

1962

# Lorenzo C. Forsey v. E. Girard Hale : Appellant's Petition for Rehearing and Supporting Brief

Utah Supreme Court

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IN THE SUPREME COURT  
of the  
STATE OF UTAH

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LORENZO C. FORSEY,  
*Plaintiff and Respondent,*

vs.

E. GIRARD HALE, Executor of  
the Will and Estate of Mabel  
Bean Forsey, deceased,  
*Defendant and Appellant.*

Case No. 9585

ED  
1962

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APPELLANT'S PETITION FOR REHEARING  
AND SUPPORTING BRIEF

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Appeal from the Judgment of the Third Judicial  
District Court for Salt Lake County,  
Hon. Stewart M. Hanson, Judge

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IN THE SUPREME COURT  
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APPELLANT'S PETITION FOR REHEARING

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Appeal from the Judgment of the Third Judicial  
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APPELLANT'S PETITION FOR REHEARING  
AND SUPPORTING BRIEF

The petition of the appellant E. Girard Hale, as Executor of the Will and Estate of Mabel Bean Forsey, deceased, respectfully shows to the Honorable Supreme Court:

1. That the above entitled court filed its opinion herein in favor of respondent and against appellant on August 13, 1962.

2. By order of the court duly entered herein,

upon good cause shown and pursuant to Rule 76(e) (4), Utah Rules of Civil Procedure, the time in which respondent may petition for a rehearing has been extended to and including the date of the filing thereof.

3. As members of the Utah State Bar, we are startled and alarmed to read that the Utah Supreme Court holds that an employee, under what is known as the common group health and accident policy, such as in this case, is entitled to twice the benefits of that policy. That is, he does not have to pay the doctors and hospital which are paid by the insurance carrier, and that he is then entitled to reimbursement for monies which he has not paid.

We feel that if this is the law in Utah, this Honorable Court should make it plain that under group health and accident insurance policies, an employee under the benefits of the group and health policy is entitled to not only having the hospital and doctors paid, but he is also entitled to reimbursement in addition to the payment of the doctors' and hospital's monies. In other words, he is paid twice.

We feel that this is a momentous decision and one which this court should reconsider in light and in view of the impact and repercussions that it will bring upon the insurance law in this state.

The amount involved here is infinitesimal with

the principle that has been enunciated by this Honorable Court by its majority opinion, and we think it is disastrous and catastrophic to the laws of this state regarding insurance laws to so hold as it has.

4. It is respectfully alleged that the court, by its opinion and decision aforesaid, erred on the following points, to-wit:

(A) The court erred in holding that the proceeds of a group insurance plan for the last illness expenses of the appellant were payable to the respondent, despite the fact that appellant was designated as a beneficiary under said policy and the proceeds were paid by the insurance carrier directly to the hospital and doctors for said last illness.

(B) The court erred in holding that the respondent had a valid claim against the estate of the deceased for the expenses of the last illness, under Section 75-9-21, Utah Code Annotated 1953, when there was no claim which could have been enforced against the deceased during her lifetime and reduced to a simple money judgment.,

WHEREFORE, appellant prays that this action be reheard by this Honorable Court, and that said errors be corrected, and that such other order be entered as may be just.

BRIEF IN SUPPORT OF PETITION  
FOR REHEARING  
STATEMENT OF FACTS

Statements as to the kind of case involved, the disposition in the lower court, and the relief sought by the respective parties on appeal, are all outlined in the original briefs herein and the court's opinion, so it is deemed unnecessary to repeat them.

It is also believed that appellant's statement of facts in its original brief gives a reasonably comprehensive summary of the facts and, therefore, will not have to be repeated.

ARGUMENT

POINT I.

THIS COURT SHOULD HAVE RULED THAT THE LAST ILLNESS EXPENSES OF APPELLANT WERE PAID BY A GROUP INSURANCE PLAN UNDER WHICH APPELLANT WAS A BENEFICIARY AND, THEREFORE, THERE CAN BE NO CLAIM BY RESPONDENT AGAINST APPELLANT'S ESTATE FOR AMOUNT OF INSURANCE PROCEEDS PAID BY SAID POLICY FOR THE LAST ILLNESS.

The court held that the proceeds of a group insurance plan for the last illness of the beneficiary, Mabel Bean Forsey, were payable to respondent, Lorenzo C. Forsey, because of the following clause contained in said policy, as quoted by the court: "*. . . in the event of the insured's death the proceeds shall be paid . . . to the beneficiary designated*



by you; *all other benefits are payable to you.*" (Opinion, page 2, first paragraph).

The court noted that the payment of the proceeds of insurance is governed by contract: i.e., the provisions of the policy (Opinion, page 2, paragraph one). and, therefore, because of the above provision, the respondent was entitled to the proceeds of the insurance policy, notwithstanding the fact that such proceeds were paid by the insurance company to the hospital and doctors for the last illness expenses of appellant.

It is a fundamental principle of insurance law that "contracts of insurance should be viewed in the light of their general objects and purposes . . . Strained or forced constructions of insurance contracts are to be avoided". 29 Am. Jur. 634, § 251, and cases cited thereunder.

The case of *Equitable Life Assur. Soc. vs. Gilham* (1943), 195 Ga. 797, 25 SE 2d 686, 147 ALR 1008, held that an insurance policy must be construed in the light of reason, in view of its purposes, the situation of the parties, and the benefits to be conferred.

Construing the insurance policy in question in the light of reason, and taking into consideration its general objects and purposes, it is evident that here is a group insurance policy for the benefit of the members of the group plan and their families. Re-



spondent as a member of this plan, designated his wife, Mabel Bean Forsey, as the beneficiary of said plan and thereby provided her with insurance coverage and benefits as outlined in the policy. For the court to now hold that all benefits of this policy, including the proceeds, are payable to respondent, is to say that Mabel Bean Forsey had absolutely no protection under said policy for the expenses of her last illness, and that she had no right to rely on the fact that she was a beneficiary, but should have procured other insurance or effectuated other means to provide for the expenses of her last illness.

The court is in effect saying that an individual under a group insurance plan in the position of respondent can profit at the expense of a beneficiary by merely putting the beneficiary's name on the policy and thereby collecting the full insurance proceeds paid for the last illness expenses of said beneficiary from the estate of the beneficiary in the event that the beneficiary dies.

If the benefits of said policy are payable to respondent, then, as Justice Henroid brought out in the dissenting opinion, the insurance company paid the wrong payee, because they should have paid the proceeds to respondent and not the hospital and doctors. (Opinion, page 4, fourth paragraph).

If the insurance company had paid the proceeds directly to respondent, and then respondent had kept

the money, it is evident that the hospital and doctors might very well have had a cause of action against the insurance company for the proceeds of said policy, since the group insurance plan obligated the insurance company to pay the expenses of the last illness, and the hospital and doctors had relied upon this plan as the means of reimbursement in consideration for the treatment of the patient, Mabel Bean Forsey. In turn, the insurance company could then go against respondent, because he had appropriated the insurance proceeds to his own uses and not for the purposes directed under said policy, i.e., to the hospital and doctors for the last illness expenses of Mabel Bean Forsey.

Certainly, the only reasonable interpretation that can be given to the insurance policy in question is to hold that the insurer was obligated to pay the proceeds of insurance for the last illness expenses of Mabel Bean Forsey, the designated beneficiary thereunder, directly to the claimants, the hospital and doctors. To hold otherwise would be to divest **the beneficiary of any rights** under said policy, and this is clearly not the intent and purpose of said policy, and when viewing the situation of the parties and the benefits to be conferred.

## POINT II.

THE COURT SHOULD HAVE RULED THAT FOR RESPONDENT TO HAVE A VALID CLAIM AGAINST THE ESTATE OF THE DECEASED FOR THE EX-

PENSES OF THE LAST ILLNESS, UNDER SECTION 75-9-21, UTAH CODE ANNOTATED 1953, THERE MUST BE A DEBT OF A PECUNIARY NATURE WHICH COULD HAVE BEEN ENFORCED AGAINST DECEASED IN HER LIFETIME AND REDUCED TO A SIMPLE MONEY JUDGMENT.

If the appellant, Mabel Bean Forsey, had lived, there can be no question that respondent would have had no claim against her for reimbursement of funds paid by the insurance carrier to the hospital and doctors. Respondent, in no event, could have sued her for the proceeds of insurance.

The question can then be asked, if respondent did not have an enforceable and valid claim against Mabel Bean Forsey during her lifetime, how does he now get one by virtue of her death? To have a claim under Section 75-9-21, Utah Code Annotated 1953, for the last illness expenses, there must have been a debt of a pecuniary nature which could have been enforced during the lifetime of the deceased. *Tinkham v. Tinkham*, 45 Ind. N.E. 2d 257, 360 (1942); *Gilbreath v. Line*, 119 S. 2d 210 (Ala. 1955). There is no such claim in this case, and all respondent can claim is that he listed his wife as his beneficiary under the terms of a group insurance plan and, therefore, now wants all of the proceeds from said insurance plan.

The court by its decision, therefore, has interpreted Section 75-9-21, Utah Code Annotated 1953, so as to make a valid claim out of a claim which

could not have been enforced had deceased lived. The court, also, by its decision had completely nullified Mabel Bean Forsey's rights as a beneficiary under said plan of insurance, thereby impairing her rights to contract under said plan.

## CONCLUSION

It is respectfully submitted that this Honorable Court erred in the particulars hereinbefore set out and that such errors should be corrected and that upon rehearing the opinion of the court should be withdrawn and rewritten in accordance with the contentions contained herein and that the judgment of the trial court below should be reversed.

Respectfully submitted,

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