Michigan Law Review

Volume 46 | Issue 7

1948

INSURANCE-DEATH OF INSURED RESULTING FROM CRIMINAL ABORTION- RIGHT OF BENEFICIARY

R. V. Wellman
University of Michigan Law School

INSURANCE—DEATH OF INSURED RESULTING FROM CRIMINAL ABORTION—RIGHT OF BENEFICIARY—Insured died as the result of a criminal abortion to which she had voluntarily submitted. The policies issued on her life contained a provision to the effect that no benefits should be payable or recoverable should the insured die as a result of a violation of law. The insurer resisted the action brought by the named beneficiary on the policy on two grounds: (a) The insured's death was caused by her violation of law; (b) Although the stated terms of the policy be held not to exclude the risk of death thus caused, it would be contrary to public policy to allow recovery. *Held*, for plaintiff. Under Louisiana law a woman who solicits and submits to an illegal operation is guilty of no crime, hence the policy covers death resulting from such an operation. Moreover, public policy does not stand in the way of enforcing such a contract when the beneficiary is an innocent third party with vested rights. *Payne v. Louisiana Industrial Life Insurance Co.*, (La. 1948) 33 S. (2d) 444.

It is everywhere agreed that in the absence of a statute to the contrary, an insurer may exclude from coverage the risk of death caused by insured's violation of the law.[1] The usual interpretation of "violation of the law" is that it operates to prevent liability only where death proximately results from insured's *criminal* act.[2] Although the language of the provision would seem broad enough to cover violations of civil laws as well, the standard interpretation is generally justified on the dual grounds that criminal behavior is what was contemplated by the parties, and that the narrow interpretation is most favorable to the insured.[3] Thus defeated on its contention that the risk was excluded by the terms of the policy, the insurer here urged, on the basis of considerable authority, that the enforcement of a policy insuring against the risk of death resulting from an illegal operation, is against public policy.[4] The true basis of this position undoubtedly rests on the fundamental proposition that any contract tending to endanger public interests by inducing illegal or immoral conduct is unenforceable. Perhaps the leading case on the point is *Ritter v. Mutual Life Insurance Co.*, which held that though there be no express exception of the risk of death from suicide, an exception must be implied or else the policy will be deemed illegal.[5] This holding met with almost unanimous disapproval in the state courts, and has been impliedly repudiated by later decisions in the Supreme Court on the question of suicide.[6] Its unpopularity seems to have been one of the sources of the line of decisions, relied upon by the court in the principal case, to the effect that a named beneficiary who is guilty of no wrong in connection with the death of the insured may enforce a policy, even though recovery would be denied if it were payable to the estate of the insured. The reason usually stated for this distinction is that a beneficiary with vested rights under a policy is unaffected by the acts of the insured.[7] As has often been pointed out, to rest such decisions on the nature of the beneficiary's interest is completely without basis, for the contract is the source of all rights under it. If to insure against a

[1] 29 AM. JUR., Insurance, § 906, p. 692.

[2] VANCE, INSURANCE, 2d ed., 814 (1930). 17 A.L.R. 1005 (1922).

[3] 6 COUCH, CYCLOPEDIA OF INSURANCE LAW, § 1237 (1930).

[4] Hatch v. Mut. Life Ins. Co., 120 Mass. 550 (1876); Wells v. New England Mut. Life Ins. Co., 191 Pa. 207, 43 A. 126 (1899); Jacob v. Prudential Ins. Co. of America, 256 App. Div. 884, 9 N.Y.S. (2d) 27 (1939).

[5] "A contract, the tendency of which is to endanger the public interests or injuriously affect the public good, or which is subversive of sound morality, ought never to receive the sanction of a court of justice or be made the foundation of its judgment." Mr. Justice Harlan, in Ritter v. Mutual Life Ins. Co., 169 U.S. 139 at 154, 18 S.Ct. 300 (1898).

[6] 49 HARV. L. REV. 304 (1935) and cases there cited. Northwestern Mut. Life Ins. Co. v. Johnson, 254 U.S. 96, 41 S.Ct. 47 (1920), noted in 30 YALE L.J. 401 (1921).

[7] Mutual Life Ins. Co. v. Guller, 68 Ind. App. 544, 119 N.E. 173 (1918), was particularly relied upon by the court in the principal case. Other cases supporting this distinction are: Patterson v. Natural Premium Mutual Life Ins. Co., 100 Wis. 118, 75 N.W. 980 (1898); Seiler v. Economic Life Assn., 105 Iowa 87, 74 N.W. 941 (1898); Parker v. Des Moines Life Assn., 108 Iowa 117, 78 N.W. 826 (1899). Cf. Shipman v. Protected Home Circle, 174 N.Y. 398, 67 N.E. 83 (1903).

criminal act or an act contrary to public policy is illegal because of its tendency to induce the prohibited activity, the illegality would seem to permeate the entire contract.[8] Probably the explanation of these decisions lies in a hesitancy to disagree directly with the Supreme Court, coupled with a conviction that to hold insurance covering death resulting from acts contrary to public policy to be valid will not have any direct effect upon the occurrence of the undesirable conduct. Other reasons for distinguishing the right of a named beneficiary from the right of the estate have been urged, all of which seem to be camouflage of that which truly motivated the decision. Thus it has been said that to permit recovery by the estate would be to allow the insured to benefit from his own wrong, though it seems apparent that a dead man benefits in no real sense from payments made to his estate.[9] It may well be that the public interest would suffer more through a denial of the right of indigent dependents to recover on a policy not expressly excluding the risk in question than from the enforcement of a policy such as was found to exist in the principal case. It is indeed regrettable that the court in the principal case saw fit to rest its decision on the nature of the beneficiary's right, thus adding another to the line of decisions so justly condemned as illogical and misleading.

R. V. Wellman

[8] Hopkins v. Northwestern Life Assurance Co., (C.C., E.D. Penn., 1899) 94 F. 729; Northwestern Mut. Life Ins. Co. v. McCue, 223 U.S. 234, 32 S.Ct. 220 (1912); VANCE, INSURANCE, 2d ed., 544 (1930); 49 HARV. L. REV. 304 (1935).

[9] 8 L.R.A. (n.s.) 1124 et seq. (1907).