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Exemption of Life Insurance Money from Creditors in North Dakota

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ATTORNEYS WANTED

The Board of Legal Examiners of the Civil Service Commission, headed by Solicitor General, Charles Fahy, has announced an examination for the establishment of its first register of eligibles for appointment to the first 4 grades of the Federal legal service. The written portion of the examination will be given April 11th, 1942. Applications to take the examination must be filed with the Civil Service Commission in Washington not later than March 3rd, 1942. Forms may be obtained from any of the Commission's offices.

EXEMPTION OF LIFE INSURANCE MONEY FROM CREDITORS IN NORTH DAKOTA

1. INSURANCE: EXEMPTIONS BY STATUTE

From a study of the life insurance law of North Dakota it is evident that our legislature from time to time has passed insurance laws for the benefit of the poor within its borders. Our Supreme Court has construed those statutes liberally in order to give full effect to this legislative policy.[1]

The North Dakota statutes on life insurance benefit payments are Compiled Laws of North Dakota 1913, sec. 8719[2] as amended by North Dakota. Laws 1927, c. 225, and N. D. Laws 1929, c. 149.[3]

11. PROBLEMS ARISING UNDER BENEFIT PAYMENTS

A. When Made Payable To The Insured Himself.

The Legislature in the 1929 Laws, supra, by the use of the words "deceased" and "insured" has filled in the "loophole," so-to-speak, which was found to appear in section 8719 by the case of Cohen vs. Gordon Ferguson, 56 N. D. 545, 218 N. W. 209 (1928). Our Supreme Court has construed the 1929 Laws, supra,

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[1]The policy of construction by our court is clearly expressed in the case of Jorgensen vs. DeViney, 57 N. D. 63, at 73, 222 N. W. 464 (1928). "The great object of statutory construction is to ascertain and give effect to the intention of the lawmakers as expressed in the law."

[2]N. D. Compiled Laws 1913, sec. 8719. "The avails of a life insurance policy or of a contract payable by any mutual aid or benevolent society, when made payable to the personal representative of a deceased, his heirs or estate upon the death of a member of such society or of such insured shall not be subject to the debts of the decedent except by special contract, but shall be inventoried and distributed to the heirs or the heirs at law of such decedent. . ."

[3]N. D. Laws 1929, c. 149. "The avails of a life insurance policy or of a contract payable by any mutual aid or benevolent society, when made payable to the deceased, the personal representatives of the deceased, his heirs or estate. . ." The Chapter is concluded as follows: "This statute is intended to apply only to life insurance policies and beneficiary certificates that by their terms are made payable to the insured, to the personal representatives of the insured, or to his heirs or estate."

and said that a policy payable to the insured himself comes under the protection of the law.[4]

B. Are Benefit Payments Subject to Beneficiary's Debts?

There has been no case that has come to the writer's knowledge in this state which determines what may be done with the money once it is paid over to the beneficiary, as far as the beneficiary's debts are concerned.[5] There are two lines of authority upon the question, according to Ruling Case Law.[5a] In many jurisdictions it is the rule that a statute which exempts the proceeds of insurance from the debts of the insured in no way affects the liability of the fund for the debts of the beneficiary. Leading states cited for this holding are the states of Michigan and Washington. But many states hold that such proceeds are exempt from the claims of the beneficiary's creditors, including the states of California, Nebraska, and Minnesota. For valuable notes see 6 A. L. R. 603, 610.

C. Exemption Under The Bankruptcy Law.

Section 70a (5) of the Chandler Act[6] vests the policy of insurance in the hands of the trustee in bankruptcy upon the filing of the petition in bankruptcy. Under this section the holder of the policy must pay to the trustee in bankruptcy the cash surrender value within thirty days after it has been ascertained from the insurance company. However, section 6 of the Chandler Act[7] says that the provisions of this Act will not affect the allowance to bankrupts of the exemptions which are prescribed by the laws of the United States or by the state laws in force at the time of the filing of the petition in bankruptcy. We have a statute which

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[4]In Anderson vs. Northern and Dakota Trust Co., 65 N. D. 721, 725, 261 N. 759 (1935) Judge Nuessle in construing sec. 8719, cited supra note 2, and commenting on the case of Cohen vs. Gordon Ferguson, 56 N. D. 545, 218 N. W. 209 (1928), said: "The opinion in the case of Cohen vs. Ferguson was filed in January, 1928. The question there was as to whether a policy payable to the insured himself fell within the terms of §8719. We held that it did not. So it seems clear that when the statute was reenacted as chapter 149 the reason for this reenactment was to widen its provisions so as to include policies payable to the insured; to make the statute cover not only policies written prior to the enactment of Chapter 225, Sess. Laws 1937, but also policies thereafter written; and to strictly define the limits within which the statute operated."

[5]§5078, 1913 Comp. Laws, protects insurance proceeds flowing from Fraternal Benefit Societies even in the hands of a beneficiary. See note 15 infra.

[5a]11 R. C. L. 528.

[6]Chandler Act, 1938, sec. 70a (5), 11 U. S. C. A. §110. ". . .And provided further, That when any bankrupt, who is a natural person, shall have any insurance policy which has a cash surrender value payable to himself, his estate, or personal representatives, he may, within thirty days after the cash surrender value has been ascertained and stated to the trustee by the company issuing the same, pay or secure to the trustee the sum so ascertained and stated, and continue to hold, own, and carry such policy free from the claims of the creditors participating in the distribution of his estate under the bankruptcy proceedings, otherwise the policy shall pass to the trustee as asset. . ."

[7]Chandler Act, 1938, sec. 6, 11 U. S. C. A. §24. "This title shall not effect the allowance to bankrupts of the exemptions which are prescribed by the laws of the United States or by the State Laws in force at the time of the filing of the petition in the State wherein they have had their domicile for the six months immediately preceding the filing of the petition, or for a longer portion of such six months than in any other State. . ."

apparently serves the purpose for what the Chandler Act calls "exemptions."[8]

The case of In Re Coughlin[9] appears to be the only case in this state which deals with the exemption problem under section 8718a, and in its opinion the court used the term "exempt" quite freely. However, the court did not say that section 8718a is an exemption statute. Our Constitution provides that an exemption statute must be limited in amount.[10]

D. When Payable To A Specific Beneficiary With Change of Beneficiary Reserved.

The next consideration is whether an insurance contract which is payable to a specific beneficiary with the right reserved in the insured to change the beneficiary at will comes under the provisions of the law. There is no doubt that a policy payable to a specific beneficiary with no right reserved to change the beneficiary at will, vests immediately in the beneficiary, and the money becomes part of the beneficiary's estate, if he dies before the insured.

The case of Cohen vs. Gordon Ferguson, 56 N. D. 545, 218 N. W. 209 (1928) said that sec. 8719 does not apply to all insurance contracts. This section covers only those contracts where the insured, by the use of appropriate terms in the designation of beneficiaries, has indicated an intention that the policy shall be controlled by it. But sec. 8718a saves the policy from creditors in any event, and upon death the beneficiary gets the proceeds by contract.

E. Does The Insurance Money At Any Time Become Part of the General Assets of the Insured's Estate?

The cases in this state hold that creditors of the insured cannot attach the money in the hands of the executor or administrator of the insured on the theory that the insurance money has become part of the general assets of the estate. The decisions hold

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[8]N. D. Supp. 1925, sec. 8718a. "The surrender value of any policy of life insurance, which policy of insurance would, upon the death of the insured, be payable to the wife or children or any relative of the insured dependent or liable to be dependent upon him for support, shall be absolutely exempt from the claims of creditors of the insured, and no creditor and no court or officer of a court acting for the creditors of such insured shall have the right under any circumstances to elect for the insured to have such policy of insurance surrender or in anywise converted into money; and no such policy of life insurance and no property right therein belonging to the holder and no value thereof shall, under any circumstances, be subject to seizure under any process of any court."

[9]In Re Coughlin's Estate, 53 N. D. 188, 195, 205 N. W. 14 (1925). Judge Nuessle said: "In view of the legislative intent expressed in the sections of the statute quoted, supra, they are exempt from payment of debts of the insured. Under these statutes, they are for the benefit of, and belong to, the beneficiaries under the policy, or the heirs of the insured."

[10]N. D. Const. sec. 208. "The right of the debtor to enjoy the comforts and necessaries of life shall be recognized by wholesome laws, exempting from forced sale to all heads of famiies a homestead, the value of which shall be limited and defined by law, and a reasonable amount of personal property; the kind and value shall be fixed by law. . . ."

[11]Supra, note 8.

that a policy payable to the estate, personal representative, heir, or assigns of the insured, is deemed to be payable to the heirs of the insured, and that they take by contract and not by descent.[12] Hence the money vests in the beneficiary as soon as it becomes payable.

III. AMOUNT "EXEMPT" UNDER OUR LAWS.

The problem here is concerned with what amount may a person invest in life insurance in North Dakota and still be under protection of our "exemption" statutes.

N. D. Compiled Laws, 1913 sec. 8719, supra, was held constitutional by our court.[13] The court said that it was not an exemption statute. Hence no amount need be stated in the statute which will be the limit of investment in one year under the law. The amendments to sec. 8719 were likewise held not to be exemption laws.[14] The court said that if the legislature had intended to abrogate the rule thus established, it could have done so in unmistakable, apt words. The court ruled out the dicta in Marifjeren vs. Farup, 51 N. D. 78, 81, 199 N. W. 181, 182 (1924) which implied that sec. 8719 was an exemption statute.

In the state of New York, they have recognized those laws as exemption laws and have set a limit of five hundred dollars a year which an insolvent debtor may pay into insurance premiums which are absolutely exempt. Indeed, our Supreme Court has discussed the problem of limitation of investments under our statutes. In the Smith case, cited in footnote 13, Judge Robinson said in his dissenting opinion, "I dissent on the grounds that section 8719, Compiled Laws, is in reality an exemption statute which does not limit the exemption to a reasonable amount or to any amount or to any sum. It permits a party to put all of his property beyond the reach of creditors, and the constitutionality of an act is to be determined by what may be done under it."

The matter of amount which may be put beyond the reach of creditors was discussed once more in connection with another code section.[15] The statute was held constitutional by the case of Brown vs. Steckler, 40 N. D. 113, 168 N. W. 670, 1 A. L. R. 753 (1918). The case held among other things that the court took judicial notice of the fact that payments under a mutual protection plan were relatively small. The court went on to say, "This

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[12]Talcott vs. Bailey, 54 N. D. 19, 208 N. W. 549 (1926), followed Finn vs. Walsh, 19 N. D. 61, 121 N. W. 766 (1909); Farmers State Bank vs. Smith, 36 N. D. 225, 162 N. W. 302 (1917); and Marifjeren vs. Farup, 51 N. D. 78, 199 N. W. 181 (1924) to bring about that result.

[13]Farmers State Bank vs. Smith, 36 N. W. 225, 162 N. W. 302 (1917).

[14]Anderson vs. Northern and Dakota Trust Co., 65 N. D. 721, 261 N. W. 759 (1935).

[15]N. D. Comp. Laws 1913, sec. 5053. "The money or benefit, charity, relief or aid to be paid, provided or rendered by any association authorized to do business under this article shall not be liable to attachment by trustee, garnishee or other process, and shall not be seized, taken, appropriated or applied by any legal or equitable process, or by operation of law, to pay any debt or liability of a certificate holder, or of any beneficiary named in a certificate, or any person who may have any right thereunder."

is not like the old line legal reserve insurance companies. There the amount is much larger and may be invested in for a business venture." The maximum limit which may be invested in life insurance policies by an insolvent person has not been fixed by statute in this state.

Quaere: Are we to understand that any amount whatever may be invested in life insurance in North Dakota, and still be free from payment of the debts of the insured? Is Sec. 8718a an exemption statute? If so, is it constitutional? If it is not an exemption statute, just what is an exemption statute in North Dakota? Does sound policy dictate the necessity for an amendment which, while setting up an ample insurance estate for the family, will prevent investing large sums in exempt insurance?

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OUR SUPREME COURT HOLDS

In George Anderson, Pltf. and Applt., vs. Emma M. Roberts, et al., Defts., and Victor Moynier, Deft. and Respt.

That after a certificate of tax sale has been issued, the validity thereof may not be challenged with respect to any of the tax proceedings prior thereto unless those defects are such as may be urged under the provisions of Section 2193, Comp. Laws N. D. 1913, or are beyond the power of the legislature to remedy.

That the description of land assessed in the name of the owner thereof and described as: NW¼, S. 14, T. 139, R. 79. Ac. 160, is sufficient to support a tax levy and subsequent proceedings resulting in a tax sale.

That where land sold as one tract at tax sale is contained in a legal subdivision of 160 acres belonging to one owner and is occupied as a unit, such sale is valid as against the contention that the land should have been advertised and sold in smaller subdivisions.

That Chapter 235, Session Laws N. D. 1939, requires the publication of a notice of expiration of redemption and the service thereof by registered mail on the record title owner, the person in possession and mortgagee, lien holders and other persons interested in the property as may appear from the records of the register of deeds and clerk of the district court of the county wherein the property involved is situated.

That under Chapter 235, Session Laws N. D. 1939, a county does not acquire title to real property under tax deed proceedings until the prescribed notice of expiration of redemption has been published and served upon all parties entitled to redeem in the manner prescribed by the statute.

That until statutory notice of expiration of redemption has been published and served upon all parties entitled to receive such notice, and the prescribed period of redemption has expired, the right of redemption remains as to all.

That where two separate tax sales are held for taxes levied upon the same property for the same year, one being for general taxes and the other for hail taxes and separate certificates are issued therefor as prescribed by law, there exist separate rights of redemption from each sale and a notice of redemption that fails to disclose the separate sales, certificates and respective amounts for which the property was sold, is an insufficient notice and is not effective to terminate rights of redemption.

(Syllabus by the Court)

Appeal from the District Court of Burleigh County, Hon. Fred Jansonius, Judge. AFFIRMED.

Opinion of the Court by Morris, J.

Christianson, J. concurring specially.