

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Albertha M. Duval, as Personal Representative of the
Estate of Edward Duval, Sr.,

Appellant/Respondent,

v.

Heritage Life Insurance Company, United Companies
Lending Corporation and Loan Finders of South Carolina,
Inc.,

of whom Heritage Life Insurance Company, is

Respondent/Appellant.

Appeal From Charleston County
Paula H. Thomas, Circuit Court Judge

Unpublished Opinion No. 99-UP-428
Submitted June 8, 1999 - Filed August 17, 1999

AFFIRMED IN PART and REVERSED IN PART

George J. Kefalos, of George J. Kefalos, P.A., and C. Steven
Moskos, both of Charleston, for appellant/respondent.

James E. Lady and William C. Cleveland, both of
Haynesworth, Marion, McKay & Guerard, of Charleston,
for respondent/appellant.

PER CURIAM: Albertha M. Duval, as Personal Representative of the estate of her husband, Edward Duval, Sr., sued Heritage Life Insurance Company (Heritage) for breach of contract and bad faith failure to pay the proceeds of a life insurance policy. After the trial court denied directed verdict motions by both parties, the jury found in favor of Duval on the contract claim and in favor of Heritage on the bad faith claim. Both parties filed motions for judgment notwithstanding the verdict (JNOV) or,

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At the closing, Kinard was only responsible for explaining the Heritage life insurance application to the Duvals. The application included the following disclaimer:

Except as noted below to the best of my knowledge and belief, I have not consulted or been treated during the last 24 months for: aids related complex, Acquired immunodeficiency syndrome, cancer, diabetes or conditions of the heart, circulatory system, high blood pressure, lungs, brain, liver, kidneys or back.

Mr. Duval signed the application without making any notations about his health.

Mr. Duval died on July 13, 1994. Dr. Hackney, who signed the death certificate, listed the immediate cause of death as congestive heart failure and dilated cardiomyopathy. Dr. Hackney also listed hypertension and atherosclerosis as other significant conditions contributing to the death.

By letter dated August 31, 1994, Heritage informed Mrs. Duval that it was declining her claim and canceling the policy. It explained that if it had known of Mr. Duval's treatment for conditions of the heart, it would not have issued any insurance.

II.

Both parties assert that the trial court erred in refusing to grant their directed verdict motions.

In deciding a motion for directed verdict or JNOV, the court "must consider the evidence in the light most favorable to the nonmoving party." Brady Dev. Co. v. Town of Hilton Head Island, 312 S.C. 73, 78, 439 S.E.2d 266, 269 (1993). Neither motion should be granted unless the evidence lends itself to only one reasonable inference entitling the moving party to judgment as a matter of law. See Horry County v. Laychur, 315 S.C. 364, 367, 434 S.E.2d 259, 261 (1993). In making its decision, the court cannot decide credibility issues or resolve conflicts in the evidence. See Garrett v. Locke, 309 S.C. 94, 99, 419 S.E.2d 842, 845 (Ct. App. 1992).

We consider Heritage's appeal first. It claims that the only reasonable inference from the evidence is that the Duvals knew of Mr. Duval's heart condition and intentionally did not disclose it. Thus, according to its theory, Heritage is entitled to a directed verdict or JNOV because the policy is void ab initio due to the insured's material misrepresentation. We disagree.

In order to declare the life insurance policy void and avoid liability, the [i]nsurance [c]ompany must show[:] (1) that the statements complained of were untrue; (2) that their falsity was known to the applicant; (3) that they were material to the risk; (4) that the insurer

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company. Accordingly, the trial court did not err in denying Heritage's motion for a directed verdict or JNOV.¹

We next consider Mrs. Duval's arguments. She appeals the trial court's failure to grant her directed verdict motion on the contract cause of action or, in the alternative, to grant her a new trial. She asserts that Heritage had notice of facts which, if inquired into, would have revealed Mr. Duval's full medical condition. Thus, according to her theory, the trial court should have sent the case to the jury for determination of the bad faith action with Heritage's breach of contract established as a matter of law. Had this happened, she contends that the jury's verdict on the bad faith cause of action might have been different. We disagree.²

The sound health provision of a policy may be waived by the delivering agent where the agent has knowledge of the medical condition. See Abercrombie v. Pilot Life Ins. Co., 214 S.C. 350, 354-55, 52 S.E.2d 400, 401-02 (1949). The provision also may be waived where the agent was informed of facts by the insured that are sufficient to put a reasonably prudent man on inquiry notice, and that, if pursued with due diligence, would lead to the knowledge of the true medical condition. See id. Inquiry notice is the equivalent of actual notice. See id.; Ellison v. Independent Life & Accident Ins. Co., 216 S.C. 475, 483, 58 S.E.2d 890, 893 (1950) ("It was properly found that notice to the agent that the applicant was 'drawing disability' was sufficient notice to

¹ Heritage cites to Winburn v. Minnesota Mut. Life Ins. Co., 261 S.C. 568, 201 S.E.2d 372 (1973) in support of its argument. This reliance on Winburn is misplaced. In that case, the insurer denied a claim for life insurance policy proceeds on the ground that the insured made material misrepresentations on the insurance application by failing to mention several medical conditions. 261 S.C. at 572-73, 201 S.E.2d at 373-74. There was "a total absence of any testimony," that the insurer "had any knowledge or had been informed of the insured's previous medical history or physical condition." Id. at 575, 201 S.E.2d at 375 (emphasis added). In affirming the trial court's directed verdict in favor of the insurer, the Court held:

We recognize that[,] ordinarily, the question of fraud in a case of this kind is for the jury, but we feel that this is one of those rare cases where the only reasonable conclusion from the uncontradicted facts is that the insured intended to deceive and defraud the respondent when she deliberately suppressed the truth and gave false answers as to her health or physical condition and prior medical treatment, of which she had full knowledge.

261 S.C. at 578, 201 S.E.2d at 376 (emphasis added). In contrast, as noted above, the Duvals' intent was disputed at trial. Furthermore, there is evidence that Kinard was or should have been aware of Mr. Duval's heart condition. Consequently, given the bias in favor of jury determinations in these types of cases, Winburn does not control the case at bar.

² Because we dispense with this argument on its merits, we do not approach Heritage's argument that any error in failing to grant Mrs. Duval's motion was harmless.

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submission of the proper records, prejudgment interest on life insurance policy proceeds begins to accrue from the date of the insured's death. See Jackson v. Speed, 326 S.C. 289, 301, 486 S.E.2d 750, 756 (1997) ("When interpreting a statute, words must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation."). Therefore, Heritage must pay Mrs. Duval prejudgment interest from the date of Mr. Duval's death, not from the denial of the claim. See Flynn v. Nationwide Mut. Ins. Co., 281 S.C. 391, 396-97, 315 S.E.2d 817, 820-21 (Ct. App. 1984) (holding that once a reasonable period passes for an insurer to investigate a claim and the insurer still refuses to pay, interest is computed as of the date of loss, absent a contrary provision).

For the foregoing reasons, the trial court's order is

AFFIRMED IN PART and REVERSED IN PART.

HOWELL, C.J., HUFF and HOWARD, JJ., concur.