

UNITED STATES COURT OF APPEALS

For the Fifth Circuit

No. 92-9557

Summary Calendar

MILDRED WATERHOUSE FLEMING,

Plaintiff-Appellee,

VERSUS

BRYAN DANTONI, ET AL.,

Defendants.

CARLENE S. FLEMING,

Defendant-Appellant.

TRAVELERS INSURANCE COMPANY,

Plaintiff,

VERSUS

MILDRED WATERHOUSE FLEMING,

Defendant-Appellee,

VERSUS

CARLENE SMOLLEN FLEMING,

Defendant-Appellant.

MILDRED W. FLEMING, Testamentary Administratrix, etc.

Plaintiff-Appellee,

VERSUS

THE NEW ENGLAND MUTUAL LIFE INSURANCE COMPANY, ET AL.,

Defendants,

CARLENE S. FLEMING,

Counter Defendant-Appellant.

Appeal from the United States District Court
For the Eastern District of Louisiana

(90 CV 1528)

(July 8, 1993)

Before WISDOM, JOLLY, and JONES, Circuit Judges.

PER CURIAM:*

This case involves the question whether the primary beneficiary's right to receive insurance benefits may be denied immediately upon her conviction for first degree murder, or whether such right may be denied only after she has exhausted all collateral appeals.

Carlene Fleming was arrested, tried, and convicted for the murder of her husband, George Fleming. The Fourth Circuit Court of Appeal affirmed her conviction, and on February 14, 1992, the Louisiana Supreme Court denied writs.

Mildred Fleming, mother of the decedent, sued in the federal district court as the secondary beneficiary. Because of the wife's

* Local Rule 47.5.1 provides:
"The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession."
Pursuant to that Rule, the Court has determined that this opinion should not be published.

conviction, the district court adjudged her unworthy to inherit any part of the estate of her late husband. The wife filed a habeas corpus proceeding, attacking her criminal conviction. On December 2, 1992, the federal district court granted the mother summary judgment against Carlene. On December 8, 1992, the district court further recognized the mother as the sole beneficiary of the proceeds of the insurance policies. The court ordered the case stayed on January 25, 1993, pending a decision by the United States Supreme Court in Sullivan v. Louisiana, cert. granted, 113 S.Ct. 373 (1992). The district court stated that, in the light of Sullivan, "the potential of post-conviction relief [was still] real" (R.4).

On June 1, 1993, the Supreme Court decided Sullivan (61 U.S.L.W. 4518). Without reaching the merits, we REMAND this case to the district court to allow it to evaluate the judgment in view of the Supreme Court's decision in Sullivan. On remand, the district court may wish to consider the finality concerns which are raised if the administration of an estate is delayed until all collateral appeals are exhausted.