1983

Suzanne Proctor, On Behalf of Her Minor Daughter, Angela Beth Proctor v. Insurance Company of North America And Shirley Fletcher aka Shirley Worthen : Brief of Respondent, Insurance Company Of North America

IN THE SUPREME COURT OF THE STATE OF UTAH

SUZANNE PROCTOR, on behalf of her minor daughter, ANGELA BETH PROCTOR,

Plaintiff/Appellant,

v. Civil No. 19288

INSURANCE COMPANY OF NORTH AMERICA and SHIRLEY FLETCHER aka SHIRLEY WORTHEN,

Defendants/Respondents.

BRIEF OF RESPONDENT, INSURANCE COMPANY OF NORTH AMERICA

APPEAL FROM JUDGMENT OF THE THIRD JUDICIAL DISTRICT COURT
THE HONORABLE TIMOTHY R. HANSON PRESIDING.

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TABLE OF CONTENTS

CASES CITED

TABLE OF CONTENTS
(Continued)

TABLE OF CONTENTS
(Continued)

STATE STATUTES CITED

TABLE OF CONTENTS
(Continued)

OTHER AUTHORITIES CITED

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CASE STATEMENT

Angela Proctor claims a right to life insurance policy proceeds which were paid by Insurance Company of North America to Shirley Fletcher Proctor, the "wife" of the insured within the meaning of the policies and the intended beneficiary.

DISPOSITION BELOW

The Honorable Timothy R. Hanson of the Third Judicial District Court heard Cross-Motions for Summary Judgment upon

stipulated facts, granted Respondents' Motion for Summary Judgment and dismissed Appellant's Complaint with prejudice.

RELIEF SOUGHT

Respondent, Life Insurance Company of North America ("LINA"), respectfully requests that judgment below be affirmed and that respondent, LINA, be awarded its costs. In the alternative, this case should be remanded to the Trial Court for further proceedings.

FACTS

On April 24, 1966, Willis Brent Proctor ("Brent") and Suzanne Proctor ("Suzanne") were married. (R. 314.) Angela Beth Proctor is the sole child of that marriage and is Brent's sole surviving issue. (R. 314.)

Suzanne sued for divorce and obtained an interlocutory decree on March 13, 1968 after having separated from Brent. (R. 314.) The divorce became final three months after entry of the interlocutory decree. (R. 314.) Before the divorce, Brent participated in a marriage ceremony with Shirley Fletcher Proctor ("Shirley") on July 15, 1967. (R. 315.)

Subsequent to that marriage ceremony, Shirley and Brent resided together as husband and wife continuously until Brent's death in a motorcycle accident on September 29, 1980. (R. 315.) During the thirteen years they lived

Together, Brent held Shirley out to be his wife and his only wife. He executed several documents indicating that she was his wife. (R. 315, 316.) Among them were loan applications indicating Shirley to be his wife. He filed joint Federal tax returns with Shirley, sent her "anniversary cards" on the anniversary of their marriage and generally represented to public, friends and family that Shirley was his sole wife for all purposes.

In April, 1978, Brent purchased an accidental death insurance policy from the respondent, LINA, through the Chevron Travel Club, Inc. (R. 313.) On the face of the Chevron Travel Club application was a printed box, above which appeared: "To indicate the level of Broad Coverage Accidental Loss-Of-Life Insurance you want included in your Chevron Travel Club Membership, affix your stamp here. (See reverse for benefits of each Plan.)" (R. 317.) Brent attached a paper stamp which indicated that he had selected Plan 2, the "Member and Spouse" Plan. (R. 317.)

The reverse side of the Chevron Travel Club application explained the four alternative insurance plans: (1) a "Member Only Plan"; (2) a "Member and Spouse Plan"; (3) a "Member and Eligible Children Plan"; and (4) a "Member, Spouse and Eligible Children Plan". By affixing this particular stamp to his application, Brent selected a policy which insured both his own life and that of his "spouse".

This policy of insurance provided that the named insured, Brent, could designate a beneficiary. If no beneficiary were named, the proceeds would be payable to the first surviving class of the following beneficiaries: (1) husband or wife, (2) child or children, (3) mother or father, or (4) brothers or sisters. No specific individual beneficary was named by Mr. Proctor in the policy. (R. 313.)

In January, 1979, Brent and Shirley purchased a second LINA policy of insurance through the Chevron Travel Club. Again, Brent indicated that he wished to purchase insurance under the "Member and Spouse Plan," this time by checking one of four possible boxes on the application. (R. 313, 318.) No specific individual beneficiary was named in the second application and, again, the proceeds of the policy were payable to the first surviving class of the following beneficiaries: (1) husband or wife, (2) child or children, (3) mother or father, or (4) brothers or sisters. (R. 313.)

As a natural result of injuries sustained in an automobile-motorcycle accident, Brent died on September 29, 1980. (R. 314.)

The proceeds from the two insurance policies in the sum of $46,701.50 were paid to Shirley by LINA as the only claimant under the policies. (R. 314-15.) There is an additional $1,900 still to be paid from LINA pending direction of the Court. (R. 315.)

ARGUMENT

I.

THE INSURANCE POLICIES WERE CONTRACTS BETWEEN THE INSURED AND THE INSURER AND THE LANGUAGE OF SUCH CONTRACTS MUST BE INTERPRETED IN LIGHT OF THE INTENT OF THE PARTIES.

This case hinges on the meaning of the word "wife" as used in the two life insurance contracts. The insured, Brent, appears to have intended that the term "wife" mean only Shirley and that she should receive the proceeds of the policies.

The case of Bergera v. Ideal Nat'l Life Ins. Co., 524 P.2d 599 (Utah 1974), presents an analogous situation. In Bergera, the issue was the meaning of the term "war" in a life insurance policy which excluded coverage for death resulting from war. The insured died while serving in the United States armed forces in Viet Nam. The President had never declared war in Viet Nam and the insured's beneficiaries claimed coverage. The Court stated: "The policy is merely a contract between the insured and the insurer. Its language should be construed pursuant to the same rules as are applied to other ordinary contracts, to wit: What did the parties thereto intend by the language used?" Id. at 600 (emphasis added).

In Bergera, the term "war" was interpreted according to the meaning intended by the insured and the insurer and not according to any meaning expressed by Congress or the President. It is clear that Congress had the power to define the term "war". Congress' definition, however, did not control what the parties meant by the term "war" in a private contract.

Similarly, the insurance policies at issue in this case must be interpreted according to the meaning intended and understood by the insured (Brent) and the insurer (LINA) and not according to the intent expressed by the state legislature. Pacific Automobile Ins. Co. v. Commercial Cas. Ins. Co. of New York, 161 P.2d 423, 426 (1945) ("an insurance contract like any other contract must be interpreted in the light of the intention of the parties"); Cf. Woolery v. Metropolitan Life Ins. Co., 406 F. Supp. 641, 644 (E.D. Va. 1976) (statutory definition controlled because the policy was issued by the federal government under an Act of Congress); Metropolitan Life Ins. Co. v. Spearman, 344 F. Supp. 665 (M.D. Ala. 1972) (statutory definition controlled because the policy was issued by the federal government under an Act of Congress).

> As is the case of contracts generally, the cardinal principle pertaining to the construction and interpretation of insurance contracts is that the

intention of the parties should control. 43 Am. Jur. 2d Insurance § 272 (1982) (footnotes omitted). See also the cases cited therein.

This Court has always held that "a contract made by parties should be construed so as to give effect to what the parties intended at the time it was made." DuBois v. Nye, 584 P.2d 823, 824-25 (Utah 1978). See also O'Hara v. Hall, 628 P.2d 1289, 1291 (Utah 1981); Barrus v. Wilkinson, 389 P.2d 207, 208 (Utah 1965).

II.

THE INTENT OF THE INSURED CONTROLS THE INTERPRETATION OF THESE PARTICULAR INSURANCE CONTRACTS, AND BRENT INTENDED THE PROCEEDS TO BE PAID TO SHIRLEY, THE PERSON HE CONSIDERED TO BE HIS "WIFE".

The obvious purpose of LINA in articulating the classes of individuals who would receive the benefits of the policies was to specify who would be the beneficiaries if the insured failed to name specific beneficiaries. Conversely stated, LINA's only purpose was to see that the proceeds of the policies were paid to those persons that the insured intended.

LINA did not foresee, nor could it have reasonably foreseen, that there would be a dispute over the meaning of the term "wife" used in the language of the policy. As the Utah Supreme Court has stated:

> In resolving a dispute about the interpretation of provisions in a contract the objective is to determine what the parties intended at the time it was

> executed; and if the intent with respect to some unforeseen subsequent occurrence was not clearly articulated, what would have been their intent if their minds had adverted to such an occurrence. Union Pacific R.R. v. El Paso Natural Gas Co., 17 Utah 2d 255, 408 P.2d 910, 913 (1965).

It was and is LINA's intent to pay the policy proceeds to the insured's intended, and only, beneficiary. LINA's purpose was only to identify the insured's intended beneficiary. Brent's intent, therefore, controls.

In determining who the beneficiary of a life insurance policy is, it is the intention of the insured which is the controlling element. E.g., Wheaton Nat'l Bank v. Aarvold, 38 Ill. App. 3d 658, 348 N.E.2d 520, 523 (Ill. App. 1976); Pabst v. Hesse, 286 Minn. 33, 173 N.W.2d 925, 927 (1970); Jenkins v. Liberty Life Assur. Co., 207 So. 2d 255, 258 (La. App. 1968); New York Life Ins. Co. v. Rak, 24 Ill. 2d 128, 180 N.E.2d 470, 472-73 (1962).

> The intention of the insured is the controlling element and almost any form of words which demonstrates the insured's intention is sufficient. Thus, the fact that the beneficiaries in a life policy are misdescribed as respects their relationship to the insured generally will not result in the designation of no beneficiary so as to disregard the intent of the insured. 2 J. Appleman & J. Appleman, Insurance Law and Practice, § 781 (1966 & Supp. 1982) (footnotes omitted).

It is undisputed that Brent intended the LINA proceeds to be paid to Shirley. Brent purchased - years after his divorce from Suzanne - an insurance plan which insured both

himself and his "spouse". He obviously considered Shirley to be his spouse and held her out to the public, friends, family and the government as his spouse.

It is clear that Brent considered Shirley to be his spouse for purposes of coverage under the insurance policy and that he also considered Shirley to be his "spouse" for purposes of payment of the insurance proceeds. Had Shirley predeceased Brent, LINA could not possibly have escaped its obligation under the insurance policies to pay death benefits to Brent. Shirley's life was insured under the policies as the spouse of Brent and LINA was obligated to make payment if she had predeceased Brent. Conversely, Brent was an insured under the policies and LINA was obligated to make payment of the proceeds to Brent's spouse according to the policies.

It also appears clear that had Brent foreseen any question, he could have and would have designated Shirley as a specific beneficiary under the policies. See Union Pacific R.R. v. El Paso Natural Gas Co., supra.

The Trial Court found that Brent relied upon the clause which designated who would receive payment in lieu of a named beneficiary believing that the proceeds would be paid to Shirley.

III.

THE TRIAL COURT'S FINDING THAT THE PARTIES INTENDED SHIRLEY TO BE THE BENEFICIARY UNDER THE POLICIES IS A FINDING OF FACT WHICH IS SUPPORTED BY SUBSTANTIAL EVIDENCE.

Appellant's Brief correctly states the proposition that the interpretation of a contract is ordinarily a question of law for the Court. It is not invariably so, however. "In ascertaining the meaning of words in a contract the intention of the parties is controlling and where it is susceptible of different interpretations extraneous evidence is admissible to show the intention." Bennett v. Robinson's Medical Mart, Inc., 18 Utah 2d 180, 417 P.2d 761, 764 (1966).

The appellant does not dispute that extraneous evidence is admissible to explain an ambiguous term in a contract and appellant correctly points out that a term of a contract is not ambiguous merely because the parties to the contract urge diverse interpretations upon the Court. Here, however, the one party to these insurance contracts whose intent is controlling was not before the Trial Court to testify as to his intent. The Trial Court, therefore, heard stipulated facts to determine the intent of the parties.

Once extraneous evidence is properly admitted to determine the intent of the parties, the intent becomes a question of fact. Central Credit Collection Control Corp. v. Grayson,

7 Wash. App. 56, 499 P.2d 57 (1972) [quoted by the Utah Supreme Court in Overson v. United States Fidelity & Guar. Co., 587 P.2d 149, 151 (Utah 1978)].

In the case below, the District Court heard Cross-Motions for Summary Judgment on stipulated facts. The Court found that Brent had intended the word "wife" to mean only Shirley and intended Shirley to receive the proceeds of the insurance policies as the beneficiary. The Court's finding was supported by substantial evidence and must be sustained. Leon Glazier & Sons, Inc. v. Larsen, 26 Utah 2d 429, 491 P.2d 226, 227 (1971). The evidence shows that Brent and Shirley lived together as husband and wife for thirteen years. Brent purchased the policies indicating that his "wife" was to be not only a beneficiary but an insured also. Brent consistently held Shirley out to be his wife for all purposes. There can be no doubt that the Trial Court's finding is supported by substantial evidence.

IV.

APPELLANT'S CONTENTION THAT THE RELATIONSHIP WHICH BRENT AND SHIRLEY EACH CONSIDERED TO BE MATRIMONIAL IN NATURE CANNOT BE RECOGNIZED FOR ANY PURPOSE UNDER UTAH LAW IS INCORRECT.

It is clear that a marriage must be validly solemnized by an authorized individual in order to be recognized under Utah

law for most purposes. However, Utah law does allow invalid marriages to be recognized for limited purposes.

Utah Code Ann. § 30-1-17.1 (1976) gives Utah Courts the power to annul marriages which are prohibited or void. The Court also has extensive equitable powers to recognize the parties' putative marriage relationship. The Court may make orders for alimony, child support, child custody and child visitation rights when annulling an invalid marriage. Utah Code Ann. § 30-1-17.2 (1976); Maple v. Maple, 566 P.2d 1229 (Utah 1977); Ferguson v. Ferguson, 564 P.2d 1380, 1381-82 (Utah 1977). See also Jenkins v. Jenkins, 153 P.2d 262 (Utah 1944) (prior to the new statute, attorney's fees could not be awarded to a "wife" seeking an annulment because no support obligation existed without a valid marriage). By granting a Court order for alimony in a proceeding to annul a void marriage, the Court has power to recognize the parties' relationship and enforce marital obligations even though the marriage was "void" from the beginning. These statutes allow Utah Courts to recognize an invalid marriage in equity for some limited purposes.

The case of Metropolitan Life Ins. Co. v. Manning, 568 F.2d 922 (2nd Cir. 1977), is directly on point. In Manning, Irene Penn Manning was married to Thomas Gaines in 1941. Irene and Thomas Gaines were separated in 1943, but were not

in accord. In 1956, Irene participated in a marriage ceremony with Edward Manning and thereafter lived with Edward as his wife until 1975, when she died. Irene's life was insured under a Federal Employees Group Life Insurance policy. Irene had not designated a specific beneficiary. However, the policy indicated that payment would be made according to a federal statutory schedule which gave first priority to the insured's "widow" if no beneficiary were named.

The District Court relied upon Sears v. Austin, 292 F.2d 690 (9th Cir.) cert. denied, 368 U.S. 929 (1961) (overruled by 5 U.S.C.A. § 8105(a) (West Supp. 1983), and held that Edward Manning, and not Thomas Gaines, was entitled to the insurance proceeds according to the "manifest intent" of the insured.

Upon appeal, the Ninth Circuit Court did not question the soundness of the "manifest intent" doctrine which had been adopted by the federal courts in cases involving Federal Employees Group Life Insurance policies. The "manifest intent" doctrine required payment of proceeds to be made according to the intent of the insured despite noncompliance with the technicalities of naming a new beneficiary. Congress, however, had subsequently amended 5 U.S.C.A. § 8705(a) (West Supp. 1983) for reasons of administrative convenience to require strict compliance with statutory provisions for naming a beneficiary.

The Ninth Circuit Court held the District Court's reliance upon earlier cases erroneous, Metropolitan Life Ins. Co. v. Manning, 568 F.2d 922, 925-26, but affirmed the award of the policy proceeds to Edward Manning upon different grounds. It found that Congress, as the insurer and by statute, intended that payment under the statutory scheme be made to the "widow" of the insured as defined by the law of the state where the insured was married or resided. The validity of Irene's marriage to Edward Manning was controlled by Connecticut law.

Connecticut law, like Utah law, characterized a bigamous marriage as "invalid". However, a Connecticut statute allowed its state courts to annul marriages which were void or invalid. The Connecticut statute, like the Utah statute, allowed the Court to make orders for the payment of alimony even where an annulment was granted on the grounds that the marriage was void. The Ninth Circuit Court, under a statute very similar to the Utah statute, recognized the "marriage" of Irene and Edward as having "sufficient legal effect to entitle him to the proceeds of his wife's insurance even if Gaines were able to prove satisfactorily that the marriage was bigamous." Metropolitan Life Ins. Co. v. Manning, supra, at 929. See also Perlstein v. Perlstein, 152 Conn. 152, 204 A.2d 909, 911-12 (1964).

Likewise, the marriage of Brent and Shirley has sufficient legal effect to entitle Shirley to the insurance proceeds as the wife of the insured. Appellant is unable to cite to any rule of law or public policy which would prevent limited recognition of this marriage relationship in equity according to the intent of the insured. See 2 J. Appleman & J. Appleman, Insurance Law and Practice, § 803 (1966 & Supp. 1982) ("most courts, under ordinary form policies in particular, are prone to permit a woman living with a man as his wife, without the benefit of legal ceremony, or even as regular mistress, to be designated as a beneficiary and to recover the policy proceeds"); 2 J. Appleman & J. Appleman, Insurance Law and Practice, § 781 (1966 & Supp. 1982) ("in the absence of statutory contractual restriction, the utmost freedom exists as to who may be designated as a beneficiary. And where the right to so designate is given by contract, that right should neither be curtailed nor abrogated. The intention of the insured is the controlling element ...." (emphasis added)).

V.

THE DISTRICT COURT'S DECISION SHOULD BE AFFIRMED IN ALL RESPECTS. IN THE ALTERNATIVE, THIS CASE SHOULD BE REMANDED TO THE TRIAL COURT FOR FURTHER PROCEEDINGS.

The District Court granted respondents' Motion for Summary Judgment on the basis of the insured's intent alone.

The Court's findings made it unnecessary for the Court to consider other issues which were raised by the pleadings. It was unnecessary to consider LINA's Cross-Claim against respondent, Shirley. It was also unnecessary to consider LINA's claims that it is absolved of liability by reason of good faith payment to Shirley.

Utah Code Ann. § 31-19-30 (1974) absolves an insurer who makes payment of policy proceeds in good faith to one who appears to be entitled to payment before any written conflicting notice of claim is received by the insurer. LINA made payment to Shirley on December 15, 1980. Appellant admits that she first sent written notice of claim to this respondent on January 28, 1981. Upon Shirley's representation that she was the wife of the insured, LINA made payment in good faith.

Many cases have held that good faith payment of life insurance proceeds to one who appears to be the beneficiary absolves the insurance company of further responsibility if payment is made before the insurer receives notice of conflicting claims and if the insurer acts reasonably. See Weed v. Equitable Life Assur. Soc., 288 F.2d 463, 464-65 (5th Cir. 1961); Harper v. Prudential Ins. Co., 662 P.2d 1264, 1273 (Kan. 1983); Renchie v. John Hancock Mut. Life Ins. Co., 174 S.W.2d 87 (App. Ct. Tex. 1943); John Hancock Mut. Life Ins.

Co. v. Sally, 163 S.W.2d 652 (App. Ct. Tex. 1942); Avondale v. Sovereign Camp W. O. W., 134 Neb. 717, 279 N.W. 355 (1938); Grand Lodge of Colorado K. P. v. Harris, 109 Miss. 173, 68 So. 75 (1915); Metropolitan Life Ins. Co. v. Louisville Trust Co., 28 Ky. 426, 89 S.W. 268 (1905). While the statutory language is less than clear, any other interpretation renders the statute meaningless. Paying the proceeds to the correct beneficiary is all the insured is required to do under the terms of the insurance contract. The statute is not necessary in order to absolve the insurer of any liability if correct payment is made. It is presumed that the legislature would not pass useless, meaningless or futile legislation. Haddenham v. Laramie, 648 P.2d 551, 554 (Wyo. 1982); Walker v. National Fin. Corp., 102 Idaho 266, 629 P.2d 662, 664 (1981); State ex rel. Irvin, Inc. v. Anderson, 164 Mont. 513, 525 P.2d 564, 570 (1974).

The resolution of this issue is not important to this appeal, however, because the District Court did not address this issue. If the Trial Court's decision is not affirmed, this case should be remanded for further proceedings.

Further, respondent, LINA, filed a Cross-Claim against Shirley in this case. The District Court's decision made it unnecessary to address the issues raised by that Cross-Complaint. If judgment of the Trial Court is not affirmed, this

case should be remanded to the Trial Court for further proceedings.

CONCLUSION

The insurance policies which are the subject of this controversy, like any contract, must be interpreted in light of the intention of the parties. Here, Brent's obvious intent that Shirley receive the insurance proceeds controls. The insurance policies contained provisions which designated who would receive the proceeds if the insured failed to name specific beneficiaries. The District Court found that the term "wife" as used in these provisions was intended to include the person the insured considered to be his wife and that Brent expected and intended that Shirley would receive the proceeds of the these life insurance policies. The District Court's finding, upon stipulated facts, is a finding of fact which is supported by substantial evidence and, therefore, must be sustained. The appellant is unable to point to any law or public policy which would prevent this Court from recognizing the relationship between Brent and Shirley in equity for the limited purpose of payment of the insurance proceeds according to Brent's intent. The District Court's decision should be affirmed in all respects and the respondent, Insurance Company of North America, should be granted

it costs. In the alternative, this case should be remanded for further proceedings.

DATED this 6th day of October, 1983.

SNOW, CHRISTENSEN & MARTINEAU

By _____ for
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CERTIFICATE OF SERVICE

I hereby certify that two true and correct copies of the foregoing Brief of Respondent, Insurance Company of North America, were delivered to the following counsel on the 6th day of October, 1983:

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