

1983

Suzanne Proctor, On Behalf of Her Minor Daughter, Angela Beth Proctor v. Insurance Company of North America And Shirley Fletcher aka Shirley Worthen : Brief of Appellant

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc2

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors. William W. Downes, Jr.; Attorney for Appellant

Recommended Citation

Brief of Appellant, *Proctor v. Insurance Company of North America*, No. 19288 (1983).
https://digitalcommons.law.byu.edu/uofu_sc2/4733

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

IN THE SUPREME COURT OF THE STATE OF UTAH

SUZANNE PROCTOR, on behalf :
of her minor daughter, ANGELA :
BETH PROCTOR, :
Plaintiff/Appellant, :
-v- :
INSURANCE COMPANY OF NORTH : Civil No. 19288
AMERICA and SHIRLEY FLETCHER :
aka SHIRLEY WORTHEN, :
Defendants/Respondents. :

BRIEF OF APPELLANT

APPEAL FROM JUDGMENT OF THE THIRD JUDICIAL DISTRICT COURT,
THE HONORABLE TIMOTHY R. HANSON PRESIDING.

WILLIAM W. DOWNES, JR.
COLLARD, PIXTON, IWASAKI & DOWNES
417 Church Street
Salt Lake City, Utah 84111
Telephone: (801) 534-1663

ATTORNEY FOR APPELLANT

KENT M. KASTING
GUSTIN, ADAMS, KASTING & LIAPIS
1000 Boston Building
Salt Lake City, Utah 84111

ATTORNEY FOR RESPONDENT,
SHIRLEY FLETCHER

H. JAMES CLEGG
SNOW, CHRISTENSEN & MARTINEAU
Ten Exchange Place, 11th Floor
Salt Lake City, Utah 84111

ATTORNEY FOR RESPONDENT,
INSURANCE COMPANY OF NORTH AMERICA

FILED

AUG 17 1983

Clerk, Supreme Court, Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

DEANNE PROCTOR, on behalf :
of her minor daughter, ANGELA :
BETH PROCTOR, :
 :
Plaintiff/Appellant, :
 :
-v- :
 :
INSURANCE COMPANY OF NORTH : Civil No. 19288
AMERICA and SHIPLEY FLETCHER :
aka SHIRLEY WORTHEN, :
 :
Defendants/Respondents. :

BRIEF OF APPELLANT

APPEAL FROM JUDGMENT OF THE THIRD JUDICIAL DISTRICT COURT,
THE HONORABLE TIMOTHY R. HANSON PRESIDING.

WILLIAM W. DOWNES, JR.
COLLARD, PIXTON, IWASAKI & DOWNES
417 Church Street
Salt Lake City, Utah 84111
Telephone: (801) 534-1663

ATTORNEY FOR APPELLANT

KENT M. KASTING
GUSTIN, ADAMS, KASTING & LIAPIS
1000 Boston Building
Salt Lake City, Utah 84111

ATTORNEY FOR RESPONDENT,
SHIRLEY FLETCHER

H. JAMES CLEGG
SNOW, CHRISTENSEN & MARTINEAU
Ten Exchange Place, 11th Floor
Salt Lake City, Utah 84111

ATTORNEY FOR RESPONDENT,
INSURANCE COMPANY OF NORTH AMERICA

TABLE OF CONTENTS

	PAGE
STATEMENT OF THE NATURE OF THE CASE	1
DISPOSITION OF THE COURT BELOW.	1
RELIEF SOUGHT ON APPEAL	1
STATEMENT OF THE FACTS.	2
ARGUMENT	
POINT I: SHIRLEY FLETCHER PROCTOR WAS NOT THE WIFE OF THE INSURED DECEDENT, WILLIS BRENT PROCTOR, ON THE DATE OF HIS DEATH	5
POINT II: THE CLASS OF BENEFICIARIES, "WIFE OR HUSBAND", IS PROPERLY INTERPRETED TO BE "LAWFUL WIFE OR LAWFUL HUSBAND".	6
CONCLUSION.	11
CERTIFICATE OF SERVICE.	12
<u>CASES CITED</u>	
<u>Bergera v. Ideal National Life Insurance Company</u> , 524 P.2d 599 (Utah, 1974).	7
<u>Beschler v. Fireman's Fund American Life Insurance Company</u> , 663 P.2d 97 (Utah, 1983).	6
<u>Faulkner v. Farnsworth</u> , Utah Supreme Court No. 18142 filed June 7, 1983.	7
<u>In re Dalton's Estate</u> , 167 P.2d 690 (Utah, 1946).	5
<u>Jones v. Hinkle</u> , 611 P.2d 733 (Utah, 1980).	6,7
<u>Kent v. Kent</u> , 497 P.2d 652 (Utah, 1972)	5
<u>Lembcke v. United States</u> , 181 F.2d 703 (2nd Cir., 1950)	8
<u>Metropolitan Life Insurance Company v. Spearman</u> , 344 F.Supp. 665 (M.D. Ala., 1972)	8
<u>Mitchell v. Mitchell</u> , 448 S.W.2d 807 (Tex., 1969)	8
<u>Warders v. Industrial Commission</u> , 230 P. 1026 (Utah, 1924). . .	5,8

TABLE OF CONTENTS
(Continued)

	PAGE
<u>Union Labor Life Insurance v. Parmely</u> , 311 A.2d 24 (Md., 1973)	3
<u>Utah Farm Bureau Mutual Insurance Company v. Orville P. Andrews and Sons</u> , Utah Supreme Court No 1823 ⁹ filed June 10, 1983.	7
<u>Williams v. First Colony Life Insurance Company</u> , 593 P.2d 534 (Utah, 1979).	7
<u>Woolery v. Metropolitan Life Insurance Company</u> , 406 F.Supp. 640 (E.D. Va., 1976).	8

STATE STATUTES CITED

Utah Code Ann. §30-1-2 (1953 as amended).	5, 9
Utah Code Ann. §30-1-6 (1953 as amended).	5

OTHER AUTHORITIES CITED

Black's Law Dictionary, Revised Fourth Edition, 1968.	7
<u>Couch on Insurance</u> , 2d §28: 18 (P. 99).	7
C.P.M. Laws of Utah, §2967, 1917.	9

IN THE SUPREME COURT OF THE STATE OF UTAH

SUZANNE PROCTOR, on behalf :
of her minor daughter, ANGELA :
BETH PROCTOR, :
Plaintiff/Appellant, :
vs- :
INSURANCE COMPANY OF NORTH : Civil No. 19288
AMERICA and SHIRLEY FLETCHER :
aka SHIPLEY WORTHEN, :
Defendants/Respondents. :

BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

Appellant, Suzanne Proctor, on behalf of her minor daughter, Angela Beth Proctor, seeks payment of certain life insurance benefits payable to her on account of the accidental death of Willis B. Proctor, the father of the real party in interest.

DISPOSITION OF THE COURT BELOW

Respondents' Motion for Summary Judgment was granted by the Honorable Timothy R. Hanson, Judge of the Third Judicial District Court in and for Salt Lake County, State of Utah, thereby dismissed appellant's Complaint with prejudice.

RELIEF SOUGHT ON APPEAL

Appellant respectfully requests that the Judgment entered below be reversed and the matter be remanded to the court below with instructions to enter judgment for plaintiff in the amount of \$12,000.00 plus pre-judgment interest from January 28, 1981 to the date of judgment.

STATEMENT OF FACTS

On or about April 1, 1978, Willis B. Proctor, a Utah resident, purchased through the Chevron Travel Club, Inc. a policy of insurance from the Insurance Company of North America, insuring him against loss of life caused by accident. (R. 313, 317) The policy of insurance purchased by Willis Proctor was entitled "a member and spouse plan." (R. 317) The policy provided that the insured may designate, in writing, a beneficiary, and if no beneficiary is named, the proceeds of the policy were payable to the first surviving class of the following classes of beneficiaries: (1) Wife or husband, (2) Child or children, (3) Mother or father, (4) Brothers or sisters. Willis Proctor named no specific beneficiary in the policy application. (R. 6-10, 313)

On January 1, 1979, a second policy of insurance was purchased by Willis Proctor from defendant, Insurance Company of North America, increasing the benefits payable to insured's surviving beneficiary by the sum of \$25,000.00. The member and spouse plan was elected by Mr. Proctor and no specific beneficiary was named in the policy application. (R. 313, 319)

On September 18, 1980, Willis Proctor sustained multiple injuries when a motorcycle he was riding collided with an automobile in Salt Lake County, State of Utah. As a result of these injuries, Willis Proctor died in Salt Lake County, Utah, on September 29, 1980. (R. 313)

On April 24, 1966, Willis Proctor and the appellant, Suzanne Proctor were married. One child, Angela Beth Proctor, was born as a result of this marriage on November 16, 1966. Angela Beth Proctor is the sole surviving issue of Willis B. Proctor. (R. 314)

The marriage of Willis Proctor and Suzanne Proctor was dissolved by an entry of an interlocutory Decree of Divorce in Salt Lake County, State of Utah, on March 13, 1968. This Decree of Divorce became final three months after its entry. In the divorce proceeding, Willis Proctor withdrew his Answer in open court on February 7, 1968, and allowed Suzanne Proctor to proceed on a default basis. (R. 314, 319)

Prior to the Decree of Divorce being entered between Willis Proctor and Suzanne Proctor, Willis Proctor participated in a marriage ceremony with respondent, Shirley Fletcher Proctor, in Las Vegas, Nevada on July 15, 1967. (R. 315, 320)

After the death of Willis Proctor, respondent, Shirley Fletcher Proctor, filed an application with Insurance Company of North America for the proceeds of the insurance policies, claiming to be the lawful wife of the decedent at the time of his death. \$48,601.50 was payable by Insurance Company of North America to the proper beneficiary of the decedent pursuant to the terms of the policies. Upon receiving the application for benefits filed by Shirley Fletcher Proctor, Insurance Company of North America paid to her \$46,701.50. (R. 313, 315) The balance of \$1,900.00 payable to the proper beneficiary, was retained by Insurance Company of North America, pending the outcome of this litigation.

The deposition of Shirley Fletcher Proctor was taken during discovery in this litigation. At her deposition, Shirley Fletcher Proctor testified that she entered into a second marriage ceremony with Willis Brent Proctor in the Village of Alvarez, in Colima, Mexico. She

produced for inspection and copying a certificate which she stated was a marriage certificate evidencing her marriage to the decedent on November 24, 1979. (R. 65, 66, translated at P. 48, 49) This certificate purported to be recorded as Act #415 of Book No. 1 of Marriages for the year 1979 for the Village of Alvarez, Colima, Mexico.

A member of the Utah State Bar Association, Maxwell Bentley, was contacted to investigate the authenticity of the document produced by the respondent. On September 4, 1981, Mr. Bentley drove from Guadalajara, Mexico to Alvarez, Colima, Mexico to examine the official marriage records in Alvarez, Colima, and to obtain a certified statement from the secretary of the Bureau of Records and Statistics of Alvarez, Colima, regarding the authenticity of the purported marriage certificate. On September 4, 1981, Mr. Bentley examined Act #415 in Book No. 1 of Marriages for the year 1979 for Alvarez, Colima, Mexico to determine whether it corresponded to the marriage of the decedent, Willis Brent Proctor and respondent, Shirley Fletcher Proctor. Mr. Bentley found that it did not but rather this act referred to the marriage of one Alejo Galvez Manzon and Rosa-Olivia Garcia Gutierrez. Moreover, examining the Marriage Book of the year 1979, Mr. Bentley found no evidence of a marriage between respondent, Shirley Fletcher Proctor, and Willis Brent Proctor. (R. 97-102)

A statement was obtained from the secretary of the Bureau of Records and Statistics for Alvarez, Colima, Mexico, to the effect that Act #415 in Book No. 1 of Marriages for the year 1979 did not correspond with the marriage of the decedent and Shirley Fletcher Proctor. (R. 97-102)

In subsequent discovery, respondent, Shirley Fletcher Proctor, has withdrawn her claim that she entered into a marriage ceremony with the decedent in Mexico and admits that the marriage ceremony participated in by her and Mr. Proctor in Las Vegas, Nevada on July 15, 1967, was the only marriage ceremony entered into by these parties. (R. 286-287)

ARGUMENT

POINT I

SHIRLEY FLETCHER PROCTOR WAS NOT THE WIFE OF THE INSURED DECEDENT, WILLIS BRENT PROCTOR, ON THE DATE OF HIS DEATH.

Under Utah law, a man and a woman must comply with certain statutory prerequisites in order to become husband and wife. The principal requirement is that the marriage between two individuals be solemnized before an authorized person. Utah Code Ann. §30-1-6 (1953 as amended). Common law marriages are not recognized under Utah law. Sanders v. Industrial Commission, 230 P. 1026 (Utah, 1924).

Certain marriages are prohibited and declared void by statute. Utah Code Ann. §30-1-2 (1953 as amended). Included in these is a marriage between two people, one of whom has a husband or wife living from whom the person has not obtained a divorce. It has been held by this Court that a marriage between two people, one of whom has a husband or wife living, is a nullity from its inception. No decree from a Court is necessary to determine that such a marriage is void ab initio and cannot be recognized as having any legal status in Utah. Sanders v. Industrial Commission, supra; Kent v. Kent, 497 P.2d 652 (Utah, 1972); In re Dalton's Estate, 167 P.2d 690 (Utah, 1946). Indi-

viduals, believing in good faith that they are legally married, who hold themselves out to the community as husband and wife, are not legally married in this state. Consequently, the marriage ceremony entered into between the decedent and the respondent, Shirley Fletcher Proctor, on July 15, 1967, in Las Vegas, Nevada, was of no effect, and Willis Proctor was married to appellant, Suzanne Proctor. Willis Proctor remained the husband of Suzanne Proctor until their Decree of Divorce became final on June 13, 1968. Thereafter, the decedent remained an unmarried man until his death on September 18, 1980.

POINT II

THE CLASS OF BENEFICIARIES, "WIFE OR HUSBAND", IS PROPERLY INTERPRETED TO BE "LAWFUL WIFE OR LAWFUL HUSBAND."

Interpretation of a written contract is ordinarily a question of law. This Court need not defer to the trial court's interpretation but may make its own independent interpretation of the contract terms. Deschler v. Fireman's Fund American Life Insurance Company, 663 P.2d (Utah, 1983); Jones v. Hinkle, 611 P.2d 733 (Utah, 1980).

A policy of insurance is a contract between the insured and the insurer. Its language is interpreted according to the same rules that apply to other contracts. The Court examines the language of the contract to determine the intention of the parties. Extraneous evidence is not admissible to explain the parties' intention unless there is an ambiguity in the instrument. The language of a contract is accorded the weight and effect which it may show was intended by the contracting parties. Faulkner v. Farnsworth, Utah Supreme Court No. 18142 filed June 7, 1983. Contract provisions are not rendered ambiguous

ous merely because the parties urge diverse interpretation upon the court. Jones v. Hinkle, supra; Utah Farm Bureau Mutual Insurance Company v. Orville E. Andrews and Sons, Utah Supreme Court No. 18239 filed June 10, 1983; Williams v. First Colony Life Insurance Company, 493 P.2d 534 (Utah, 1979); Bergera v. Ideal National Life Insurance Company, 524 P.2d 599 (Utah, 1974).

The payment of claims provision of the policy of insurance at issue provides:

Any payment of accidental loss of life indemnity becoming due hereunder shall be payable to the beneficiary of record, who shall be the beneficiary designated in writing by the member and on file with the policy holder. If at the death of the insured, there is no designated beneficiary or there is no surviving beneficiary, the accidental loss of life indemnity shall be payable in one sum to the first surviving class of the following classes of beneficiary otherwise to the estate of the insured: The insured's (1) Wife or husband, (2) Child or children, (3) Mother or father, (4) Brothers or sisters.

The payment of claims provision of the policy contains no ambiguity. The decedent named no beneficiary in writing, thereby rendering the proceeds of the policy payable to the first surviving class of the named classes of beneficiary.

The word wife is defined as "a woman united to a man by marriage." Black's Law Dictionary, Revised Fourth Edition, 1968.

Where the beneficiary is designated merely as the wife of the insured, it is the lawful wife who is the beneficiary. In those jurisdictions in which common law marriage is regarded as valid, a common law wife is entitled to take under the designation.

Black on Insurance, 2d §28: 18 (P. 99). The term widow has been construed to mean "the woman surviving on the death of the man to whom she

was legally married at the time of his death." Mitchell v. Mitchell, 448 S.W.2d 807 at 811 (Tex., 1969). In accord, Woolery v. Metropolitan Life Insurance Company, 406 F.Supp. 640 at 641 (E.D. Va., 1976); Metropolitan Life Insurance Company v. Spearman, 344 F.Supp. 665 (M.D. Pa., 1972); Union Labor Life Insurance v. Parmely, 311 A.2d 24 (Md., 1973). A widow has no popular meaning which can be determined without reference to the validity of the marriage. Lembcke v. United States, 181 F.2d 703 at 706 (2nd Cir., 1950).

In Metropolitan Life Insurance Company v. Spearman, *supra*, it is stated:

Whether one is the lawful widow of her deceased spouse can only be determined by reference to the validity of her marriage to him, and this necessarily depends upon the law of the state where the marriage was contracted.

344 F. Supp. 665 at 667.

In this case, the Court must construe the term "husband and wife" in the context of a printed, travel club, accidental death benefit of insurance. Contractual terms are to be given their usual and ordinary meaning. Bergera v. Ideal National Life Insurance Company, *supra*. The usual and ordinary meaning of "husband or wife" is a man and woman lawfully married to another. On the date of his death, Willis Proctor was not lawfully married to another and, thus, not survived by a wife.

In the context of workman's compensation insurance, this Court has held that a woman believing in good faith that she is the widow of a decedent killed in an industrial accident is entitled to no benefit under the Utah Workman's Compensation Act. Sanders v. Industrial

Commission, supra. On March 8, 1924, O. J. Sanders was killed in the course of his employment in a mine explosion in Castlegate, Utah. It was not disputed that the injury was caused by accidental means. Ruby Clark Sanders, claiming to be the wife of the decedent, applied to the Industrial Commission for compensation.

The decedent and the applicant had entered into a purported marriage contract on June 16, 1923, in the State of Wyoming, yet the applicant's previous marriage had not been dissolved by Decree of Divorce until April 25, 1923, said Decree to become final six months thereafter. This Court held that the purported marriage contract of June 16, 1923 with the decedent, was in violation of the law, and thereby null and void. §2967 of C.M.P. Laws of Utah, 1917 provided that: "Marriage is prohibited and declared void . . . (2) When there is a husband and wife living with whom the person marrying has not been divorced." This identical statute is now codified as Utah Code Ann. §30-1-2 (1953 as amended).

A marriage which is a nullity from its inception cannot be ratified or validated in Utah.

Holding each other out as husband and wife, believing in good faith that they were legally married--all of these things are of no avail in this state, where common law marriages are not valid, where marriages to be valid must be solemnized as by statute provided.

230 P. at 1027.

This Court ruled that the decedent, prior to his death, was under neither legal nor moral obligation to support the applicant, for their relationship was adulterous and

Thus this the parties were presumed to know when they contracted the void marriage. The Workman's Compensation Act does not create a right or impose a liability growing out of such illegal relationship.

In Union Labor Life Insurance Company v. Parmely, supra, the Court of Appeals of Maryland held that the payment by an insurance company to a party believing in good faith to be the proper beneficiary of an accidental death insurance policy, did not discharge the insurance company from its obligation to claims of the true beneficiary. The decedent in Parmely, died on September 24, 1972, as a result of accidental gun shot wounds which were not self inflicted. Prior to his death, the decedent had enrolled in a group life insurance policy and group accidental death policy. No beneficiary was named in either policy and under the terms of the policies, the eligible beneficiary was the decedent's widow.

The decedent was married to one Francina Parmely in Baltimore on February 16, 1946. At no time was this marriage dissolved by either party. Subsequent thereto, in 1966, a second marriage contract was entered into by the decedent with one Dorothy Pearsall. The record indicates that neither Francina nor Dorothy knew of Clyde Parmely's marriage to the other.

Following the death of the decedent, Dorothy filed a sworn statement with the insurance company alleging that she was the wife and nearest relative of the decedent, together with a certification of the marriage and proof of death. The insurance company retained a private investigator who confirmed the circumstances of the decedent's death. Thereafter, plaintiff insurance company paid to the decedent's purported second wife insurance benefits of approximately \$10,000.00.

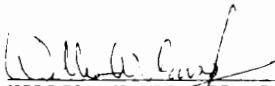
plaintiff's payment to Dorothy was in good faith without knowledge of the decedent's prior marriage. Approximately one month after this payment, Francina Parmely, through her attorney, notified the insurance company of her claim and accompanied this claim with a copy of the marriage license.

Francina Parmely, the decedent's first wife, moved for summary judgment against the insurance company contending that Dorothy had not been validly married to Clyde under the laws of Maryland, and thus could not be his "widow" under the policy. The trial court granted Francina's Motion for Summary Judgment for she remained the widow of the decedent despite his purported second marriage.

CONCLUSION

Appellant, on behalf of her minor daughter, submits that the trial court erred in granting respondents' Motions for Summary Judgment and denying appellant's Motion for Summary Judgment. At the time of his death, Willis Proctor was an unmarried man. Thus, his daughter, Angela Beth Proctor, his sole surviving issue, is the proper beneficiary under the accidental death policies of insurance. Appellants respectfully request that this Court reverse the trial court and direct them to enter judgment for appellant and against respondent, Insurance Company of North America, for the face value of the policies plus pre-judgment interest from January 28, 1981, the date the Notice of Claim was filed with the insurance company.

RESPECTFULLY SUBMITTED this 17 day of August, 1983.



WILLIAM W. DOWNES, JR.
COLLARD, PIXTON, IWASAKI & DOWNES
417 Church Street
Salt Lake City, Utah 84111
Telephone: (801) 534-1663

ATTORNEY FOR APPELLANT

CERTIFICATE OF SERVICE

I hereby certify that two true and correct copies of the foregoing Brief of Appellant were delivered to following counsel for Respondents on this 17 day of August, 1983.

Kent M. Kasting
Attorney for Respondent Shirley
Fletcher Proctor
1000 Boston Building
Salt Lake City, Utah 84111

H. James Clegg
Attorney for Respondent Insurance
Company of North America
SNOW, CHRISTENSEN & MARTINEAU
Ten Exchange Place, 11th Floor
Salt Lake City, Utah 84111

