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DOES THE ADOPTION OF THE PROPOSED INSURED DIVEST THE BIOLOGICAL PARENT FROM HAVING AN INSURABLE INTEREST IN THE CHILD'S LIFE AFTER ADOPTION?

Robert B. "Chip" Delano, Jr.*

A life insurance carrier was faced with the following fact pattern:

> *Mother* dies while giving birth to *Child* who was left with lifetime permanent injuries from birth. By court order, *Child* is adopted by *Parent 1* and *Parent 2* who are unrelated and *Child's* last name is changed to their last name. Years after the adoption, *Grandmother* (*Mother*'s mother and *Child*'s biological grandparent) applied for a life insurance policy insuring *Child's* life and stated on the application that she was *Child*'s grandmother. Relying on the information that *Grandmother* disclosed on the application, the insurer issued a life insurance policy insuring *Child*'s life. Several years later when *Child* was a teenager, *Child* died of natural causes. *Grandmother* made a claim for the life insurance benefits under the policy. During the claims[1] process, *Grandmother* disclosed, for the first time, that over a decade before she applied for the life insurance policy *Child* had been adopted and her last name changed to that of her adopted parents, *Parent 1* and *Parent 2*.

In this claim, the life insurer faced the substantial question whether the bio-logical grandmother possessed the requisite insurable interest in the life of her now-adopted grandchild for a life insurance policy to be issued. In an attempt to resolve the insurable interest question presented, this article will consider the effect under Virginia law that the adoption of the proposed insured may have

* Mr. Delano is a shareholder in the Richmond office of Sands Anderson PC and is a former president of VADA. He serves as trial and appellate counsel in insurance and tort litigation with a significant portion of his practice devoted to the defense of life, health, disability, and ERISA cases.

1 Although the Supreme Court of Virginia appears not yet to have decided this precise issue, the vast majority of courts around the country have held that a life insurer can challenge the enforceability of a life insurance policy even after the contestability period has expired where a lack of insurable interest voids the policy. *See, e.g.*, PHL Variable Ins. Co. v. Price Dawe 2006 Ins. Trust, 28 A.3d 1059, 1067 n.18 (2011) (citing cases); Lincoln Nat'l Life Ins. Co. v. Joseph Schlanger 2006 Ins. Trust, 28 A.3d 436, 440 n.18 (2011) (citing cases). In fact, one of the majority cases relied upon the case of *Crismond's Adm'x v. Jones*, 117 Va. 34, 83 S.E. 1045 (1915), in deciding that a policy which lacks the requisite insurable interest is void and unenforceable even if the contest-ability period has passed. *See* Commonwealth Life Ins. Co. v. George, 248 Ala. 649, 653, 28 So. 2d 910, 912 (1947).

upon the requirement that one taking a life insurance policy must have an insurable interest in the life of the proposed insured.

I. Virginia's Insurable Interest Requirement

> It is a settled principle of our American jurisprudence that one taking out a policy of insurance on the life of another person for his own benefit, must have an interest in the continuance of the life of the insured.[2]

In Virginia, when someone takes out a life insurance policy on the life of another for his own benefit he must have an insurable interest in the life of the person being insured at the time the life insurance policy is issued. "In this State it has long been held that in the absence of an insurable interest, a policy on the life of another is contrary to public policy and cannot be enforced by the beneficiary. The lack of insurable interest causes the transaction to be regarded as a speculative or wager contract."[3]

Under Virginia Code section 38.2-301(A), an insured of lawful age may procure life or accident insurance upon himself for the benefit of any person, but one cannot knowingly procure or cause to be procured any insurance policy upon another person *unless* the benefits under the policy are payable to

> (1) the insured or his personal representative, or (2) a person having an insurable interest in the insured at the time when the contract was made.[4]

The statute goes on to define *insurable interest* to mean the following:

> In the case of individuals related closely by blood or by law, a substantial interest engendered by love and affection; . . .[5]

II. The Legal Effects of Adoption in Virginia

An adoption results in the complete divesting of all legal rights that a natural parent may have in his or her child, with the adopting parent obtaining all the legal rights and obligations removed from the biological parent. Virginia Code section 63.2-1215, entitled "Legal Effects of Adoption," provides in pertinent part as follows:

> *The birth parents, and the parents by previous adoption, if any . . . shall, by final order of adoption, be divested of all legal rights and obli-*

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[2] *See, e.g.,* Crismond's Adm'x v. Jones, 117 Va. 34, 37, 83 S.E. 1045 (1915).

[3] Green v. Southwestern Voluntary Ass'n, 179 Va. 779, 785, 20 S.E.2d 694, 696 (1942).

[4] Va. Code § 38.1-301(B).

[5] *Id.*

> *gations in respect to the child including the right to petition any court for visitation with the child . . . . [A]ny person whose interest in the child derives from or through the birth parent* or previous adoptive parent, including but not limited to grandparents, stepparents, former stepparents, blood relatives and family members *shall, by final order of adoption, be divested of all legal rights and obligations in respect to the child,* including the right to petition any court for visitation with the child. *In all cases the child shall be free from all legal obligations of obedience and maintenance in respect to such persons divested of legal rights. Any child adopted under the provisions of this chapter shall*, from and after the entry of the interlocutory order or from and after the entry of the final order where no such interlocutory order is entered, *be, to all intents and purposes, the child of the person or persons so adopting him, and*, unless and until such interlocutory order or final order is subsequently revoked*, shall be entitled to all the rights and privileges, and subject to all the obligations, of a child of such person or persons born in lawful wedlock. An adopted person is the child of an adopting parent, and as such, the adopting parent shall be entitled to testify in all cases civil and criminal, as if the adopted child was born of the adopting parent in lawful wedlock.*[6]

The drastic effects of severing all ties between parent and child were summarized by the Supreme Court of Virginia in *Doe v. Doe,*[7] where, citing the predecessor to Virginia Code section 63.2-1215, the court stated:

> The most drastic and far-reaching action that can be taken by a court of equity is to enter a final order of adoption. Such an order severing the ties between a parent and a child is as final, and often as devastating, as though the child had been delivered at birth to a stranger instead of into the arms of its natural mother or father. Custody of children and child support are matters that remain within the breast of the court and are subject to change and modification so long as a child is a minor. This is not true of adoptions. Once an order of adoption becomes final, the natural parent is divested of all legal rights and obligations with respect to the child, and the child is free from all legal obligations of obedience and maintenance in respect to the natural parents. The child, to all intents and purposes, becomes the child of the person adopting him or her to the same extent as if the child had been born to the adopting parent in lawful wedlock.[8]

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6 Emphasis added.

7 222 Va. 736, 746-47, 284 S.E.2d 799, 805 (1981).

8 VA. CODE § 63.1-233.

The sweeping effects that an adoption has are illustrated in the context of intestate succession in *Kummer v. Donak*.[9] In that case, the Supreme Court of Virginia held that an adoption divested the adopted person and her decedents of all inheritance rights running through her biological family. The Court first ruled that Code section 63.2-1215 divested the adopted person's biological parents of their legal rights with respect to her, with the divestiture extending to collateral relatives whose interest derived through the parents.

The Court in *Kummer* next rejected the decedent's argument that

> the public policy behind intestate succession supports allowing property to descend to the closest blood relative and disfavors allowing the adoption of a person to sever the inheritance rights of her descendants.[10]

The Court explained that the public policy argument favoring blood relatives failed because "consanguinity[11] ceases to be permanent where the legislative expresses an intention to the contrary."[12]

Thus, the significance of the *Kummer* case is that the Court ruled that under Virginia Code section 63.2-1215, the legal effect of the woman's adoption dissolved all ties that her biological relatives had with her, be they legal or blood, which thereby precluded them from inheriting her property by intestate succession.

III. The Effect of an Adoption upon the Insurable Interest Requirement

What impact, if any, does an adoption of the proposed insured have upon the policy's insurable interest requirement?

In *Kummer,* the Supreme Court of Virginia applied the sweeping provisions of Virginia Code section 63.2-1215, dealing with the legal effects of adoption, in the context of intestate succession to divest the inheritance rights, both by law and by blood. The Court's reasoning in *Kummer* is not confined to interstate succession and appears to be readily transferrable to other fact patterns, such as divesting a parent of all legal and blood rights to his biological child who has been adopted.

Under a strict application of Code section 63.2-1215, once the final order of adoption has been entered, the birth parents (and all who claim through them, such as grandparents) are thereby divested of all legal rights as to their biological child who has been adopted by someone else.

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9 282 Va. 301, 715 S.E.2d 7 (2011).

10 282 Va. at 304, 715 S.E.2d at 9.

11 *Consanguinity* means "relation by blood." Brooks v. Commonwealth, 41 Va. App. 454, 460, 585 S.E.2d 852, 854 (2003) (quoting Doyle v. Commonwealth, 100 Va. 808, 810, 40 S.E. 925, 926 (1902)).

12 282 Va. at 306, 715 S.E.2d at 18.

In addition to divesting the parents of all legal rights to their child, the birth parents' relationship to their biological child by blood is similarly extinguished by the adoption statute.

Virginia's insurable interest statute, Code section 38.2-301, requires a person procuring a life insurance policy upon another person to have an insurable interest in the proposed insured at the time that the life insurance contract is made. If, by virtue of Code section 63.2-1215, the person procuring the life insurance no longer has any legal or blood ties to the proposed insured—as is true for the biological parent after adoption—that person would appear to lack the requisite insurable interest in the life of the proposed insured (*i.e.*, his/her biological child), and any life insurance policy issued to a birth parent would be void ab initio and unenforceable. In the absence of the requisite insurable interest needed under Code section 38.2-301 for a valid life insurance policy, the insurer is thereby relieved of any obligation to provide coverage under the life insurance policy.

IV. Conclusion

Since under Code section 63.2-1215 the legal effect of an adoption is to divest the parent (and all who claim through the parent, such as a grandparent) of all legal and blood ties to his/her biological child, it appears that the sweeping legal effect of the adoption would likewise deprive the parent/grandparent of the requisite insurable interest in the biological child needed for the issuance of a valid life insurance policy. Any policy issued in the absence of the required insurable interest would be void ab initio.