

HILARIO GERCIO, PLAINTIFF AND APPELLEE, VS. SUN LIFE ASSURANCE CO. OF CANADA ET AL., DEFENDANTS. SUN LIFE ASSURANCE CO. OF CANADA, APPELLANT.*G.R. No. 23703. September 28, 1925*

Ponente: MALCOLM, J.

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The question of first impression in the law of life insurance to be here decided is whether the insured—the husband—has the power to change the beneficiary—the former wife—and to name instead his actual wife, where the insured and the beneficiary have been divorced, and where the policy of insurance does not expressly reserve to the insured the right to change the beneficiary. Although the authorities have been exhausted, no legal situation exactly like the one before us has been encountered.

Hilario Gercio, the insured, is the plaintiff. The Sun Life Assurance Co. of Canada, the insurer, and Andrea Zialcita, the beneficiary, are the defendants. The complaint is in the nature of mandamus. Its purpose is to compel the defendant Sun Life Assurance Co. of Canada to change the beneficiary in the policy issued by the defendant company on the life of the plaintiff Hilario Gercio, with one Andrea Zialcita as beneficiary.

A default judgment was taken in the lower court against the defendant Andrea Zialcita. The other defendant, the Sun Life Assurance Co. of Canada, first demurred to the complaint and when the demurrer was overruled, filed an answer in the nature of a general denial. The case was then submitted for decision on an agreed statement of facts. The judgment of the trial court was in favor of the plaintiff without costs, and ordered the defendant company to eliminate from the insurance policy the name of Andrea Zialcita as beneficiary and to substitute therefor such name as the plaintiff might furnish to the defendant for that purpose.

The Sun Life Assurance Co. of Canada has appealed and has assigned three errors alleged, to have been committed by the lower court. The appellee has countered with a motion which asks the court to dismiss the appeal of the defendant Sun Life Assurance Co. of Canada, with costs.

As the motion presented by the appellee and the first two errors assigned by the appellant are preliminary in nature, we will pass upon them first. Appellee argues that the "substantial defendant" was Andrea Zialcita, and that since she was adjudged in default, the Sun Life Assurance Co. of Canada has no interest in the appeal. It will be noticed, however, that the complaint prays for affirmative relief against the insurance company. It will be noticed further that it is stipulated that the insurance company has persistently refused to change the beneficiary as desired by the plaintiff. As the rights of Andrea Zialcita in the policy are rights which are enforceable by her only against the insurance company, the defendant insurance company will only be fully protected if the question at issue is conclusively determined. Accordingly, we have decided not to accede to the motion of the appellee and not to order the dismissal of the appeal of the appellant.

This brings us to the main issue. Before, however, discussing its legal aspects, it is advisable to have before us the essential facts. As they are stipulated, this part of the decision can easily be accomplished.

On January 29, 1910, the Sun Life Assurance Co. of Canada issued insurance policy No. 161481 on the life of Hilario Gercio. The policy was what is known as a twenty-year endowment policy. By its terms, the insurance company agreed to insure the life of Hilario Gercio for the sum of P2,000, to be paid him on February 1, 1930, or if the insured should die before said date, then to his wife, Mrs. Andrea Zialcita, should she survive him; otherwise, to the executors, administrators, or assigns of the insured. The policy also contained a schedule of reserves, amounts in cash, paid-up policies, and renewed insurance, guaranteed. The policy did not include any provision reserving to the insured the right to change the beneficiary.

On the date the policy was issued, Andrea Zialcita was the lawful wife of Hilario Gercio. Towards the end of the year 1919, she was convicted of the crime of adultery. On September 4, 1920, a decree of divorce was issued in civil case No. 17955, which had the effect of completely dissolving the bonds of matrimony contracted by Hilario Gercio and Andrea Zialcita.

On March 4, 1922, Hilario Gercio formally notified the Sun Life Assurance Co. of Canada that he had revoked his donation in favor of Andrea Zialcita, and that he had designated in her stead his present wife, Adela Garcia de Gercio, as the beneficiary of the policy. Gercio requested the insurance-company to eliminate Andrea Zialcita as beneficiary. This, the insurance company has refused and still refuses to do.

With all of these introductory matters disposed of and with the legal question to the forefront, it becomes our first duty to determine what law should be applied to the facts. In this connection, it should be remembered that the insurance policy was taken out in 1910, that the Insurance Act, No. 2427, became effective in 1914, and that the effort to change the beneficiary was made in 1922. Should the provisions of the Code of Commerce and the Civil Code in force in 1910, or the provisions of the Insurance Act now in force, or the general principles of law, guide the court in its decision?

On the supposition, first, that the Code of Commerce is applicable, yet there can be found in it no provision either permitting or prohibiting the insured to change the beneficiary.

On the supposition, next, that the Civil Code regulates insurance contracts, it would be most difficult, if indeed it is practicable, to test a life insurance policy by its provisions. Should the insurance contract, whereby the husband names the wife as the beneficiary, be denominated a donation inter vivos, a donation causa mortis, a contract in favor of a third person, or an aleatory contract? The subject is further complicated by the fact that if an insurance contract should be considered a donation, a husband may then never insure his life in favor of his wife and vice versa, inasmuch as article 1334 prohibits all donations between spouses during marriage. It would seem, therefore, that this court was right when in the case of *Del Val vs. Del Val* ([1915], 29 Phil., 534), it declined to consider the proceeds of the insurance policy as a donation or gift, saying "the contract of life insurance is a special contract and the destination of the proceeds thereof is determined by special laws which deal exclusively with that subject. The Civil Code has no provisions which relate directly and specifically to life-insurance contracts or to the destination of life-insurance proceeds. * * *" Some satisfaction is gathered from the perplexities of the Louisiana Supreme Court, a civil law jurisdiction, where the jurists have disagreed as to the classification of the insurance contract, but have agreed in their conclusions as we will hereafter see. (Re Succession of *Leonce Desforges* [1914], 52 L. R. A. [N. S.], 689; *Lambert vs. Penn Mutual Life Insurance Company of Philadelphia and L'Hote & Co.* [1898], 50 La. Ann., 1027.)

On the further supposition that the Insurance Act applies, it will be found that in this Law, there is likewise no provision either permitting or prohibiting the insured to change the beneficiary.

We must perforce conclude that whether the case be considered as of 1910, or 1914, or 1922, and whether the case be considered in the light of the Code of Commerce, the Civil Code, or the Insurance Act, the deficiencies in

the law will have to be supplemented by the general principles prevailing on the subject. To that end, we have gathered the rules which follow from the best considered American authorities. In adopting these rules, we do so with the purpose of having the Philippine Law of Insurance conform as nearly as possible to the modern Law of Insurance as found in the United States proper.

The wife has an insurable interest in the life of her husband. "The beneficiary has an absolute vested interest in the policy from the date of its issuance and delivery. So when a policy of life insurance is taken out by the husband in which the wife is named as beneficiary, she has a subsisting interest in the policy. And this applies to a policy to which there are attached the incidents of a loan value, cash surrender value, an automatic extension by premiums paid, and to an endowment policy, as well as to an ordinary life insurance policy. If the husband wishes to retain to himself the control and ownership of the policy, he may so provide in the policy. But if the policy contains no provision authorizing a change of beneficiary without the beneficiary's consent, the insured cannot make such change. Accordingly, it is held that a life insurance policy of a husband made payable to the wife as beneficiary, is the separate property of the beneficiary and beyond the control of the husband.

As to the effect produced by the divorce, the Philippine Divorce Law, Act No. 2710, merely provides in section 9 that the decree of divorce shall dissolve the community property as soon as such decree becomes final. Unlike the statutes of a few jurisdictions, there is no provision in Philippine Law permitting the beneficiary in a policy for the benefit of the wife of the husband to be changed after a divorce. It must follow, therefore, in the absence of a statute to the contrary, that if a policy is taken out upon a husband's life and the wife is named as beneficiary therein, a subsequent divorce does not destroy her rights under the policy.

These are some of the pertinent principles of the Law of Insurance. To reinforce them, we would, even at the expense of clogging the decision with unnecessary citation of authority, bring to notice certain decisions which seem to us to have controlling influence.

To begin with, it is said that our Insurance Act is mostly taken from the statute of California. It should prove of interest, therefore, to know the stand taken by the Supreme Court of that State. A California decision oft cited in the Cyclopedias is *Yore vs. Booth* ([1395], 110 Cal., 238; 52 Am. St. Rep., 81), in which we find the following:

" * * * It seems to be the settled doctrine, with but slight dissent in the courts of this country, that a person who procures a policy upon his own life, payable to a designated beneficiary, although he pays the premiums himself, and keeps the policy in his exclusive possession, has no power to change the beneficiary, unless the policy itself, or the charter of the insurance company, so provides. In other words, it is held that the beneficiary named in the policy, although he has parted with nothing, and is simply the object of another's bounty, has acquired a vested and irrevocable interest in the policy, which he may keep alive for his own benefit by paying the premiums or assessments if the person who effected the insurance fails or refuses to do so."

As carrying great weight, there should also be taken into account two decisions coming from the Supreme Court of the United States. The first of these decisions, in point of time, is *Connecticut Mutual Life Insurance Company vs. Schaefer* ([1877], 94 U. S., 457). There, Mr. Justice Bradley, delivering the opinion of the court, in part said:

"This was an action on a policy of life assurance issued July 25, 1868, on the joint lives of George F. and Francisca Schaefer, then husband and wife, payable to the survivor on the death of either. In January, 1870, they were divorced, and alimony was decreed and paid to the wife, and there was never any issue of the marriage. They both subsequently married again, after which, in February, 1871, George F. Schaefer died. This action was brought by Francisca, the survivor.

* * * * *

"The other point, relating to the alleged cessation of insurable interest by reason of the divorce of the parties, is

entitled to more serious consideration, although we have very little difficulty in disposing of it.

"It will be proper, in the first place, to ascertain what is an insurable interest. It is generally agreed that mere wager policies, that is, policies in which the insured party has no interest whatever in the matter insured, but only an interest in its loss or destruction, are void, as against public policy. * * * But precisely what interest is necessary, in order to take a policy out of the category of mere wager, has been the subject of much discussion. In marine and fire insurance the difficulty is not so great, because there insurance is considered as strictly an indemnity. But in life insurance the loss can seldom be measured by pecuniary values. Still, an interest of some sort in the insured life must exist. A man cannot take out insurance on the life of a total stranger, nor on that of one who is not so connected with him as to make the continuance of the life a matter of some real interest to him.

"It is well settled that a man has an insurable interest in his own life and in that of his wife and children; a woman in the life of her husband; and the creditor in the life of his debtor. Indeed it may be said generally that any reasonable expectation of pecuniary benefit or advantage from the continued life of another creates an insurable interest in such life. And there is no doubt that a man may effect an insurance on his own life for the benefit of a relative or friend; or two or more persons, on their joint lives, for the benefit of the survivor or survivors. The old tontines were based substantially on this principle, and their validity has never been called in question.

"The policy in question might, in our opinion, be sustained as a joint insurance, without reference to any other interest, or to the question whether the cessation of interest avoids a policy good at its inception. We do not hesitate to say, however, that a policy taken out in good faith and valid at its inception, is not avoided by the cessation of the insurable interest, unless such be the necessary effect of the provisions of the policy itself. * * *

" * * * In our judgment a life policy, originally valid, does not cease to be so by the cessation of the assured party's interest in the life insured."

Another controlling decision of the United States Supreme Court is that of *Central National Bank of Washington City vs. Hume* ([1888], 128 U. S., 134). Therein, Mr. Chief Justice Fuller, as the organ of the court, announced the following doctrines:

"We think it cannot be doubted that in the instance of contracts of insurance with a wife or children, or both, upon their insurable interest in the life of the husband or father, the latter, while they are living, can exercise no power of disposition over the same without their consent, nor has he any interest therein of which he can avail himself; nor upon his death have his personal representatives or his creditors any interest in the proceeds of such contracts, which belong to the beneficiaries to whom they are payable.

"It is indeed the general rule that a policy, and the money to become due under it, belong, the moment it is issued, to the person or persons named in it as the beneficiary or beneficiaries, and that there is no power in the person procuring the insurance, by any act of his, by deed or by will, to transfer to any other person the interest of the person named."

A jurisdiction which found itself in somewhat the same situation as the Philippines, because of having to reconcile the civil law with the more modern principles of insurance, is Louisiana. In a case coming before the Federal Courts, *In re Dreuil & Co.* ([1915], 221 Fed., 796), the facts were that an endowment insurance policy provided for payment of the amount thereof at the expiration of twenty years to the insured, or his executors, administrators, or assigns, with the proviso that, if the insured die within such period, payment was to be made to his wife if she survive him. It was held that the wife has a vested interest in the policy, of which she cannot be

deprived without her consent. Foster, District Judge, announced:

"In so far as the law of Louisiana is concerned, it may also be considered settled that where a policy is of the semitoritine variety, as in this case, the beneficiary has a vested right in the policy, of which she cannot be deprived without her consent, (Lambert vs. Penn Mutual Life Ins. Co., 50 La. Ann., 1027; 24 South., 16,)" (See in same connection a leading decision of the Louisiana Supreme Court, Re Succession of Leonce Desforges, [1914], 52 L. R. A. [N. S.], 689.)

Some question has arisen as to the power of the insured to destroy the vested interest of the beneficiary in the policy. That point is well covered in the case of Entwistle vs. Travelers Insurance Company ([1902], 202 Pa. St., 141). To quote:

"* * * The interest of the wife was wholly contingent upon her surviving her husband, and she could convey no greater interest in the policy than she herself had. The interest of the children of the insured, which was created for them by the contract when the policy was issued; vested in them at the same time that the interest of the wife became vested in her. Both interests were contingent. If the wife die before the insured, she will take nothing under the policy. If the insured should die before the wife, then the children take nothing under the policy. We see no reason to discriminate between the wife and the children. They are all payees, under the policy, and together constitute the 'assured.'

"The contingency which will determine whether the wife, or the children as a class will take the proceeds, has not as yet happened; all the beneficiaries are living, and nothing has occurred by which the rights of the parties are in any way changed. The provision that the policy may be converted into cash at the option of the holder does not change the relative rights of the parties. We agree entirely with the suggestion that 'holder' or 'holders,' as used in this connection, means those who in law are the owners of the policy, and are entitled to the rights and benefits which may accrue under it; in other words, all the beneficiaries; in the present case, not only the wife, but the children of the insured. If for any reason, prudence required the conversion of the policy into cash, a guardian would have no special difficulty in reasonably protecting the interest of his wards. But however that may be, it is manifest that the option can only be exercised by those having the full legal interest in the policy, or by their assignee. Neither the husband, nor the wife, nor both together had power to destroy the vested interest of the children in the policy."

The case most nearly on all fours with the one at bar is that of Wallace vs. Mutual Benefit Life Insurance Co. ([1906], 97 Minn., 27; 3 L. R. A. [N. S.], 478). The opinion there delivered also invokes added interest when it is noted that it was written by Mr. Justice Elliott, the author of a text on insurance, later a member of this court. In the Minnesota case cited, one Wallace effected a "twenty-year endowment" policy of insurance on his life, payable in the event of his death within twenty years to Emma G. Wallace, his wife, but, if he lived, to himself at the end of twenty years. If Wallace died before the death of his wife, within the twenty years, the policy was payable to the personal representatives of the insured. During the pendency of divorce proceedings, the parties signed a contract by which Wallace agreed that, if a divorce was granted to Mrs. Wallace, the court might award her certain specified property as alimony, and Mrs. Wallace agreed to relinquish all claim to any property arising out of the relation of husband and wife. The divorce was granted. An action was brought by Wallace to compel Mrs. Wallace to relinquish her interest in the insurance policy. Mr. Justice Elliott said:

"As soon as the policy was issued Mrs. Wallace acquired a vested interest therein, of which she could not be deprived without her consent, except under the terms of the contract with the insurance company. No right to change the beneficiary was reserved. Her interest in the policy was her individual property, subject to be divested only by her death, the lapse of time, or by the failure of the insured to pay the premiums. She could keep the policy alive by paying the premiums, if the insured did not do so. It was contingent upon these events, but it was free from the control of her husband. He had no interest in her property in this policy, contingent or otherwise. Her interest was free from any claim on the part of the insured or his creditors. He could deprive her

of her interest absolutely in but one way, by living more than twenty years. We are unable to see how the plaintiffs interest in the policy was primary or superior to that of the husband. Both interests were contingent, but they were entirely separate and distinct, the one from the other. The wife's interest was not affected by the decree of court which dissolved the marriage contract between the parties. It remains her separate property, after the divorce as before. * * *

" * * * The fact that she was his wife at the time the policy was issued may have been, and undoubtedly was, the reason why she was named as beneficiary in the event of his death. But her property interest in the policy after it was issued did not in any reasonable sense arise out of the marriage relation."

Somewhat the same question came before the Supreme Court of Kansas in the leading case of *Filley vs. Illinois Life Insurance Company* ([1914], 91 Kansas, 220; L. R. A., [1915 D], 130). It was held, following consideration extending to two motions for rehearing, as follows:

"The benefit accruing from a policy of life insurance upon the life of a married man, payable upon his death to his wife, naming her, is payable to the surviving beneficiary named, although she may have years thereafter secured a divorce from her husband, and he was thereafter again married to one who sustained the relation of wife to him at the time of his death.

"The rights of a beneficiary in an ordinary life insurance policy become vested, upon the issuance of the policy, and can thereafter, during the life of the beneficiary, be defeated only as provided by the terms of the policy."

If space permitted, the following corroborative authority could also be taken into account: *Joyce, The Law of Insurance*, second edition, vol. 2, pp. 1649 et seq.; 37 *Corpus Juris*, pp. 394 et seq.; 14 *R. C. L.*, pp. 1376 et seq.; *Green vs. Green* ([1912], 147 Ky., 608; 39 L. R. A. [N. S.], 370); *Washington Life Insurance Co. vs. Berwald* ([1903], 97 Tex., 111); *Begley vs. Miller* ([1907], 137 Ill., App., 278); *Blum vs. New York L. Ins. Co.* ([1906], 197 Mo., 513; 8 L. R. A. [N. S.], 923); *Union Central Life Ins. Co. vs. Buxer* ([1900], 62 Ohio St., 385; 49 L. R. A., 737); *Griffith vs. New York Life Ins. Co.* ([1894], 101 Cal., 627; 40 Am. St. Rep., 96); *Preston vs. Conn. Mut. L. Ins. Co. of Hartford* ([1902], 95 Md., 101); *Snyder vs. Supreme Ruler of Fraternal Mystic Circle* ([1909], 122 Tenn., 248; 45 L. R. A. [N. S.], 209); *Llyod vs. Royal Union Mut. L. Ins. Co.* ([1917], 245 Fed., 162); *Phoenix Mut. L. Ins. Co. vs. Dunham* ([1878], 46 Conn., 79; 33 Am. Rep., 14); *McKee vs. Phoenix Ins. Co.* ([1859], 28 Mo., 383; 75 Am. Rep., 129); *Supreme Council American Legion of Honor vs. Smith and Smith* ([1889], 45 N. J. Eq., 466); *Overhiser vs. Overhiser* ([1900], 63 Ohio St., 77; 81 Am. St. Rep., 612; 50 L. R. A., 552); *Condon vs. New York Life Insurance Co.* ([1918], 183 Iowa, 658); with which compare *Foster vs. Gile* ([1880], 50 Wis., 603) and *Hatch vs. Hatch* ([1904], 35 Tex. Civ. App., 373).

On the admitted facts and the authorities supporting the nearly universally accepted principles of insurance, we are irresistibly led to the conclusion that the question at issue must be answered in the negative.

The judgment appealed from will be reversed and the complaint ordered dismissed as to the appellant, without special pronouncement as to the costs in either instance. So ordered.

Street, Villamor, Ostrand, Johns, and Villa-Real, JJ., concur.

Avanceña, C. J., concurs in the result.

CONCURRING IN THE RESULT

JOHNSON, J.:

I agree with the majority of the court, that the judgment of the lower court should be revoked, but for a different reason. In my judgment, the question presented by the plaintiff is purely an academic one. The purpose of the petition is to have declared the rights of certain persons in an insurance policy which is not yet due and payable. It may never become due and payable. The premiums may not be paid, thereby rendering the contract of insurance of non effect, and many other things may occur, before the policy becomes due, which would render it non effective. The plaintiff and the other parties who are claiming an interest in said policy should wait until there is something due them under the same. For the courts to declare now who are the persons entitled to receive the amounts due, if they ever become due and payable, is impossible, for the reason that nothing may ever become payable under the contract of insurance, and for many reasons such persons may never have a right to receive anything when the policy does become due and payable. In my judgment, the action is premature and should have been dismissed.

Romualdez, J., did not take part.

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