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Giles J. McCarthy
University of Kentucky

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**INSURANCE: RIGHT OF A DIVORCED WIFE TO RECOVER THE
FACE AMOUNT OF A LIFE INSURANCE POLICY ON HER
HUSBAND'S LIFE—FICKE v. PRUDENTIAL.**

The Court of Appeals in the recent case of *Ficke v. Prudential Insurance Company of America*¹ brought the anomalous Kentucky law governing the right of a divorced wife as beneficiary to recover on an insurance policy taken out on her husband's life more nearly in line with the rule set out in the majority of jurisdictions. In this case suit was filed by a divorcee to recover either the proceeds of the policy taken out by her during the marriage, or the amount of the premiums paid by her with interest. After reviewing past decisions on the problem, the Court ruled that she was entitled to recover the face amount of the policy

In strict accordance with settled principles of insurance law the great majority of courts in other states hold that a life insurance policy is valid once and for all if an insurable interest existed at the time the policy was obtained. Because of the socially unproductive consequences of wagering contracts, and because of a possible inducement on the part of the beneficiary to take the life of the insured, the requisite of insurable interest must be satisfied.² If the party procuring the policy on another's life can show such an interest in the life of the insured that great loss will result from his death, and great benefit will be the result of his continued existence, the requisite of insurable interest is satisfied. If the insured himself takes out the policy he may name anyone he desires as beneficiary, since it is presumed that there will be no danger of a wagering contract in such a situation.⁴

Applying these rules to facts involving the divorced wife as beneficiary, virtually all courts hold that a subsequent divorce will not prevent the wife from recovering the face amount of the policy because the insurable interest once acquired cannot later be divested

¹ 305 Ky. 171, 202 S.W. 2d 429 (1947)

² *Wellhouse v. United Paper Co.*, 29 F. 2d 886 (C.C.A. 5th. 1929)
Reilly v. Penn. Mut. Life Ins. Co. of Phil., 201 Iowa 555, 207 N.W. 583 (1926), *VANCE, INSURANCE* (2d ed. 1930) sec. 53.

³ *VANCE, INSURANCE* (2d ed. 1930) 154. That insurable interest was required early in our law is substantiated by the statute of 14 Geo. III c. 48 (1774). As to the exact nature of a life insurance contract the authorities are in conflict. An early Kentucky case referred to the contract as one of indemnity (*Adam's Adm'r. v. Reed*, 36 S.W. 568, decided in 1896) *But see: VANCE, INSURANCE* (2d ed. 1930) page 80, where it is contended that the life insurance contract is primarily a contract of investment, to pay a certain sum of money in the event of death.

⁴ *Lawrence v. Trav. Ins. Co.*, 6 F. Supp. 428 (1934) *Nat'l. Life & Accid. Ins. Co. v. Bridgeforth*, 220 Ala. 314, 124 So. 886 (1929).

by the severance of the marriage bonds so far as policies taken out during the marriage are concerned.⁵ If the husband has taken out the policy, the right of the wife to recover is dependent on the change of beneficiary clause; if he has not reserved the right to change the beneficiaries, the wife has a vested interest which cannot be taken away by either the divorce or an attempted change by the insured;⁶ if he has reserved the right to change the beneficiaries, the wife may still recover on the policy unless he has exercised this right.⁷

Texas alone at the present time holds that divorce ends all insurable interest so that the wife is unable to collect the proceeds of the policy in the event of the termination of the marriage, and that she is limited in her recovery to the premiums which she has paid from her own pocket.⁸ One court in that state held that divorce was the "equivalent of civil death, and thereafter her [the wife's] relations became that of a stranger and she could take nothing thereunder."⁹ This rule based on the state's public policy was adopted by a Federal court in a case presenting a conflict of laws question when it denied a divorcee the right to recover on a policy issued on her husband's life, where the marriage occurred in New York, the contract of insurance was executed in New York, and only the divorce occurred in Texas.¹⁰ Of course the application of the Texas rule automatically followed the court's determination to decide the case according to Texas law.

In Kentucky the greatest obstacle to recovery by the divorced wife has been created by the restoration statute which provides:

"Upon final judgment of divorce from the bonds of matrimony each party shall be restored all the property not disposed of at the beginning of the action, that he or she obtained from or through the other before or during the marriage and in consideration of the marriage."¹¹

Prior to the *Ficke* case, Kentucky decisions consistently held that divorce would prevent the wife from recovering the face amount of the policy because the restoration statute was construed to include insurance as property acquired by reason of marriage, and also

VANCE, INSURANCE (2d ed. 1930) 596.

⁵ *Filley v Illinois Life Ins. Co.*, 93 Kan. 193, 144 Pac. 257 (1914).

Jenkins v Jenkins, 112 Calif. App. 402, 297 Pac. 56 (1931)

⁸ *Hatch v Hatch*, 35 Texas Civ App. 371, 80 S.W. 411 (1904)

⁹ *Williamson v Modern Woodmen of America*, 237 S.W. 338, 340 (Tex. 1922).

¹⁰ *New England Mutual Life Ins. Co. v Spence*, 104 F.2d 665 (1939) (In this case the court held that under Texas law there was an involuntary transfer of the wife's vested interest in the policy to her husband's estate as a result of the divorce.)

¹¹ Ky. R. S. (1946) sec. 403.060. For a similar provision see: KY. CIVIL CODE (Carroll, 1938) sec. 425.

because of the alleged cessation of insurable interest.¹² Accordingly, in the case of *Sea v. Conrad* the divorced wife was not permitted to recover on the policy taken out during the marriage.¹³ The only recourse available to the wife was to recover the amount of the premiums which she had paid; a situation which would arise only when she had procured the insurance.¹⁴ *Bradley v. Bradley's Adm'r*¹⁵ was prophetic of the position taken in the principal case since dicta therein pointed to a recovery of the face amount of the policy if the wife had obtained the policy and had paid the premiums.

Opportunity was afforded in the *Ficke* case to re-examine prior decisions because of two controlling factors: (1) if Mrs. Ficke was allowed to recover the total amount of premiums paid by her plus interest, she would recover more than the face amount of the policy and (2) in the past no attention had been given to the question of how much the wife should be charged for the protection she received from the insurance during the marriage.

In overruling the older cases, the court distinguished policies procured by the wife on her husband's life and policies taken out by the insured in which he named his wife as beneficiary. In the former situation, which was the main problem presented in the *Ficke* case, the court held that the wife's insurable interest was not affected by the divorce and that the policy was not obtained by reason of the marriage. In the latter, the court intimated that the policy would be obtained by virtue of the marriage, thus barring recovery by the wife.

As to the effect of this decision on future cases, the dicta seem to import no further extension of the court's new position so as to allow the divorced wife to recover on a policy taken out by her husband. The court has definitely overruled the theory that insurable interest will be divested by divorce, but the restoration statute may still prove a nemesis to recovery where the wife has not paid the premiums. It is difficult to understand, however, the basis for the distinction made by the court between policies taken out by the insured and those taken out by the beneficiary. Certainly no insurable interest would have existed unless there had been a marriage. The court admits this.¹⁶ If the insurable interest, the *sine qua non* of the

¹² *Flinin v Flinin's Adm'r.*, 250 Ky 327, 64 S.W 2d 165 (1933),
Eversole v. Eversole's Adm'r., 169 Ky 234, 183 S.W 494 (1916)
Schauberger v Morel's Adm'r., 168 Ky 368, 182 S.W 198 (1916)

¹³ 155 Ky 51, 159 S.W 622 (1913)

¹⁴ *Ibid.*

¹⁵ 178 Ky. 239, 198 S.W 905 (1917).

¹⁶ 305 Ky 171, 176, 202 S.W 2d 429, 432 (1947).

insurance contract, were in existence because of the marriage, certainly the policy itself was also acquired because of the marriage. Logically a better solution to the problem lies in the legislature revising the restoration statute so as to expressly exclude insurance contracts from the scope of the statute.

GILES J. MCCARTHY