

1972

**Zella Gygi, As Administratrix of the EState of David Alan Gygi v.
Lois Storch and the Travelers Insurance Company : Respondent's
Brief**

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IN THE SUPREME COURT OF THE STATE OF UTAH

ZELLA GYGI, as Administratrix
of the Estate of DAVID ALAN GYGI,

Plaintiff-Appellant,

vs.

LOIS STORCH and THE TRAVELERS
INSURANCE COMPANY, a
corporation,

Defendants-Respondents.

Case No.
12834

RESPONDENT'S BRIEF

Appeal from Summary Judgment of the
Third Judicial District Court in and for
the County of Salt Lake, State of Utah

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of the Estate of DAVID ALAN GYGI,
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RESPONDENT'S BRIEF

STATEMENT OF THE NATURE OF THE CASE

This is an action by respondent, Lois Storch, to recover the proceeds of a life insurance policy in which she is named as beneficiary. In a separate action, the appellant, Zella Gygi, as administratrix of the estate of David Alan Gygi, seeks damages for emotional distress allegedly caused by respondent, Lois Storch, to the deceased. The cases were consolidated by the trial court.

DISPOSITION IN THE LOWER COURT

The respondent filed a complaint in the District Court of Salt Lake County against The Travelers Insurance Companies. The appellant filed a complaint against respondent

and The Travelers Insurance Companies. The cases were consolidated and the insurance company paid the proceeds from the life insurance policy into court. Subsequent to the consolidation of the cases and the payment of the proceeds into court, the respondent moved the lower court for summary judgment and her motion was granted by Judge James S. Sawaya. The court ordered that the proceeds of the policy be paid to respondent and dismissed appellant's complaint with prejudice.

RELIEF SOUGHT ON APPEAL

Respondent seeks to have the judgment of the trial court affirmed.

STATEMENT OF THE FACTS

In approximately November, 1970, the respondent met David Alan Gygi, now deceased. Some time after their meeting, they commenced dating each other on an irregular basis, which dating continued until the death of Mr. Gygi in July, 1971. During the time the respondent and the deceased knew each other, the respondent was thirty-seven years old, divorced and the mother of eight children. The deceased was twenty-seven years old, single, apparently in fine health, and employed by Univac in Salt Lake City, Utah as a technician.

In March, 1971, David Alan Gygi applied for and received group life insurance through his employer. In his application for insurance, he designated the respondent, Lois Storch, as the beneficiary and listed her relationship to him as that of "friend". No alternate beneficiary was designated. (R. 23, R. 25).

At no time prior to his death did David Alan Gygi inform respondent that he had made her the beneficiary of any insurance policy. (Deposition of respondent, Pages 29, 30 and 51; Deposition of Janet Rider, Page 35).

During the course of their relationship, the respondent and the deceased continued to date other persons (Deposition of respondent, Pages 47, 56); the deceased never offered respondent an engagement ring (Deposition of respondent, Page 56); never gave her any gifts (Deposition of respondent, Pages 52, 29); and never gave her any money (Deposition of respondent, Page 57). Although the respondent and the deceased talked about marriage, the respondent never consented to marry the deceased, nor did she make any requests or demands of him (Deposition of respondent, Pages 49, 50, 52, 56 and 58; Deposition of Janet Rider, Page 29). The respondent did nothing more than refuse to marry the deceased, and throughout the entire course of their relationship she made her unwillingness to marry Mr. Gygi clear to him. (Deposition of respondent, Pages 49, 50, 52, 56 and 58; Deposition of Janet Rider, Pages 16-17, 29, 35). Respondent had no indication that the deceased was immature, unstable or suicidal (Deposition of respondent, Page 53; Deposition of Janet Rider, Pages 30, 31 and 32).

In July, 1971, David Alan Gygi died allegedly by his own hand, and it was after his death that respondent became aware that she had been designated beneficiary of the above described insurance policy.

ARGUMENT

THE LOWER COURT DID NOT COMMIT ERROR IN RULING THAT THE APPELLANT HAD NO CAUSE OF ACTION BASED UPON HER CONTENTION THAT RESPONDENT SUBJECTED APPELLANT'S SON TO SUCH EMOTIONAL DISTRESS THAT HE TOOK HIS OWN LIFE.

The only point raised by appellant is that the respondent "inflicted emotional distress upon David Alan Gygi to such an extent that he took his own life." (Appellant's Brief, Page 10). The precise cause of action alleged by appellant is not clear from her brief. If she is claiming damages for the emotional distress and suffering allegedly caused David Alan Gygi before his death, it is clear that under Section 78-11-7, Utah Code Annotated 1953, no cause of action for pain and suffering, physical or emotional, survived his death. If her claim is one for wrongful death, the mere refusal of marriage does not give any basis for a wrongful death action, and even if it did, appellant has failed to establish any causal connection between respondent's actions and Mr. Gygi's death. No matter what appellant's theory is, it is apparent that none of appellant's contentions relate in any way to the insurance proceeds. Therefore, whatever the ruling of the court, respondent is clearly entitled to the insurance proceeds.

The appellant recites authorities with which respondent has no basic disagreement. However, there is no evidence that respondent's conduct would be actionable under any of the authorities cited by appellant. In a case involving an entirely different factual background, the Utah case of *Sammis v. Eccles*,

11 Utah 2d 289, 358 P. 2d 344 (1961), held that a cause of action for emotional distress may not be based on mere negligence. In that case, the court said:

"Our study of the authorities and of the arguments advanced, convinces us that, conceding such a cause of action may not be based upon mere negligence, the best considered view recognizes an action for severe emotional distress, when not accompanied by bodily impact or physical injury, where the defendant intentionally engaged in some conduct toward the plaintiff (a) with the purpose of inflicting emotional distress, or (b) where any reasonable person would have known that such would result; and his actions are of such a nature as to be considered outrageous and intolerable in that they offend against the generally accepted standards of decency and morality."

See also *Covert v. Kennecott Copper Corporation*, 23 Utah 2d 252, 461 P. 2d 466 (1969); and *Wood v. United Airlines, Inc.*, 404 F. 2d 162 (10th Cir. 1968).

Therefore, before a cause of action exists for emotional distress, the respondent must have engaged in some outrageous and/or intentional conduct with the purpose of inflicting emotional distress or with knowledge that such distress would likely result.

The respondent did nothing which intentionally or unreasonably subjected David Alan Gygi to emotional distress, nor would her conduct cause an average member of the community to condemn her actions as outrageous and intolerable or offensive to the generally accepted standards of decency and morality.

Despite appellant's attempts to make the respondent appear to be a designing woman who took advantage of the deceased, the facts are clearly the opposite. The respondent exercised great consideration for David Alan Gygi and was straightforward and honest with him throughout their relationship. The only improper action alleged by the appellant is that the respondent refused to marry the deceased. It is understandable that in many cases such conduct could cause emotional distress, as is the case in many situations when a woman refuses an offer of matrimony. One soon learns as he goes through life that the female of the species can continue to inflict emotional suffering upon the male. However much the males of the world may wish otherwise, the law has never recognized this cause of action to be "extreme and outrageous conduct or intentional and unreasonable conduct" for which a cause of action will lie. With the women's liberation movement firmly established, it is now too late for the courts to take such a drastic step in judicial legislation.

From the facts before the court, it is obvious that none of the four points set forth on Pages 10-11 of appellant's brief have any merit. With regard to those points, respondent asserts the following:

POINT 1: Both the respondent and Janet Rider felt that David Alan Gygi was stable and mature. He was twenty-seven years old, had served in the United States Army, appeared to be in good health, and was holding down a responsible position as a technician with an important firm. He never mentioned to respondent or Janet Rider that he would take his own life if circumstances did not go his way.

POINTS 2 and 3: The allegations of Points 2 and 3 appear to claim that a woman is liable for any and all consequences if she refuses a man's proposal of marriage when he is infatuated and in love with her and spends a great deal of time with her. To permit a cause of action based upon the emotional distress suffered by men and women whose love is unrequited is absolutely ridiculous. Moreover, the complete honesty and good faith of Lois Storch is evidenced throughout her deposition and the deposition of Janet Rider.

POINT 4: Point 4 attempts to make a claim that the respondent suddenly and with knowledge of the probable consequences told the deceased she would not marry him. The facts clearly show that Lois Storch had repeatedly told the deceased she would not marry him and finally terminated the relationship.

CONCLUSION

The respondent is the lawful beneficiary under the insurance policy (R. 19), and the appellant does not dispute that she was lawfully designated as beneficiary and remained the beneficiary until the death of David Alan Gygi. The appellant no longer contends that the insurance policy was conditional upon any event, nor is there any evidence that the deceased changed or intended to change the beneficiary before his death (R. 26).

In *Scherer v. Wahlstrom*, 318 S.W. 2d 456 (1958), a Texas case with facts much like those of the instant case, the beneficiary was awarded the proceeds of an insurance policy as against the parents of the deceased even though she was

engaged to the deceased at the time of her designation as beneficiary, but married to another at the insured's death. There was evidence that the insured had obtained a change of beneficiary form but failed to fill it out and return it before his death. The court ruled that where no change of beneficiary was completed, the lawfully designated beneficiary was entitled to the proceeds.

The summary judgment granted by the trial court sustaining the right of the respondent to the insurance proceeds and dismissing appellant's complaint with prejudice should be sustained and affirmed.

Respectfully submitted,

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