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Negligence - Insurer Held Liable for Negligent Issuance of Life Insurance Policy to One with No Insurable Interest Who Subsequently Murdered Insured - Liberty National Life Ins. Co. v. Weldon, 100 So. 2d 696 (Ala., 1958)

DePaul College of Law

having operated under both arrangements). In finding an unprofessional and illegal practice the court stated, ". . . petitioners must be held accountable for the practices which existed during the period that they were charged with misconduct."[14] This statement appears to have reference to the period in which the attorney operated under the "fee-splitting" contracts.

The Illinois Supreme Court, in the instant case, concluded that the legitimate interest of the Brotherhood does justify the conducting of investigations, and a staff, financed by the Brotherhood, may be maintained to accomplish this purpose. The investigations may be conducted with a view towards subsequent litigation, but the resulting reports must be given to the injured or his kin.

Further, the court asserted that the Brotherhood may make known to all its members, and specifically to those injured, the advisability of obtaining legal advice prior to a settlement and the names of attorneys who, in the opinion of the Brotherhood, can handle such claims successfully. However, the court also held that the Brotherhood may not permit investigators to carry the attorneys' contracts or photostats of prior settlement checks, fix the fees of the attorneys, or maintain any financial connection with the attorneys.

The Illinois Supreme Court did not take disciplinary action against the attorneys of the Brotherhood[15] because of the ambiguity resulting from the *Ryan* case.[16] Upon the same basis, the Brotherhood was given until July 1, 1959 to reorganize in accordance with the recommendations set forth in the opinion.

[14] Ibid., at 514, 514.

[15] Ibid. The California court did not take disciplinary action against Hildebrand.

[16] The rationale for refusing to discipline was based on In re Luster, 12 Ill.2d 25, 145 N.E.2d 75 (1957), where the court permitted an attorney to use as an equitable defense his reliance on an unreported case never expressly overruled, notwithstanding similar contra opinions.

NEGLIGENCE–INSURER HELD LIABLE FOR NEGLIGENT ISSUANCE OF POLICY TO ONE WITH NO INSURABLE INTEREST WHO SUBSEQUENTLY MURDERED INSURED

Appellee, father of a deceased minor child, sued appellants, Liberty National Life Ins. Co., National Life and Accident Ins. Co., and Southern Life and Health Ins. Co., for the wrongful death of the child. The father based his suit upon the theory that the insurers were negligent in issuing policies of life insurance to the beneficiary, an aunt-in-law, who was subsequently convicted of the murder of the child. The Supreme Court of Alabama upheld the judgment of $75,000 on the ground that the evi-

dence presented questions for the jury. *Liberty National Life Ins. Co. v. Weldon*, 100 So. 2d 696 (Ala., 1958)

In a lengthy but logical discourse on the various aspects of the law involved in this case, the court arrived at the conclusion that an insurance company which negligently issues a life insurance policy on a life, to one who has no insurable interest in the life, is liable for the injuries to the insured as a result of this negligence.

In looking at this problem the court explained the pertinent issues in regard to insurable interest and negligence. To arrive at a better understanding of the rule announced, it is necessary to view each of these aspects separate and apart from the instant case.

Illinois courts have held that it is essential for the validity of an insurance policy, that the party taking the insurance have an insurable interest in the subject matter of the insurance,[1] and policies so issued without this requisite insurable interest are void as against public policy.[2] In the words of Justice Field in *Warnock v. Davis:*

> [I]n all cases there must be a reasonable ground, founded upon the relations of the parties to each other, either pecuniary or of blood or affinity, to expect some benefit or advantage from the continuance of the life of the assured. Otherwise the contract is a mere wager, by which the party taking the policy is directly interested in the early death of the assured. Such policies have a tendency to create a desire for the event. They are, therefore, independently of any statute on the subject, condemned as being against public policy.[3]

In the instant case, the court states Alabama public policy in equally strong language, quoting from *Helmetag's Adm'r. v. Miller:*[4]

> The reason of the law which vitiates wager policies, is the pecuniary interest which the holder has in procuring the death of the subject of insurance, thus opening a wide door by which a constant temptation is created to commit for profit the most atrocious of crimes.[5]

It is seen that in the instant case, the policies issued to the aunt-in-law would be void as against public policy, if it was found that the aunt-in-law

[1] Patterson v. Durand Farmers Mut. Ins. Co., 303 Ill. App. 128, 24 N.E.2d 740 (1940).

[2] Warnock v. Davis, 104 U.S. 775 (1881); Helmetag's Adm'r. v. Miller, 76 Ala. 183 (1884); Mutual Aid Union v. White, 166 Ark. 467, 267 S.W. 137 (1924); Wilson v. Progressive Life Ins. Co., 61 Ga. 617, 7 S.E.2d 44 (1940); Guardian Mut. Life Ins. Co. v. Hogan, 80 Ill. 35 (1875); Shaw v. Livingston & Co., 293 Ky. 575, 169 S.W.2d 612 (1943); Evans v. Independent Nat. Life Ins. Co., 148 So. 264 (1933); Woods v. Washington Fidelity Nat. Ins. Co., 113 S.W.2d 121 (1938); Wharton v. Home Security Life Ins. Co., 206 N.C. 254, 173 S.E. 338 (1934); Henderson v. Life Ins. Co. of Virginia, 176 S.C. 100, 179 S.E. 680 (1935); Washington v. Atlanta Life Ins. Co., 175 Tenn. 529, 136 S.W.2d 493 (1940).

[3] 104 U.S. 775, 779 (1881).

[4] 76 Ala. 183, 187 (1884).

[5] Liberty Nat. Life Ins. Co. v. Weldon, 100 So.2d 696, 705 (Ala., 1958).

lacked sufficient insurable interest in the life of the deceased child. The court dismissed a discussion of pecuniary interest for the evidence tended to show that the aunt-in-law had no ". . . reasonable expectation of possible profit or advantage to her from the continued life of Shirley."[6] By virtue of the holdings in two Alabama cases, *Commonwealth Life Ins. Co. v. George*[7] and *National Life and Accident Ins. Co. v. Middlebrook*,[8] the court in the instant case resolved the question of insurable interest by blood or affinity. In the former case it was held that in Alabama, the relation of aunt alone, without other circumstances, is not sufficient to sustain an insurable interest. The latter case stands for the proposition that Alabama courts do not recognize an in-law relationship alone as sufficient to sustain an insurable interest.

Following the Alabama decisions, the majority of jurisdictions recognize an insurable interest by virtue of blood relation alone where there is the relation of parent and child, grandparent and grandchild and brother and sister. Usually the courts only hold the relation of husband and wife as sufficient when speaking of affinity.[9] Other relations, such as uncle and aunt, nieces and nephews, and that of cousins, have not been recognized by the courts as sufficient to uphold an insurable interest without some other attendant circumstances.[10]

Illinois courts have put an even stricter interpretation upon insurable interest. They state, in summary, that besides the relationship of husband and wife and certain aspects of parent and child, there must be some economic or pecuniary advantage in order to support an insurable interest.[11]

Thus satisfying itself with the absence of an insurable interest by the aunt-in-law in the life of the deceased child, the court moved into the area of the negligent issuance of these void policies.

Following the academic theory for finding the components of a cause of action in negligence, the court in the instant case first discussed duty; then breach of the duty; and finally proximate cause. Using cases which dealt with other than insurance matters,[12] the court based its finding on

[6] Ibid., at 104. See Helmetag's Adm'r. v. Miller, 76 Ala. 183 (1884); Commonwealth Life Ins. Co. v. George, 248 Ala. 649, 28 So. 2d 910 (1947).

[7] 248 Ala. 649, 28 So. 2d 910 (1947).

[8] 27 Ala. App. 247, 170 So. 84 (1936).

[9] 44 C.J.S., Insurance §§ 204, 205 (1945); Vance, Insurance § 31, pages 183 to 199 incl. (3rd ed., 1951).

[10] Ibid.

[11] Metropolitan Life Ins. Co. v. Quandt, 69 Ill. App. 649 (1897). But see: Guardian M. L. Ins. Co. v. Hogan, 80 Ill. 35 (1875); and, Schwerdt v. Schwerdt, 235 Ill. 386, 85 N.E. 613 (1908).

[12] Weston v. National Manufacturers & Stores Corp., 253 Ala. 503, 45 So. 2d 459 (1950) (sales contract); Railway Express Co. v. Real, 253 Ala. 489, 45 So. 2d 306

the broad statement that there is a duty upon all to exercise reasonable care not to injure another.[13] The breach of this duty of the insurance companies to take reasonable steps so as not to cause injury to the insured was evident by a perusal of the facts. It was shown that the appellants made no effort to inquire into the actual presence or absence of an insurable interest in the aunt-in-law. The component of this negligence action which posed the greatest problem was whether the insurance companies could be held liable for this negligence, not withstanding the fact that an intervening cause, the criminal act of murder by the aunt-in-law, was actually in point of time, the cause of the death of the insured child.

The appellants cited the case of *Garrett v. Louisville and Nashville R. Co.*[14] for the proposition that the intervening criminal act breaks the chain of causation and therefore appellants would not be liable. The court was not impressed with this case, as authority, since there was no question of foreseeability in the *Garrett* case.

Kettman v. Levine[15] concisely pinpoints the problem in the instant case with the statement: "The question of proximate cause is a question of foreseeability." Similar statements have been found in many other cases, too numerous to mention.

The court in the instant case stated that the appellants were duty bound to anticipate the possibility of the very act which here occurred; and this duty comes directly from the vigorous tenor of the language found in the cases in respect to such insurance contracts being held void as against public policy.[16] As stated above, Alabama has found such insurance contracts void because of ". . . the pecuniary interest which the holder has in procuring the death of the subject of insurance."[17]

The negligence of the appellants is the proximate cause of the death of the insured, because by public policy, appellants were held to foresee or should have foreseen, as reasonable men, the very action which the public policy roundly condemns; in this case the intervening criminal act of murder.

Many cases have held that intervening negligent acts do not break the

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(1950) (truck); Southeastern Greyhound Lines v. Callahan, 244 Ala. 449, 13 So. 2d 660 (1943) (common carriers); Whiddon v. Malone, 220 Ala. 220, 124 So. 516 (1929) (auto); Merchant's Bank v. Sherman, 215 Ala. 370, 110 So. 805 (1926) (sales warranty); Southern Ry. Co. v. Arnold, 162 Ala. 570, 50 So. 293 (1909) (railway).

[13] Liberty Life Ins. Co. v. Weldon, 100 So. 2d 696, 708 (Ala., 1958).

[14] 196 Ala. 52, 71 So. 685 (1916).

[15] 115 Cal. App. 2d 844, 253 P. 2d 102 (1953).

[16] See Helmetag's Adm'r. v. Miller, 76 Ala. 183 (1884).

[17] **Ibid., at 187.**

chain of causation. But, in *Werkman v. Howard Zink Corp.* the following statement is found:

> Foreseeability in causation means foreseeability of intervening causes only; it does not include foreseeability of consequences. A consequence which follows directly either from defendant's act or from a foreseeably caused intervening act is proximate.[18]

In Illinois, the case of *Libby, McNeill and Libby v. Illinois District Telephone Co.*, although holding upon the facts that there was no foreseeability, stated:

> Defendant's negligence is too remote to constitute the proximate cause where an independent illegal act of a third person, which *could not reasonably have been foreseen*, and without which such injury would not have been sustained, intervenes. A person is not bound to anticipate the malicious or criminal acts of others by which damage is inflicted, even though they are the acts of children. *But where an independent illegal act was of a nature which might have been anticipated and which it was the defendant's duty to provide against*, he will be liable for breach of such duty not-withstanding the production of injuries by the intervention of an act of the character described.[19]

Alabama, by this decision, holds, that insurance companies are liable to insured persons for injuries which result from the impetus given buyers of the insurance who have no insurable interest, to commit acts which public policy condemns and which by virtue of this same public policy, the insurance companies are bound to foresee. With the use of reasoning similar to that used by the Alabama court in the instant case, the majority of courts which hold such insurance contracts void as against public policy (including Illinois whose public policy is much more vigorous in its condemnation) may very well hold insurance companies liable under similar factual arrangements.

[18] 97 Cal. 2d 418, 218 P. 2d 43, 48 (1950). See also, Watson v. Southern Bus Lines, 186 F. 2d 981 (C.A. 6th, 1951); Di Gironimo v. American Seed Co., 96 F. Supp. 795 (E.D. Pa., 1951); Eads v. Marks, 39 Cal. 2d 807, 249 P. 2d 257 (1952); De La Torre v. Valenzuela, 102 Cal. App. 2d 586, 228 P. 2d 13 (1951).

[19] 249 Ill. App. 93, 13 N.E. 2d 683 (1938) (emphasis supplied).

TAXATION–LIABILITY OF BENEFICIARY OF LIFE INSURANCE POLICY FOR UNPAID TAXES OF DECEDENT DETERMINED

Two recent Supreme Court cases have finally settled the question of liability of the beneficiary of a life insurance policy for the unpaid income taxes of the decedent.

In the first case, the decedent was a resident of Kentucky. Six years after his death the Tax Court held that he had been deficient in his income