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Civil Procedure - Discovery - Liability Insurance Coverage Limits Not Discoverable

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adoption statutes of this state do not purport to affect the relationship of any person other than that of the parent's by blood, the adopting parents, and the child." Other courts with similar statutes have held accordingly.[9] This would seem to indicate that the adoption statutes in the instant case are not applicable in determining the testatrix's intention.

In interpreting a will to find the intention of the testator the following presumptions are found to be in general use by the courts. The presumption that where the testator is the adoptive parent, an adopted child is included in the term "children".[10] Where the testator is not the adoptive parent, the presumption is that he did not intend such inclusion,[11] especially when the adoption takes place after the testator's death.[12] Only where the testator has clearly shown by other words that he intended to use the word "children" in a more extensive sense will this presumption be overcome.[13]

The holding in the instant case would appear to give one taking a life estate with remainder to his children what is in effect a general power of appointment over the property. There seems to be nothing to prevent the holder of the life estate from adopting anyone whom he wishes to take the property upon his death.[14] Such a result does not seem to be in accord with legislative intent as expressed in the adoption statutes, nor with the intent of a testator in circumstances similar to those in the instant case.

RICHARD A. RAHLFS.

CIVIL PROCEDURE — DISCOVERY — LIABILITY INSURANCE COVERAGE LIMITS NOT DISCOVERABLE. — In an action arising out of a motorcycle-automobile collision, plaintiff sought, by discovery proceedings, knowledge of the limits of defendant's automobile liability policy. In reversing the lower court's order requiring defendant to answer questions on this point, the Supreme Court of Florida, one justice dissenting, *held* that limits of liability in insurance policies are not matters subject to discovery under the Florida Rules of Civil Procedure. *Brooks v. Owens*, 97 So. 2d 693 (Fla. 1957).

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tate of Pence, 117 Cal. App. 323, 332-333, 4 P.2d 202; *In re* Estate of Jones, 3 Cal. App.2d 395, 39 P.2d 847; *In re* Estate of Stewart, 30 Cal. App.2d 594, 86 P.2d 1071; *In re* Estate of Pierce, 32 Cal.2d 265, 269, 196 P.2d 1; Probate Code, sec. 257." In *In re* Stewart's Estate, *supra* at 1073 the California District Court of Appeal allowed an estate to escheat to the state, rather than allow the adopted children of a predeceased cousin of the intestate take. The court said that "had the legislature intended to enlarge the right of succession of an adopted child to inherit *through*, and not *from* the adopted parent, it would have so provided."

9. See Batcheller-Durkee v. Batcheller, 39 R.I. 45, 97 Atl. 378 (1916) and cases cited therein.

10. Brunton v. International Trust Co., 114 Colo. 298, 164 P.2d 472, 477 (1945) (dictum); Appeal of Wildman, 111 Conn. 683, 151 Atl. 265, 266 (1930) (dictum); Wilder v. Wilder, 116 Me. 389, 102 Atl. 110, 111 (1917) (dictum).

11. Brunton v. International Trust Co., *supra* note 10; Middletown Trust Co. v. Gaffney, 46 Conn. 61, 112 Atl. 689 (1921); Pierce v. Farmers State Bank, 222 Ind. 116, 51 N.E.2d 480 (1943); Copeland v. State Bank and Trust Co., 300 Ky. 432, 188 S.W.2d 1017 (1945); Wilder v. Wilder, *supra* note 10; *In re* Fisler, 131 N.J.Eq. 310, 25 A.2d 265 (Prerog. Ct. 1942).

12. Appeal of Wildman, 111 Conn. 683, 151 Atl. 265 (1930); Copeland v. State Bank and Trust Co., *supra* note 11.

13. Comer v. Comer, 195 Ga. 79, 23 S.E.2d 420 (1942); Copeland v. State Bank and Trust Co., *supra* note 11; *In re* Fisler's Estate, 131 N.J.Eq. 310, 25 A.2d 265 (Prerog Ct. 1942).

14. See Bedinger v. Graybill's Executor and Trustee, 302 S.W.2d 594 (Ky. 1957) (where testatrix placed a fund in trust for her son for life, remainder to his heirs at law, and upon failure of heirs, to specified charities. Eighteen years after testatrix died the son adopted his wife. The court allowed the adopted wife to take under the will as a "child" of the son.)

The applicable statutes in the instant case, as in most states which have an adaptation of the Federal Rules of Civil Procedure, provide for discovery of all relevant matters in pending litigation not privileged,[1] and that are admissible or lead to admissible evidence.[2]

An analysis of existing precedent reveals divergent views with regard to the question of relevancy of liability policy limits.[3]

Those courts whch hold that matters of insurance are discoverable apply a broader meaning to the term "relevancy" in discovery proceedings than at trial.[4] They contend that Rule 1[5] contemplates settlement out of court as well as by litigation in defining the scope of the Rules.

An equally impressive line of authority holds that this matter is not of itself sufficiently material for discovery purposes in pending litigation.[6] The underlying rationale is that Rule 1 does not take into its scope the matter of settlement out of court, but pertains only to such action over which the court has control.[7] This line of cases also holds that to be relevant the matter must be admissible or lead to admissible evidence.[8] The advocates of this view indicate, however, that there may be instances where insurance may be relevant in discovery proceedings,[9] but to be discoverable good cause must be shown.[10]

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1. Fla. Stat. Ann. R.Civ.P. 1.21 (b).
2. Fla. Stat. Ann. R.Civ.P. 1.28.
3 Brackett v. Woodall Products Inc., 12 F.R.D. 4 (E.D. Tenn. 1951); Orgel v. McCurdy, 8 F.R.D. 585 (S.D. N. Y. 1948); Superior Ins. Co. v. Superior Court, 31 Cal. 2d 749, 235 P.2d 833 (1951); People v. Fischer, 12 Ill. 2d 231, 145 N.E.2d 588 (1957); Maddox v. Grauman, 265 S.W.2d 939 (Ky. 1954). *Contra* McNelley v. Perry, 18 F.R.D. 360 (E.D. Tenn. 1955); McClure v. Boeger, 105 F.Supp. 612 (E.D. Pa. 1952); Brooks v. Owens, 97 So.2d 693 (Fla. 1957); Jeppesen v. Swanson, 243 Minn. 547, 68 N.W.2d 649 (1955).
4. See Brackett v. Woodall Products Inc., 12 F.R.D. 4 (E.D. Tenn. 1951) (This case relied primarily on the Financial Responsibility Statutes as crucial in determining the relevance of insurance in discovery. The reasoning here was that since these statutes require minimum limits in the form of bonds or insurance policies, which must be revealed to state authorities in case of an accident, they should be discoverable in proceedings while action is pending in a case, as they are matters of public record under this statute.); Superior Ins. Co. v. Superior Court, 31 Cal.2d 749, 235 P.2d 833 (1951) (The rationale to justify discovery is that since automobile liability policies are for the benefit of the injured third party in case of the insured's negligence, the matter of insurance is not for the sole knowledge of the insured and insurer, thus giving the injured third party a discoverable interest.); Maddox v. Grauman, 265 S.W.2d 939 (Ky. 1951) (In that case the court felt that since standard liability policies provide that persons injured by negligence of the insured may institute proceedings against an insurer if a judgment against the insured is returned unsatisfied, in which instance the matter of insurance is relevant, it should also be relevant prior to the judgment.).
5. See N.D.R.Civ.P. 1 Referring to the new rules of procedure. "They shall be construed to secure the just, speedy, and inexpensive determination of every action."
6. McNelley v. Perry, 18 F.R.D. 360 (E.D. Tenn. 1955); McClure v. Boeger, 105 F.Supp. 612 (E.D. Pa. 1952); Brooks v. Owens, 97 So. 2d 693 (Fla. 1957); Jeppesen v. Swanson, 243 Minn. 547, 68 N.W.2d 649 (1955).
7. See Brooks v. Owens, 97 So. 2d 693 (Fla. 1957); Jeppesen v. Swanson, 243 Minn. 547, 68 N.W.2d 649 (1955).
8. McClure v. Boeger, 105 F.Supp. 612 (E.D. Pa. 1952); Brooks v. Owens, 97 So. 2d 693 (Fla. 1957) (The fundamental purpose of our court system is to insure through their employment an opportunity to prove liability and resulting damages. Liability limits of insurance policies are not material for either of these purposes.)
9. See McNelley v. Perry, 18 F.R.D. 360, 361 (E.D. Tenn. 1955) (dictum) "If defendant is insolvent so pro-ration of insurance becomes an issue among the various claimants, the question of insurance would become material."
10. Brooks v. Owens, 97 So. 2d 693 (Fla. 1957) (It should be noted that the rule regarding discovery by deposition does not require a showing of good cause; however, the rule providing for inspection of documents has such a requirement. The argument of the Brooks case is that the two rules must be read together for purposes of construction. Failure to so construe would allow discovery without showing cause in the case of an oral

It should be noted that North Dakota has not passed on this question. Since North Dakota has rules similar[11] to those in the main case, the problem comes into sharp focus since it will undoubtedly arise eventually in our own courts. It is submitted that the rule of the instant case expresses the more logical view of construction, and that which North Dakota should follow.

RALPH E. KOENIG.

CONSTITUTIONAL LAW — PERSONAL LIBERTY AND SECURITY — CURFEW ORDINANCE WHICH PROHIBITS MINORS UNDER SEVENTEEN FROM BEING ON THE STREETS DURING CERTAIN RESTRICTED HOURS IS VOID. — Appellant, aged 21, was about to be prosecuted under an ordinance which prohibited any person from assisting or encouraging minors under seventeen to violate a curfew ordinance.[1] Prohibition proceedings were initiated to prevent prosecution under the allegedly unconstitutional curfew ordinance.[2] The court *held* that the curfew ordinance was unconstitutional as an unlawful invasion of personal rights and liberties. *Alves v. Justice Court of Chico Judicial District*, 306 P.2d 601 (Cal. App. 1957).

Courts have repeatedly upheld legislation applicable to the protection and welfare of minors, but there exists only a few legal precedents construing curfew ordinances.[3] In 1898 the Texas Court of Criminal Appeals[4] held unconstitutional an ordinance enacted without express legislative authority.[5] The court indicated that exceptions might arise which would necessitate the minor's violation of the ordinance, and as stated in their opinion, ". . . so numerous do they occur to us that they serve themselves to bring into question the reasonability of the law."[6]

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deposition, and requiring a showing of good cause in the instance of discovery of written matters. This would be anomolous according to the view of the Brooks case. It should be observed that the North Dakota Rules have no specific requirement that good cause be shown as a prerequisite to discovery in either case. See N.D.R.Civ.P. 34(a).

11. N.D.R.Civ.P. 26(b); N.D.R.Civ.P. 34(a).

1. The court did not allude to the fact that the minor was married and emancipated from his parents' control.

2. Chico Municipal Code, § 684 "Subdivision (a). It shall be unlawful for any minor under the age of seventeen years of age to be in or on any public street, park, square or any public place between the hours of 10:00 o'clock P. M. and 5:00 o'clock A. M. of the following day, except when and where said minor is accompanied by a parent or legal guardian having the care and custody of said minor, or where the presence of said minor in said place or places is connected with and required by, some legitimate business, trade, profession or occupation in which said minor is engaged.

"Subdivision (b). Any person assisting, aiding, abetting or encouraging any minor under the age of seventeen years to violate the provisions of Subdivision (a) hereof shall be guilty of a misdemeanor . . ." (The court construed "business", in Subdivision (a), as employment and not just any legitimate activity.).

3. See, *e.g.*, People v. Walton, 70 Cal. App. 2d 862, 161 P.2d 498 (1945).

4. *Ex parte* McCarver, 39 Tex. Crim. 448, 46 S.W. 936 (1898). The ordinance prohibited all persons under 21 from being on the streets after 9 P.M. unless accompanied by parents or guardian or unless such minor was in search of a physician.

5. North Dakota has no express provision which grants the power to enact a curfew ordinance. *But see*, N.D. Rev. Code § 40-0501 (1943).

6. *Ex parte* McCarver, 39 Tex. Crim. 448, 46 S.W. 936 (1898). The McCarver case cited several cases involving liberty of association and movement but it is submitted that since we now have several decisions construing curfew ordinances such an analogy is no longer a sound one as minors constitute a class which is distinct from adults. For curfew cases not necessarily pertaining to minors see, Kiyoshi Hirabayashi v. United States, 320 U. S. 81 (1943) (Curfew for Japanese-Americans during World War II held valid.); City of Shreveport v. Brewer, 225 La. 93, 72 So. 2d 308 (1954) (Ordinance which defined acting in a dangerous and suspicious manner included anyone who is found on the streets after midnight without a satisfactory explanation held in-