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## INSURANCE-RIGHT TO PROCEEDS OF POLICY ON LIFE OF DIVORCED SPOUSE

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**INSURANCE—RIGHT TO PROCEEDS OF POLICY ON LIFE OF DIVORCED SPOUSE**—Plaintiff was beneficiary of certain life insurance policies issued by defendant on the life of her former husband. All of the policies involved were issued after the marriage and before the divorce, and plaintiff had paid all the premiums on the policies. The administratrix, decedent's second wife, claimed the proceeds on the basis of section 425 of Kentucky Civil Code of Practice which provides for restoration of property obtained from the other spouse by reason of the marriage upon judgment for divorce. *Held*, where the wife has procured and paid for insurance on the life of her husband a subsequent divorce does not abrogate the contract, and she is entitled to continue to pay the premiums after the divorce and to collect the proceeds of the policy upon its maturity. *Ficke v. Prudential Insurance Co. of America*, (Ky. 1947) 202 S.W. (2d) 429.

With this decision Kentucky has abandoned a line of cases<sup>1</sup> to the effect that the wife's interest in the policy on her husband's life is divested by divorce even though she has paid all the premiums and procured the policy,<sup>2</sup> and has adopted the rule prevailing in many, but not all,<sup>3</sup> jurisdictions to the effect that

<sup>1</sup> *Schauberger v. Morel*, 168 Ky. 368, 182 S. W. 198 (1916); *Western & S. L. Ins. Co. v. Webster*, 172 Ky. 444, 189 S. W. 429 (1916); *Western & S. L. Ins. Co. v. Nagel*, 180 Ky. 476, 203 S.W. 192 (1918); *Eversole v. Eversole*, 169 Ky. 234, 183 S. W. 494 (1916); *Guthrie v. Guthrie*, 155 Ky. 146, 159 S.W. 710 (1913).

<sup>2</sup> However, if she paid the premiums out of her own earnings or property she was entitled to be reimbursed to the extent of the premiums so paid, with interest thereon from date of each payment. *Schauberger v. Morel's Administrator*, 168 Ky. 368, 182 S.W. 198 (1916); *Sea v. Conrad*, 155 Ky. 51, 159 S.W. 622 (1913); *Eversole v. Eversole*, 169 Ky. 234, 183 S.W. 494 (1916); *Western & S. L. Ins. Co. v. Webster*, 172 Ky. 444, 189 S.W. 429 (1916).

<sup>3</sup> In Texas it is held that a wife's interest in a policy of life insurance on her

in the absence of a policy provision to the contrary or regulation of the matter by statute, the rights of the beneficiary in an ordinary life insurance policy are in no way affected by the mere fact that the beneficiary is divorced from the insured subsequent to issuance of the policy.<sup>4</sup> The Kentucky rule was based wholly on statute<sup>5</sup> which provides that upon a judgment of divorce there should be a restoration of all property either party has obtained from the other by reason of marriage, the court going on the theory that an insurance policy is "property" within the meaning of that statute. In this case the court stated that it would not blindly follow erroneous decisions of the past based upon the misconception that the wife obtained the policy on her husband "by reason of marriage" when she had procured it and paid all of the premiums thereon. As a general rule, a life insurance policy, originally valid, does not cease to be so by reason of the cessation of the insurable interest of the beneficiary in the meanwhile.<sup>6</sup> The purpose in requiring an insurable interest at any time is to prevent wager policies, and the courts following this majority rule go on the theory that assuming a proper insurable interest at the inception of the contract, the purpose of the rule is sufficiently attained, and the contract continues to be valid despite termination of the insurable interest.<sup>7</sup> It is reasonable, therefore, to hold that a beneficiary does not lose her rights in an insurance policy even though her insurable interest does cease upon divorce from the insured.<sup>8</sup> Those juris-

husband's life ceases upon obtaining a decree of divorce even though it be obtained through the fault of the husband. *Hatch v. Hatch*, 35 Tex. Civ. App. 373, 80 S. W. 411 (1904); *New Eng. Mut. L. Ins. Co. v. Spence*, (C.C.A. 2d, 1939) 104 F. (2d) 665. Quebec courts follow the same rule. *Hart v. Tudor*, Quebec Rep. 2 C.S. 534 (1892).

<sup>4</sup> *Conn. Mut. Life Ins. Co. v. Schaefer*, 94 U.S. 457 (1876); *McGrew v. Mut. Life Ins. Co.*, 132 Cal. 85, 64 P. 103 (1901); *Phoenix Mut. Life Ins. Co. v. Dunham*, 46 Conn. 79 (1878); *Begley v. Miller*, 137 Ill. App. 278 (1907); *Filley v. Ill. Life Ins. Co.*, 91 Kan. 220, 137 P. 793 (1914); *Wallace v. Mut. Ben. Life Ins. Co.*, 97 Minn. 27, 106 N.W. 84 (1906). *Grego v. Grego*, 78 Miss. 443, 28 S. 817 (1900); *McKee v. Phoenix Ins. Co.*, 28 Mo. 383 (1859); *Overhiser v. Overhiser*, 63 Ohio St. 77, 57 N.E. 965 (1900); *Rhodes v. Equitable Life Assur. Soc.*, 109 Ore. 586, 220 P. 736 (1923); *Marquet v. Aetna L. Ins. Co.*, 128 Tenn. 213, 159 S.W. 733 (1913). Also see 52 A.L.R. 386 (1928); 59 A.L.R. 172 (1929); L.R.A. 1915 D 130.

<sup>5</sup> Civil Code of Practice, § 425, provides, "Every judgment for a divorce from the bond of matrimony shall contain an order restoring any property not disposed of at the commencement of the action, which either party may have obtained, . . . from or through the other, during the marriage, in consideration or by reason thereof." See *Ky. Rev. Stat.* (1944) 403.060.

<sup>6</sup> *Grigsby v. Russell*, 222 U.S. 149, 32 S. Ct. 58 (1911); *Caldwell v. Grand Lodge U. W.*, 148 Cal. 195, 82 P. 781 (1905); *White v. Brotherhood of American Yeoman*, 124 Iowa 293, 99 N.W. 1071 (1904); *Bowers v. Mo. Mut. Assn.*, 333 Mo. 492, 62 S.W. (2d) 1058 (1933); *Steinback v. Diepenbrock*, 158 N.Y. 24, 52 N.E. 662 (1899).

<sup>7</sup> *Conn. Mut. Life Ins. Co. v. Schaefer*, 94 U.S. 457 (1876).

<sup>8</sup> *Sea v. Conrad*, 155 Ky. 51, 159 S.W. 622 (1913); *Hatch v. Hatch*, 35 Tex. Civ. App. 373, 80 S.W. 411 (1904), hold that the insurable interest of the wife ceases upon divorce and this is apparently the general rule, however, in *Begley v. Miller*, 137 Ill. App. 278 (1907) the court held that the fact that the decree of

dictions adopting a contrary rule base their decisions on the theory that the reasons for requiring an insurable interest at the inception of the contract are as strong where an insurable interest, once existing, has terminated, as where no insurable interest ever existed.<sup>9</sup> However, it is worthy of comment in the principal case that the court refused to pass on the situation where the insured procures the policy and pays the premiums, but in dictum the court suggested that in such a case "it might well be said that the insurance was procured by the wife by reason of the marriage, and under the code and statutory provisions, must be restored on divorce." It is submitted that the Kentucky court may well follow that dictum since section 425 of Civil Code of Practice will be much more difficult to circumvent where the husband has paid the premiums himself. In most other jurisdictions where there is no such statute the former wife's right to the proceeds on death of insured is recognized even though the insured procured the policy and paid all premiums thereon himself.<sup>10</sup>

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divorce orders the husband to pay alimony gives her an insurable interest in his life, which will continue at least during the time the alimony is payable under the decree.

<sup>9</sup> In *Northwestern Mut. Life Ins. Co. v. Whiteselle*, (Tex. Civ. App. 1916) 188 S.W. 22, affd., (Texas 1920) 221 S.W. 575; *Hatch v. Hatch*, 35 Tex. Civ. App. 373, 80 S.W. 411 (1904).

<sup>10</sup> See cases cited in note 4, supra.