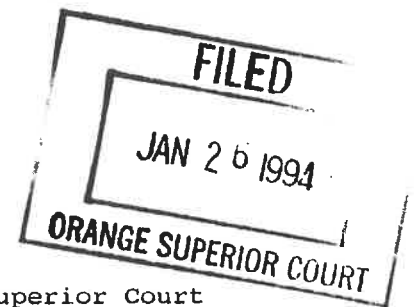


STATE OF VERMONT  
ORANGE COUNTY, SS



Joan Larose, Lois Partlow  
Steven Shangraw, Dennis  
Shangraw, Andrew Shangraw,  
and Dubois Trucking, Inc.

Orange Superior Court

v.

The Travelers Insurance  
Company, American Bankers  
Life Insurance Group of Florida,  
North American Company for Life  
& Health Insurance, Federal Home  
Life, Mary Welch and the Estate of  
Warren Shangraw, and Nationwide  
Insurance

Docket No. S 80-93 OeC

In re: Estate of Warren Shangraw

Docket No. S 111-93 OeC

Decision and Order Re:

Motions for Jury Trial and Consolidation

These two matters each involve common questions regarding the legal validity of certain actions taken by Mr. Shangraw, who is now deceased, which have had the effect of causing certain of Mr. Shangraw's assets to pass to Mary Welch, who was Mr. Shangraw's wife at the time of his death. According to the factual claims asserted in plaintiffs' complaint in docket S 80-93 OeC, Mr. Shangraw and Ms. Welch met in November 1992. Plaintiffs assert that Mr. Shangraw had suffered from long-term mental illness requiring medication and treatment by a physician. Plaintiffs assert that Ms. Welch persuaded Mr. Shangraw to cease taking his medication for these conditions, and then pressured him to change his will and various insurance policies so that many of his assets would belong to her upon his death. Mr. Shangraw and Ms. Welch were married in late March of 1993. Mr. Shangraw committed suicide in early April of 1993.

Plaintiffs contend that Mr. Shangraw either lacked competency to change

the provisions of his insurance policies and his will, or, alternatively, that Ms. Welch exerted undue influence upon him to make these changes. Plaintiffs assert, under either scenario, that the changes are null and void and that they (plaintiffs) are the rightful beneficiaries of the various assets formerly belonging to Mr. Shangraw. The Orange Probate Court rejected these claims by plaintiffs in a decision issued on June 25, 1993. The Probate Court found that Mr. Shangraw had been competent at the time at which he made his final will, and that he was not subjected to undue influence or duress. Plaintiffs have appealed that decision to this court, and requested trial by jury in the questions presented by that appeal.

On May 18, 1993, plaintiffs had begun a declaratory judgment proceeding in the Orange Superior Court, requesting a judgment, on the basis of their aforementioned theories of Mr. Shangraw's lack of competence and Ms. Welch's undue influence, that Ms. Welch forfeit any rights which she may have gained as a result of the changes to the insurance policies made by Mr. Shangraw prior to his death. Both the probate appeal regarding the will contest and the declaratory judgment action regarding the insurance policies are therefore presently pending before this court.

Defendant Welch's original answer to the declaratory judgment action did not include a request for trial by jury. Defendant Welch did, however, make a timely motion to amend her answer to include a demand for trial by jury. As previously noted, plaintiffs, in the probate appeal, had already requested trial by jury. At the hearing on defendant Welch's motion to amend her answer to include the jury demand, counsel for Ms. Welch made an oral motion to consolidate the declaratory judgment action and the probate appeal. This court ordered the parties to submit memoranda outlining their positions regarding

consolidation.

Plaintiffs have submitted a memorandum which addresses their position as to the issues of both the jury trial in the declaratory judgment action and the consolidation of the two matters. In this memo, plaintiffs discuss various factors weighing upon the presence or absence of an absolute right to trial by jury in various scenarios, and also discuss considerations bearing upon consolidation of actions. Plaintiffs also note that issues of res judicata may arise if the actions proceed separately, as both concern issues related to Mr. Shangraw's competency and whether Ms. Welch exerted undue influence. Plaintiffs do not set forth a particularly definitive position upon either of these issues, but do acknowledge that both the jury demand and the request for consolidation are potentially allowable. Plaintiffs do ask the court to be aware of their concerns that they not lose their right to trial by jury in the probate appeal, and that the matter not be unduly delayed.

#### Conclusions of Law

##### I. Availability of Trial by Jury on Issues of Fact and Mixed Questions of Fact and Law

The court first turns to the question of whether trial by jury is available in a declaratory judgment action. Declaratory judgments are created and governed by Chapter 167 of Title 12. 12 V.S.A. §4719, "Jury trial," speaks directly to the availability of a jury trial in a declaratory judgment action:

When a proceeding under this chapter involves the determination of an issue of fact, or a mixed issue of law and fact, such issue may be tried in the court in which the proceeding is pending and determined in the same manner as issues of fact and mixed issues of law and fact are tried and determined in other civil actions, with the right to trial by jury preserved to the parties, on any issue as to which such right would have existed in an action for affirmative relief.

Of course, "if only questions of law are presented on trial of a declaratory judgment action, such questions, as in all civil causes, are for the determination only of the court." Fish v. Nationwide Mutual Ins. Co., 126 Vt. 487, 490 (1967).

"Whether the case at bar comes within the purview of 12 V.S.A. 4719 depends upon the presence of any factual questions as opposed to law questions..." Leech v. Munn, 129 Vt. 575, 577 (1971). "The legislature made it very apparent that the policy expressed by the statute was that the court grant a trial by jury where factual issues were present." Id. Accordingly, so long as there are, or are likely to be, disputed issues of fact which will bear upon the court's legal determination as to the relative rights of the parties, trial by jury is available in a declaratory judgment action.

Questions regarding Mr. Shangraw's competence at the time he made changes to his will and insurance policies will, of necessity, depend upon resolution of various questions of fact. A determination of factual issues will also be a prerequisite to a determination of whether or not Ms. Welch exercised undue influence over Mr. Shangraw. Accordingly, it is appropriate for the court to grant defendant, Ms. Welch's, request for trial by jury in the declaratory judgment action. As previously noted, the duty of the jury in the declaratory judgment action will be to give answers to questions of fact. The court will then render the ultimate declaration of the relative rights of the parties in the relevant insurance policies.

## II. Consolidation

When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all [of] the matters in issue in the actions; it may, with consent of the parties, order all the actions consolidated ...

V.R.C.P. 42(a). Trial courts are given broad discretion as to the propriety of

consolidating multiple actions for joint hearing or trial, subject to the caveat that it may be improper to consolidate matters where it would have the effect of aligning parties who have conflicting interests regarding other aspects of the litigation. Mobbs v. Central Vt. Ry., Inc., 155 Vt. 210, 215 (1990). Joint trial is generally appropriate where two actions possess related and reasonably straightforward factual and legal issues. Mobbs, 155 Vt. at 217. "This is precisely the situation we have here. ...[T]he jury would have... to wrestle with the same issue[s] in each trial." Id. The same situation is presented here. The same basis is alleged for challenging the execution of a new will and a change in the life insurance policy, and this claim requires determination of fact by a jury. Joint trials would, therefore, be appropriate in this case.

Nothing has been presented to the court which would indicate that consolidation would cause an alignment of parties with conflicting interests. Neither the general interests of justice nor the particular interests of the parties would be meaningfully advanced by having the same issues litigated in two separate proceedings. Indeed, as acknowledged by the plaintiffs, a determination of issues in one proceeding would quite likely be res judicata as to the same issues in the other proceeding. For all of these reasons, consolidation is appropriate. Plaintiffs' only reservation as to full consent addressed whether a jury trial would delay the proceedings, not any substantive reason.

Consolidation of the two cases requires consent of the parties. Plaintiffs' position appears to be consent with a concern over scheduling. Since the court has granted the motion for a jury trial, a jury trial will be had. Given that fact, consolidation itself (as opposed to separate trials)

would not result in further delay, as the two cases would be scheduled for the same jury draw anyway.

Order

Defendant Welch's motion to amend her answer to include a demand for trial by jury in the declaratory judgment action is hereby GRANTED.

Defendant Welch's request for a trial by jury is hereby GRANTED. The court will utilize the jury's determinations in issuing an order declaring the relative rights of the parties.

Defendant Welch's oral motion for consolidation is hereby GRANTED. The consolidated matters shall proceed as quickly as reasonably possible given the court's schedule and other obligations.

The parties are each hereby instructed to prepare proposed special interrogatories for the jury on the questions which they wish the jury to determine regarding Mr. Shangraw's competence to change the policies and the will, and the matter of whether Ms. Welch exerted undue influence upon Mr. Shangraw. The parties shall file these proposed interrogatories with the court and serve them on all parties, no later than fifteen days before the date which is ultimately assigned by the court for the trial.

The parties shall also each prepare proposed jury instructions for any and all particular issues which they wish to be determined by the jury. These proposed instructions shall be filed with the court and served on the parties no later than fifteen days prior to the date which is assigned by the court for trial.

Dated this 25<sup>th</sup> day of January, 1994, at Chelsea, Vermont.

Mary Miles Leach  
Presiding Judge