IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
September 17, 2003 Session

FIDELITY & GUARANTY LIFE INSURANCE COMPANY
v.
PATRICIA LEE FUTRELL CORLEY, ESTATE OF ROBERT LEON CORLEY, AND CHERYL ANN JONES PATTERSON

An Interlocutory Appeal from the Circuit Court for Henry County
No. 1973 Julian P. Guinn, Judge

No. W2002-02633-COA-R9-CV - Filed December 31, 2003

This is an interpleader action involving the doctrine of former suit pending. In 1995, the decedent purchased a term life insurance policy from the defendant insurance company and named his wife as the primary beneficiary. In 1999, the decedent changed the named beneficiary from his wife to another woman. In September 2001, the decedent died. At his death, the other woman was still the named beneficiary under the policy. The named beneficiary filed a complaint in the chancery court in Humphreys County against the insurance company seeking payment of the proceeds of the life insurance policy. The wife, however, had previously made a claim with the insurance company for the same proceeds. Consequently, less than two weeks after the first lawsuit was filed, the insurance company filed the interpleader action below in Henry County against the wife, the named beneficiary, and the estate, seeking a determination of the rightful beneficiary of the proceeds. The named beneficiary moved for dismissal of the interpleader action, based on the doctrine of prior suit pending. The trial court denied that motion, finding that the doctrine of prior suit pending did not apply in this situation. The named beneficiary was granted permission to file this interlocutory appeal from the order denying the motion to dismiss. We now reverse, concluding that this interpleader action should be dismissed based on the doctrine of prior suit pending.

Tenn. Rule App. P. 9 Appeal by Permission; Judgment of the Circuit Court is Reversed

HOLLY M. KIRBY, J., delivered the opinion of the court, in which ALAN E. HIGHERS, J., and DAVID R. FARMER, J., joined.

Robert I. Thomason, Jr., and Tracy L. Harrell, Waverly, Tennessee, for the appellant, Cheryl Ann Jones Patterson.

Clifford K. McGown, Jr., Waverly, Tennessee, for the appellees, Patricia Lee Futrell Corley and Estate of Robert Leon Corley.

Todd A. Rose, Paris, Tennessee, for the appellee, Fidelity & Guaranty Life Insurance Company.

OPINION

Robert Leon Corley ("Corley") and his wife, Respondent/Appellee Patricia Lee Futrell Corley ("Wife"), were married in August 1967. During their marriage, they lived in Henry County, Tennessee. In 1994, Corley purchased a $75,000 term life insurance policy on his own life from Petitioner/Appellee Fidelity & Guaranty Life Insurance Company ("F & G"), naming Wife as the primary beneficiary. The premiums for that policy were paid by direct withdrawal from their joint bank account.

In January 1999, Corley moved out of his marital residence and moved in with Respondent/Appellant Cheryl Ann Jones Patterson ("Patterson") in her home in Humphreys County, Tennessee. In June 1999, Corley changed the primary beneficiary of his F & G life insurance policy from Wife to Patterson, and notified the company of his change of address. At some point, Corley learned that he was suffering from cancer. In January 2000, Corley moved back home to live with Wife. Corley lived with Wife in their Henry County residence until his death from cancer on September 1, 2001. However, at the time of Corley's death, Patterson remained the named beneficiary on his life insurance policy.[1]

As the named beneficiary under Corley's life insurance policy, Patterson notified F & G that she sought to claim the $75,000 in life insurance proceeds. Wife notified F & G that she asserted a claim to the life insurance proceeds as well, under theories of fraudulent change of beneficiary or constructive or resulting trusts. On December 14, 2001, Patterson filed a lawsuit in Humphreys County Chancery Court against F & G to recover the life insurance proceeds as the named beneficiary on the policy. On December 26, 2001, one day before F & G was served with process in the Humphreys County Chancery Court lawsuit, F & G filed an interpleader action in the Henry County Circuit Court below, naming Patterson, Wife, and Corley's estate as defendants. F & G sought to deposit the $75,000 in life insurance proceeds with the clerk of the Henry County Circuit Court and to have the trial court determine the lawful beneficiary of the proceeds. F & G's complaint also requested the trial court to "enjoin the Respondents from commencing any other actions regarding the [s]ubject matter of this action" and dismiss F & G "with the assurance that it will not be subjected to double or multiple claims arising out of the subject matter of this action."

On February 14, 2002, Patterson filed a notice of prior suit pending and a motion to dismiss in the Henry County trial court below, asserting that the chancery court in Humphreys County had exclusive jurisdiction over the matter. In response, F & G argued that the doctrine of prior suit pending did not apply to the Henry County Circuit Court lawsuit because, while all necessary and indispensable parties were before the Henry County Circuit Court, two parties – namely, Wife and Corley's estate – were not before the Humphreys County Chancery Court. Therefore, F & G argued,

[1] Wife's briefs on appeal refer to Patterson as Corley's "paramour," while Patterson's briefs refer to her as the "named beneficiary."

the doctrine of prior suit pending would be inapplicable because the parties in both suits were not identical, and the Henry County action should not be dismissed on this basis. Wife joined F & G in contending that the interpleader action should not be dismissed, arguing that venue was proper in Henry County because all of the fact witnesses lived there. Wife claimed that maintaining the lawsuit in Henry County, as opposed to Humphreys County, was more convenient and practical. Wife further argued that it was improper for Patterson to fail to name Wife as a defendant in the Humphreys County action, despite Patterson's knowledge of Wife's competing claim to the insurance proceeds.

On April 3, 2002, the trial court ruled on Patterson's motion to dismiss. The trial court first noted that Patterson's filing of the Humphreys County lawsuit was "precisely correct," and observed that the Humphreys County Chancery Court and the Henry County Circuit Court had concurrent jurisdiction over the matter. The trial court then concluded that, although the Humphreys County lawsuit was filed first, Patterson's motion to dismiss should be denied because the case had more contacts with Henry County than with Humphreys County, and because "[a]ll parties to the dispute are presently before the [Henry County] Circuit Court." Therefore, the trial court rejected Patterson's reliance on the doctrine of prior suit pending and denied her motion to dismiss. On May 3, 2002, Patterson filed a motion to reconsider, arguing that Corley's estate was not properly before the trial court at the time the trial court ruled on her motion to dismiss. The trial court reconsidered the matter, but on May 31, 2002, reiterated its conclusion that "the case has more contacts with Henry County, Tennessee than with Humphreys County, Tennessee, and therefore this Court is not deprived of jurisdiction even though the Chancery Court case in Humphreys County was filed prior to this case." For those reasons, the trial court again denied Patterson's motion to dismiss. Patterson was granted permission by the trial court and by this Court to file an interlocutory appeal of the trial court's denial of her motion to dismiss.

On appeal, Patterson makes the same argument as she made in the trial court, that the application of the doctrine of prior suit pending requires that this lawsuit be dismissed. F & G, Wife, and the Corley estate argue that the trial court's denial of Patterson's motion to dismiss should be affirmed, because the parties were not the same in both lawsuits, that is, both Wife and the estate were properly before the trial court below, but were not parties in the lawsuit in the Humphreys County Chancery Court. Therefore, because the parties were not the same in both lawsuits, the respondents argue, the doctrine of prior suit pending is inapplicable.

The facts pertinent to this appeal are undisputed. The only issue raised on appeal relates to the applicability of the doctrine of prior suit pending, which is a question of law. Consequently, our review is *de novo* on the record, with no presumption of correctness in the trial court's decision. ***State v. Levandowski***, 955 S.W.2d 603, 604 (Tenn. 1997).

The doctrine of prior suit pending, also called the doctrine of former suit pending, "has prevailed in this jurisdiction for over one hundred years." ***Metropolitan Development & Housing Agency v. Brown Stove Works***, 637 S.W.2d 876, 878 (Tenn. Ct. App. 1982) (hereinafter "***MDHA***"). Under that doctrine, where two courts have concurrent jurisdiction over a matter, the court first

taking jurisdiction acquires exclusive jurisdiction over the matter, and the subsequent action must be dismissed. ***See id.*** The court in ***MDHA*** explained:

> The rule has been stated in slightly different terms over the years but with a very uniform meaning. As an example, in ***American Lava Corp. v. Savena***, 476 S.W.2d 639, 640 (Tenn. 1972), it was held that the authority of the first court acquiring jurisdiction of the subject matter and the parties continues until the matters in issue are disposed of, *and no court of coordinate authority is at liberty to interfere with its action.* In ***Kizer v. Bellar***, 192 Tenn. 540, 546, 241 S.W.2d 561, 563 (1951), the holding was that when courts have concurrent jurisdiction, the one that first acquires jurisdiction thereby acquires exclusive jurisdiction, and only the first suit can be allowed to stand. In ***Casone v. State***, 176 Tenn. 279, 285, 140 S.W.2d 1081, 1083 (1940), the court noted "that when two courts have concurrent jurisdiction of a particular subject matter that tribunal which first obtains jurisdiction retains it."

Id. at 878-79; ***see Murphy v. Jackson***, No. 02A01-9510-CV-00213, 1996 WL 601597, at *3 (Tenn. Ct. App. Oct. 22, 1996) ("[t]he court which first takes jurisdiction thereby acquires exclusive jurisdiction of the case, and it is appropriate for the second case to be dismissed.").

In ***Cockburn v. Howard Johnson, Inc.***, 385 S.W.2d 101 (Tenn. 1964), the Tennessee Supreme Court explained that, when a party seeks to avoid a second lawsuit on the same subject matter in a court of concurrent jurisdiction, that party should file a "plea in abatement" (now called a motion to dismiss) to have the second suit dismissed based on the doctrine of prior suit pending. ***Cockburn***, 385 S.W.2d at 102; ***see*** Tenn. R. Civ. P. 7.03, 41.02. The Supreme Court enumerated the factors necessary for a dismissal, or a granting of the plea in abatement, based on the doctrine of former suit pending:

> The essentials of such a plea are that the two suits must involve the identical subject matter and be between the same parties and the former suit must be pending in a court of this state having jurisdiction of the subject matter and the parties. A plea, whether it be in abatement or in bar, must contain these elements.

Cockburn, 385 S.W.2d at 102 (quoting Caruthers, History of a Lawsuit, Sec. 181, Higgins & Crownover, Tennessee Procedure in Law Cases, Sec. 518(6)); ***see also Robinson v. Easter***, 344 S.W.2d 365, 366 (Tenn. 1961) (stating that, where two courts have concurrent jurisdiction over a case, "the court which first takes jurisdiction thereby acquires exclusive jurisdiction of the case, and a demurrer will lie upon that ground"). This Court has recognized that the doctrine applies not only to issues actually raised in the first suit, but also to issues that could have been raised regarding the same subject matter:

> Indeed, this rule has this further extension, that all issues which are made or might be made concerning the same subject matter must be determined in that Court which acquires jurisdiction first. The test of the question of subject matter is whether the

> judgment in the first suit could be pleaded to the second suit in bar as former adjudication.

Id. Thus, to determine whether the same subject matter is involved in both suits, a court must consider whether a judgment in the first suit would bar litigation of an issue in the second suit under *res judicata* principles.

In the instant case, many of the essential elements of the doctrine of prior suit pending are readily apparent. Both the Humphreys County Chancery Court and the Henry County Circuit Court have jurisdiction over the case filed in each respective court. It is undisputed that the same subject matter is involved in both lawsuits. In the Humphreys County lawsuit, Patterson sought to recover the $75,000 in life insurance proceeds from F & G, and in the Henry County lawsuit, F & G sought to deposit those same proceeds with the clerk of the court in order to avoid "double or multiple claims arising out of the subject matter of this action." Indeed, that same interpleader action could have been raised as a counterclaim in the Humphreys County action, but F & G, having not yet been served in the Humphreys County action, filed a separate lawsuit in Henry County. ***See*** Tenn. R. Civ. P. 22.01. The decision on whether to apply the doctrine turns on the "same parties" requirement. The parties in the Humphreys County suit and the Henry County suit are not identical because, although Patterson and F & G are involved in both lawsuits, Wife and Corley's estate are not yet before the court in Humphreys County.

Although we have found no Tennessee caselaw addressing the situation in the case at bar, Tennessee cases are instructive. Patterson acknowledges that, "strictly speaking," the parties in the two cases are not identical. She argues, however, that Tennessee courts have found that the "same parties" requirement of the doctrine was met where the parties in both suits were "in effect the same." For example, in ***Cockburn v. Howard Johnson***, ***supra***, the plaintiff filed a lawsuit arising out of a motor vehicle accident in federal district court against Roosevelt Buchanan, Hertz Corporation, and Howard Johnson's Inc. Later, the same plaintiff filed a lawsuit arising out of the same accident in Tennessee state court against the same defendants plus Howard Johnson's, Inc. of Florida. ***Cockburn***, 385 S.W.2d at 102. Buchanan and Hertz Corporation filed a plea in abatement in the Tennessee lawsuit, asserting that the state suit should be dismissed based on the prior suit pending in federal court on the same subject matter. The Tennessee Supreme Court observed that "[t]he defendants in these two cases are not identical but are in effect the same. The liability of defendants, Howard Johnson's, Inc. or Howard Johnson's Inc. of Florida, will depend upon the liability of the defendant [Buchanan] as their agent, servant or employee." ***Id.*** Therefore, although application of the doctrine of prior suit pending was found to be inappropriate on other grounds,[2] the Court noted that the "same parties" requirement could be met if the parties were "in effect the same." ***Id.***

[2]The Court held that the doctrine of prior suit pending did not apply because the first lawsuit was filed in a federal district court in Tennessee, which was not a "court in this state." ***Cockburn***, 385 S.W.2d at 103.

In ***Roy v. Diamond***, 16 S.W.3d 783 (Tenn. Ct. App. 1999), two beneficiaries of a will, Sam and Elizabeth Dawkins, filed a lawsuit *pro se* in Madison County Circuit Court against an attorney for damages arising out of the attorney's actions as executor and legal counsel for the decedent's estate. Later, Sam Dawkins and Joy Roy filed a separate action, represented by counsel, in the same court against the attorney based on the same alleged misconduct. ***Roy***, 16 S.W.3d at 786. In the second lawsuit, the attorney filed a motion to dismiss, asserting the doctrine of prior suit pending. The trial court denied that motion. ***See id.*** at 789. Eventually, the *pro se* plaintiffs non-suited the first circuit court action,. The second lawsuit went to trial, resulting in a judgment favorable to the plaintiffs. ***Id.*** at 786. The attorney appealed, arguing *inter alia* that the trial court erred in failing to dismiss the second lawsuit based on the doctrine of prior suit pending. ***Id.*** at 789. The appellate court noted that the subject matter was identical in both suits and that both lawsuits were filed in the same court. ***Id.*** at 790. The appellate court addressed the fact that the parties were not identical in both lawsuits:

> One seeming problem [with the application of the doctrine of prior suit pending] is the fact that the plaintiffs in the two cases were different. In the first case, Sam and Elizabeth Dawkins were the plaintiffs, while Sam Dawkins and Joy Roy were the plaintiffs in the second case. *Even though the plaintiffs are not identical in both cases, we consider them sufficiently similar so as to make no practical difference.* ***See Cockburn***, 385 S.W.2d at 102 ("The defendants in these two cases are not identical but are in effect the same").

Id. (emphasis added). Thus, the fact that the plaintiffs in both suits were not identical was not a bar to the application of the doctrine of prior suit pending, given the fact that the cases involved the same subject matter, both courts had jurisdiction over the parties and the subject matter, and the parties were "sufficiently similar." ***Id.***

In ***Murphy v. Jackson***, ***supra***, the plaintiff sued the defendant corporation and its officers in circuit court to collect proceeds due from the defendant corporation to a shareholder who had assigned his rights to the plaintiff. The defendants counterclaimed by filing an interpleader action against the plaintiff and Omega Investment Partners, an entity that also asserted a right to the proceeds due to the shareholder. ***Murphy***, 1996 WL 601597, at *1. Omega, the newly added counter-defendant, filed a motion to dismiss the action, claiming that it held a judgment against the shareholder in a previous chancery court lawsuit and that, to collect on the judgment, it had issued garnishments in the chancery court against all of the assets belonging to the shareholder, including the proceeds at issue. Thus, because the proceeds sought by the plaintiff were already the subject of chancery court proceedings, Omega argued, the circuit court had no subject matter jurisdiction over the disposition of the proceeds. The trial court granted Omega's motion to dismiss and ordered that all funds deposited into the circuit court by the defendants be deposited into the chancery court. ***Id.*** at *2. This Court affirmed the decision of the trial court, relying on the doctrine of prior suit pending, even though the parties in the chancery court proceedings and the circuit court proceedings were not identical. Without mentioning the "same parties" requirement, the court stated simply that,

"[b]ecause the chancery court first acquired jurisdiction regarding the disposition of the proceeds . . . , the chancery court has jurisdiction over any claims to these proceeds." ***Id.*** at *3.

Thus, although cases discussing the elements of the doctrine of prior suit pending refer to both lawsuits involving the "same parties," the requirements of the doctrine may be met where the subject matter in both lawsuits is identical, and the parties involved in each are "sufficiently similar so as to make no practical difference." ***Roy***, 16 S.W.3d at 790. In the instant case, then, the question becomes whether the parties in this lawsuit and the Humphreys County lawsuit are "sufficiently similar" so as to warrant the application of the doctrine of prior suit pending.

Federal courts have applied a principle that is similar, though not identical, to the doctrine of prior suit pending, termed the "first-filed rule."[3] Like the doctrine of prior suit pending, the first-filed rule was developed "to avoid the danger of inconsistent results and duplication of judicial effort." ***Martin v. Townsend***, No. 90-2616, 1990 WL 159923, at *4 (D.N.J. Oct. 15, 1990). In the federal system, absent exceptional circumstances, a district court may enjoin subsequent proceedings in a different federal court if those proceedings involve the same parties and the same issues in a case already before the first federal district court. As a corollary, the federal district court involved in the second-filed proceedings may dismiss the lawsuit before it or stay proceedings until the first suit is resolved. ***Id.***; ***see Commerce & Indus. Ins. Co. v. Cablewave Ltd.***, 412 F. Supp. 204, 207 (S.D.N.Y. 1976) (noting the well-settled proposition that courts should not duplicate each other's work in cases involving the same parties and the same issues).

Some federal courts have discussed the "first-filed rule" in cases in which a life insurance company has filed a separate interpleader action regarding the benefits of a policy after a named beneficiary has already filed a lawsuit to recover the proceeds of the same life insurance policy. In such situations, federal courts have adhered to "a widely recognized policy . . . that where an action is already pending in one forum against an insurance carrier where interpleader was equally available, either as an independent action or by way of counterclaim, the interpleader should not be tried in another forum, absent exceptional circumstances." ***Metropolitan Life Ins. Co. v. Scott***, 587 F. Supp. 451, 452 (W.D. Pa. 1984). The district court in ***Metropolitan Life*** explained its reasoning:

> We concur in the long standing belief that absent of [sic] exceptional circumstances, the federal court first seized of an action should be the one to adjudicate it. Although plaintiffs have filed the within interpleader action in the interest of protecting their rights, we do not feel that this factor standing alone entitles them to the right to choose the federal forum in which their interpleader claims to be heard. The

[3]The first-filed rule is not identical to the doctrine of prior suit pending. For example, the federal rule involves the exercise of the federal court's discretion to issue an injunction under 28 U.S.C. § 2361, which is not a factor under Tennessee law. ***See Commerce & Indus. Ins. Co. v. Cablewave, Ltd.***, 412 F. Supp. 204, 206 (S.D.N.Y. 1976) (noting that granting an injunction under section 2361 is discretionary). In addition, interpleader relief may be denied in federal court if there is an adequate remedy elsewhere. ***Id.***; ***see Metropolitan Life Ins. Co. v. Scott***, 587 F. Supp. 451, 452 (W.D. Pa. 1984) (noting that discretion under section 2361 should not be taken lightly, and that interpleader relief may be denied if there is another adequate remedy).

> interpleader action may be asserted in an independent action . . . or as a counterclaim to the primary action . . . . We believe it appropriate in the interest of judicial economy that the interpleader action be brought as a counterclaim to the federal court action already commenced by the defendant . . . .

Id. (citations omitted); ***accord Prudential Ins. Co. of America v. Trowbridge***, 313 F. Supp. 428, 430 D. Conn. 1970) (dismissing second-filed interpleader action and ordering the insurance company to file, as part of its answer in the first action, the same interpleader claim); ***Massachusetts Mut. Life Ins. Co. v. Stern***, 124 F. Supp. 695, 696 (E.D.N.Y. 1954) (holding that interpleader claims must be brought as a counterclaim in suit first filed); ***see also Southwestern Life Ins. Co. v. Sanguinet***, 231 S.W.2d 727, 731 (Tex. Ct. App. 1950) (when insurance company filed interpleader in first suit, and named insured subsequently filed separate action to recover insurance proceeds, court held that insured's suit must be dismissed, even though it had already gone to trial).

Like the doctrine of prior suit pending, the federal "first-filed rule" requires that both lawsuits involve the "same parties" in order to warrant a dismissal or a stay of the second-filed lawsuit. ***Commerce & Indus. Ins. Co.***, 412 F. Supp. at 207. Federal courts, however, have found that this requirement was met where the primary parties in both lawsuits are the same, but the insurance company joins additional parties in the separate interpleader action involving the same insurance proceeds. This is analogous to Tennessee cases finding that the "same party" requirement in the doctrine of prior suit pending is satisfied when the parties in both lawsuits are "in effect the same" or "sufficiently similar so as to make no practical difference." ***See Roy***, 16 S.W.3d at 790; ***Cockburn***, 385 S.W.2d at 102. In this case, the interpleader action filed by F & G included the primary litigants in the Humphreys County Chancery Court action – F & G and Patterson. The ruling of the Henry County Circuit Court below does not mean that the Humphreys County lawsuit, filed by Patterson against F & G, would be dismissed or transferred. Rather, both lawsuits, involving the identical subject matter, would proceed to conclusion.[4] The doctrine of prior suit pending was intended to avoid such duplicative litigation on the same subject matter between parties that are essentially the same. Accordingly, we must conclude that the doctrine of prior suit pending is applicable in this case, requiring dismissal of the Henry County Circuit Court lawsuit.

Wife argues that the trial court was correct in rejecting Patterson's motion to dismiss, because all of the contacts in the case are in Henry County.[5] She argues that the trial court correctly determined that Henry County had more contacts based on the fact that the life insurance policy was purchased in Henry County, the issuing agency is in Henry County, Wife resides in Henry County,

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[4] Undoubtedly, F & G would be required to bring Wife and Corley's estate into the Humphreys County proceedings, because they are admittedly indispensable parties.

[5] Wife also argues that Patterson engaged in inappropriate forum shopping by filing suit against F & G in Humphreys County and by not including Wife in her lawsuit. However, Patterson's "diligence in pursuing a remedy . . . should not be punished" simply because she filed her lawsuit first. In any event, "the need to discourage improper forum shopping and/or races to the courthouse pales when measured against the necessity to preserve the principle of 'former suit pending.' " ***MDHA***, 637 S.W.2d at 882.

and Corley's estate is being probated in Henry County. Regardless of the accuracy of these findings, these factors relate to the issue of venue, not to jurisdiction in the Henry County Circuit Court or to the proper application of the doctrine of prior suit pending. The Court in ***MDHA*** observed that questions of jurisdiction and venue are distinct, in that "[j]urisdiction relates to physical power over person or property, while venue merely determines whether a court having the requisite power is an appropriate place for trial." ***MDHA***, 637 S.W.2d at 880. In this case, arguments regarding contacts, i.e. venue, are premature because the doctrine of prior suit pending requires dismissal of the Henry County lawsuit and trial court below does not have jurisdiction to determine proper venue. Any question of venue must be presented to and decided by the Humphreys County Chancery Court, the court that first acquired jurisdiction.[6] ***See id.*** at 881.

The decision of the trial court is reversed. Costs on appeal are to be taxed equally to the appellees, Patricia Lee Futrell Corley, Estate of Robert Leon Corley, and Fidelity & Guaranty Life Insurance Company, for which execution may issue, if necessary.

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HOLLY M. KIRBY, JUDGE

[6] It is ironic that, if F & G brings Wife and Corley's estate into the Humphreys County proceedings, if the issue of venue is raised in that proceeding, venue considerations may require transfer to Henry County. But the issues are distinct, and must be considered separately.