

IN THE COURT OF APPEALS 12/29/95

OF THE

STATE OF MISSISSIPPI

NO. 94-CA-01240 COA

J. STUART CUNDIFF AND AMERICAN REPUBLIC LIFE INSURANCE COMPANY

APPELLANTS

v.

**NORMA TALLANT CAIN, ADMINISTRATRIX OF THE ESTATE OF SCOTTY S.
TALLANT, DECEASED**

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. DON GRIST

COURT FROM WHICH APPEALED: LAFAYETTE COUNTY CHANCERY COURT

ATTORNEYS FOR APPELLANTS:

JOHN H. DUNBAR

LOUIS H. WATSON

T. H. FREELAND IV

ATTORNEY FOR APPELLEES:

CLIFF R. EASLEY, JR.

NATURE OF THE CASE: INSURANCE

TRIAL COURT DISPOSITION: INSURANCE BENEFITS AWARDED TO ESTATE BECAUSE
THE NAMED BENEFICIARY HAD NO "INSURABLE INTEREST" IN THE DECEASED

BEFORE FRAISER, C.J., BARBER, AND McMILLIN, JJ.

McMILLIN, J., FOR THE COURT:

This case involves a dispute over the entitlement to the proceeds of a life insurance policy issued on the life of Scotty S. Tallant. There were three parties to the litigation in the trial court. American Republic Life Insurance Company (American Republic) issued the policy. J. Stuart Cundiff was the owner and beneficiary of the policy at the time of its issuance, and was the recipient of the death benefits after Tallant's death. Norma Tallant Cain, in her capacity as administratrix of Scotty Tallant's estate, lays claim to the death benefits upon an allegation that Cundiff lacked an insurable interest in the life of Tallant.

The chancellor determined that Cundiff, in fact, did not have an insurable interest in the life of Tallant. He further adjudicated that, because American Republic had paid the proceeds of the policy, it was estopped to deny its obligation to pay death benefits. The chancellor, therefore, concluded that the proceeds of the policy were properly payable to the decedent's estate and rendered a joint and several judgment against Cundiff and American Republic for the amount of the death benefits.

Both Cundiff and American Republic perfected appeals from that judgment. Upon a conclusion that the chancellor committed an error of law in deciding the case, we reverse and render judgment against Tallant's estate.

I.

FACTS

Shortly after Scotty Tallant married Stuart Cundiff's daughter, Cundiff applied to American Republic for a policy of insurance on Tallant's life. The policy was issued. Cundiff testified that his motives in procuring the insurance were that, upon the marriage, he expected Tallant to provide some portion of the financial care of Cundiff's granddaughter, who by virtue of the marriage became Tallant's stepdaughter. Cundiff claimed to believe that, in the event something happened to Tallant, the primary care for the granddaughter would devolve to Cundiff and this was the contingency he was seeking to insure against.

Within only a short time after the issuance of the policy, Tallant and Cundiff's daughter were divorced; however, Cundiff continued to maintain the policy. Approximately three months after the divorce, Tallant was killed in an automobile accident, and Cundiff filed for the insurance benefits. During the course of a routine investigation by American Republic prior to paying on the policy, Norma Tallant Cain, Scotty Tallant's mother, learned for the first time of the existence of the policy. Through an attorney, she informed the company of the circumstances and demanded that the company not pay any benefits to Cundiff. Despite the protestations of Cain, American Republic paid the proceeds to Cundiff. That payment ultimately led to the litigation now before this Court.

II.

DISCUSSION OF THE LAW

The chancellor based his decision in part in reliance upon the provisions of section 83-5-251 of the Mississippi Code of 1972. This section of the code deals with the issue of who may obtain insurance upon the life of another person and attempts to formalize the concept of "insurable interest" that has existed in Mississippi law by case law for some time. The enactment also created a cause of action in favor of an insured decedent's estate to permit recovery of insurance benefits obtained by other persons who did not, in fact, have an insurable interest in the insured. Any reliance upon the provisions of this statutory enactment was misplaced, however, for the reason that the statute did not go into effect until 1993, and the operative facts controlling this case all occurred prior to that time. Therefore, this case must be decided solely on case law as it existed at the time the events of this case unfolded.

While this Court concedes that there is a close question as to whether Cundiff, under the essentially undisputed facts of this case, had an insurable interest in Tallant at the time of issuance of the policy, we conclude that, under the existing state of the law at the time the facts of this case occurred, it is not necessary to reach that issue in order to resolve the case.

The necessity for the existence of an insurable interest in the beneficiary in order to render a policy of life insurance valid is a concept that existed in Mississippi by case law long before the adoption of the referenced statute. See *Van Zandt v. Morris*, 196 Miss. 374, 381, 17 So. 2d 435, 436 (1944). The idea of requiring an insurable interest in favor of the beneficiary originally arose in the middle 18th century in England as an answer to an abusive practice wherein life insurance policies were often purchased on public figures by persons completely unacquainted with them as a mere sporting wager. In a brief, but enlightening passage on the subject, Janice E. Greider, Muriel L. Crawford, and William T. Beadles concluded that "[t]he vicious nature of this wagering shocked the conscience of an 18th century public not noted for its squeamishness" and noted the practice "provided an inducement to the murder of the insured." See Janice E. Greider et al., *Law and the Life Insurance Contract* (5th ed. 1984).

The underlying theory of requiring an insurable interest, then, appears to be to provide reasonable assurance that the beneficiary has some motive to desire the preservation rather than the foreshortening of the life of the insured. Though the general concept is understandable, there has never arisen an objective formula to test for the presence of an insurable interest. In some cases, it is recognized that the strong bonds of affection naturally assumed to exist provide the disincentive to desire the early demise of the insured. Thus, husbands and wives are generally deemed, as a matter of law, to have an insurable interest in their spouses. 3 George J. Couch: *Cyclopedia of Insurance Law* § 24:125 (Mark S. Rhodes ed., 2d ed., rev. vol. 1984); See *Warnock v. Davis*, 104 U.S. 775, 779 (1882). Likewise, parents are deemed to have an insurable interest in their children. 3 Couch, *supra* § 24:129; See *Warnock*, 104 U.S. at 779. On the other hand, more remote relationships arising by blood or marriage, though not automatically excluded, have been said to require some additional stake, generally of a pecuniary nature, by the beneficiary in the continued life of the insured in order to give rise to an insurable interest. 3 Couch, *supra* § 24:121. By way of example, the case relied upon by Administratrix Cain, *National Life and Acci. Ins. Co. v. Ball*, determined that the son-in-law in that case did not have an insurable interest in his father-in-law. *National Life & Accident Ins. Co. v. Ball*, 157 Miss. 163, 127 So. 268 (1930). However, that case does not lay down a hard and fast rule that a relationship of that degree arising by affinity can never give rise to an insurable interest. Instead, the case proceeds to analyze the relative financial situation of the parties to determine if the

necessary additional element of a pecuniary interest can be discovered to establish the interest. *Id.*

There is a substantial obstacle in the way of the chancellor's ever reaching this issue in this case, however. The rule that has arisen in the majority of jurisdictions considering the question is that the insuring company is the sole entity with standing to raise the issue of the existence of an insurable interest.

Only the insurer can raise the objection of want of insurable interest. As a corollary of this rule, after the insurer has recognized the validity of the life insurance policy as by paying the amount thereof to the beneficiary or into court, adverse claimants to the funds ordinarily may not raise the objection of lack of insurable interest.

3 Couch, *supra* § 24:6.

Thus, the majority rule is that the insurer alone may question the eligibility of beneficiaries, and a contesting beneficiary may not raise such lack of relationship or other ineligibility. . . . Likewise, the majority rule is to the effect that only the insurer may raise the defense of lack of insurable interest. . . .

3 John Alan Appleman & Jean Appleman, *Insurance Law and Practice* § 1061 (1979).

There is little doubt that, prior to the 1993 effective date of section 83-5-251, cited earlier, Mississippi followed the general rule. The Mississippi Supreme Court has discussed the existence of an insurable interest of an employer in its employees. *Neely v. Pigford*, 181 Miss. 306, 314, 178 So. 913, 914 (1938). The Court found a general basis for its existence due to common practices then prevailing, and stated, "If a particular insured employer does not follow the custom or practice above mentioned, or in a particular case neglects or refuses, the insurer can raise for decision the point of want of insurable interest, since, according to the authorities, that point is available only to the insurer, and not to other parties." *Neely*, 178 So. at 914.

This principle appears reasonable in view of the result required under the law as it existed at the time: If the insurer established lack of an insurable interest, the policy was declared void and no benefits were payable to any entity. *State Farm Mut. Auto. Ins. Co. v. Calhoun*, 236 Miss. 851, 866, 112 So. 2d 366, 372 (1959); *Gerard v. Metropolitan Life Ins. Co.*, 167 Miss. 207, 149 So. 793 (1933). Had American Republic in this case investigated further at the demand of Cain and concluded that Cundiff did not have an insurable interest in Tallant's life, the proper legal result would have been to render the policy void and deny policy proceeds to anyone. *Gerard*, 149 So. at 794. The lack of an insurable interest in Cundiff, even if established, simply did not give rise to a claim to policy proceeds by Tallant's estate under the law as it existed at the time these events occurred.

Neither does the fact of the divorce that followed shortly after the purchase of the policy change the relative rights of the parties. Although discussing the relative rights of former spouses in regard to insurance proceeds after a divorce, the following passage would appear to have equal application to the situation of more distant relationships created by the marriage and destroyed by the subsequent

divorce:

The fact that the divorce destroys the insurable interest does not prevent recovery on the policy which was previously valid. This is an application of the rule, which prevails in most jurisdictions, that a policy or certificate, originally valid, continues to be so, notwithstanding cessation of the assured's interest in the life insured, unless the contrary is the necessary effect of the provisions of the contract.

3 Couch, *supra* § 24:126.

Mississippi followed this general rule in *First-Columbus National Bank v. D. S. Pate Lumber Co.*, where D. S. Pate Lumber Company took out two policies on the life of Walter Holesapple, one of its executive officers and shareholders. Holesapple later sold his stock and ceased to be an officer in the company. Upon leaving the lumber company, Holesapple requested that the life insurance policies be turned over to him. The company complied as to one of the policies, but refused as to the other. Holesapple filed suit against D. S. Pate Lumber offering to pay the fair cash surrender value for the policy and requesting that the beneficiary be changed to name Mr. Holesapple's wife. During the course of this suit, Holesapple died and First-Columbus National Bank, his executor, took over in the action. The court ruled in favor of D. S. Pate Lumber stating, "An insurable interest in the assured, at the time the policy is issued, is essential to the validity of the policy, but it has often been decided, . . . that it is not necessary to the continuance of the insurance that the interest in the life insured should continue. Cessation of interest . . . would not terminate the policy." *First-Columbus Nat'l Bank v. D. S. Pate Lumber Co.*, 163 Miss. 691, 703, 141 So. 767, 768 (1932) (quoting *Murphy v. Red*, 64 Miss. 614, 618-19, 1 So. 761, 762 (1887)).

III.

COMPLICITY OF AMERICAN REPUBLIC IN POLICY ISSUANCE

The chancellor determined that somehow American Republic had some additional liability in this case due to the complicity of its agent in the questionable circumstances surrounding the issuance of the policy, including the fact that Cundiff admittedly signed Tallant's name to the insurance application. (He testified that he did so with Tallant's express knowledge and consent.) While we cannot disagree that the circumstances regarding the issuance of the policy are sufficient to raise the eyebrow, the fact simply remains that nothing in these facts, even if accepted as true, creates any cause of action in the estate of Tallant. While some courts have found an independent tort to exist in favor of the insured for an insurance company's failure to reasonably ascertain the existence of an insurable interest prior to issuance of a policy. *See, e.g., Liberty Nat'l Life Ins. Co. v. Weldon*, 267 Ala. 171, 100 So. 2d 696 (1957), *overruled in part on other grounds by* 279 Ala. 536, 173 So. 2d 80 (1966). Nevertheless, such a tort was neither pled nor proved in this case.

CONCLUSION

American Republic may have had an absolute defense to payment of the policy proceeds to Cundiff based upon the lack of an insurable interest. However, that defense was available solely to the

company. Had it elected to assert such a defense, it was subject to suit by Cundiff for the proceeds. It was also subject to a claim of bad faith denial of coverage by Cundiff had it denied his claim based upon lack of insurable interest, since the existence or lack of such an interest in this case was not subject to an objective litmus test, but was based upon the nuances of a perhaps questionable but certainly ingenious assertion of a pecuniary interest in the continued life of Tallant based upon his moral obligation to support his minor stepdaughter. Rather than litigate such an issue, American Republic elected simply to honor the policy as issued. No harm arose to Tallant during his lifetime nor to his estate by that election. Had American Republic denied coverage and successfully defended a suit by Cundiff, Tallant's estate would have benefitted not one whit. Had American Republic denied coverage and lost in litigation to Cundiff, likewise, Tallant's estate would not have derived a single benefit. Therefore, American Republic's election to pay a dubious but arguably valid claim for death benefits did nothing to give rise to an independent cause of action for the death benefits on behalf of the insured's estate.

This case is reversed and judgment is rendered in favor of American Republic and Cundiff.

THE JUDGMENT OF THE CHANCERY COURT OF LAFAYETTE COUNTY IS REVERSED AND JUDGMENT IS RENDERED FOR THE APPELLANTS. COSTS OF THE APPEAL ARE TAXED TO THE APPELLEE.

FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ, KING, PAYNE AND SOUTHWICK, JJ., CONCUR.