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Recent Developments: Knill v. Knill: Husband May Not Be Equitably Estopped to Deny Child Support

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767. After this rule, the conduct of the insurer need no longer be opprobrious or unconscionable in nature, but only intentional with an underlying improper purpose of inducing a client to settle directly with the insurer.

The court reversed the court of special appeals but admitted that it did so only because Sharrow barely alleged a claim for tortious interference with contract. Sharrow, on the basis of the broader rule, although lacking specificity, alleged the elements necessary to sustain the tort claim. Based on the facts and the court's analysis, it is highly unlikely that Sharrow had what was needed to prove the commission of tortious interference with contract. The court, however, supplied practitioners, who may find themselves victims of an interference with contract, with the ammunition necessary to actually prove the tort.

The court emphasized that the determinative factor in such cases is whether there was purposeful conduct by the insurer, or whether such conduct was by the client. If the facts of Sharrow's case showed that State Farm rather than Zorbach actually initiated the settlement negotiations, the purposeful conduct of State Farm would indeed be more substantial and the tort claim more likely to succeed at trial. Also absent from Sharrow's complaint was an allegation that State Farm's purpose in negotiating directly with Zorbach was for its own benefit. The presence of such an allegation would enhance the success of a claim alleging the commission of the tort and certainly assist in proving the same.

The *Sharrow* case sends a message to insurance companies to tread lightly whenever they may be in a position of dealing with a claimant directly. The insurer's duty toward its insured, heretofore rather ambiguous, does not extend to intentional conduct, however subtle, whereby the insurer leads a claimant to discharge his attorney and settle his claim.

–Kevin S. Anderson

Knill v. Knill: HUSBAND MAY NOT BE EQUITABLY ESTOPPED TO DENY CHILD SUPPORT

The Doctrine of Equitable Estoppel may not be applied to estop a husband from denying support to an illegitimate child born to his wife by another man during the marriage, unless the husband's voluntary conduct in treating the child as his own gives rise to reliance by the child upon such conduct and such conduct results in the child suffering financial loss. *Knill v. Knill*, 306 Md. 527, 510 A.2d 546 (1986).

Charles and Cledythe Knill had been married ten years. As a result of their marriage, two children were born. After the birth of their children, Charles underwent surgery for a full vasectomy. However, one and a half years after the operation, Mrs. Knill bore a third child, Stephen. Both parties acknowledged that Stephen was not Charles' son. According to Cledythe, the natural father was a former co-worker. Charles apparently forgave Cledythe for her infidelity and the marriage continued for twelve years with Stephen being reared and supported as a member of the Knill family. During this twelve year period, Stephen had no knowledge of his illegitimacy. Charles was named as Stephen's father on his birth certificate. Additionally, Stephen was treated as "one of the family" and was thereby so known in the community where the family resided. In the aftermath of a family dispute, Cledythe revealed to Stephen that Charles was not his natural father. Charles nevertheless continued to support Stephen for two years until Cledythe sued for divorce. Among her prayers for relief, Cledythe requested child support for Stephen. The Circuit Court for Frederick County held that even though Charles was not Stephen's natural father, he was estopped from asserting the illegitimacy of the child in order to avoid child support.

On appeal, Charles argued that since he was not Stephen's natural father he could not be ordered to support Stephen. Maryland law places the responsibility of child support squarely on the shoulders of natural parents. MD. FAM. LAW CODE ANN. § 15-703(b)(1) (1984). *See also, Bledsoe v. Bledsoe*, 794 Md. 183, 448 A.2d 353 (1982). Charles asserted that he stood *in loco parentis* during the twelve years that he voluntarily supported him. Since this relationship had been temporary in nature, he owed no legal duty to continue to support Stephen. On the other hand, Cledythe contended that the doctrine of equitable estoppel should be applied to prevent an inequitable and unconscionable result.

For the first time in Maryland, the court of appeals had the opportunity to address the applicability of equitable estoppel to a child support proceeding. For the doctrine's to apply that a party claiming the benefit of estoppel must have been misled to his injury and changed his position for the worse, having believed and relied on the representations of the party sought to be estopped. *Dahl v. Brunswick Corp.*, 277 Md. 471, 356 A.2d 221 (1976). *See also*, 3 J. Pomeroy, *Equity Jurisprudence* § 804 (5th Ed. 1941).

In *Knill*, by a 4-3 decision, the court held that a husband cannot be equitably estopped to deny a duty to support. In reaching its decision Judge Cole for the majority reviewed decisions from other jurisdictions which had previously addressed the issue. While a few jurisdictions had held that equitable estoppel is to be applied in order to force child support, as in *Clevenger v. Clevenger*, 189 Cal. App.2d 658, 11 Cal. Rptr. 707 (1961) and the Supreme Court of New Jersey in *Miller v. Miller*, 97 N.J. 154, 478 A.2d 351 (1984), the majority for the court followed the holdings of the majority of jurisdictions which do not apply the doctrine to estop a husband from denying paternity and a support obligation. *See e.g., Remkiewicz v. Remkiewicz*, 180 Conn. 114, 479 A.2d 833 (1980); *Weise v. Weise*, 699 P.2d 700 (Utah 1985).

The court in *Knill* stated that in order for the doctrine of equitable estoppel to apply, the related elements of representation, reliance and detriment must be present. The Court indicated that the application of the three-element test requires that the voluntary conduct or representation of the party to be estopped must give rise to the estopped party's reliance and, in turn, result in detriment to the estopped party. In applying the elements of equitable estoppel to the facts in *Knill*, the court found the elements of representation and reliance to be present. The facts showed that Charles represented to Stephen that he was his father and these representations were accepted and acted upon by the child. *Id.* at 537, 510 A.2d at 551. The facts also showed Stephen relied upon the representations and treated Charles as his father, giving his love and affection to him in ignorance of the true facts. *Id.* In regard to the element of detriment, the court stated,

> [T]he evidence in this case, however fails to demonstrate any financial detriment incurred by Stephen as a result of Charles's course of conduct during their twelve year relationship . . . if any detriment was incurred by Stephen, it was emotional and attributable to his mother . . . it was she who ripped the 'cloak of legitimacy' off the boy when she revealed to him that Charles was not his father.

Knill, at 537, 510 A.2d at 551. The court concluded that since the elements of equitable estoppel were not satisfied, Charles could not be held legally responsible for child support.

For the dissent, Chief Judge Murphy, opined, "I think the majority is dead wrong." *Id.* at 539, 510 A.2d at 552. Murphy

agreed that the natural father should be considered the primary source for child support and recognized that caution must be exercised when imposing child support liability on a non-biological father. In addition the dissent, like the majority, believed that an estoppel may arise even when there is no intent to mislead, if the actions of one party cause a prejudicial change in the welfare of another. However, the dissent disagreed with the majority's reasoning that financial detriment is the only type of detriment, such being the sole reason the majority denied the application of equitable estoppel. *Id.* at 541, 510 A.2d at 556.

The dissent concluded that emotional detriment should be sufficient to establish the element of detriment, and the facts in *Knill* supported a finding of emotional detriment. *Id.* at 547, 510 A.2d at 559. In light of the circumstances in *Knill*, the dissent observed the duration of the husband's representations to determine whether a true paternal relationship developed between Charles and Stephen. Moreover, the frustration of the realistic opportunity to discover and establish a relationship with the natural father was considered. Finally, the dissent noted the devastating effect on a child's welfare where a long established paternal relationship has been breached resulting in the child being proclaimed a bastard and left without a father. The dissent ultimately determined that detriment was in fact established, and therefore Charles should have been precluded from disavowing parental responsibility for child support. *Id.* at 554, 510 A.2d at 560.

In *Knill*, the court stated that since statute of limitations no longer exist in paternity suits Cledythe could maintain a successful paternity action against Stephen's natural father. Furthermore, even though Charles knew Stephen was not his son, the conduct which he demonstrated was consistent with Maryland's public policy of strengthening the family unit. Maryland encourages such conduct so long as it does not interfere or deprive the child or mother of the right or opportunity to seek legal support from the natural father.

In Maryland, as in the majority of other jurisdictions that have addressed this issue, a husband may not be equitably estopped from denying child support to an illegitimate child. In *Knill*, a case of first impression, the dissent would have considered whether the paternal relationship did, in fact, exist. The end result in *Knill* is that Charles Knill, who voluntarily assumed the role as a father, has no legal duty to support Stephen. But in the final analysis Stephen will suffer the "ultimate humiliation of having no support from a man who for all purposes was his father for fourteen years." Brief for Appellee at 6.

– William James Morrison, III

United States, Petitioner v. American Bar Endowment et al.: SUPREME COURT FINDS CHARITABLE ORGANIZATION'S INSURANCE PROGRAM TAXABLE

The Supreme Court recently upheld a tax assessment by the IRS against the American Bar Endowment (ABE) concerning income received from an insurance plan made available to its members. In *United States, Petitioner v. American Bar Endowment et al.*, 106 S.Ct. 2426 (1986), the Court decided two issues related to the particular plan. First, whether income derived from the insurance plan constituted "unrelated business income" subject to tax under §§511 through 513 of the Internal Revenue Code (Code), 26 U.S.C. §§511-513, and second, whether the members who participated in the plan could claim a charitable deduction for those premium payments which amounted to dividends on behalf of the ABE.

The ABE is a corporation exempt from taxation because it is "organized and operated exclusively for charitable . . . or educational purposes." 26 U.S.C. §501(c)(3). In order to fund its charitable work, the ABE provides group insurance policies to its members. By purchasing insurance as a group, the ABE has bargaining power that an individual would lack. Furthermore, the cost of the insurance to the group is less because it is based on the group's claims experiences instead of general actuarial tables. Normally, the cost of this plan to the insurance company is less than the premiums paid by the ABE, thereby entitling the ABE to a "dividend." Instead of dispersing the amount of the dividend among the participating members, the ABE retains the whole dividend amount to aid its fund-raising efforts. Members are required to agree to this arrangement as a condition to participation in the insurance plan. They have also been advised by the ABE that relinquishment of the dividend constitutes a tax-deductible contribution to the ABE, thereby making the after-tax cost of the insurance, "less than the cost of a commercial policy with identical coverage and premium rates." 106 S.Ct. at 2429.

The ABE was assessed a tax deficiency after an audit by the IRS in 1980. Its insurance plan was considered an "unrelated trade or business" such that any profits realized were subject to tax. 26 U.S.C. §§511-513. The ABE paid the taxes assessed, and then brought an action in the Claims Court for a refund after all administrative remedies had been exhausted. Individual participants who had not yet taken a deduction for the excess premiums paid brought an action for refunds as well. The two suits were consolidated for trial in the Claims Court.

The Claims Court found in favor of the ABE in its suit, holding that its insurance plan did not constitute a "trade or business" for purposes of the tax. The court's conclusion was based on the following four factors:

(1) The program was developed as a means of raising funds for the ABE's educational efforts.
(2) The program's success in generating dividends evidenced noncommerical behavior.
(3) Together, participants could change the program to reduce premiums.
(4) The ABE was not in competition with other non-charitable companies because it did not underwrite or act as a broker.

In the individual respondent's action, the court held that they had failed to show that the insurance was purchased at a greater price "with the intention that the excess be used to benefit a charitable enterprise," and were thus denied a charitable deduction. 4 Cl.Ct. 415 (1984). On appeal, the Court of Appeals for the Federal Circuit affirmed the decision of the Claims Court as to the ABE, but reversed and remanded the decision as to the individual respondents for further fact-finding. The Supreme Court granted the Government's petition for certiorari on both issues.

I. In a six to one decision, the Court held that the insurance program offered by the ABE constituted a trade or business for purposes of the unrelated trade or business tax. By definition, the Code sets up a three-part test for determining whether a trade or business carried on by a tax-exempt organization should be taxed. In its discussion, the Court found that the ABE's insurance program is regularly carried on, that it is not substantially related to the purpose of the ABE's tax-exempt status, and that its activity is both "the sale of goods" and "the performance of services." Thus the three-part test is satisfied. Furthermore, the program possesses the characteristics of services provided by other entities for a profit. After this initial conclusion, the Court went on to strike down three of the four factors relied on by the Claims Court in its holding.

As to the program's success in generating dividends, the Court found this to be a