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Federal Procedure - Declaratory Judgments in Civil Suits Following Conviction of One of the Parties in a Criminal Case

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FEDERAL PROCEDURE

Declaratory Judgments in Civil Suits following conviction of one of the parties in a criminal case.

In an action for declaratory judgment the insured, holder of a property insurance policy, sought to compel the insurer to defend in an action for wrongful death in which the insured shot the deceased, a prowler. The insured was covered by a comprehensive dwelling policy which excluded coverage for death caused by intentional acts. The issue was whether or not the killing was intentional.[1]

Since the issue of intentional killing was already pending in a tort action brought against the insured by the administratrix of the deceased, there was a question as to whether the court could properly entertain this action for declaratory judgment. The general rule is that a federal court will not entertain a declaratory judgment action when the same issues as those sought to be determined are pending in another court of competent jurisdiction.[2] However, the facts of this case brought it outside this rule.[3]

In the principal case there was a conflict of interests between the insurer and the insured since there was a genuine issue as to whether death was intentionally or unintentionally inflicted. It would be unfair and inequitable to require the insurer to defend the insured on the ground that death was caused by an unintentional act in view of the fact the insurer escapes liability if the act is intentional.

Therefore, the court should have entertained this action and decided by a declaratory judgment whether the act was intentional or unintentional.[4] Unless this question is decided

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1 Stout v. Grain Dealers Mutual Insurance Co., 307 F.2d 521, 523 (4th Cir. 1962).

2 Yellow Cab Transit Co. v. Overcash, 133 F.2d 228 (8th Cir. 1942); Brillhart v. Excess Insurance Co. of America, 316 U.S. 491 (1942).

3 Indemnity Insurance Company of North America v. Schriefer, 142 F.2d 851, 853 (4th Cir. 1944); Maryland Casualty Co. v. Boyle Construction Co., 123 F.2d 558 (4th Cir. 1941).

4 Webster-Chicago Corp. v. Minneapolis-Honeywell Regulator Co., 99 F.Supp. 503, 506 (D.C. Del. 1951); Howard v. Howard, 131 Calif. App. 308, 280 P.2d 802, 805 (1955).

in advance it would have been to the insurer's interest when defending the insured to prove a state of facts which would release the insurer from liability.[5] A weak defense would also make it easier for the third party to prove his claim against the insured.[6]

The use of a declaratory judgment is proper in this case but the final decision seems to be wrong. The court in deciding that the death was the result of an intentional act by the insured used, as a basis for its decision, the insured's conviction of voluntary manslaughter in the state criminal action.[7] North Carolina law defines voluntary manslaughter as the intentional killing of a person without malice.[8] The court held that this conviction placed the insured outside the scope of the insurance policy and as a result held that the insurer was not required to defend the insured.

This criminal conviction, the basis of the court's holding, should not have been admitted as evidence in this action. The general rule is that a prior criminal conviction is inadmissible as evidence in a subsequent civil action.[9] North Carolina courts adhere to this rule.[10] An exception to the rule was made by the North Carolina court in *Taylor* v. *Taylor*.[11] Here the court allowed a prior criminal conviction to be used as evidence in a civil action because the plaintiff was seeking to profit from criminal conduct for which he had been prosecuted and convicted.

Virginia courts also follow this rule. In *Aetna Casualty and Surety Company* v. *Anderson*,[12] the Virginia court rejected as

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[5] *Supra*, note 1.

[6] *Ibid.*

[7] *Id.* at 525.

[8] State v. Baldwin, 152 N.C. 822, 68 S.E. 148 (1910).

[9] 4 JONES, EVIDENCE §§ 1816 and 1817 (2d ed. 1926); Cortes v. Rosetti, 235 N.Y.S.2d 403 (1962); Webb v. McDaniel, 218 Ga. 366, 127 S.E.2d 900 (1962); Walbert v. Farina, 199 Pa. Super. 361, 185 A.2d 825 (1962).

[10] Durham Bank & Trust Co. v. Pollard, 256 N.C. 77, 123 S.E.2d 104, 108 (1961).

[11] 257 N.C. 130, 125 S.E.2d 373, 376 (1962).

[12] 200 Va. 385, 388, 105 S.E.2d 869, 872 (1958).

evidence the insurer's plea that the insured's conviction in a criminal action showed the insured not to be within the scope of the insurance policy. In rejecting this plea the court said that a judgement rendered in a criminal proceeding does not establish in a civil proceeding the truth of the facts on which it was rendered. The *Eagle, Star and British Dominions Insurance Company* v. *Heller*[13] case is an exception to the Virginia rule. In this case the insured, who had been convicted of arson in a prior criminal action, was suing to collect on a fire insurance policy. Here the court allowed the insured's criminal conviction to be used as evidence to show that the insured was not within the scope of the insurance policy. In making this exception, the court held that the exclusion rule is a shield for the protection of the defendant in asserting his defense and is not to be used as a sword to reap the benefits of an already established and condemned criminal act. In this case the insured was not a defendant seeking to assert a defense but a plaintiff seeking payment for his own criminal act.

The principal case does not come within this exception, for here the insured was not trying to profit from his own wrong. The prior criminal conviction should not have been admitted because it denied the insured the right to assert his defense.

The court was in error in admitting the criminal conviction as evidence. The decision based on the criminal conviction is prejudicial as to the insured under ordinary principles of evidence.

J. G.

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[13] 149 Va. 82, 106, 140 S.E. 315 (1927).