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PRESUMPTION OF DEATH IN LIFE INSURANCE CASES

Society has long had to face the problems arising when one of its members disappears. When a person who disappears is covered by life insurance, questions immediately arise concerning the rights of the beneficiary of the policy.¹ Can he collect immediately? Should he continue to pay the premiums? These questions hinge on other questions. Is he the insured dead, or presumed dead? If so, when did he die, or when is he presumed to have died? The common law developed the “presumption of death” doctrine² in an effort to cope with the legal aspects of these problems. Most states,³ including Florida,⁴ have recognized the presumption by statute. It arises from proof of seven years’ unexplained absence of a person from his usual place of residence and absence of communication with him.⁵ It counters the common law “presumption of life” that one who is shown to be alive at a given time is presumed to be alive at a subsequent time.⁶ In the absence of the presumption of death, the presumption of life continues indefinitely.⁷

The initial problem that confronts the beneficiary of a life insurance policy upon the disappearance of the insured is to determine when to assert the claim. He cannot take advantage of the presumption of death because the requisite seven years have not passed. If the beneficiary relies upon the available evidence to establish that the insured has met his death, and loses the case, the concept of res judicata apparently bars him from asserting the claim at the termination of the seven-year period.⁸ Hence, when the beneficiary is in doubt as to whether his evidence is sufficient to overcome the pre-

⁵. See cases cited notes 2, 4 supra.
⁷. See Bennett v. Equitable Life Assur. Soc'y, 180 La. 238, 156 So. 290 (1934) (civil law).
sumption of life, it seems that he would be well advised to wait seven years before bringing an action. At that time he would be entitled to an instruction that the insured is to be presumed dead.

Assume that the beneficiary determines that he cannot establish, with reasonable certainty, that the insured is dead and decides that the better course under the facts available is to wait for the period to expire and use the presumption to establish the death. He may then discover that there is another obstacle to his ultimate recovery. The time of death may become critical. If the policy lapses during the time required for the period to run and the beneficiary is unable to establish that the insured died before the policy lapsed, he will not be permitted to recover. In some situations the cash reserve of the policy will be sufficient to convert the policy into fully paid term insurance of a sufficient duration to cover the period. In situations in which the period is not so covered and the beneficiary is unwilling or, as in the case of the impoverished family, unable to pay the premium for the period, recovery will be denied in the absence of proof fixing the time of death as prior to the lapse.

The law has developed four views concerning the time of death of a missing person. The "Tisdale Doctrine" permits a presumption of death to arise before the end of seven years. The missing person in the case in which the doctrine arose was a young man of good repute who disappeared while in Chicago on a business trip. The basis of this doctrine is that prosperous men of good character and habits with affection for their families seldom voluntarily disappear from sight. The second presumption is the "Specific Peril Doctrine." Under this doctrine the presumption of death does not arise because of the lapse of seven years but from proof of a shorter absence plus evidence of exposure to specific peril. In reality this is not a presump-

9. This is the effect of a statute requiring life insurance policies to contain a "non-forfeiture clause." See, e.g., FLA. STAT. §627.0225 (1959); ILL. ANN. STAT. ch. 73, §841.2 (Smith-Hurd Supp. 1960); IND. STAT. ANN. §39-4206b (Burns Supp. 1960); MO. ANN. CODE art. 48A, §197 (Supp. 1959).

10. See Szabad & Blum, Proving Death of Victims of Nazi Oppression, 24 N.Y.U.L. REV. 577 (1949). The statute of limitations might appear to raise similar problems, but the cases treating the problem hold that, in situations in which the beneficiary must rely on the 7-year period to establish death, the cause of action does not accrue until the period has expired and that the statute does not begin to run until that time. United States v. Willhite, 219 F.2d 343 (4th Cir. 1955); Howard v. Equitable Life Assur. Soc'y, 197 Wash. 230, 85 P.2d 253 (1938).


tion but recognition that death may be proved by circumstantial evidence. The third presumption, and the one most often followed, is that unexplained absence for seven years raises a presumption of death but does not raise a presumption that death occurred at any specific time within the seven-year period. The fourth presumption is that the missing person is presumed to have died on the last day of the seven-year period. The rationale of this view is that since the presumption of life is in force, the person cannot be presumed dead until the presumption of life is rebutted.

The differences between these four presumptions are not as marked as might appear. In order to prove the time of death under the “Tisdale Doctrine,” evidence may be used that does not directly tend to show death. Under the “Specific Peril Doctrine,” facts must be shown indicating that the missing party was exposed to some specific peril during his absence. Therefore, facts sufficient to show a specific peril satisfy the requirements of the “Tisdale Doctrine.” Under the third view, that of no presumption as to time of death, proof of exposure to specific peril is sufficient to establish death prior to the end of the seven-year period. The presumption that death occurred at the end of the period does not preclude the introduction of evidence to show that the insured died at or near the time of his disappearance. Presumably this holds true even when the aid of the presumption is necessary to establish death initially. Under this presumption, evidence of exposure to a specific peril should also be adequate to establish the time of death as before the end of the seven-year period.

Thus it appears that evidence that would meet the requirements of the “Specific Peril Doctrine” would also be sufficient to prove the time of death under the other doctrines. Time of death would be least difficult to prove under the “Tisdale Doctrine,” since it is only necessary to show that it would be unlikely for the missing person to disappear without having met death.


15. See cases cited note 12 supra.

16. Travelers Ins. Co. v. Bancroft, 65 F.2d 963 (10th Cir. 1933); United States
Claims by life insurance beneficiaries involving missing persons have not come before the Florida courts. In *Johns v. Burns* the conservator of the presumed decedent's estate sought to collect pension benefits after the seven-year period. Two weeks after his disappearance the decedent's car was found. His keys, fishing tackle, and outboard motor were missing from it, and nothing was heard from him again. The Florida Supreme Court upheld a finding that death occurred at or near the time of his disappearance. Thus the conservator was not entitled to recover pension benefits for the period from the disappearance until the suit. The Court discussed all four presumptions and stated that they precluded neither a showing of specific peril nor any other circumstances that would warrant the conclusion that death occurred at an earlier time.

Although the Florida Supreme Court has not established the doctrine that it will follow in the insurance context, the *Johns* opinion indicates that it will take a view favorable to the insurance beneficiary. Regardless of the doctrine adopted, the burden of proving that death occurred before the end of seven years is on the party who will be benefited by this fact. In *Johns* the Court held that death may be proved by facts raising a presumption of death, or by direct or circumstantial evidence. The Court also said that the time of death is a fact to be proved as any other fact and may be established by circumstantial evidence.

The United States Court of Appeals for the Fifth Circuit, in a case involving an action on a life insurance policy, has thus stated the Florida rule as to circumstantial evidence:

"'In civil cases the preponderance of evidence required, where circumstantial evidence is relied on as the method of proof, is a preponderance of all reasonable inferences that might be drawn from the circumstances in evidence to prove the principal fact sought to be established sufficient to outweigh all other contrary inferences.'"

The Court held that the question whether the insured was dead at the time the policy lapsed was a question for the jury. The evidence included establishment of the presumption of death arising from seven years' absence. Another court has approved submitting to the jury the question of date of death even when the evidence is circumstantial and shows no specific peril or impending or immediate danger.

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v. O'Brien, 51 F.2d 37 (4th Cir. 1931); Johns v. Burns, 67 So. 2d 765 (Fla. 1953).
18. 67 So. 2d 765, 767 (Fla. 1953).