1990

Terri C. Hardy, widow of Bryce W. Hardy, deceased v. Beneficial Life Insurance Company, a Utah corporation : Brief of Respondent

Utah Supreme Court

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BRIEF

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IN THE SUPREME COURT

OF THE STATE OF UTAH

TERRI C. HARDY, widow of BRYCE W. HARDY, deceased, Plaintiff/Respondent, vs. BENEFICIAL LIFE INSURANCE COMPANY, a Utah corporation, Defendant/Petitioner.	Case No. 900130

BRIEF OF RESPONDENT

PETITION FOR WRIT OF CERTIORARI
TO REVIEW A DECISION OF THE UTAH COURT OF APPEALS

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QUESTION PRESENTED

The sole issue presented by this petition is whether this action warrants exercise of this Court's discretionary review authority.

STATEMENT OF THE CASE

This is an action on an insurance policy wherein the plaintiff, Terri C. Hardy, was awarded judgment against Beneficial Life Insurance Company for $25,000.00 as a result of the accidental death of her husband. The sole issue presented in the trial court and the Court of Appeals was whether Mr. Hardy's death from an overdose of drugs was an accident within the meaning of the insurance policy in question. The defendant has asserted throughout the proceeding that because Mr. Hardy had been warned, and apparently understood, that drug usage would likely shorten his life, his death on the day in question was a natural and probable consequence of his drug use and, therefore, not an accident.

The case was submitted on stipulated facts which are reproduced in the appendix to the petition. The decision of the Court of Appeals is reported at 787 P.2d 1.

ARGUMENT

THE TRIAL COURT AND THE COURT OF APPEALS EACH APPLIED ESTABLISHED UTAH LAW TO THE UNDISPUTED FACTS OF THIS CASE AND RULED APPROPRIATELY

Both the trial court and the Court of Appeals noted that the applicable test for determining whether an event is accidental is that articulated by this Court in Hoffman v. Life Ins. Co. of North America, 669 P.2d 410 (Utah 1983). Under that test, a death is accidental unless it was expected to follow from the actions of the insured with a high degree of certainty. Both courts hold that there was no evidence to suggest that Mr. Hardy expected to die as a result of his actions on September 10, 1981, and that his death was therefore an accident within the meaning of the policy. The Court of Appeals also noted that the vast majority of other jurisdictions which have dealt with the question have ruled that absent affirmative evidence of suicide, death from drug overdose is accidental. The Court also held that because the language of the policy is, at best, ambiguous, it must be interpreted against the company in favor of coverage.

The decision of the Court of Appeals is consistent with the rulings of this Court, courts of other jurisdictions, and settled principles of contract interpretation. This case presents none of the considerations set forth in Rule 46 of the Utah Rules of Appellate Procedure for granting a Writ of Certiorari nor is there any other special or important reason

why the matter should be reviewed by this Court.

In this case, the defendant has acknowledged that there is no direct evidence that Mr. Hardy had any intent to take his life on September 10, 1981, or any expectation that his actions on that day would result in his death. As a substitute for such evidence, the defendant asserts the courts below were required to find that Mr. Hardy intended his death because it was the "natural and probable consequence" of his conduct and therefore his death "falls under the maxim that every many must be held to intend the natural and probable consequence of his deeds." Brief of Petitioner at p. 9. As this Court has noted, however, this maxim is not a substantive rule of law applicable to disputes arising under insurance policies. As this Court stated in Hoffman, supra.,

> Although the law frequently employs the proposition that one intends the natural and probable results of his conduct in tort and criminal law, as well as other areas of the law, a rule based on that proposition is generally only a rule of evidence giving rise to an inference, not a conclusive presumption or a shift in the burden of proof. The purpose of such a rule in tort law is to allow an innocently injured plaintiff to recover against an insane tortfeasor. However, in accident insurance law, there are no plaintiffs who have suffered at the hands of an insane defendant. When an insurance company has contracted to cover losses from a certain risk, and the occurrence of that risk causes an injury which is insured against, liability under the policy cannot be avoided on the basis of a presumption contrary to the actual fact.

669 P.2d at 420 (citation omitted).

In this case, the Court of Appeals noted that the evidence of Mr. Hardy's history of drug use in the past actually gave rise to an inference that he would not expect drug usage to cause death.

> Hardy's own extensive experience with drug abuse raises the inference that he would not believe, with a high degree of certainty, that doing only what he had been doing for some years would cause death on September 10, 1981.

Hardy v. Beneficial Life Ins. Co., 787 P.2d 1, 3 (Utah 1990).

The defendant's assertion that the courts below were compelled to disregard the evidence and find, instead, that Mr. Hardy actually intended his death is without support in the law.

CONCLUSION

This case presents no special or important reason to warrant exercise of this Court's discretionary power of review. There were no disputed facts in the case and the courts below applied established principles of law in deciding the legal issue presented. Accordingly, the petition should be denied.

DATED this 23rd day of April, 1990.

PRINCE, YEATES & GELDZAHLER

By M. David Eckersley
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Terri C. Hardy

MAILING CERTIFICATE

I hereby certify that, on the 23rd day of April, 1990, I caused to be mailed, postage prepaid, four (4) true and correct copies of the foregoing BRIEF OF RESPONDENT to the following:

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