Indiana Law Journal

Volume 13 | Issue 6 Article 13

8-1938

Insurance-Presumption of Survivorship

INSURANCE—PRESUMPTION OF SURVIVORSHIP.—The decedent, some time before his death, took out three insurance policies on his life, in each of which, after naming his wife as beneficiary, he reserved the power of changing the beneficiary. Each of the policies provided for distribution of the proceeds in case the beneficiary predeceased the insured. The language whereby this was accomplished varied. One policy stipulated that the proceeds were "payable to the beneficiary if surviving the insured, otherwise to the insured's estate." The other two policies provided, in substance, that if the beneficiary should have died before the insured, the proceeds should be paid to the estate of the insured. The insured and the beneficiary were killed in a common disaster, and no evidence was available to show which survived. The suit here is between the heirs of the husband and the heirs of the wife to determine who is entitled to the proceeds of the policies. The court held in favor of the husband's heirs.[1]

The court declared that its decision followed the weight of authority on the three propositions which it enunciated, although this was the first time the questions had arisen in this jurisdiction.

The first and second propositions may well be treated together: the court held that where two people die in a common disaster there is no presumption in favor of either as to survivorship, and that proof of the same must be furnished by him whose claim is based upon the right of one of the deceased to inherit from the other, or who would recover in the right of the beneficiary of the policy. There can be no doubt that the majority of the courts are in accord with the principal case as to the ability of one of the victims to inherit from the other,[2] but that is of meagre importance here, for this is not an

---

[7] Lucey Mfg. Corp. v. Oil City Iron Works (1930), 15 La. App. 12, 131 So. 57; Piedmont Print Works v. Receivers of Peoples State Bank (1934), 68 F. (2d) 110.

[8] General Discount Corp. v. First Nat'l. Bank (1933), 5 F. Supp. 709; Jewett v. Martinsville Milling Co. (1935), 76 F. (2d), 153; Gallagher v. Germania Brewing Co. (1893), 53 Minn. 214, 54 N. W. 1115 (dominant individual stockholder); Erie Bronze Co. v. Haughney (1936), 17 F. Supp. 1022; Taub v. Coker (1931), 162 S. C. 391, 161 S. E. 117; State ex rel. Sorenson v. Weston Bank (1933), 125 Neb. 612, 251 N. W. 164; Frigidaire Sales Corp. v. Alexandria Bank and Trust Co. (La. App., 1933), 145 So. 703.

[1] McKinney v. Depoy (Ind., 1938), 12 N. E. (2d) 250.

[2] Young Women's Christian Home v. French (1903), 187 U. S. 401, 23 S. Ct. 184; Russel v. Hallet (1880), 23 Kan. 276; Southwell v. Gray (1901), 72 N. Y. S. 342.

effort of the heirs of the wife to share in the husband's estate or vice versa. Instead, the heirs of the wife base their claim on the fact that she was named beneficiary in the policies and that such interest as she had in the policies passed to them at her death. In connection with that contention the court well stated the general rule to be that the burden of proving that the beneficiary survived the insured was on those claiming under the beneficiary, since there were no presumptions of survivorship;[3] and until they did, they had no interest. It seems that a strict construction of two of the policies might have placed the burden of proving survivorship upon the heirs of the insured, but this court, as have most other courts, felt that to do so would defeat the intention of the insured. This intention is believed to have been that the proceeds were to go to the beneficiary only if she were alive and able to use them, otherwise, to the heirs of the insured. In view of the fact that policies are not drawn to fit specific cases, but are usually forms prepared by the insurance company, and being aware of the difficulty of proving survivorship, the courts have maintained that the intention of the insured would be furthered by such an interpretation as would require the beneficiary or her heirs to prove the fact that she survived the insured. The strength of this tendency upon the part of the courts is evidenced by their holding that the following language so provides: "In event of death of all the beneficiaries before the insured,"[4] "If beneficiary dies before insured,"[5] "In event of prior death of beneficiary."[6] Arkansas is the only jurisdiction that has decided the other way, and it held that the words, "If beneficiary die before insured," left the burden of proof upon the heirs of the insured.[7]

The third proposition announced by the court, to the effect that a beneficiary in an insurance policy where the insured has the power of revocation does not have a vested interest, is compatible with the majority rule.[8] The heirs of the wife advanced the argument that she had an interest in the policies that could be divested only by changing the beneficiary in the manner provided for in the policies, and since no change was shown to have been made in that way, her interest was never divested. The courts here consider the survivorship of the beneficiary a condition precedent to the vesting of any interest in the beneficiary rather than construing the failure to survive as a condition subsequent which divests an interest already vested. Until the beneficiary can prove the death of the insured, and can prove that she survived him, the courts have held that she has a mere expectancy in the policies. Some

---

[3] McGowin v. Menken (1918), 223 N. Y. 509, 119 N. E. 877; Fuller v. Linzee (1891), 135 Mass. 468; Middeke v. Balden (1902), 198 Ill. 590, 64 N. E. 1002; Fleming v. Grimes (1926), 142 Miss. 522, 107 So. 420.

[4] Padin v. Briscoe (1891), 81 Tex. 563, 17 S. W. 42; Middeke v. Balden, supra, note 3.

[5] Fuller v. Linzee, supra, note 3.

[6] Dunn v. Amsterdam Casualty Co. (1910), 141 App. Div. 478, 126 N. Y. S. 229.

[7] Watkins v. Home Life Ins. (1919), 137 Ark. 207, 208 S. W. 587.

[8] Equitable Life v. Stilley (1934), 271 Ill. App. 283; Illinois Bankers Assn. v. Collins (1930), 341 Ill. 548, 173 N. E. 465; Supreme Conclave v. Cappella (1890), 41 F. 1.

of the courts have departed from this general rule where the insured feloniously causes the death of the beneficiary.[9] J. W. M.

CONTRACT—NEGLIGENCE AS A BAR TO EQUITABLE RELIEF.—Appellant and appellee entered into a written agreement whereby the appellant agreed to purchase automobile accessories from the appellee. At the time of the execution of the instrument appellee's agent, in response to an inquiry, stated that the contract as written contained a provision to the effect that upon the termination of the agreement the appellant could at his option pay such sums as were due either in cash or by return of certain merchandise. In reliance thereon, the appellant signed the instrument without reading it only to discover subsequently that the provision had been omitted. After the rightful termination of the contractual relations by the appellant, the appellee brought suit for the sum owing. The court below excluded evidence of the misrepresentations which appellant offered, apparently for the purpose of securing reformation of the agreement. Held, on appeal, affirmed. The appellant's negligence barred equitable relief.[1]

This case presents the intriguing question as to the right to equitable relief of one who has signed an instrument without reading it. At present there are two lines of authority,[2] some courts taking the view that in the absence of some clear excuse such as incapacity, the existence of a fiduciary relation, or the like, it is inexcusable negligence so to sign without reading and equitable relief will not be granted.[3] On the other hand, many liberal jurisdictions have held that signing a contract without reading it is not as a matter of law such negligence as to preclude reformation; to have that effect the circumstances must show gross negligence.[4]

While this split of authority does in fact exist as to the mere signing of an instrument without reading it, a totally different question is presented when one is induced to sign such a contract by the misrepresentations of the other contracting party. In the case at bar, the court's opinion was predicated on the fact that the appellant negligently refused to avail himself of the knowledge at hand; therefore, he was not entitled to relief. It is submitted, however, that while this statement of the law might be true in a situation in which there was no misrepresensation as to the contents of an agreement, it certainly is not true when this other element is present. Such a result in the latter event would be contrary to the great weight of authority, which is to the effect that negligence constitutes no bar to reformation for the mistake of

---

[9] Parker v. Potter (1931), 200 N. C. 348, 157 S. E. 68; Riggs v. Palmer (1889), 115 N. Y. 506, 22 N. E. 188; New York Mutual v. Armstrong (1885), 117 U. S. 591, 6 S. Ct. 877.

Contra, Metropolitan Life v. May (1929), 10 Tenn. App. 221.

[1] Welsh v. Kelly Springfield Tire Co. (Ind., 1938), 12 N. E. (2nd) 254.

[2] 45 A. L. R. 706.

[3] Keains v. Hart (1924, D. C.), 1 F. (2nd) 318; Houchin v. Auracher (1922), 194 Ia. 606, 190 N. W. 3, 45 A. L. R. 707.

[4] Schautz v. Keener (1882), 87 Ind. 258; Smelser v. Pugh (1902), 29 Ind. App. 614, 64 N. E. 943; Albany City Sav. Bank v. Burdick (1881), 87 N. Y. 40; 45 A. L. R. 707.