

1979

American Western Life Insurance Company v.  
Vonice W. Hooker And Helen M. Mallard, A/K/A  
Helen Margurite Hooker And Helen Mallard v.  
American Western Life Insurance Company, Helen  
Mallard Aka Helen Margurite Hooker v. Vonice  
Hooker : Brief of Respondent Vonice W. Hooker

Utah Supreme Court

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IN THE SUPREME COURT OF THE  
STATE OF UTAH

AMERICAN WESTERN LIFE INSURANCE CO. )  
Plaintiff & Respondent, )  
v. )  
VONICE W. HOOKER, )  
Defendant & Respondent, )  
and )  
HELEN M. MALLARD, )  
aka HELEN MARGURITE HOOKER, )  
Defendant & Respondent )  
and )  
HELEN M. MALLARD, aka HELEN )  
MARGURITE HOOKER, )  
v. )  
AMERICAN WESTERN LIFE INSURANCE CO., )  
Counter-Defendant & Respondent, )  
HELEN M. MALLARD, aka HELEN MARGURITE )  
HOOKER, )  
Crossclaim Defendant & Appellant, )  
v. )  
VONICE W. HOOKER, )  
Crossclaim Defendant & Respondent )  
HELEN M. MALLARD, aka HELEN MARGURITE HOOKER, )  
Third-Party Plaintiff & Appellant, )  
v. )  
VONICE W. HOOKER, Executrix of the Estate )  
of Ronald Dean Hooker, Deceased. )  
Third-Party Defendant & Respondent. )

Case No. 16596

Brief of Respondent Vonice W. Hooker

Appeal from the Judgment of the  
District Court of Cache County

Honorable Ve Noy Christofferson  
District Judge

FILED

DEC - 7 1979

Clark, Supreme Court, Utah

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v. )  
VONICE W. HOOKER, Executrix of the Estate )  
of Ronald Dean Hooker, Deceased. )  
Third-Party Defendant & Respondent. )

## STATEMENT OF THE CASE

This is an action commenced by Plaintiff-Respondent American Western Life Insurance Company (hereinafter "American Western") for determination of the party to whom proceeds of a certain life insurance policy (policy #44498) should be paid. Proceeds of said policy were initially paid to Defendant-Respondent Vonice W. Hooker (hereinafter sometimes referred to as "Mrs. Hooker"). When Defendant-Appellant Helen M. Mallard (hereinafter sometimes referred to as "Mrs. Mallard") made claim against American Western for said proceeds American Western brought this action and obtained a pre-judgment ex parte writ of garnishment and garnished Mrs. Hooker's checking account wherein the proceeds had been deposited.

Mrs. Mallard counterclaimed for the proceeds of policy #44498 and for the proceeds of an additional policy #43476. Mrs. Mallard also cross-claimed against Mrs. Hooker individually for the proceeds of policy #44498 and filed a third-party complaint against Mrs. Hooker as Executrix of the Estate of Ronald Dean Hooker for said proceeds.

## DISPOSITION IN LOWER COURT

Defendant Vonice Hooker moved for partial summary judgment against American Western and Helen Mallard claiming that she was entitled to return of the proceeds of Policy #44498 and against Helen Mallard on her third party Complaint and her cross-complaint claiming that Mrs. Mallard had no interest in the proceeds of Policy #44498.

Defendant Helen Mallard moved for summary judgment against American Western claiming the proceeds of both Policy #44498 and Policy #43476.

American Western moved for partial summary judgment against Helen Mallard on her counterclaim.

The district court:

1. Dismissed American Western's complaint against Mrs. Hooker for return of the proceeds received by Mrs. Hooker and released the balance of the proceeds of Policy #44498 to Mrs. Hooker.

2. Granted Mrs. Hooker's motion for summary judgment with respect to Helen Mallard's third party Complaint against Mrs. Hooker as the personal representative of her husband's estate and dismissed Mrs. Mallard's cross-claim against Mrs. Hooker as an individual with prejudice.

3. Denied Helen Mallard's motion for summary judgment against American Western on her claim for the proceeds of Policies #43476 and #44498 and granted American Western's motion for summary judgment against Helen Mallard.

4. Defendant Helen Mallard made a motion for reconsideration. The court denied her motion.

#### RELIEF SOUGHT ON APPEAL

Vonice W. Hooker seeks affirmation of the trial court's judgment and order, and dismissal of Helen Mallard's appeal.

#### STATEMENT OF FACTS

1. On or about December 22, 1972, Plaintiff American



Western issued a policy of insurance No. 43476 (hereinafter Policy #43) to Ronald Hooker. Policy #43 was a twenty year decreasing term policy with an initial amount of \$75,000.00. The policy insured the life of Ronald Hooker and initially Mrs. Mallard, who at that time was married to Mr. Hooker was the beneficiary. (TR 49)

2. On or about December 1, 1973, American Western issued a second life insurance policy No. 44498 (hereinafter Policy #44) to Ronald Hooker. Policy #44 was similarly a twenty year decreasing term policy with an initial amount of \$75,000.00 which insured the life of Ronald Hooker and named his wife at that time, Mrs. Mallard, as the beneficiary. (TR 49)

3. Apparently on or about July 3, 1974, Ronald Hooker, executed a "Change of Policy Ownership Designation" Form(s) which requested that Helen Mallard be named as the new owner of Policy #44, or #43, or both of them. (TR 49)

4. Upon receipt of a request for change of ownership for Policy #44, American Western apparently recorded the change of ownership to Policy #43 and then filed the executed request Form in the Policy #43 file. (Elspeth Forbes Depo. Pgs. 13-14, 26; (TR 50) In any event it was undisputed that American Western sent to Ronald Hooker a letter advising him that the change of ownership had been recorded to Policy #43. A copy of this letter was placed in the Policy #43 file. (Elspeth Forbes Depo., Pgs. 13-14, 26)

Both with respect to changes of ownership or assignment both policies provide that:

"No assignment of this policy shall be binding upon the company until it is filed with the company at its Home Office".

5. In March of 1976, Ronald Hooker was divorced by Defendant Helen Mallard; later that same month Helen Mallard married Mr. Mallard. (Helen Mallard Depo. Pg. 46)

6. On October 2, 1976, Ronald Hooker married Defendant Vonice W. Hooker. (Vonic W. Hooker Depo., Pg. 5)

7. It is the policy and custom of American Western to mail premium notices to the policy owner. (Elspeth Forbes Depo., Pgs. 16, 22; Martin C. Reeder Depo., Pgs. 52-53) Consistent with the information contained in the American Western file an annual premium notice for Policy #44 was mailed in December 1976 by American Western to the record owner, Ronald Hooker. (Martin C. Reeder Depo., Pg. 13) Accordingly, Ronald Hooker did not receive an annual premium notice for Policy #43 which, as recorded in the file of American Western, was owned by Helen Mallard. (Martin C. Reeder Depo., Pgs. 26, 58 and 61)

8. On or about December 9, 1976, and after he had received the premium notice on Policy #44, Ronald Hooker stated to Martin Reeder, agent for American Western, that he wanted his new wife, Vonice Hooker, rather than Helen Mallard, his former wife, to be the primary beneficiary of the policy which he owned, Policy #44. (Martin C. Reeder Depo., Pgs. 49-50) Martin Reeder testified as follows:

QUESTION: "You understood, then, that the secondary beneficiaries were to have been his children?"

ANSWER: "Right. I think I recall at the time, if I recall right--I don't think we really discussed that part of it. He said he wanted the primary beneficiary to be Vonice Hooker, and I made it out the same way, you know, for contingent beneficiary, the same way it was made out on the other." (Martin C. Reeder Depo., at 50)

Ronald Hooker expressly stated that he definitely did not want his ex-wife Helen Mallard, to receive any of the insurance proceeds (Martin Reeder Depo. Pgs. 29, 52; Vonice W. Hooker Depo. Pg. 19) and that he wanted the proceeds to go to Vonice Hooker so that they would be used for what he intended them to be used for. (Martin Reeder Depo. Pgs. 52.) Ronald Hooker further stated to the agent Mr. Reeder that if he could not change the beneficiary of Policy #44 he would rather not make the premium payments, allow the policy to lapse and take out a new policy (Martin Reeder Depo. Pgs. 29, 31, 32, 51 & 53).

With respect to Mr. Hooker's desire to change the beneficiary or take out a new policy Martin Reeder, agent for American Western, testified as follows:

ANSWER: "I'm sure he did wish the ownership changed at the time he changed beneficiaries--well, I shouldn't say both policies, because at the time we were talking about the one policy, the one \$75,000.00 policy, and that's what he'd got the premium notice on, and on the premium notice it listed the insured and the beneficiary or owner, whatever, and he specifically called me and said, "I don't want the money to go to Helen. I want it to go to Vonice so it will be used for what I'm carrying it for."

In fact, to my recollection, there was some discussion at the time about would it be better to have let the policy lapse and take out a new one, and I told him no; I said, "Just don't send in the premium until I get the paperwork done so that we make sure it's done before the premium is paid." (Martin Reeder Depo., at 28-29.)

Martin Reeder further testified:

QUESTION: "Now, had Helen Mallard declined to do that [to sign the change of beneficiary form, assuming she had been the owner] in your experience what alternative would Mr. Hooker have then?"

ANSWER: "He would have requested the policy to lapse and canceled it and taken out another one."

QUESTION: "On what basis do you make that statement?"

ANSWER: "Because of his attitude when he called me in regards to this change of beneficiary, to start with".

QUESTION: "What did he say?"

ANSWER: "He definitely didn't want the money to go to Helen; he wanted the money to go to Vonice so it would be used for what he intended it to be used for, to keep the business open, so there would be something for his kids. He was very specific about that."

QUESTION: "At the time this change of beneficiary agreement was sent in, apparently Mr. Hooker had explored the possibility with you of allowing the policy to lapse and getting a new policy, and you said something--"

ANSWER: "Well, he said something to the point--or the point was brought up that he definitely wanted the insurance to go to Vonice, or something to that point, and that if it didn't, he wouldn't want to pay the premium, he'd take out a new policy, you know, to quote him, as near as I can recall, this was the gist of the conversation. Because of his insistence on the fact that Vonice

get the money, I says, "Well, let's change the beneficiary, but don't send in the premium until we have filled that out, the change of beneficiary." But he was very emphatic about the fact that he wanted the money to go to Vonice if anything happened." (Martin Reeder Depo., at 52-53)

9. Therefore, on or about December 9, 1976, with the assistance of Martin Reeder, Ronald Hooker executed a "Change of Beneficiary Agreement" with American Western, requesting that his wife, Vonice Hooker, be named as the beneficiary of Policy #44 in place of Helen Mallard (no such request was made on Policy #43. Mr. Hooker had previously received notice that this policy had been transferred to Mrs. Mallard during their marriage.) It is the policy and procedure of American Western, upon receipt for a request for change of beneficiary, to have the underwriter make a determination and verification of the ownership of the policy being changed. (Martin C. Reeder Depo., Pgs. 25, 28, 30, 51 and 55) Upon receipt of the Request for Change of Beneficiary, American Western apparently reviewed the file for Policy #44 and verified that Ronald Hooker was authorized to change the beneficiary. (Elsbeth Forbes Depo., Pgs. 14-15 and 18-22; (TR 50) Following the underwriter's determination that Ronald Hooker was empowered to change the beneficiary, the change was authorized and a letter of confirmation that the request that Vonice Hooker be named as the new beneficiary of Policy #44 was sent to Mr. Hooker and evidence thereof was recorded and placed in the files of American Western. (TR 50)

10. In December, 1976, Ronald Hooker made the premium payment on Policy #44 with Mrs. Hooker as beneficiary. He neither requested any beneficiary change on Policy #43 (which according to the records of American Western and consistent with any confirmatory information sent by American Western belonged to Mrs. Mallard); nor did he make any further payments toward Policy #43. Apparently Mrs. Mallard didn't make any payments on this policy either and it lapsed on December 22, 1976, for failure to make premium payments.

11. In the matter of the divorce of Mr. Hooker and Mrs. Mallard the decree makes no mention of the insurance policies. There was no written agreement between them regarding death benefits or payment of premium payments of insurance policies. (Helen M. Mallard Depo., Pgs. 38, 46-48) (However, by virtue of Ideal National Policy No. 50796 which insured the life of Ronald Hooker and named Helen Mallard as beneficiary, Helen Mallard received the sum of \$66,844.03 as beneficiary of this policy.)

12. It is the policy and procedure of American Western, upon failure to receive the premium payment when due, to first send a late payment notice to the owner, followed by a notice that the policy has lapsed and finally an offer to reinstate such policy. It is the policy of American Western to send such notices to the address of the owner of such policy as it appears on the records of American Western. (Martin C. Reeder Depo., Pgs. 32, 38) Helen Mallard was

listed on the American Western records as the owner of Policy #43 at the time the policy lapsed.

13. Apparently no notice was ever received by Ronald Hooker that premium payments were due on Policy #43; that Policy #43 was about to lapse for failure to make premium payments, nor that Policy #43 had lapsed. (Vonice W. Hooker Depo., Pg. 17)

14. Martin C. Reeder, agent for American Western, who serviced the above-mentioned policies, was not notified that Policy #43, which according to American Western's records was owned by Mrs. Mallard, had lapsed, nor that the address of the owner was unknown. (Martin C. Reeder Depo., Pg. 59)

15. On September 16, 1977, Ronald Hooker died. Thereafter, with the assistance of Martin Reeder, a claim and demand for payment was submitted by Vonice Hooker as beneficiary under Policy #44 which, according to the records of American Western, was owned by the decedent, Ronald Hooker, showing his wife, Vonice Hooker, as his beneficiary. (TR 50) On October 19, 1977, Helen Mallard, through her counsel, submitted a claim and demand for payment under Policy #43 which, according to American Western's records, was owned by Helen Mallard. (TR 50)

16. On September 27, 1977, after a review of the information contained in the file for Policy #44, American Western issued a check in the amount of \$67,000.00 payable

to Vonice Hooker (TR 51) and after a review of the information contained in the file for Policy #43 denied Helen Mallard's claim for payment because Policy #43 had lapsed.

17. On October 25, 1977 American Western commenced this action after receiving further demands from Mrs. Mallard.

#### ARGUMENT

It is the position of Defendant-Respondent Vonice W. Hooker that the lower court ruled correctly that Vonice was the beneficiary of policy #44 and that the proceeds of said policy had been correctly distributed to her. Certain issues raised by Appellant concerning Policy #43 do not concern this party and consequently they will not be dealt with in this argument.

#### POINT I

AT THE TIME OF RONALD DEAN HOOKER'S DEATH  
VONICE WAS THE BENEFICIARY OF AMERICAN WESTERN  
POLICY #44.

A. Defendant Ronald Dean Hooker as owner of the policy properly made his wife, Vonice, the beneficiary of the policy.

When policy #44 was purchased Ronald Dean Hooker was the owner and the insured. He remained the insured until his death. Ronald Dean Hooker acting as owner requested a change in ownership status on Policy #44 on July 3, 1974. His request was never granted by American Western. The form requesting the change in ownership designation was never filed in American Western's file for Policy #44. Premium



notices continued to be sent to Ronald Dean Hooker as owner of the policy and the change of beneficiary form later submitted by him as owner was accepted and acted upon by the company. All indicia of ownership regarding Policy #44 in the possession of American Western or sent to Ronald Hooker or anyone else indicated his ownership of the policy until his death. American Western never confirmed any change of ownership designation regarding policy #44. In contrast the transfer of ownership with regard to policy #43 was made confirmed and acted upon by the insurance company and Ronald W. Hooker.

The general policy provisions of both policies provide "no assignment of this policy shall be binding upon the company until it is filed with the company at its home office." There is no competent evidence that any effective transfer of policy #44 was ever made.

As owner when he received the 1976 premium notice on Policy #44, Ronald Hooker stated to American Western Agent Martin C. Reeder, that he wanted his wife, Vonice Hooker, to be the beneficiary of this American Western policy. Reeder, the agent who had sold Ronald Hooker the policy, advised and assisted Ronald Hooker to fill out the appropriate change of beneficiary forms which Reeder witnessed, forwarded to American Western's home office, and which was confirmed by the company.

As owner Ronald Hooker made Vonice the beneficiary to

Policy #44 according to the terms and provisions of the insurance contract and American Western had no course other than to pay the insurance policy proceeds to Mrs. Hooker, as it initially did.

B. As insured Ronald Hooker had the right to designate Mrs. Hooker as beneficiary under the policy.

The provisions of the policy which are controlling concerning change of beneficiary are:

CHANGE OF BENEFICIARY, while the insured is living, the beneficiary may be changed by the owner upon filing at the Home Office of the company, a written request therefor in form satisfactory to the Company. . . . (TR 141) (emphasis added)

and

Control of Policy - During the minority of the insured the right to exercise all privileges under this Policy and to agree with the Company as to any change in or amendment to this policy, shall vest successively, during their respective lifetimes, in the Owner, the Beneficiary, the Contingent Beneficiary, if any, and the Insured. After the insured has attained his majority, such rights shall vest solely in the insured unless otherwise provided in the policy. (TR 141) (emphasis added)

These provisions clearly give the owner of the policy a secondary right to make a change of beneficiary under the terms of the policy. Likewise the insured (after attaining his majority, as Ronald Hooker had) has the primary right to exercise all privileges under the policy. It is undisputed that Ronald Hooker was the insured. He therefore had the contract right to change the beneficiary of the policy,

which he exercised in naming his wife Vonice as beneficiary under the policy. Respondent Vonice Hooker submits that it is clear that Ronald Hooker was also owner of the policy up to the time of his death.

## POINT II

### EQUITY REQUIRES THAT PAYMENT OF THE PROCEEDS OF POLICY #44 BE MADE TO VONICE HOOKER.

It is not disputed that in 1974 Ronald Hooker requested that the ownership of one or both policies be transferred to Helen Mallard.

In response American Western transferred ownership of Policy #43 to Helen Mallard, leaving, according to its records, Ronald Hooker the owner of Policy #44.

The fact that Mr. Hooker had years before submitted a change of ownership form to American Western does not relieve American Western from now treating Mr. Hooker as the owner. American Western never confirmed the transfer of ownership of Policy #44; it continued to send the premium notices on Policy #44 to Mr. Hooker as owner; and, most importantly, when he asked for a change of beneficiary on Policy #44 from his ex-wife, Helen Mallard, to his new wife, Vonice Hooker, American Western complied and confirmed the request in writing.

Even if American Western, therefore, substituted one policy for another, it could not now in response to Helen's claims--after Mr. Hooker's death when he can take no action to carry out his intent--deny that Mr. Hooker was the owner

of a policy, with power to designate its beneficiary.

The . . . substitution of policies, even though originally unauthorized by the insured, may be ratified if the insured is fully and fairly informed as to such acts and then assents or acquiesces in them. . . . 43 Am Jur 2d. Insurance §439.

Late in 1976 when he received the premium notice on Policy #44, Ronald Hooker stated to Martin C. Reeder, American Western Agent, that he wanted his wife, Vonice Hooker, to be the beneficiary of this American Western policy. He even suggested to the agent that the policy be dropped and another taken out if this would be a simpler procedure to insure that his wife would receive the proceeds. He was advised by Mr. Reeder that this would not be necessary if American Western confirmed the beneficiary request, which it did. (Martin C. Reeder Depo., 29, 31, 32, 51 and 52)

Years before Mr. Hooker had requested that his then wife, Mrs. Mallard be made the beneficiary on Policy #44 (perhaps on #43 as well) but an assignment of ownership on Policy #43 was confirmed to Mr. Hooker instead. This transaction was obviously ratified by Ronald Hooker.

Couch on Insurance 2d §63:79 provides:

A policy provision requiring a written assignment of the policy may be waived by the acts of the insurer . . . , and may be so waived even though the policy requires that an assignment be evidenced by a writing and that the waiver be in writing and endorsed on the policy.

Not only did Ronald Hooker waive any objection to the assignment of ownership of Policy #43 to Mrs. Mallard, but

he obviously relied upon the actions and representations of American Western to the effect that he was the owner of Policy #44.

Ronald Hooker relied in good faith on his ownership of Policy #44 by continuing to make premium payments on the policy. It is undisputed that he would not have done so had he not been told that the beneficiary change had been completed in accord with his request. (Martin C. Reeder Depo., 29, 31, 32, 51 and 52) The annual premium statements were sent to him as the owner of the policy which would have reinforced his belief that he owned the policy. Any doubt would have been removed by the fact that American Western confirmed his request of beneficiary change to his wife, Vonice Hooker. He was prepared to cancel Policy #44 if necessary and take out a new policy naming Vonice Hooker as the beneficiary rather than allow Helen Mallard, the previous beneficiary, to benefit from the policy. However, Ronald Hooker was informed by American Western agent, Martin Reeder, that this would not be necessary; that he should simply request a change of beneficiary on Policy #44. This change of beneficiary was verified and authorized by American Western (Elsbeth Forbes Depo., Pg. 22); and, once again, confirmation was given to Ronald Hooker of his ownership of Policy #44.

In Morgan v. Board of State Lands, 549 P.2d 695 (Utah, 1976), the Utah Supreme Court stated as follows:

Estoppel is a doctrine of equity purposed to rescue from loss a party who has, without fault, been deluded into a course of action by the wrong or neglect of another. . . . Estoppel arises when a party (defendant Board) by his acts, representations, or admissions, or by his silence when he ought to speak, intentionally or through culpable negligence, induces another (plaintiffs) to believe certain facts to exist and that such other (plaintiffs) acting with reasonable prudence and diligence, relies and acts thereon so that he will suffer an injustice if the former (Land Board) is permitted to deny the existence of such facts. Id. at 697.

Ronald Hooker was justified in relying upon American Western's acts and representation that he could change the beneficiary on Policy #44 based on his ownership of that policy. If the court were to reverse the lower court's order authorizing payment of the proceeds of Policy #44 to Mrs. Hooker as Ronald Hooker's surviving spouse and designated beneficiary causing her to lose the benefit of the life insurance policy that would clearly be contrary to the equities of the situation and would work a terrible injustice to her and to the intent of Ronald Hooker.

Even were Helen Mallard to be construed the owner and beneficiary under Policy #44 Ronald Hooker's conduct in maintaining that policy, paying premiums on that policy, and designating his wife, Vonice as beneficiary of that policy was brought about by the actions of American Western and its agent, Martin C. Reeder, who informed Ronald Hooker that he owned the policy, that he could change the beneficiary, and that the proceeds would be paid to Mrs. Hooker. Ronald

Hooker's action was specifically induced by American Western, and if American Western's representations to him were not accurate then he was deluded by negligent or wrongful conduct on the part of American Western causing him to believe those representations. He acted with reasonable prudence and diligence based upon the information he received from American Western. He clearly relied upon American Western.

Injustice will result if Helen Mallard is permitted to deny Vonice Hooker's right to the proceeds of Policy #44.

#### CONCLUSION

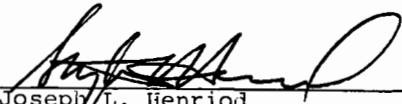
Ronald Hooker was the owner of Policy #44 at his death. No change of ownership to said policy was ever made by American Western or relied upon or ratified by any of the parties. Ronald Hooker was the insured under Policy #43. As owner or as insured under the terms of the policy Ronald Hooker had the right to designate Vonice Hooker as the beneficiary of Policy #44, which he did, and which was verified and confirmed by American Western. His ownership and that change of beneficiary were relied upon by all the parties thereafter, even including Helen Mallard who made no claim under Policy #44 until she was informed that Policy #43 had terminated pursuant to the policy provisions for nonpayment of premiums.

All the equities of the circumstances unequivocally require payment of the proceeds of Policy #44 to Vonice Hooker.

Law and equity support the lower court's judgment in

every respect and that judgment should be affirmed in its entirety.

Respectfully submitted this 7 day of December, 1979.

  
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CERTIFICATE OF MAILING

I hereby certify that I mailed two true and correct copies of Respondent's Brief, on the 7 day of December, 1979, postage prepaid to the following:

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