

SOVEREIGN CAMP WOODMEN OF THE WORLD v. JOHNSON.

4-3405

Opinion delivered March 19, 1934.

1. INSURANCE—BENEFIT DUES.—Where a fraternal insurance association's bylaws required that camp dues be fixed under bylaws of the local camp, but insured's local camp had no bylaws,

camp dues fixed by the president of the association were unauthorized.

2. INSURANCE—BENEFIT DUES.—Camp dues wrongfully assessed against a member of a fraternal insurance association and paid by him remained his property in the hands of the association, which was required to apply such funds to prevent a forfeiture of the policy.

Appeal from Pulaski Circuit Court, Third Division; *Marvin Harris*, Judge; affirmed.

STATEMENT BY THE COURT.

This appeal comes from a judgment in favor of the beneficiary against appellant order. William J. Johnson about April 24, 1906, applied for membership and a benefit certificate in appellant order through the local lodge at Cabot, Arkansas, which was issued to him in the sum of \$1,000.

On January 8, 1914, he was issued another certificate in lieu of the first, which had been lost, and on June 9, 1926, a third beneficiary certificate was issued to him upon his request, as the second one had been lost also. The association amended its bylaws and increased the assessments to be paid by Johnson in July, 1917, 10 cents per month or from \$1.95 to \$2.05 per month, and in July, 1919, it again amended its bylaws and provided an advanced rate of assessments, but allowed any member who did not elect to pay the advance to continue to pay the old rate and charged a lien against the certificate for the difference in rates as of December 31, 1919. The liens charged against this certificate amounted to \$220.

Johnson failed to pay the clerk of his camp as required by his certificate the monthly installment of his current assessment for the month of March, 1929, on or before the 31st day of March of said year, and by reason of the nonpayment of said monthly installment he became suspended, and it is claimed his beneficiary certificate became null and void on and after April 1, 1929. Johnson died on the 16th day of April, 1929, and appellee is the beneficiary named in the last certificate issued to the said Johnson.

In 1927 the Cabot lodge of the association dissolved and Johnson made application to transfer his member-

ship to the lodge at the home office No. 555, known as Loyal Camp, which was done, and he was admitted to said camp. Each camp under the bylaws and constitution of the association fixes its local camp dues in such sum as in its judgment is sufficient to cover local expenses, etc. The camp dues of said camp No. 555 at Omaha, Neb., were 25 cents per month and were paid by the said Johnson for a period of two years prior to his death, without complaint. It was compulsory under the constitution and bylaws of the association that he be a member of some camp, and he had the right thereunder to elect which camp he would join, and he selected Camp No. 555.

Appellee contends that the dues paid by Johnson to Loyal Camp went to the Sovereign Camp and should be credited on his delinquent assessment; that, under the constitution and bylaws, when Johnson became a member, provision was made for old age disability and non-forfeiture in the event of insured's insanity; that Johnson was entitled to a credit for old age disability, and that he was insane for 30 days prior to his death; and that the association was without authority to change the contract made in 1906 by abolishing such provisions as was attempted to be done by amendment to the bylaws in 1913.

Appellant contends that the insured had to be a member of some camp under the contract; that he elected to place his membership in Camp No. 555 at Omaha after the dissolution of the camp at Cabot and was not required to pay any more in said camp than he would have paid otherwise; that there was nothing due him because of such payments that could be placed to his credit; that it had a right to change its bylaws and constitution at any time repealing the insanity provision, and also to raise the rate of assessment, and Johnson, having elected to refuse to pay the new rate of assessment and retain his certificate under the old rates, thereby waived his right to old age disability benefits.

The testimony tended to show that Johnson was insane for more than 30 days prior to his death, and the last dues were paid for the month of February, 1929;

that insured was insane when the dues for the next month fell due; that he failed to pay the March assessment, which it is claimed by appellant automatically suspended him as a member and rendered his certificate null and void; that Johnson died April 16, 1929, at which time he had not been reinstated, and appellant contends this rendered his certificate null and void.

The case was tried without a jury, and judgment rendered by the court in favor of the association on January 26, 1933. The court granted a motion for a new trial, and set aside the judgment it had rendered, and on trial again on August 2d on the same testimony rendered judgment for the appellee for \$676.96, from which this appeal is prosecuted.

Rainey T. Wells and Lee Miles, for appellant.

Madison K. Moran, for appellee.

KIRBY, J., (after stating the facts). The testimony showed, as the court found, that the insured was insane when the March assessment became due, and continued so until his death. The appellant insists that there was no provision in its constitution and bylaws, when the forfeiture for nonpayment of the March dues was claimed, exempting insured's failure to pay his assessment or relieving against the forfeiture for failure to pay such dues, and such appears to be the case.

The insured, however, upon the dissolution of the local camp at Cabot elected to become a member of Loyal Camp No. 555 of Omaha, Neb., and was charged and paid camp dues not fixed by the bylaws of said camp, together with all other assessments by check directly to the treasurer of the Sovereign Camp. He was charged and paid 25 cents monthly for such unauthorized camp dues, and because thereof was entitled to credit for the payments made therefor and had on hand to his credit when the March assessment was required to be paid an amount more than sufficient to pay the said March assessment; and said amount should have been applied to the payment thereof, it being the money of the insured, which would have prevented the forfeiture relied on by appellants. The insured was entitled to have any of his money in the hands of the association credited against the charge of the assessment for March

before a forfeiture could be effective under the terms of the certificate and the bylaws of the association. *Mutual Aid Union v. Perdue*, 162 Ark. 551, 258 S. W. 375; *Gallegly v. American Ins. Union*, 180 Ark. 4, 20 S. W. (2d) 642.

In the case of *Mutual Aid Union v. Perdue, supra*, it was held that, where, under the bylaws, assessments are required to be levied by the board of directors, the levy of such assessments by the secretary is without authority, and a failure to pay an assessment so levied did not work a forfeiture of the policy. Here the bylaws of the association state that the camp dues shall be fixed under the bylaws of the particular camp of which he is a member, and, Loyal Camp No. 555 having no bylaws, the camp dues were fixed by the president, who was not a member of said camp (neither do any of the other officials belong to said camp) and since the failure to pay dues wrongfully assessed could not cause a forfeiture of the policy, certainly dues wrongfully assessed and paid would still be the property of the insured in the hands of the association applicable to payment of the March assessment to prevent a forfeiture of the policy, and should have been so applied. *Gallegly v. American Ins. Union, supra*.

We do not find it necessary to determine the other questions raised, having held that the forfeiture claimed for the nonpayment of the March assessment could not be effective because the insured had in the hands of the association available to his credit, more than enough to pay the said March assessment; and it was the duty of the association to apply such available funds of the insured to the payment of such assessment to avoid a forfeiture of said certificate.

We find no prejudicial error in the record, and the judgment is affirmed.