 22. While the executor contends the law is "arcane" and therefore has no applicability, no citation for such proposition was provided and, therefore, the argument must fail. See Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020).

¶ 44 The executor also argues, citing *In re Estate of Beckhart*, 371 Ill. App. 3d 1165, 1169 (2007), that the Act does not apply in this case because unjust enrichment was shown. We disagree

with this simplistic argument. In *Estate of Beckhart*, the decedent named his estate as the beneficiary of his employer-funded insurance policy. *Id.* at 1167. Decedent's ex-wife filed a motion for a constructive trust based on the estate's receipt of decedent's life insurance proceeds that she claimed were rightfully owed to decedent's child. *Id.* The basis of the ex-wife's request for a constructive trust was a claim of unjust enrichment stemming from the settlement agreement issued in the decedent and his ex-wife's divorce proceeding. *Id.* The settlement agreement stated that each would name their only child as the beneficiary to any employer-provided life insurance policy. *Id.* In determining the correct beneficiary of the insurance policy, the court addressed the child's vested right in the insurance policy benefits. *Id.* at 1169. The court found that equity required it to treat the insurance policy as if the child had been named. *Id.* Accordingly, while *Estate of Beckhart* cited section 1 (*id.* at 1168), it ultimately held that equity could defeat the statutory language "when a beneficiary's right to a policy's proceeds vests before the insured changes the beneficiary." *Id.* at 1169. A similar conclusion was seen in *In re Estate of Milus*, 2022 IL App (1st) 210729-U, ¶¶ 30-35, which was also based on a marital settlement agreement.

¶ 45 Here, however, no prior obligation by decedent was presented and no earlier vesting of the 401(k) proceeds was alleged. Instead, the executor attempts to circumvent the distribution of the 401(k) proceeds by use of Timothy's will pursuant to a claim of unjust enrichment. However, such action is specifically precluded in section 1, and no superior right, as seen in *Estate of Beckhart*, or *Estate of Milus*, was presented. Nor is any affirmative waiver, as shown in the *Estate of Hopkins* antenuptial agreement, applicable. Accordingly, we affirm the trial court's order denying the executor's petition for citation to discover assets.

¶ 46 III. CONCLUSION

¶ 47 For the above-stated reasons, we affirm the trial court's dismissal of the estate's petition for citation to discover assets.

¶ 48 Affirmed.