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Lorenzo C. Forsey v. E. Girard Hale : Brief of Respondent in Answer to Petition for Rehearing

Utah Supreme Court

Callister & Kesler; Attorneys for Appellant;
Romney & Nelson; Attorneys for Respondent;

IN THE SUPREME COURT OF THE STATE OF UTAH

LORENZO C. FORSEY,
Plaintiff-Respondent,

—vs.—

CASE NO. 9585

E. GIRARD HALE, as Executor of the Will and Estate of Mabel Bean Forsey, Deceased,
Defendant-Appellant.

RESPONDENT'S BRIEF IN ANSWER TO PETITION FOR REHEARING

Appeal from the Judgment of the 3rd District Court for Salt Lake County Hon. Stewart M. Hanson, *Judge*

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STATEMENT OF FACTS

Appellant's petition for rehearing and supporting brief contain no material which is new or different from the points heretofore presented by the parties. Nevertheless, in the interest of accuracy and clarification, we deem it advisable to answer some of the statements made therein.

Appellant's brief seems to be based upon the false premise that the policy of insurance in question was as

much the property of Mabel Bean Forsey as it was that of Lorenzo C. Forsey, and that she was as much entitled to the proceeds thereof as he was, and that even the doctors and hospitals had some rights in the policy. Therefore, we respectfully submit the following points:

ARGUMENT

POINT I

The policy was the sole property of Lorenzo C. Forsey, and all of its benefits were payable to him or pursuant to his direction.

A careful reading of the policy (Exhibit R. 34) reveals the following facts:

> The policy was issued to Lorenzo C. Forsey only, as an employee of the Forsey Furniture Company; the premium therefor was paid partly in cash, and partly as an incident of his employment.
>
> The insurance terminates upon the termination of his employment.
>
> He may, but need not, include his dependents under the health and accident benefits.
>
> All benefits (except life insurance proceeds) are payable to him only.
>
> The term "beneficiary" refers only to the person who is to receive the life insurance proceeds, and this designation may be changed by Forsey at any time and if he fails to name a beneficiary, such proceeds go to his estate. "Bene-

ficiary," as applied to an insurance policy, has been well defined as the person to whom a policy of insurance is payable. (Rev. St. Tex. 1895, art. 3096a (Vernon's Ann. Civ. St. art. 4716); Markland v. Modern Woodmen of America (Mo. App.) 210 S.W. 921; Women's Catholic Order of Foresters v. RHeffeman, 283 Ill. 429, 119 N.E. 426, 427; Grand Lodge, A.O.U.W. of Maine v. Conner, 116 Me. 224, 100 A. 1022, 1024.)

This policy was wholly and entirely the property of Lorenzo C. Forsey, paid for with his money and by his services, and no person had any interest or rights whatsoever in the policy except Lorenzo C. Forsey, save for the rights of the beneficiary of his death benefits, said beneficiary to be named by him. Forsey provided health and accident insurance for his wife because he desired to do so, but by contract with the insurance company he expressly retained the rights to such payments. He alone owned and exercised complete dominion and control over the said policy and of its proceeds. Therefore, the payment of doctor and hospital bills by the insurance company was a payment for the account of Lorenzo C. Forsey under the terms of the policy.

POINT II

There was no privity of contract between the insurance company on the one hand, and the hospitals and doctors on the other hand. Therefore, there is no basis for the specious argument of the appellant in Point I of his brief to the effect "that the hospital and doctors

might very well have had a cause of action against the insurance company for the proceeds of such policy ***." Am. Jur., Volume 29A, Page 595, Section 1485, and the cases cited thereunder are authority for the following rule of law:

> As a general rule, and in the absence of a contractual or statutory provision in such respect, there is no privity between one injured person and a liability insurer, and the former has no right of action at law against the latter. It follows, therefore, that the injured person in such case cannot join the insured and liability insurer as parties defendant.

Further, the case of *Rozell v. Rozell,* 281 NY 106, 22 NE2d 254, 123 ALR 1015, held that the mere existence of liability insurance creates no right to sue where one otherwise would not exist.

Counsel for the Appellant recite in their motion and brief that they are "startled" and "alarmed" at the decision of this Court, and that the said decision will have some sort of unusual "impact and repercussions * * * upon the insurance law in this State," and that the opinion of the Court "is disastrous and catastrophic to the laws of this State regarding insurance laws ***." We fail to see any cause for alarm with respect to any unusual effects of this decision on the application of the insurance laws of the State of Utah. The decision of this Court in no wise changes or affects the rights or liabilities of insurance companies under health and accident insurance policies, and forms no basis whatever for any concern on this point.

CONCLUSION

We have not touched upon Point II of appellant's brief in support of this petition for rehearing, as the said Point II is identical with Point III raised in appellant's brief on appeal and was fully considered by this Honorable Court and decision made thereon heretofore. We respectfully conclude that this Court made no error in its decision, and that the petition for rehearing should be denied.

Respectfully submitted,

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