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Carol Hoffman v. Life Insurance Co. of North America : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

CAROL HOFFMAN, Plaintiff and Appellant, vs. LIFE INSURANCE COMPANY OF NORTH AMERICA, Defendant and Respondent.	:	Supreme Court No. 18184

APPEAL FROM A JUDGMENT OF THE THIRD JUDICIAL DISTRICT COURT, THE HONORABLE DEAN E. CONDER PRESIDING

BRIEF OF APPELLANT

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IN THE SUPREME COURT OF THE STATE OF UTAH

CAROL HOFFMAN, Plaintiff and Appellant, vs. LIFE INSURANCE COMPANY OF NORTH AMERICA, Defendant and Respondent.	:	Supreme Court No. 18184

BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

This is an action on a contract of insurance seeking payment of certain benefits due as a result of the accidental death of appellant's spouse, Louis Hoffman.

DISPOSITION OF THE COURT BELIEF

Following a nonjury trial before the Honorable Dean E. Conder, the court below entered judgment for defendant, no cause of action.

RELIEF SOUGHT ON APPEAL

Appellant respectfully requests that the judgment entered below be reversed and the matter remanded to the court below with instructions to enter judgment for plaintiff in the amount of $50,000.00 plus prejudgment interest from the date of April 9, 1979 to the date of judgment.

FACTS

The essential facts of this case are not disputed by the parties. The parties stipulated that Carol Hoffman had a policy of accident insurance in force with the Life Insurance Company of North America which provided for payment to her of $50,000.00 in the event of the accidental death of her husband, Louis Hoffman, at the time he was killed on February 5, 1979. The sole question in this action was whether the manner in which Mr. Hoffman died was an accident within the meaning of the policy. The parties stipulated that Hoffman died as a direct result of being shot by Salt Lake City polic officers Frank Hatton-Ward and Gilbert Salazar. (R. 112)

The events which led to Mr. Hoffman's fatal encounter with the officers began on the evening of February 5, 1979, when Mrs. Hoffman informed her husband that they needed to have a serious discussion because she had consulted a lawyer regarding divorce. Mr. Hoffman, who had been having mental problems for which he was being treated by Dr. Robert Mohr, became agitated at this point and went to the base ment of the family house and obtained a pistol. He went outside the home, while Carol Hoffman was telephoning for police assistance, and when asked by his daughter if the gun was loaded he fired the pistol in the air. He then got into the family vehicle, a jeep "Cherokee" wagon, and drove off.

Salt Lake City police officer Lorraine Killpack responded to Mrs. Hoffman's call, and after discussing the situation with the appellant and her daughter, Karee, began an attempt to locate Mr. Hoffman, which included arranging for his description and that of the

vehicle he was driving to be transmitted to other city officers.

Sometime thereafter, approximately an hour from the time of Mrs. Hoffman's initial call, officer Killpack observed Mr. Hoffman drive by his home at 426 Redondo Avenue, where she was parked and waiting. When he didn't stop, she began following him and requested the assistance of other officers. Officers Salazar and Hatton-Ward responded to this call. At approximately the intersection of 700 East and 2100 South all three officers were behind the Hoffman vehicle and an attempt was made to pull him over. (R. 208-210) Mr. Hoffman didn't respond to the officers' lights and sirens by pulling over, but instead proceeded to drive onto the freeway, exit at State Street, and then drive over a circuitous route back to his home at 426 Redondo. He wasn't speeding during the "chase" and the whole journey only took about 5 minutes. (R. 137, 138)

When Mr. Hoffman arrived at his house he pulled his car down the driveway. The officers all parked their vehicles near the street. Officers Hatton-Ward and Salazar approached Mr. Hoffman's vehicle from the northwest on foot, unitl both were positioned on the passenger's side at the front door window, which was rolled down (R. 140-142, 160-161). Officer Killpack got out of her car and approached Mr. Hoffman's vehicle, stopping on the driver's side at the rear (northeast) corner of car. (R. 210-211)

From this point there is a divergence in the testimony of the officers concerning what transpired. Officer Salazar testified that from his position at the passenger's window he saw Mr. Hoffman seated behind the wheel with a pistol in his right hand, positioned level

with the steering wheel and pointed up in the air. (R. 142) He testified that Mr. Hoffman "pivoted" his shoulders both directions and then pointed the gun at Salazar and Hatton-Ward, whereupon Salazar shot Hoffman. (R. 143-144)

Hatton-Ward testified that when he arrived at the passenger's window and saw Hoffman with the gun he began yelling at him to "drop the gun." He testified, however, that Hoffman never pointed the gun in his direction (or that of Salazar), but that Hoffman got out of the vehicle and turned in such a fashion that the pistol was pointing down the driveway where Hatton-Ward felt other officers would be located (though he wasn't aware of anyone actually being there). Because of this assumed threat to others, Hatton-Ward shot Hoffman three or four times. Hatton-Ward testified he fired once before he heard Salazar's shot, which was the first time he became aware of Salazar's presence. (R. 165-169) Hatton-Ward testified that he actually fired when he couldn't see the pistol Hoffman was holding.

> Q. When Mr. Hoffman pivoted to get out of the car, at some point you lost sight of the weapon that he had in his hand, didn't you?
>
> A. That's correct.
>
> Q. Passed between your line of vision and his body?
>
> A. That's correct.
>
> Q. And it was at that point when you fired?
>
> A. That's correct.

(R. 167)

Officer Killpack, who was positioned at the rear of the vehicle at a spot Hatton-Ward felt that the gun was in the process of being pointed, testified she was commanding Hoffman to get out of the car (R. 211), and that when he did he had the gun pointed at the ground, held in his right hand with his elbow up at shoulder level. This was his position when shot. She made these observations from a distance of four feet. (R. 214)

At the time of trial, Dr. Robert Mohr, a psychiatrist, testified that he had recently been treating Mr. Hoffman for serious mental illness, which he diagnosed as high paranoia. He described Mr. Hoffman as extremely agitated and psychotic.

> Q. Let me interrupt you. When you say psychotic, define what you mean by that term for the Court.
>
> A. A psychotic individual, is an individual who is reality testing. He is defective in one or more areas. These areas of lack of reality testing can overlap or they can be fairly circumscribed in a grossly psychotic individual. Now, the high paranoid usually has a specific delusional system, which Mr. Hoffman did. And it extended into a number of different areas, but at the time that I saw him it was really all inclusive. I think all of the areas of his thinking were really pretty mixed.
>
> Q. You indicate that there are certain characteristics of a person who is grossly psychotic. Did you make that diagnosis about Mr. Hoffman?

A. Yes. I did.

Q. Did you ever draw any conclusion as to the necessity of a more aggressive treatment for Mr. Hoffman?

A. Well, from the first time that I saw him, I suggested that he let me treat him at the hospital. And he refused that immediately. And of course as you would note from the dates of treatment, I saw him every day or when he would permit.

Q. What were the circumstances of that interview, Doctor?

A. Well, the intensity and severeness of the illness, and my attempt to gain his confidence and get him into a hospital where he wouldn't be a danger to himself or to others.

Q. In this period of time when you were seeing Mr. Hoffman, did you draw any conclusions about whether or not he was delusional during that period?

A. I did.

Q. And what was your conclusion?

A. He was profoundly delusional.

Q. Doctor, assuming that the last day you indicated that you saw Mr. Hoffman, which was February 5, 1979, was the day of his death, [do] you have an opinion as to whether or not Mr. Hoffman on that date

was suffering from a mental impairment which would inhibit his ability to make rational decisions about the consequences of his conduct?

A. I do.

Q. And what is that opinion?

A. That he was psychotic and at that time not able to make sound, rational judgments.

Q. For the purpose of my next question I'll ask you to assume several facts, Doctor, which would be subsequent to your interview with Mr. Hoffman on February 5th, that he returned home, that while at home, he had a discussion with Carol Hoffman his wife wherein she indicated to him that she had seen an attorney with regard to possibly seeking a divorce from Mr. Hoffman. That at that time he became upset, went downstairs and obtained a firearm. Returned upstairs, left the house, and subsequently encountered three police officers in police vehicles who attempted to pull him over. Turned on their sirens, followed him for some period of time, approximately five to ten minutes on the highway; whereupon Mr. Hoffman returned to his house. That subsequent to that, the officers confronted him at this vehicle, made a request for him to take certain actions which would include dropping the firearm that he had, and exiting his vehicle. My question would be, assuming those facts, do you

have an opinion as to whether or not Mr. Hoffman's mental illness that you've described would have produced or controlled his responses to those stimuli that I have described to you.

A. Oh, I think because of the highly unstable nature of his whole emotional state at that time, any unexpected, intense or threatening incident would have caused a reaction of unreasonable magnitude, and unpredictable reaction.

Q. Would that reaction be a product of his mental illness?

A. In my opinion it would.

(R. 115-117)

This testimony regarding Mr. Hoffman's mental illness was not disputed.

ARGUMENT AND AUTHORITY

POINT 1: THE COURT BELOW ERRED IN CONCLUDING THAT THE INSURED'S DEATH DID NOT OCCUR BY ACCIDENT WITHIN THE MEANING OF THE INSURANCE POLICY IN QUESTION.

The sole issue presented by this action is whether Louis Hoffman's death as a result of being shot by Salt Lake City police officers was caused by "accident" within the meaning of the insurance policy in question. While this Court has not been called upon previously to decide whether injuries or death produced by the intentiona conduct of those other than the insured can be said to be the product of an accident, every jurisdiction which has considered the question has answered in the affirmative. See the cases collected in Annot.,

49 A.L.R.3d 67 (1973). Many of the early decisions concerning the accidental nature of injuries received as the result of intentional acts of others involved cases wherein the insured was injured by law enforcement officers. While some early decisions concluded that providing coverage for injuries received in confrontations with legal authorities would be contrary to public policy, this logic has now been universally repudiated and, in the absence of a policy exclusion for injuries incurred as a direct result of violation of the law, the fact that a confrontation with police officers gives rise to the injuries for which benefits are sought is not viewed as a bar to recovery. See Annot., 43 A.L.R.3d 1120 (1973). Indeed, in an analogous case, this Court rejected the so called public policy argument more than 35 years ago in Sanders v. Metropolitan Life Ins. Co., 104 Utah 75, 138 P.2d 239 (1943).

In Sanders, supra, the Court was presented with a case wherein accidental death benefits were claimed as the result of the death of a boy who died from injuries received when the vehicle in which he was riding overturned while he and his companion were in the process of attempting to elude police officers. This Court held that there was nothing about such conduct on the part of the insured which precluded recovery. The Court specifically rejected both the contention that benefits should be denied for violation of public policy and the argument that the insured's conduct in participating in a high speed chase while attempting to evade officers was of such a nature as to make his injury and death a natural and probable consequence of his actions.

It was on the basis of a similar argument by the defendant in this case that the Court below denied recovery to the plaintiff Carol Hoffman. The defendant argued, and while memorandum decision, findings of facts and conclusions of law don't speak to the question, the court apparently agreed that Mr. Hoffman's actions were of such a nature as to make his death at the hands of the officers a natural and forseeable result of his conduct.

While the appellant would assert that such a factual finding would be wholly inconsistent with the evidence offered at trial showing that Mr. Hoffman was not engaged in any aggressive or treatening conduct when shot, but rather was complying with officer Killpack's stated requests, appellant believes that the resolution of such a factual dispute is totally immaterial to the result of the action wher the proper principles of contract law are applied to this action.

Expanding upon the logic of this Court's decision in Sanders, supra, many courts have now completely rejected the requirement that an injury, to be covered under the terms of an accident policy, must not have been a foreseeable result of the deceased's own conduct. These courts have held that such a restriction on coverage raises issues which are tantamount to contributory negligence and have no place in a contract action.

In Mohn v. American Casualty Co., 458 Pa. 576, 326 A.2d 346 (1974), the Pennsylvania Supreme Court considered a case wherein the plaintiff was seeking recovery under accident policies for fatal injuries suffered by his son, who was shot by a police officer while fleeing from the scene of a burglary he was in the process of commit-

ting. The Court began by noting that in

> accident policies the law is now reasonably clear that the fact that events causing the injury may be traceable to an intentional act of a third party does not preclude the occurrence from being an 'accident.' Thus, the test of whether injury is a result of an accident is to be determined from the viewpoint of the insured and not from the viewpoint of the one that committed the act causing the injury.

326 A.2d at 348 (citations omitted, emphasis added).

The Court went on to note that "the modern legal trend is to abandon the former 'reasonably foreseeable' rule and treat the occurrance as accidental even though it resulted from the insured's criminal conduct." 326 A.2d at 351. This is proper, the Court reasoned, because

> [a] contract of insurance like any other contract requires that the intention of the parties be determined from the words of the instrument. Furthermore, where the contract is one of insurance any ambiguity in the language of the document is to be read in the light most strongly supporting the insured. Under the language of the policies presently under consideration it is clear that no provision was made that conduct should be excluded from coverage because it posed an unreasonable risk of harm to the deceased. To accept the narrow and restricted meaning of the term "accidental bodily injury" and to deny recovery to this beneficiary where the language of the policies clearly do not support such a construction would be violative of the fundamental tenets of insurance law and totally without justification in logic.

326 A.2d at 351-352 (emphasis added).

Other courts have also rejected the reasonably foreseeable rule because, as was noted in Harvey v. St. Paul Western Ins. Co., 166 So. 2d 822 (Fla. App. 1964),

> such doctrine of foreseeability is a doctrine totally unsuitable and unadoptable in construing accident policies. Moreover, the rationale of these cases seems to be founded not only in the doctrine of foreseeability but intrinsically in negligence on the part of the insured. Were we to make this principle a part of the law of this State, it would not only do violence to the reason for buying accident insurance but if it did not preclude recovery in a great majority of deaths arising from accidents, it would place an almost insurmountable burden on the insured to enforce liability.

116 So.2d at 823. See also, Beckham v. Travelers Ins. Co., 424 Pa. 107, 225 A.2d 532 (1967); Wetzel v. Westinghouse Electric Corp., 393 A.2d 470 (Pa. 1978).

By the same logic employed by this Court in rejecting the notio in Sanders, supra, that driving at a high rate of speed to elude officers wasn't conduct which rendered injuries resulting from that conduct nonaccidental, this Court should now hold that in the absence of a policy provision demanding a contrary result no degree of "comparative fault" on the part of the insured should render injuries received by him as nonaccidental if those injuries are caused by the intentional conduct of others. To hold otherwise in the instant case would be to afford the defendant insurer an implied exclusion not specified by the policy itself and one which has been specifically rejected by the Courts of the state where the company resides. See Mohn v. American Casualty Co., supra, Beckham v. Travelers Ins. Co., supra.

The appellant respectfully submits that in light of the evidence presented in the court below it was error for the court to fail to enter judgment for plaintiff.

POINT II. AN INDIVIDUAL WHO, BY REASON OF MENTAL IMPAIRMENT, CANNOT RATIONALLY EVALUATE THE CONSEQUENCES OF HIS CONDUCT NOR CONTROL HIS ACTIONS CANNOT BE DEEMED TO HAVE INTENDED OR FORESEEN THE NATURAL OR PROBABLE RESULTS OF HIS CONDUCT.

Even if this Court were to conclude that when viewed objectively the deceased's conduct was such as to make his death a natural and probable consequence of his action, and therefore not an unintended or unanticipated result of such acts, and that therefore his death would not normally be properly deemed an accident, Mr. Hoffman's mental disease at the time he engages in such conduct deprived him of the ability to make rational decisions about the consequences of his actions or to control his behavior in light of probable consequences of such conduct, which precludes application of the objective "reasonably foreseeable" test.

While the respondent has argued throughout these proceedings that the definition of what constitutes an accident must be determined by "objective" criteria, every court which has considered the question has held that a mental impairment which deprives an individual of the ability to rationally evaluate the consequences of his actions, or to control his actions in light of their probable consequences, renders injuries received through such conduct accidental. This is true because one who is insane cannot be said to have "intended" the natural results of his actions, nor to have forseen their probable consequences because his mental disease has deprived him of this ability. All courts considering the question, therefore, have held that injuries resulting from conduct which when engaged in by a normal individual

might be said to be merely the natural, probable and foreseeable result of his acts, are accidentally incurred when suffered by one not having the mental capacity to anticipate such results.

For instance, in Kobylakiewicz v. Prudential Ins. Co., 180 A. 491 (N.J. 1935), the Court held that an individual who was shot and killed by a police officer while violently resisting arrest and threatening the police with an axe died as a result of an accident within the meaning of the insurance policy in question. The Court noted that it was not

> questioned that the insured met his death by external and violent means. We have then to consider the sole remaining contention of the defendant that he did not meet his death through accidental means.
>
> Now an "accident," in this connection, is usually defined as an event that takes place without one's foresight or expectation, and that definition was given recognition in Kennedy v. United States Fidelity, etc., Co., 113 N.J. Law, 431, 174 A. 531. Foresight or expectation, of course, imply an ability to think and reason. Cases to which we have been referred are not precisely in point, but we believe that the reasoning thereof discloses that the pertinent rule is this: If the reasoning faculties of the insured were so far impaired that he was not able to understand the moral character and general nature and consequences and effect of his acts in so resisting arrest, and was impelled thereto by an insane impulse of a disordered mind which he had not the power to resist, such death was through external, violent, and accidental means within the meaning of the policy.

180 A. at 492.

This same approach was employed by the Colorado Court of Appeals in Continental Casualty Company v. Maguire, 471 P.2d 636 (Colo. App.

1970), even though Colorado is a jurisdiction which, in the normal case, retains the "reasonably foreseeable" definition of an accident. However, faced with a case wherein the plaintiff, who was suffering from a mental illness diagnosed as schizophrenic reaction, paranoid type, was blinded by fragments of an exploding tear gas cannister fired by police officers after plaintiff had wounded an officer in a gun battle, the court rejected the defendant insurer's contention that

> Maguire's injuries were not the result of an accident, but were the natural, probable, and foreseeable consequence of his intentional acts in provoking the assault by the police officers. However, the court found that Maguire, at the time of his injuries, was not engaged in any aggressive acts. Furthermore, no action of Maguire's in connection with this incident was voluntary or wrongful because he was insane at the time.

471 P.2d at 628 (emphasis added).

See also, Williams v. Prudential Ins. Co., 271 Ill. App. 532 (1933); Tuttle v. Iowa State Traveling Men's Ass'n, 104 N.W. 1131 (Iowa 1905).

While the particular question herein presented has not been widely litigated, in every reported decision where it has been raised the court has held that injuries suffered by a mentally impaired insured as a result of an intentional act of another in response to insured's own conduct are injuries caused by accident. Appellant would submit that this is an appropriate result in all such cases and urge this Court to adopt the position shared by all other jurisdictions having considered the question.

Such a holding would be entirely in accord with previous decisions of this Court which have recognized that determinations about what does or does not fall within the meaning of the term accident must include the subjective facts about the insured which are known by the Court.

The defendant urged upon the trial court the proposition that the question of the foreseeability of the result of Mr. Hoffman's actions must be judged by an objective standard and that if the result was foreseeable to a reasonable person, then the result was not an accident because it was not "an unexpected or unanticipated occurrence." Handley v. Mutual Life Ins. Co., 106 Utah 184, 147 P.2d 319 (1944). While there is no indication in the court's findings, conclusions or memorandum decision, apparently the trial court accepted this objective test in determining that Mr. Hoffman's shooting was not unexpected or unforeseeable from his conduct. However, Utah law has never adopted an objective test for determining if a particular result of an act constitutes an accident. That our law has always regarded such a determination to be based on the subjective circumstan attendant to the particular insured can be seen by comparison of two cases with differing results involving what appear to be identical circumstances when viewed "objectively," but which produce different results because the actual test of whether or not a particular result is an accident is subjective, based upon what is known about he insured when the acts occur.

In Handley v. Mutual Life Ins. Co., supra, the Court considered a claim for accidental death benefits made by the widow of an insured

who died as a result of complications following surgery. After acknowledging that an accident, within the meaning of an insurance policy, can be the product of actions done intentionally if such acts produce unexpected results, the Court held that the insured died as a result of an accident because the medical complications which caused his death were not expected, nor anticipated nor reasonably foreseeable as a result of his surgery. See also, Whatcott v. Continental Cas. Co., 85 Utah 406, 39 P.2d 733 (1935).

An apparently contrary result was reached in Kellogg v. California Western Life Ins. Co., 201 P.2d 949 (Utah 1949), wherein the Court held that a widow was not entitled to accidental death benefits when her husband died from post-operative shock caused by his surgery. After acknowledging the holdings of the previously decided cases finding coverage under apparently similar facts, the Court noted that in this case, because of the subjective facts particular to the insured, his death was a foreseeable result of the surgery because he had previously exhibited a susceptability to shock symptoms following surgery, his physical condition for which surgery was necessary was such that a prolonged operation and administration of anesthetic was required, thus increasing the normal risk of shock due to surgery, and he was in such a generally weakened condition prior to surgery that the risk of his death from the conditions caused by the surgery was highly foreseeable. The Court reasoned that it was not appropriate to view the cases as "objectively" the same.

> Each individual may be considered the average individual unless the facts disclose that in reality he is not; and when the facts do so show, then the question

> of the accidental nature of the result must be measured by this knowledge.

201 P.2d at 952.

These decisions show that the subjective circumstances of the insured must be considered in determining if a particular result has occurred by accident. As previously noted, it is from the viewpoint of the insured that the unexpected or unanticipated nature of the results must be examined, and due to his mental illness Louis Hoffman was incapable of anticipating what a reasonable person might have foreseen, or making any reasonable judgment about the possible or probable consequences of his actions.

CONCLUSION

In the present case, the policy of insurance contains no provisions excluding coverage for violation of law or for conduct creating an unreasonable risk of harm. Under such circumstances the better reasoned decisions conclude that proper application of contract principles requires a finding of coverage. However, consideration of that issue isn't necessary because even those jurisdictions which still adopt the reasonably foreseeable rule, and deny coverage for injuries which are a natural incident of the insured's own conduct, recognize an exception when the insured is mentally impaired, as the evidence clearly shows Mr. Hoffman to have been. Because he was mentally incapable of foreseeing the natural consequences of his action, Mr. Hoffman's death was "accidental" within the universally accepted meaning of that term, it having been established that he died by violent and external means while severely mentally impaired.

Based upon the foregoing authority, appellant respectfully requests that the judgment entered below be reversed and the case remanded for entry of judgment for appellant, together with her costs and prejudgment interest.

DATED this _____day of March, 1982.

M. David Eckersley

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Attorney for Plaintiff

CERTIFICATE OF MAILING

I hereby certify that two true and correct copies of the foregoing Brief of Appellant was mailed, postage prepaid this _____day of March, 1982 to the following:

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