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2012 IL App (3d) 110461-U

Order filed August 22, 2012

IN THE APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2012

EMPLOYEES LIFE COMPANY,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Plaintiff,)	Will County, Illinois
)	
v.)	
)	
ENICE NEELY,)	
)	
Defendant-Cross-Defendant-Appellant,)	
)	
and)	Appeal No. 3-11-0461
)	Circuit No. 07-CH-3976
MYRTIS NEELY, MICHELLE MONCADA,)	
and GUSSIE NEELY,)	
)	
Defendants-Cross-Plaintiffs-Appellees,)	
)	
and)	
)	
ANN CARR and UNKNOWN SURVIVING)	
RELATIVES OF JEFF D. NEELY, Deceased,)	Honorable
)	Bobbi N. Petrunaro,
Defendants.)	Judge, Presiding.

JUSTICE CARTER delivered the judgment of the court.
Justices O'Brien and Wright concurred in the judgment.

ORDER

¶ 1 *Held:* In a case involving a dispute over the appropriate distribution of the proceeds from a life insurance policy, the circuit court entered judgment against the decedent's wife, whom the court found intentionally and unjustifiably caused the decedent's death. On appeal, the appellate court upheld the circuit court's judgment.

¶ 2 The plaintiff, Employees Life Company, filed a complaint for interpleader against the defendants, Enice Neely, Myrtis Neely, Michelle Moncada, Gussie Neely, Ann Carr, and any unknown surviving relatives of the decedent, Jeff Neely, alleging that a question existed as to who was entitled to recover the \$50,000 from Jeff's life insurance policy. Defendants Myrtis, Michelle, and Gussy filed a cross-claim against Jeff's wife, Enice, claiming that she was not entitled to recover under the policy. After a trial, the circuit court ruled that Enice intentionally and unjustifiably caused Jeff's death and therefore could not recover under the life insurance policy. Enice appealed. We affirm.

¶ 3 **FACTS**

¶ 4 Jeff Neely died on December 18, 2005. The coroner's report, which was introduced at trial, stated that Jeff died of a stab wound to the upper left area of his chest. The report described the wound as "front to back and downwards" with a depth of approximately five inches. The blade entered Jeff's chest through the third rib, notched the fourth rib, pierced his heart, and collapsed his left lung.

¶ 5 Jeff had a life insurance policy with Employees Life Company for \$25,000 basic benefit plus \$25,000 accidental death benefit. On December 6, 2007, Employees Life Company filed a complaint for interpleader against Enice, Myrtis, Michelle, Gussie, Ann, and any unknown surviving relatives of Jeff. In the complaint, Employees Life Company alleged that Jeff died after being stabbed in the chest and that his death was ruled a homicide. The complaint further

stated that a question existed as to who was entitled to recover the \$50,000 from Jeff's life insurance policy, given that Jeff's wife, Enice, was the only person present at the time of Jeff's death.

¶ 6 At trial, the recording of Enice's 911 call to report Jeff's injury was introduced into evidence. Enice told the 911 operator that Jeff had grabbed a knife and stabbed himself.

¶ 7 Also introduced at trial was the recording of the interview Enice gave with Joliet Detective Marc Reid at the police station. After being placed in an interview room, Enice was given a cup of coffee in a Styrofoam cup that she variously gripped with one hand and two hands, although she appeared to use only her thumbs and index fingers. After reading and having Enice sign a waiver of rights form, Reid left the room. When he returned, he told Enice that Jeff was in surgery and his condition was unknown. Enice proceeded to describe the circumstances surrounding the incident as follows. She said that she and Jeff had been out Christmas shopping, and, after returning to their house, Jeff said he was going to have a drink. Enice took exception to Jeff's drinking, as he was diabetic and an alcoholic, and apparently would engage in "crazy" behavior that he would not remember the next day when he drank. He left to go to the liquor store around 9 or 10 p.m. and was gone for approximately 40 minutes. Enice, who had consumed one drink and was on medication, stated that she had been accusing him of cheating on her with another woman, although she had never caught him.¹ When Jeff returned, she began questioning him on the time it took him to complete the trip, as she believed he should have been gone for only 10 or 15 minutes. An argument ensued. He confronted her and she head butted

¹ Later, when Reid asked Enice questions to clarify her version of events, Enice said "I always [accuse Jeff of cheating]."

him. Jeff's nose and lip began to bleed. She thought they were in the living room when this occurred. She said the blood on her forehead² was Jeff's from the head butt, which she said she did not wipe away because she wanted to show him the next day what he did.

¶ 8 Next, Enice said she was upstairs in the bedroom and Jeff was downstairs. He yelled upstairs that she could kill him if she wanted. He came upstairs and grabbed her by the neck, and she told him to go back downstairs. She had no marks from this encounter. Jeff went downstairs but later came back upstairs and continued to tell Enice to kill him. She kept telling him to go "sleep it off," but he would not comply. She went into the kitchen and grabbed a steak knife and went upstairs to the bedroom. She said he followed her upstairs and continued to tell her to kill him. She said she was holding the knife in front of her and Jeff was sitting on the bed in front of her. Then, she said (and motioned) that Jeff lunged forward and was stabbed by the knife. He fell back on the bed, and Enice called 911.

¶ 9 Enice clarified that Jeff said he was tired of Enice accusing him of cheating. When he confronted her in the bedroom and she had the knife, she said he grabbed her hands as she held the knife, blade up, with both hands. He pulled the knife toward him. They had arguments in the past and he had put his hands on her neck before. On further questioning, she said she was scared of him and that she was trying to scare him with the knife, which had worked in the past. On this occasion, the knife happened to go straight in to his chest.

¶ 10 Reid left the room and returned later to inform Enice that Jeff had died. Reid said that Enice had given three different versions of the events to the 911 operator, the police at the scene,

² After Reid questioned her the first time and left the room, Enice appeared to attempt to wipe that blood away using her fingers and saliva.

and to him. Reid continued to press her on the different versions. When he said that she told an officer at the scene that Jeff went downstairs and got the kitchen knife, Enice said that both of them did—that she grabbed the knife, he grabbed it, and she grabbed it back and took it upstairs. He wanted her to get a knife and kill him. She denied telling the police at the scene that Jeff had the knife. She said that she was frantic and upset when she talked to the 911 operator and the police at the scene, and that her primary concern was Jeff's well-being. After Enice requested an attorney, the interview ceased. She was allowed to use the phone later; she dialed with her thumbs and asked to speak to her mother. The videotape recorded Enice on the phone and relaying a version of the events to whomever was on the line.

¶ 11 Numerous witnesses testified at trial. Jeff's sister, Michelle, testified that she received a call from her mother at around 7 or 8 a.m. on December 18, 2005, informing her that Jeff, who was over six feet tall and weighed over 200 pounds, had suffered a heart attack. Michelle gathered her family and drove to Jeff's house and then to the hospital. Once there, she learned that Jeff had died. Michelle and her family returned to Jeff's house.

¶ 12 While at Jeff's house, Michelle was present for a conversation that Enice had with Michelle and Jeff's mother, Myrtis. While discussing funeral arrangements, Enice mentioned an argument she had with Jeff. She also said that Jeff had the heart attack around 2 or 3 a.m. Michelle interrupted and asked why Enice waited until 7 or 8 a.m. to call. Enice replied that the police did not allow it earlier. When Michelle asked why, Enice replied that she had some blood on her and the police took her to the station to talk about it. Shortly thereafter, Michelle left the house with her niece to get some food.

¶ 13 Upon returning to the house, Michelle was approached by Enice, who asked Michelle if

she wanted to know what really happened. Enice told Michelle that she and Jeff had been arguing, that she got a knife, and the knife punctured Jeff in the chest. Enice also opined that the puncture did not cause the heart attack, but that it was a "gurlging noise" that caused the heart attack. According to Michelle, Enice was sobbing a little while talking.

¶ 14 Michelle and some of her family members went to the police station to find out more about the circumstances surrounding Jeff's death. They were told that Jeff did not die of a heart attack; rather, he died of a stab wound to the chest.

¶ 15 Enice was called by both sides at trial. In her first testimony, Enice admitted that she grabbed the knife from the kitchen, called 911, let the police in, signed a consent to search form, signed other forms, and drank a cup of coffee with her own hands. She also stated that she started the argument on the night of the stabbing. When she was asked if she accused Jeff of cheating before the stabbing, she said no and that she told Jeff that if he was going to continue to drink, he would have to find another woman because she was not going to put up with it. She said she never clarified this with the police because she was in shock that night. She also stated that there was in fact talk of another woman "and a lot of other things that I had brought up that he had done in the past." Enice also stated that she and Jeff called each other names during the argument; among these insults was Jeff calling Enice a cripple.

¶ 16 With regard to the knife, Enice testified that Jeff told her to go get it, and she got it "to shut him up." Jeff was telling her to stab him because he had choked her, but she also stated that he was taunting her. During the moments before Jeff was stabbed, Enice reiterated that she was trying to get the knife away from Jeff's face and chest as he was holding her hands and telling her to kill him. She also stated that she did not call the police during the argument because "he had

been acting funny," which scared her.

¶ 17 On both occasions, Enice also testified repeatedly that certain discrepancies between the versions of events she gave to the various police officers were due to the officers' own confusion. She claimed that she was telling them about past events as well as the events of that night, and the police were conflating her statements, including a version she gave at the scene in which she said Jeff was holding the knife.

¶ 18 In her second testimony, Enice testified that she was diagnosed with rheumatoid arthritis approximately 17 or 18 years ago. She said her hands were substantially the same at the time of the 2011 trial as they were in 2005 at the time of the incident. She stated that she could only take stairs one at a time, and Jeff had to help her in and out of the bathtub. He also helped her get dressed and would cut her food for her. She was in constant pain from her condition, but could perform tasks such as turning a doorknob when she was medicated. She said that she was medicated on the day of the incident, which included several painkiller pills.

¶ 19 Detective Reid testified that he recovered the knife from the scene, which had a handle of approximately three to five inches and a blade of approximately six to eight inches that was serrated on one side. Reid also testified that Enice gave statements at the scene to police officers Gregory and Cammack, and Reid noted some discrepancies between the statements. Reid stated that Enice told different officers that she was standing at different walls in the room at the time of the stabbing. Enice also allegedly told Gregory that Jeff had the knife and had pointed it toward himself, and he then walked into Enice, causing the stab wound. He also testified that Enice described the knife as going in with a straight-on motion, and also testified that the coroner's office indicated to him that the blade pierced Jeff's chest in a 30 to 45-degree downward motion.

¶ 20 Dr. Hadi Hedayati testified that he was Enice's rheumatologist since 2002. He testified that he examined Enice on April 1, 2005. She had significant deformity of the hands; inflammation in the joints of her hands, knuckles, and left elbow; and loss of cartilage and fluid in her knees. Dr. Hedayati also stated that Enice had poor grip strength. He opined that she could not grab a pan and put it on the stove and could not cut a potato, but she could likely pick up a pen and write with it.³ He stated that she could not exert force with her hands due to the severity of her condition. He diagnosed her as being functionally class three, meaning that she was "quite limited at performing vocational or a vocational activity," and as being anatomically class four, meaning that her joints were fused and did not work anymore, including her wrists and to some extent her elbows and shoulders.

¶ 21 Dr. Hedayati also examined Enice on May 20, June 1, and October 7, 2005. Her condition was substantially similar at all of these visits. He did note that at the June 1, 2005, examination, Enice had subluxation of the knuckles, meaning that her knuckles were deformed and were one degree below dislocation.

¶ 22 On cross-examination, Dr. Hedayati stated that he did not ask Enice to perform tasks to assess her functionality, but that no doctor would take that course of action. He did state that he asked Enice to squeeze his finger, and that she was unable to hold it in place, as he pulled it out with ease. Dr. Hedayati stated that he did not recommend therapy for Enice because her condition was so severe that he did not think therapy would be beneficial for her. He placed

³ Enice's niece, Tralyn McDowell, testified that she visited Enice frequently in 2005 to help take care of her. Tralyn testified that Enice could not, *inter alia*, open cans, cut things, or bathe herself.

Enice on a drug treatment and discussed possible hand surgery, but Enice was not interested in surgery. Finally, Dr. Hedayati admitted that adrenaline could improve Enice's functionality.

¶ 23 On June 1, 2011, the circuit court issued a written order. After recounting the relevant testimony, the court found:

"In this case, Enice was the one who went down to the kitchen, got a knife, and took it upstairs. Enice was not scared of Jeff. It is unclear why Enice felt the need to bring the knife upstairs when she testified that she was not scared of Jeff. She head-butted him, drawing blood, before he went to the liquor store. She started the argument between them,. Enice is the one who had the knife in her hands at the time of the stabbing. If Jeff killed himself, then this question would be one of suicide and recovery under the life insurance policy, but that question has never been raised. Enice gave several different conflicting statements as to the events of the evening to various police officers, including the position of her hands, the position of Jeff on the bed and even whether he was walking or sitting. Whether these conflicting statements were simply a mixture of past activities and the night of the stabbing, Enice never corrected her statement to the police officers.

In this case, the evidence sufficiently establishes that Cross-Defendant intentionally and unjustifiably caused the death of Jeff Neely."

Thus, the court found that Enice was not entitled to recover under the life insurance policy, and accordingly released the funds held in escrow by the circuit clerk to cross-plaintiffs Myrtis, Michelle, and Gussie. Enice appealed.

¶ 24

ANALYSIS

¶ 25 On appeal, Enice argues that the circuit court erred when it granted the cross-claim.

Enice contends that the cross-plaintiffs failed to meet their burden of proof and that the evidence was insufficient to support the court's decision.

¶ 26 In relevant part, section 2-6 of the Probate Act of 1975 (755 ILCS 5/2-6 (West 2004)) provides that a person may not collect life insurance proceeds when he or she intentionally and unjustifiably caused the death of the insured. "In order to prevent a beneficiary from recovering life insurance proceeds under that statute, the challenging party must prove that: (1) the insured is in fact dead; (2) the insured was intentionally and unjustifiably killed; and (3) the beneficiary was the person who intentionally and unjustifiably caused the death of the insured." *Eskridge v. Farmers New World Life Insurance Co.*, 250 Ill. App. 3d 603, 609 (1993). The challenging party must prove their case by a preponderance of the evidence. *Eskridge*, 250 Ill. App. 3d at 609 n.6. "A proposition is proved by a preponderance of the evidence when the proposition is more probably true than not." *In re Terry H.*, 2011 IL App (2d) 090909, ¶ 14. On review, we will not disturb the circuit court's decision unless it was against the manifest weight of the evidence. *Eskridge*, 250 Ill. App. 3d at 610. A decision is against the manifest weight of the evidence when the opposite conclusion is clearly evident, or when the court's findings are unreasonable, arbitrary, and not based on the evidence. *Eskridge*, 250 Ill. App. 3d at 610.

¶ 27 Our review of the record reveals that the evidence supports the circuit court's decision. In its written order, the court thoroughly recounted the evidence that was presented at trial. As the court commented, Enice started the argument and was the one with the knife. Most notably, she gave conflicting versions of the events of that night to the police. Moreover, while Enice's

rheumatoid arthritis was undoubtedly severe, even her doctor testified that adrenaline could improve her functionality. Given the burden of proof required the cross-plaintiffs to prove that it was more likely than not that Enice intentionally and unjustifiably caused Jeff's death, we find no error in the court's factual determinations and ultimate ruling. Under these circumstances, we hold that the opposite conclusion is not clearly evident, and the circuit court's decision was based on the evidence and was not unreasonable or arbitrary. Accordingly, we hold that the court's decision was not against the manifest weight of the evidence.

¶ 28

CONCLUSION

¶ 29 The judgment of the circuit court of Will County is affirmed.

¶ 30 Affirmed.