

1989

Ward Perkins v. Lincoln National Life Insurance Company and Great-West Life Insurance Company : Brief of Appellee

Utah Court of Appeals

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UTAH COURT OF APPEALS
BRIEF

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IN THE COURT OF APPEALS
OF THE STATE OF UTAH

WARD PERKINS, Personal
Representative of the
estate of Norma Perkins,

Plaintiffs/Appellee,

vs.

LINCOLN NATIONAL LIFE
INSURANCE COMPANY,

Defendant/Appellee,

and

GREAT-WEST LIFE ASSURANCE
COMPANY,

Defendant/Appellant.

Case No. 890732-CA

Priority No. 14b

BRIEF OF APPELLEE PERKINS

APPEAL FROM THE SUMMARY JUDGMENT OF
THE SIXTH JUDICIAL DISTRICT COURT OF KANE COUNTY
THE HON. DON V. TIBBS

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FILED

AUG 27 1990

COURT OF APPEALS

IN THE COURT OF APPEALS
OF THE STATE OF UTAH

WARD PERKINS, Personal)	
Representative of the)	
estate of Norma Perkins,)	
)	
Plaintiffs/Appellee,)	
)	Case No. 890732-CA
vs.)	
)	
LINCOLN NATIONAL LIFE)	Priority No. 14b
INSURANCE COMPANY,)	
)	
Defendant/Appellee,)	
)	
and)	
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GREAT-WEST LIFE ASSURANCE)	
COMPANY,)	
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GREAT-WEST LIFE ASSURANCE)	
COMPANY,)	
)	
Defendant/Appellant.)	

BRIEF OF APPELLEE PERKINS

JURISDICTION

The Defendant, Great West Life Assurance Company filed a Notice of Appeal (record at 211) on July 3, 1989 from the Memorandum Decision entitled Court Order signed May 30, 1989 and filed June 2, 1989 (record at 198-92). August 16, 1989 Great West Life filed a second notice of appeal (record at 240) from the Judgment signed June 23, 1989 and filed July 19, 1989 (record at 228-30). After these appeals were stayed by order of this Court, Great West obtained a rule 54 (b) certification on June 26, 1990. This Court has jurisdiction over this appeal under Utah Code Ann.

Section 78-2(a)-3(2)(j)(Supp. 1989).

ISSUES PRESENTED

Plaintiff-Appellee, will address only those issues that affect its interests.

1. Did the Trial Court err in determining that an insurer cannot accept premiums on the part of the insured and later deny liability.

2. Did the trial Court err in determining that an insurer cannot deny liability on the grounds of an exclusion to which the insured was not aware.

DETERMINATIVE STATUTES

Plaintiff/Appellee is unaware of any statutory provisions determinative of the issues presented in this appeal.

STATEMENT OF THE CASE

This is an action by Ward Perkins, (hereinafter Perkins) as Personal Representative of the Estate of Norma Perkins, (hereinafter decedent) to recover life insurance proceeds from either Lincoln National Life Insurance Company, (hereinafter Lincoln) or Great-West Life Assurance Company, (hereinafter Great-West). Prior to July 1, 1986, medical and life insurance was provided to decedent by Lincoln. As of July 1, 1986, coverage was provided to decedent by Great-West. Perkins moved for summary judgment on his life insurance claim against Great West and the Court granted Perkins Motion for Summary Judgment against Great-West. Great West has appealed.

STATEMENT OF FACTS

Decedent was employed as a nurse by Southwest Health Management Inc., (hereinafter Southwest) beginning January 1, 1970. (Record at 91). Prior to July 1, 1986, Southwest provided medical and life insurance to its employees through Lincoln National Life Insurance Company. (Record at 7 and 25). Effective July 2, 1986, Great West underwrote the group health and life insurance plan for Southwest (Record at 7, 62 and 71).

Great-West received an application card signed by the decedent on June 30, 1986. The application of the decedent provides a place for the employer to fill in the date of full time employment which was January 1, 1970. The application does not require additional information concerning employment, nor does the application refer to a definition of full time employment or exclude employees who are on sick leave or vacation time. (Exhibit C to Memorandum in Support of Great-West Life Assurance Company's Motion for Summary Judgment).

The decedent was working at the Kane County Hospital in June of 1986. The decedent became disabled for an indefinite period of time beginning on June 4, 1986. The decedent was not diagnosed as being permanently disabled and it was decedent's intention to return to work upon her recovery (Record at 36). On June 19, 1986, Doctor Howard L. Roberts, Jr. examined decedent and advised her that she would not be able to work that week and it was his conclusion that she should be examined at a later time to determine when she could return to work. In fact, decedent's physician

expected her to return to work. (Affidavit of Howard L. Roberts, Jr.)(Record at 36). Further the decedent was being paid sick leave and accrued vacation time during the period of her absence.

At the time decedent filled out her application form applying for group health and life insurance under the Southwest plan which was to be underwritten by Great-West she was considered to be a full time active employee. (Affidavit of Mark P. Toohey)(Record at 34).

It is an undisputed fact that decedent did not misrepresent any facts to Great-West and it is also undisputed that Great West did not provide the decedent with the "EDGE" booklet defining the contract between the decedent and Great-West. (Record at 128, 135). The decedent never did know the terms of the contract and the exclusions contained therein.

The decedent paid premiums to Great-West from August of 1986 until April of 1987, the month of her death. (Record at 128, 135). Great-West acknowledged and accepted the premiums paid by the decedent until the time of her death on April 11, 1987, and did not inform the decedent or Southwest that insurance coverage was not available for the decedent and Great West did not return the payments made by decedent for insurance premiums to the decedent or the personal representative of her estate.

Decedent died on April 11, 1987, and Southwest thereafter submitted, on the decedent's behalf, the life claim report (a true and correct copy of the life claim report is attached hereto and marked Exhibit A). Great West denied decedents claim for life

insurance proceeds on the basis that decedent was never eligible for coverage under the group health and life insurance plan underwritten by Great-West and that decedent was consequently never covered. Mr. Perkins filed his complaint on November 3, 1987, seeking recovery of the life insurance proceeds. The final judgment for Perkins was entered on July 19, 1989, which gave rise to this appeal.

SUMMARY OF ARGUMENT

Decedent, Norma Perkins, was eligible for coverage under the terms of the group health and life insurance policy underwritten by Great West, Defendant/Appellant. When the decedent filled out her application for group health and life insurance she was considered to be a full time active employee of Southwest and had been a full time employee since 1970. Decedent paid the required premiums to Great West from August of 1986 until April of 1987, the month of her death. Great West accepted those premiums and never returned them to decedent and it was understood by Great West that the decedent was covered under their group health and life insurance policy. Consequently the lower Court did not err in granting Perkins Motion for Summary Judgment against Great West and in denying Great West's Motion for Summary Judgment against Perkins.

ARGUMENT

POINT I

AN INSURER CANNOT ACCEPT PREMIUMS FROM THE INSURED AND THEN LATER DENY LIABILITY

The facts are undisputed that the decedent paid life insurance premiums until the date of her death and the premiums were accepted by Great West. Great West should be liable for the entire face amount of the policy.

The Washington Court of Appeals decided this issue in the case of U & I Properties v. Republic National Life Insurance Company 519 P.2d 19 (1974). In that case there was an action by the beneficiary of a life policy against the insurer. The insurer refused to pay the amount of the policy claiming that the decedent died prior to the approval of his application by the home office. (Mutual Life subsequently approved the application, unaware of his death). Id. at 21. In that case, the Court held that there was coverage, the Court went on to state, "an Insurer who retains a premium knowing of facts which would void the policy, may, by waiver or estoppel, be held bound".

The Supreme Court of Oklahoma also decided this same issue in the case of Community Natl Life Insurance Company v. Graham, 418 P.2d 670 (Oklahoma 1966). This case involved the Defendant (Insurance Company) who accepted the premiums on a life policy that was issued to the decedent. The insurance company then retained the premiums for several months and did not attempt to cancel the policy or refund the premiums until after the insured's death. The Supreme Court of Oklahoma held that "The acceptance and retention of premiums, without investigation to determine whether grounds existed for cancelation, stops Defendant from denying liability upon the policy". In the case at bar, the insurer accepted the

premiums paid by the decedent for approximately nine (9) months. Further, the decedent filled out an application of insurance in good faith and the insurer could have declined to accept the premiums that were paid. Further, the premiums were never returned to decedent, and Great West never did conduct any type of investigation to determine whether or not grounds existed for cancelation of the policy.

POINT II

THE DECEDENT IS ENTITLED TO THE FACE VALUE OF THE INSURANCE POLICY BECAUSE AN INSURER CANNOT DENY LIABILITY ON THE GROUNDS OF AN EXCLUSION TO WHICH THE INSURED WAS NOT AWARE

In the case at bar the decedent was an active employee of Southwest for approximately seventeen (17) years. The decedent was insured under Lincoln National Life Insurance Company until July 1, 1986, at which time Great West underwrote group health and life for Southwest. The decedent paid premiums to Great West until the time of her death in April of 1987 and then and only then did Great West determine that the decedent was not insured because of an exclusion which required an employee to work thirty-two (32) hours per week. The decedent had certain rights under the Lincoln policy including an "incontestability clause" and other clauses which would have required payment on her death if Lincoln had continued to insure the employees of Southwest. Great West did not advise the decedent that she could not get insurance from them while taking sick leave and vacation time nor did Great West advise her that she was giving up certain rights that she had under the

Lincoln policy. Great West does not claim, in any of its affidavits, that the decedent was given the 104 page "EDGE" booklet or that any of the terms or exclusions were brought to the attention of the decedent. The only thing Great West claims is that the "EDGE" booklet was given to Southwest to be distributed to the employees of Southwest.

The Utah Supreme Court decided a very similar issue in the case of General Motors Acceptance Corp., vs. Martinez, 668 P.2d 489 (1983) in which a Mr. Martinez purchased an automobile from Streater Chevrolet. Id at 500. Mr. Martinez was told that as a condition of obtaining a financing contract he had to purchase a credit life and disability insurance policy from Great Equity. Id. At the time Mr. Martinez purchased the insurance he did not learn about the exclusion for pre-existing conditions, nor were any of the policy exclusions explained to Mr. Martinez orally.

Although it was undisputed that Mr. Martinez suffered from high blood pressure prior to his purchase of the insurance policy, Mr. Martinez did not misstate or misrepresent his state of health and the agent who filled out the Great Equity Insurance form seemed totally indifferent to Mr. Martinez' prior health. Mr. Martinez made only two (2) monthly payments on the car prior to suffering a complete kidney failure which resulted in his total disability. Id. Mr. Martinez then made demand on his insurance company to pay and Great Equity denied coverage on the ground that Mr. Martinez had suffered from high blood pressure prior to his filling out the application form for the insurance and prior to his purchase of the

car. The Utah Supreme Court held:

"It is not consonant with our statute for an insurance company to accept premiums and then deny liability on the ground of an exclusion of which the insured was not aware because the insurance company had never informed him of the exclusion or given him the means to ascertain its existence". (Emphasis added)

In the case at bar the facts are clear and undisputed that the decedent paid approximately nine (9) months worth of premiums to Great West and that Great West then denied liability on the grounds of an exclusion to which the decedent was not aware.

Great West continually argues that the decedent was not eligible under the group life and health insurance policy because of the information which was contained in the "EDGE" booklet. What Great West fails to mention is that the "EDGE" booklet was not disbursed to the employees of Southwest and even if the booklets were distributed to some employees that did work at Southwest, Great West has not shown any evidence that could lead us to believe that the decedent ever obtained a copy of the "EDGE" booklet. Great West claims that Todd v. Dow Chemical Company, 760 F.2d 192 (8th Cir. 1985) is similar to the case at bar. However, you can distinguish the facts of the Todd case from the facts at the case at bar because in the Todd case the information of the new insurance policies were mailed to all regularly salaried employees whose names were on Dow's current payroll list. The packet included a benefits guide booklet which stated: "All permanent full time salaried Dow employees actively at work are eligible for this group insurance plan". Great West did not do this. What

Great West did was merely underwrite Lincoln's life and health group insurance policy and then apparently gave some "EDGE" booklets which consist of 104 pages to Southwest which supposedly were to be distributed to all active employees. Great West did not mail the information to all regularly salaried employees such as Dow did nor did Great West make it a point to specifically mention that you must be a permanent, full time, salaried employee of Southwest. Even if Great West had informed the decedent that she had to be a full time employee to collect any insurance benefits, the undisputed facts clearly show that the decedent was considered a full time employee of Southwest.

Great West next cites Larson v. Wycoff Co., 624 P.2d 1151 (Utah 1981) to support their position. In Larson the Plaintiff changed his status from a full time employee to a part time employee. The Court held that the Plaintiff was not entitled to dependent life insurance proceeds because he was not an active full time employee on the date of his sons death. The insurance benefits were detailed in literature which were distributed to all full time employees. Id at 1153. The lower Court, in affirming summary judgment in favor of the Defendants, stated "that because the literature clearly provided that insurance benefits were offered only to regular, full time employees, Plaintiff was on notice that his participation in the insurance plans terminated when his status changed to part time." Id at 1154.

Furthermore, the Court held that Defendants were not estopped from denying liability and that a party claiming estoppel cannot

rely on representations or actions if they are contrary to his own knowledge of the truth, "or if he had the means by which, with reasonable diligence he could ascertain the true situation". Id. The Court also noted the issue of estoppel is not dependent on the subjective state of mind of the employee but on the objective test of what a reasonable person would conclude under the circumstances. Id. The Larson case is clearly distinguishable from the case at bar. In Larson there were undisputed facts that the detailed literature describing the insurance benefits were distributed to all full time employees. In the case at bar there have not been any facts presented by Great West which show that the decedent or any other employee received their so called "EDGE" booklet. Furthermore, in the case at bar, if you take the objective test as was used by the Larson court "of what a reasonable person would conclude under the circumstances", it is clear that the decedent had been an employee of Southwest for approximately seventeen (17) years and she had always paid her insurance premiums and those premiums had always been accepted by the insurance company, be it Lincoln or Great West and that under the circumstances it would have been reasonable for the decedent to conclude that she was covered under Great West life and health insurance policy.

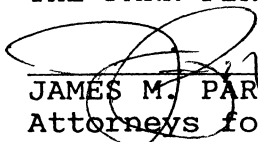
CONCLUSION

The facts are undisputed that the decedent, Norma Perkins, did pay the insurance premiums to Great West for approximately nine (9) months. The facts are also undisputed that the decedent was never aware of the "EDGE" booklet which was supposedly distributed to

Southwest by Great West. Because the decedent made an honest and good faith attempt to adhere to the terms of the policy, Great West should be liable for the face amount of the policy and should not now be able to deny liability on the ground of an exclusion to which the decedent was not aware. Therefore, the Plaintiff respectfully requests this Court to affirm the decision of the lower court.

RESPECTFULLY SUBMITTED this 24th day of August, 1990.

THE PARK FIRM,



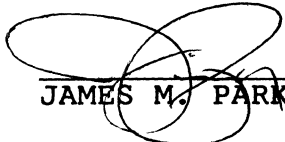
JAMES M. PARK
Attorneys for Respondents

CERTIFICATE OF HAND-DELIVERY

I do hereby certify that on the 24th day of August, 1990, four (4) true and correct copies of the foregoing were mailed, first class, postage prepaid to the following:

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Salt Lake city, Utah 84111-2309



JAMES M. PARK

ADDENDUM

M64

THE
Great-West Life

ASSURANCE COMPANY
GROUP CLAIMS DEPARTMENT
LIFE CLAIM REPORT

MAY 06 1987

HO

Name of Group Policyholder Southwest Health Management Co., Inc.	Group Policy Number G 131 57175 0004
Name of Deceased Norma Jean Perkins	Certificate Number 65

PART I GROUP POLICYHOLDER'S STATEMENT RE DECEASED

Complete Address 125 North 200 West Date of Birth 09/23/25
Kanab, UT 84741 Marital Status Married
 Occupation Registered Nurse Date Entered our Employment January 1, 1970
 Date Last Actively at Work June 3, 1986 Reason for Leaving Disability
 Date of Death April 11, 1987 Amount of Death Benefit 24,000.00
 Date April 24, 1987 By Mat P. Woolley ADMINISTRATOR
Signature of Authorized Signing Officer

PART II GROUP POLICYHOLDER'S STATEMENT RE CLAIMANT (Please see instructions on other side)

Name of Claimant Ward H. Perkins Relationship to Deceased Husband
Given Name Surname
 Complete Address 125 North 200 West Kanab, UT 84741 Age 65
If under 21, Give Birthdate
 Social Security or Tax Identification No. 528-14-4061
 Settlement Option Desired Payment in full/cash
 Above Information Obtained By Mat P. Woolley ADMINISTRATOR, on April 24, 1987
Signature

PART III CLAIMANT'S STATEMENT (to be completed if Part II not completed)

Name of Claimant _____ Relationship to Deceased _____
Given Name Surname
 Complete Address _____ Age _____
If under 21, Give Birthdate
 Social Security or Tax Identification No. _____
 Settlement Option Desired _____

I hereby declare that the foregoing answers are true and full; that, to the best of my knowledge and belief, I have withheld no material facts from the Company and that the foregoing answers and statements are made with the object of securing payment to me of the proceeds of the above policy.

I expressly consent, authorize and direct any physician, surgeon or any other person who has examined or attended the deceased and every hospital or any other institution to which the deceased has applied for or in which the deceased has received treatment to disclose to the Company or its duly authorized representative any knowledge or information thereby acquired.

STATEMENT OF WITNESS

The claimant whose signature I have witnessed is known to me and signed this form in my presence.

Date _____

Witness

Claimant—Sign Full Christian Name and Surname

EXHIBIT

"F"