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Effect of Undue Influence by Beneficiary of Insurance Policy

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EFFECT OF UNDUE INFLUENCE BY BENEFICIARY OF INSURANCE POLICY

Courts have been reluctant to recognize the use of undue influence[1] in making a change of beneficiaries in insurance policies. There are comparatively few cases where undue influence has been considered a material issue and in those cases the standard whereby undue influence was found is not clearly determinable. Moreover, the type of the particular policy in question affects the problem of undue influence used to effect a change of beneficiaries.

The subject of excessive importunities and changes of beneficiaries in insurance policies is best approached by considering the standards established in similar cases involving wills and contracts, and by comparing these with the standard established in insurance cases. When undue influence is pleaded in will contests and contract actions, the courts readily consider the effect of such influence upon the will or contract in question.

In *Evenson* v. *Rust*[2] it was determined that the undue influence in changing the beneficiary of a will had to amount to moral coercion, destruction of free will and of independent action, and a disposal of property contrary to the will and wishes of the testator. In this case, as in all such cases, the mental condition of the parties in question was seriously considered and an apparently severe standard was set up to support the finding that the testator was of strong mental condition. In *Skinsrud* v. *Schwenn*,[3] another will contest, the manner of proving this destruction of free agency was reduced to a formula containing four elements. There were: (1) opportunity to exercise undue influence, (2) disposition to influence and motive therefor, (3) susceptibility of the subject to influence by the person having the opportunity, (4) a result indicating the exercise of undue influence by such person. The *Will of Nachtsheim*[4] case enumerates the same elements and all the latter cases are based on substantially the same standard. The *Elliot* v. *Fisk*[5] case contains a modification of this rule. The important fact

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[1] Fjone v. Fjone, 16 N.D. 100, 112 N.W. 70 (1907). "One party may occupy a position or sustain such a relation to the other as to be able without any actual force, physically, to so far control the will of the other as to really constitute an overmastery of the mind and render him unable to resist his importunities. The law recognizes that to a certain extent, in the relation of husband and wife, parent and child, attorney and client, nurse with the sick or one in charge of an imbecile, the former in each instance has a measurable power over the mind of the latter, and it requires that no undue or excessive importunity shall be made the means of securing a beneficial contract or conveyance and the excessive exercise of this natural control is called 'undue influence'."

[2] 152 Wis. 113, 139 N.W. 766 (1913).

[3] 158 Wis. 142, 147 N.W. 370 (1914).

[4] 166 Wis. 556, 164 N.W. 994 (1918).

[5] 162 Wis. 249, 155 N.W. 110 (1916).

of that case was that an aged father and other relatives were excluded from a will that gave all the property to an unrelated person. While a disposition on the part of the beneficiary to exercise undue influence was not clearly proven, yet, the court held that the other three elements were shown to exist and that only three of the four elements need be proven at any time.[6]

Responsibility of proving undue influence in will contests falls upon the one contesting the will.[7] In *Graham* v. *Courtwright*,[8] the presumption of undue influence and fiduciary relations are discussed and the court found that the existence of a fiduciary relationship does not change the burden of proof. One, however, who draws up a will and who is also a beneficiary of a considerable amount and not a blood relative is viewed with suspicion.[9]

Thus, in will contests, the doctrine of what constitutes undue influence and how it is to be proven is definite. Emphasis is always on the state of mind of the testator,[10] but there must be accompanying proof of attendant circumstances, and this is done by proving the elements of undue influence as found in the *Skinsrud* case.[11]

Contract cases on this subject differ from will contests only in the degree of proof necessary. In will contests it is the interest of a third party that is involved and in contract cases, it is the interest of a contracting party. The natural tendency is to give a contracting party more consideration, and, consequently, the amount of proof necessary will not be as great in contract cases as in will contests.

Nevertheless, the influence to be undue must result in the destruction of free agency of the person acted upon and in the substitution of

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[6] In the Skinsrud case, the son of the testator got one half of the estate and three daughters received nothing. But, the court held there was no disposition to exercise undue influence nor was there a causal connection between the result and the influence. Stress was laid on the mental condition of the testator. In Ball v. Boston, 153 Wis. 27, 141 N.W. 8 (1913), a husband and wife relationship was not enough to constitute an opportunity to exercise an influence that would be undue.

[7] Ball v. Boston, 153 Wis. 27, 141 N.W. 8 (1913). Relationship resulting from a child's lifelong faithfulness and kindness to a parent does not cast upon the child, as a beneficiary in the parent's will the burden of proving that the will was without influence. In re Boyle's Will, 186 Iowa 216, 172 N.W. 280 (1919).

[8] 180 Iowa 394, 161 N.W. 774 (1917). "The doctrine that undue influence is to be presumed as between parties inter vivos, dealing with each other when fiduciary relations exist between them, has no application to testamentary gifts." Pirkle v. Ellenberger, 179 Iowa 1122, 162 N.W. 791 (1917).

[9] Hughes v. Meredith, 24 Ga. 325, 71 Am. Dec. 127 (1858).

[10] In Davidson v. Davidson, 2 Neb. (Unof.) 90, 96 N.W. 409 (1901) where the testator excluded his children of the first marriage, "to keep peace in the family, although the children were all alike to him." This statement was admissible, but there had to be other proof of coercion. In re Allen's Estate, 230 Mich. 584, 203 N.W. 479 (1925); In re Kirschbaum's Estate, 242 Mich. 291, 218 N.W. 660 (1928).

[11] *Supra* note 6.

the will of another person for his own.[12] In *Holmes* v. *Hill*,[13] the court looked for evidence of fraud, unfairness, or design on the part of the one accused of exercising undue influence, and for evidence of surprise, imbecility or weakness on the part of the contractor, holding that these were the characteristics of cases in equity where courts felt warranted in interposing between the strong and weak. *Fjone* v. *Fjone*[14] contains the same idea of protection against the weak and further indicates the tendency of the courts to watch closely for undue influence in contracts. This is evident from the fact that the doctrine of fiduciary relationship is readily applied when one is in the position of advantage as a result of a relationship of confidence or trust. Then, proof that no undue influence existed rests on the one holding the position of trust. Of course, the existence of such relationship must be first established.[15] In the *Graham* case[16] it was shown that this doctrine is not applicable to cases of testamentary gifts.

Thus we find a similarity in the concept of undue influence as applied in will and contract cases and a common emphasis on the mental condtion of the one allegedly influenced, although, in contract cases, the opportunity to exercise influence receives more stress than in will cases. The authority of many cases involving undue influence in the making of contracts, includes many citations of will cases as in *Hult* v. *Home Life Ins. Co. of New York*[17] which is evidence of a tendency to look to the doctrine in the will contests as a possible standard.

The problem of undue influence occurs in insurance cases only where there has been a change of beneficiary. Not even in all cases of changes can the problem arise, because only the original beneficiary is recognized in cases of life insurance policies, unless there is a reserva-

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[12] Hult v. Home Life Ins. Co. of New York, 213 Iowa 573, 240 N.W. 218 (1932); Drinkwine v. Gruelle, 120 Wis. 628, 98 N.W. 534 (1904) modifies the standard by saying there must be at least an impairment of free agency, but showing the existence of ill feeling is not enough.

[13] 22 Neb. 425, 35 N.W. 206 (1887). Hill who had befriended Holmes, years later aided Holmes in getting his mother's estate by paying transportation costs and giving Holmes the use of his residence. A contract, permitting Hill to use $25,000 of the money was not considered the result of undue infiuence from the circumstances.

[14] 16 N.D. 100, 112 N.W. 70 (1907). "Courts of equity will carefully scrutinize transactions . . . and will not hesitate to reach out their strong arm in protection of the weaker against the stronger mind, where an inequitable or unconscionable bargain has been obtained through improper or undue influence."

[15] Utterback v. Hollingsworth, 208 Iowa 300, 225 N.W. 419 (1929). "It must appear expressly or by implication that trust or confidence was reposed. The supposed trustee must be shown to have been in a position of advantage or superiority such as to imply a dominating influence." In O'Neil v. Morrison, 211 Iowa 416, 233 N.W. 708 (1930) it was held that a situation wherein a daughter aided her father by caring for him in her home after an accident does not constitute a fiduciary relationship.

[16] *Supra* note 8.

[17] 213 Iowa 573, 240 N.W. 218 (1932).

tion in the policy allowing a change.[18] This immediate vesting of interest in life insurance policies applies also to endowment, accumulation, and tontine policies.[19] In *Foster* v. *Gile Administrator*,[20] there is a substantial modification in the Wisconsin law which allows a change of beneficiaries of a life insurance policy by the insured if he pays the premiums.

The interest of a beneficiary of a fraternal benefit certificate is very contingent, since a change can be made at any time by the insured as long as there is a compliance with any regulations or provisions made by the insurance company.[21] Therefore, the problem of undue influence in insurance cases can arise in cases of fraternal benefit certificates and generally in life insurance policies where a provision reserving the right to make a change of beneficiary is made.

In *New York Life Ins. Co.* v. *Andrews*,[22] the court states that the influence to be undue in making a change of beneficiary must approach the point of depriving the insured of his or her free agency and such fraud must be directed toward the end of affecting a transfer. The proof should be reasonably clear and convincing. Here, again, the destruction of free agency is the prime element. Further, the undue influence must be directed, and intentional—which brings in the element of intent to influence unduly. This is a considerably stronger element than the "disposition" to influence unduly necessary in will cases, but it is similar to the "design" looked for in the *Holmes* v. *Hill*[23] contract case. In some cases where opportunity apparently existed the courts held that the situation did not constitute an exercise of undue

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[18] In Central Nat. Bank of Washington City v. Hume, 128 U.S. 195, 9 Sup. Ct. 41, 32 L.ed. 370 (1888) it was held that a policy and the money to become due under it belong at the moment it is issued, to the person or persons named in it as the beneficiary or beneficiaries; and there is no power to transfer by act or deed. North American Life Ins. Co. v. Wilson, 111 Mass. 542 (1873).

[19] Condon v. New York Life Ins. Co., 183 Iowa 658, 166 N.W. 452, 19 A.L.R. 649 (1918). *Endowment*—Lambert v. Penn. Mut. Life Ins. Co., 50 La. Ann. 1027, 24 So. 16 (1898). *Tontine*—New York Life Ins. Co. v. Ireland (Texas 1891) 17 S.W. 617, 14 L.R.A. 278; Smith v. Metro. Life Ins. Co., 222 Penn. 226, 20 L.R.A. (N.S.) 928, 128 Am. St. Rep. 799 (1908).

[20] 50 Wis. 603, 7 N.W. 555 (1880).

[21] Malancy v. Malancy, 165 Wis. 642, 163 N.W. 186 (1917); Estate of Breiting, 78 Wis. 33, 47 N.W. 17 (1890). "Benefit certificates give no vested interest before death. Payment of premiums by beneficiary is immaterial." Preusser v. The Supreme Hive of the Ladies of the Maccabees of the World, 123 Wis. 164, 101 N.W. 358 (1904).

[22] 167 Ill. App. 182 (1912). The fact that the father of the new beneficiary had seduced the insured when she was only eighteen years of age and had carried on illicit relations until death of insured did not amount to undue influence. It is interesting to note that all the decisions referred to as authority in this case are will contests—which is an indication as in the contract cases that the courts look to the standard set up in will contests involving undue influence.

[23] 22 Neb. 425, 35 N.W. 206 (1887).

influence such as a continuation of illicit relations.[24] But in *Savage* v. *McCauley*[25] the court found undue influence where the landlady of the deceased insured cared for him in his weakened condition and became the new beneficiary. Emphasis was placed on the weakened mental condition in that case and also in *Burke* v. *Bay*[26] where a practitioner of Christian Science affiliations was constantly present at the side of the dying insured and allegedly aided the new beneficiary in prevailing upon the insured to change the beneficiary in the policy.

Insurance policies are considered contracts and undue influence vitiates them.[27] But they also have most of the characteristics of a will as far as third party interests are concerned, so that it is natural in insurance cases involving undue influence to find a combination of standards of proof as found in contract and will cases. First, the result must be the destruction of free agency and substitution of a will for that of the insured. Then, as in contract cases, there must be shown a design, that is, an intention to influence unduly for purpose of affecting a particular change of beneficiaries, and, finally a fact situation that presents ample opportunity to influence. The burden of proof remains on the contestant, since insurance cases are similar to cases involving testamentary gifts. And, at all times, the mental condition of the insured and his susceptibility to influence are considered of primary importance.

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[24] Gerst v. Western & Southern Life Ins. Co., 11 Ohio App. 382 (1917). Free agency would not be substantially impaired in a case such as this.

[25] (Mass. 1938) 16 N.E. (2d) 639.

[26] 164 Minn. 331, 205 N.W. 219 (1925). It is to be noted that the burden of proof in case of allegations of undue influence is upon the plaintiff alleging it. Wherry v. Latimer, 103 Miss. 524, 60 So. 642 (1913); Eyestone v. Eyestone, 103 Akla. 301, 299 Pac. 518 (1924).

[27] Cason v. Owens, 100 Ga. 142, 28 S.E. 75 (1897).