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The Travelers Insurance Company v. Bernice Lewis : Brief of Respondent

Utah Supreme Court

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DEC 6 1975

In the Supreme Court of the State of Utah

BRIGITAM YOUNG UNIVERSITY
J. Reuben Clark Law School

THE TRAVELERS INSURANCE
COMPANY,

Plaintiff,

— vs. —

BERNICE LEWIS,

Defendant-Appellant,

and

WILLIAM DEAN LAVENDER,
SHANA L. AMADOR and JOANN
L. SYLVESTER,

Defendant-Respondents.

Case
No. 13662

BRIEF OF RESPONDENTS

Appeal from the Judgment of the Third District Court
for Salt Lake County

HONORABLE G. HAL TAYLOR, *Judge*

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FILED

AUG 30 1974

Clerk, Supreme Court, Utah

TABLE OF CONTENTS

	Page
STATEMENT OF THE NATURE OF THE CASE	1
DISPOSITION IN THE LOWER COURT	1
RELIEF SOUGHT ON APPEAL	2
STATEMENT OF FACTS	2
ARGUMENT	
POINT I: THE PROVISIONS OF THE 1960 DI- VORCE DECREE ARE ENFORCEABLE BY THE CHILDREN AGAINST THE CLAIM OF THE DECE- DENT'S SECOND EX-WIFE	4
POINT II: THE PRESENT STATUS OF RESPON- DENTS AS ADULTS DOES NOT TERMINATE THEIR INTEREST BECAUSE THE ATTEMPTED CHANGE OF BENEFICIARY WAS AN UNLAWFUL CONTRACT AT THE TIME IT WAS EXECUTED	7
CONCLUSION	8

CASES CITED

FEDERAL

Candler v. Donaldson, 272 F.2d 374 (6th Cir. 1959)	4
Equitable Life Assurance Societ v. Wilkins, 44 F.Supp. 595 (E.D.N.Y. 1942)	4
Metropolitan Life Ins. Co. v. Enright, 231 F.Supp 275 (S.D. Cal. 1964)	4

TABLE OF CONTENTS—(Continued)

	Page
Metropolitan Life Ins. Co. v. Richardson, 27 F.Supp 791 (W.D. La. 1939)	6
Peckham v. Metropolitan Life Ins. Co., 415 F.2d 312 (10th Cir. 1969)	4
<i>STATE</i>	
Binben v. Contenental Casualty Co., 9 Mich. App. 97, 155 N.W.2d 883 (1967)	6
Dixon v. Dixon, 184 So.2d 478 (Fla. 1966)	6
Goodrich v. Massachusetts Mutual Life Ins. Co., 34 Tenn. App.516, 240 SW2d 263 (1951)	5
Pollick v. Pollick, 477 P.2d 620 (Hawaii 1970)	6
Williams v. Williams, 276 Ala. 43, 158 So.2d 901 (1963)	5

In the Supreme Court of the State of Utah

THE TRAVELERS INSURANCE
COMPANY,

Plaintiff,

— vs. —

BERNICE LEWIS,
Defendant-Appellant,

and

WILLIAM DEAN LAVENDER,
SHANA L. AMADOR and JOANN
L. SYLVESTER,
Defendant-Respondents.

Case
No. 13662

BRIEF OF RESPONDENTS

STATEMENT OF THE NATURE OF THE CASE

This is an Interpleader action brought by the Travelers Insurance Company to resolve conflicting claims to the proceeds of an insurance policy upon the life of William E. Lavender, who died by accidental drowning.

DISPOSITION IN THE LOWER COURT

The original plaintiff, The Travelers Insurance Company, brought this action pursuant to Rule 22, URCP, against Bernice Lewis, who is the second ex-wife

of William E. Lavender, and against William Dean Lavender, Shana L. Amador and Joann L. Sylvester, who are the children by his first marriage of William E. Lavender. After paying the policy proceeds into Court, the insurance company was dismissed as a party (R.67). Thereafter, both remaining parties filed motions for summary judgment based upon the pleadings, attached exhibits and a written stipulation of facts (R.43, 61, 64). After full hearing upon these cross-motions and a consideration of the memoranda of authorities submitted by both parties, the Court below denied the motion of Bernice Lewis, Appellant herein, and granted the motion of Respondents (R.40). Appellant then filed another motion entitled "Motion for Re-Hearing on Summary Judgment" (R.15), supporting the same with additional documents. After another full hearing, Appellant's second motion was denied (R.5).

RELIEF SOUGHT ON APPEAL

Respondents here seek affirmance of the summary judgment entered in their favor below and of the lower Court's denial of Appellant's Motion for Re-Hearing.

STATEMENT OF FACTS

Following are listed in chronological order the facts material to the question presented:

1. On November 11, 1946, The Travelers Insurance Company issued to William E. Lavender a policy of life insurance, and the latter designated his wife, Heler Smith Lavender, as beneficiary (R.43).

2. On June 7, 1960, Helen Smith Lavender was awarded a Decree of Divorce from William E. Lavender (R.43). The Decree provided that William E. Lavender maintain the policy in question, that his first wife should remain as beneficiary, and that the three children, Respondents herein, should be contingent beneficiaries in the event of the death or remarriage of the first wife (R.38). In its Findings and Conclusions, the Court specifically found that William E. Lavender should be permanently restrained from making any beneficiary designation contrary to the Decree (R.34).

3. In December 14, 1962, William E. Lavender married Bernice Lewis, Appellant (R.11).

4. On January 9, 1963, William E. Lavender attempted to change the beneficiary of the policy in question to Bernice Lavender, Appellant herein (R.51).

5. On January 27, 1963, Helen Smith Lavender, the first wife of William E. Lavender, remarried (R.12).

6. On March 25, 1965, Bernice Lavender, the Appellant herein, was awarded a Decree of Divorce from

William E. Lavender; neither this Decree nor its supporting Findings and Conclusions referred to the policy in question (R.18).

7. On June 9, 1973, William E. Lavender died by drowning in a boating accident on Utah Lake (R.13).

ARGUMENT

POINT I: THE PROVISIONS OF THE 1960 DIVORCE DECREE ARE ENFORCEABLE BY THE CHILDREN AGAINST THE CLAIM OF THE DECEDENT'S SECOND EX-WIFE.

In *Equitable Life Assurance Society v. Wilkins*, 44 F.Supp. 595 (E.D.N.Y. 1942), a divorce decree required the husband to name his former wife as the beneficiary of a life insurance policy. After so doing, the husband thereafter executed a change of beneficiary, naming his second wife. The Court awarded the proceeds of the policy to the first wife, reasoning that to do otherwise would be to render the original decree a nullity. This case is a leading authority for Respondents' position herein, and has been widely followed. *See, e.g. Peckham v. Metropolitan Life Insurance Co.*, 415 F.2d 312 (10th Cir. 1969; *Candler v. Donaldson*, 272 F.2d 374 (6th Cir. 1959); *Metropolitan Life Insurance Co. v. Enright*, 231 F.Supp. 275 (S.D.Cal. 1964).

Other Courts which have considered the question presented here have similarly established Respondents' position. For example, in *Goodrich v. Massachusetts Mutual Life Ins. Co.*, 34 Tenn.App. 516, 240 S.W.2d 263 (1951), the decedent, in violation of the provisions of a divorce decree requiring him to maintain his former wife as beneficiary under a life policy, executed a change of beneficiary, naming his second wife. In awarding the proceeds of the policy to the first wife, the Court specifically held that the original divorce decree gave her a vested right in the policy, so that the insured's attempt to change the beneficiary did not affect her rights to the policy proceeds.

It is clear that the principle applies also to protect the children of the insured in cases where a decree of divorce had provided that the husband name his children as beneficiaries. In *Williams v. Williams*, 276 Ala. 43, 158 So.2d 901 (1963), a decree of divorce had provided that the husband name his children as beneficiaries under an existing life policy. The husband, in violation of the decree, thereafter named his mother as beneficiary. The Court awarded the proceeds to the children, holding that the consequence of the divorce decree was to give the children a vested equitable interest in the policy, so that the attempt to change the beneficiary to the mother did not establish superior rights in her, and that equity would intervene to declare the children as beneficiaries. On the same rationale, the Florida Court has held that

the terms of a divorce decree requiring the decedent to keep a life policy in force for his children prevented him from changing the beneficiary to his brother. *Dixon v. Dixon*, 184 So.2d 488 (1966). The same conclusion was reached by the Hawaii Court with respect to conflicting claims between the beneficiaries named in a divorce decree and the estate of the decedent. *Pollick v. Pollick*, 477 P.2d 620 (1970).

Further, the cases establish that the same result will obtain even though, as in the instant case, the beneficiary designation specified in the decree was never actually made. *Metropolitan Life Ins. Co., v. Richardson*, 27 F.Supp. 791 (W.D.La. 1939); *Binben v. Continental Casualty Co.*, 9 Mich. App. 97, 155 N.W.2d 883 (1967).

From the above, it is clear that appellants' assertion that, as a matter of contract between the insured and the insurance company the decedent was free to change the beneficiary of the policy because the policy so provided is manifestly incorrect; indeed, stated in *Peckham*, *supra*,

“The decisive issue presented on appeal is the legal effect of the divorce decree vis-a-vis critical provisions of the group policy Our own research has disclosed two cases where the court gave effect to a divorce decree vesting one spouse with the rights of a beneficiary . . . See *Equitable Life Assurance Society v. Wilkins (supra)* and *Metropolitan Life Ins. Co. v. Richardson (supra)* . . . These authorities uni-

formly demonstrate a manifest respect for the divorce decree. And rightly so, since it is deeply rooted in the equities of domestic relations." 415 F.2d at 313.

POINT II: THE PRESENT STATUS OF RESPONDENTS AS ADULTS DOES NOT TERMINATE THEIR INTEREST BECAUSE THE ATTEMPTED CHANGE OF BENEFICIARY WAS AN UNLAWFUL CONTRACT AT THE TIME IT WAS EXECUTED.

From the record, it appears that on June 13, 1960, the time of the entry of the Decree of Divorce between the decedent and his first wife, the three Respondents herein were ages 17 years (Respondent Amador), 14 years (Respondent Lavender) and 5 years (Respondent Sylvester) (R.47). Further, although Respondent Amador was married on March 28, 1960 (R.11), the original decree of divorce specifically provided that the decedent's support obligation for Respondent Amador was to continue despite that she reached her majority (R.46). Finally, it appears from the record that decedent's first wife had not yet remarried at the time he attempted to change the beneficiary of the policy in question (R.12, 51). It is thus clear that when the decedent attempted the beneficiary change on January 9, 1963, two of the children were still minors, his support obligation to the third still existed, and his wife had not remarried. Accordingly, the attempted change was unlawful because

none of the circumstances which might arguably have terminated his obligation regarding the policy had yet occurred. Appellant claims the proceeds of the policy as a third-party beneficiary of the contract between the decedent and the insurance company on the apparent theory that the beneficiary change, under which she claims the proceeds, constituted a part of the original insurance contract. But since the change was unlawful, the aspect of the contract upon which Appellant relies was void at its inception, and Appellant therefore cannot rely upon the change of beneficiary to claim the proceeds.

CONCLUSION

The 1960 divorce decree must be given legal effect as against Appellant's claim that, because the policy so provided, William E. Lavender was free, as a matter of contract, to change the beneficiary. To hold otherwise would render ineffectual the similar provisions regarding insurance commonly incorporated into divorce decrees. In addition, to award the proceeds to Appellant would condone an unlawful contract made by William E. Lavender in direct defiance of the divorce decree, since his attempt to change the beneficiary was made when his support obligation to Respondents still existed, and before the remarriage of his first wife. It is submitted that the decree operated to vest in Respondents the right to the proceeds of the policy, contingent only upon their

mother's remarriage prior to the death of William E. Lavender. The contingency having later occurred, Respondents are now entitled to enforce the decree against Appellant's claim; accordingly the decision of the lower Court should be affirmed.

Respectfully Submitted,

JAY D. EDMONDS

Attorney for Respondents