

SHERIFF'S SALES, cont.

Jeffrey L. Jarrett

— vs —

Thelma J. Lane

Atty: Timothy W. Misner

ALL THAT CERTAIN following described real estate lying and being situate in the Township of Metal, Franklin County, Pennsylvania, bounded and limited as follows:

TRACT NO. 1: BEGINNING at a point on the public road being Legislative Route No. 45 and Traffic Route 75; thence along said public road North 3° 10' West, 350 feet to a point in the center of said road; thence by lands now or formerly of Mary M. C. Shaner, South 77½° East 437½ feet to a stake; thence by lands now or formerly of Wesley E. and Violet P. Cowen, South 23¼° West, 300 feet to a point; thence by town lots, North 87½° West, 265 feet to a point at the place of BEGINNING.

CONTAINING two (2) acres and eighty-five (85) perches, neat measure.

TRACT NO. 2: BEGINNING at a post on the Northeastern corner of the school lot and lands now or formerly of W. H. Shearer; thence by lands now or formerly of W. H. Shearer on line of school lot Eastward about forty-five (45) feet to a post; thence along lands now or formerly of W. H. Shearer Southward about one hundred sixty-eight (168) feet to a post at corner of lands now or formerly of W. H. Shearer and lower Path Valley Presbyterian Church lot; thence by said lot West about forty-five (45) feet to a post on school lot; thence along school lot North about one-hundred sixty-eight (168) feet to the place of beginning.

BEING the same real estate conveyed to Thelma J. Lane and Anna Bell Lane by deed of Billy G. Sims and Edith E. Sims, husband and wife, dated June 25, 1979 and recorded in Franklin County Deed Book Volume 792, Page 127.

BEING sold as the one-half interest owned by Thelma J. Lane a/k/a Thelma Josephine Lane in the real estate attached hereto, Writ No. DSB 1983-1081.

SALE NO. 7

Writ No. AD 1984-72 Civil 1984

Judg. No. AD 1984-72 Civil 1984

Robert Kirk

— vs —

Graciliano Mangual and Carmen

P. Mangual

Atty: John F. Nelson

ALL THAT CERTAIN tract of real estate, together with improvements thereon erected, lying and being situate in the Borough of Chambersburg, Franklin County, Pennsylvania, bounded and limited as follows:

ON the North by lands formerly of Mary Hayden, now Larry Lee Dehart and Linda L. Dehart, his wife; on the East by Broad Street; on the South by lands of Luther Higgins and Hazel Higgins, his wife; on the West by a public alley, fronting on Broad Street about 28 feet 9 inches and extending back to the said alley about 140 feet. Being more commonly known as 557 Broad Street.

BEING THE SAME REAL ESTATE which Robert Kirk and Bernadine L. Kirk, his wife, by Deed dated the 13th day of May, 1977 and intended to be recorded prior to the recording of this Mortgage conveyed to Graciliano Mangual and Carmen P. Mangual, his wife.

BEING sold as the property of Graciliano Mangual and Carmen P. Mangual, his wife, Writ No. AD 1984-72.

SHERIFF'S SALES, cont.

TERMS

As soon as the property is knocked down to a purchaser, 10% of the purchase price plus 2% Transfer Tax, or 10% of all costs, whichever may be the higher, shall be delivered to the Sheriff. If the 10% payment is not made as requested, the Sheriff will direct the auctioneer to resell the property.

The balance due shall be paid to the Sheriff by NOT LATER THAN Monday, June 18, 1984 at 4:00 P.M., E.D.S.T. Otherwise all money previously paid will be forfeited and the property will be resold on Friday, June 22, 1984 at 1:00 P.M., E.D.S.T. in the Franklin County Courthouse, 3rd Floor, Jury Assembly Room, Chambersburg, Franklin County, Pennsylvania, at which time the full purchase price or all costs, whichever may be higher, shall be paid in full.

Raymond Z. Hussack
Sheriff

Franklin County, Chambersburg, PA

5-18, 5-25, 6-1

SPANGLER V. U.S. FIDELITY AND GUARANTY COMPANY, C.P.
Franklin County Branch, No. A.D. 1983 - 38

Assumpsit - No-Fault Act - Work-Loss Benefit - Statute of Limitations - Unemployed decedent

1. An action for additional benefits under the No-Fault Act may be commenced within two years of the last payment of survivor benefits.
2. A decedent's estate is entitled to work-loss benefits even though the decedent's sole source of income is his monthly disability benefits from social security and his former employer.
3. In determining work-loss award, Sec. 205 of the No-Fault Act makes no reference to "employability" or "opportunity" of future employment.

Denis M. DiLoreto, Esquire, Counsel for Plaintiff

Daniel K. Deardorff, Esquire, Counsel for Defendant

OPINION AND ORDER

EPPINGER, P.J., January 5, 1984:

Harry Spangler, a pedestrian, was struck by an automobile on November 30, 1980, as he was crossing South Potomac Street in Waynesboro, Pennsylvania. As a result of the injuries he sustained from the accident, Spangler died on December 15, 1980.

At the time of the accident, Spangler and his wife, Justina, were insured under a No-fault policy which had been issued by their carrier, United States Fidelity & Guaranty Company. The policy covered both of their cars, but separate premiums were paid for each vehicle.

Spangler was fifty-seven years old when he died. Because of an illness he had not been employed since April, 1977, and had no reasonable expectation of becoming gainfully employed during the remainder of his life. At his death he was receiving Social Security disability benefits of \$469.30 per month and additional long-term disability benefits of \$173.06 per month from his former employer, the Landis Tool Company. The Social Security benefits would have continued for the remainder of his life and the company's long-term benefits until he became sixty-five, provided the disability continued.

Since the accident and her husband's subsequent death, the defendant has made payment to Mrs. Spangler for the medical expenses and \$5,000 in survivor's loss benefits. The last item of medical expenses was paid on April 15, 1981, and the last installment of the survivor's benefit on October 13, 1981.

Mrs. Spangler subsequently applied for work-loss benefits and additional survival benefits. When defendant U.S.F. & G. refused to pay, on February 16, 1982, Mrs. Spangler filed her complaint, In Count I, she sues as Executrix of her husband's estate claiming work-loss benefits of \$15,000 and an additional \$15,000 in "stacked" work-loss benefits. In Count II, she sues in her individual capacity as the widow of Spangler for an additional \$5,000 in "stacked" survivor's loss benefits.

On August 18, 1983, the parties stipulated to the facts as they appear above. Both filed Motions for Summary Judgment. Three issues are before us for disposition.

Initially, U.S.F. & G. argues that Mrs. Spangler's claims for work-loss benefits and additional survivor's benefits are barred by the two-year Statute of Limitations imposed by Section 106(c) of the Pennsylvania No-fault Motor Vehicle Insurance Act, 40 P.S. Sec. 1009.101 et seq. We do not agree.

While it is true that Spangler died on December 15, 1980, section 106(c)(1) of the No-fault Act, *id.*, provides that claims for work-loss benefits must be commenced within two years of the last payment of benefits. Since defendant made its last payment of medical bills on April 15, 1981, the filing of the suit on February 16, 1983, was within the Statute of Limitations. Section 106(c)(2), *id.*, makes a similar provision for survivor's benefits. An action for additional benefits may be commenced within two years of the last payment of survivor's benefits. Here, the last installment on the survivor's benefits was paid to Mrs. Spangler on March 5, 1981, within the statutory period.

U.S.F. & G. next argues that Mrs. Spangler, as executrix of her husband's estate, is not entitled to recover work-loss benefits since Spangler was not employed at the time of the accident and had no reasonable expectation of ever returning to work. Spangler's sole source of income was his monthly disability benefits from Social Security and Landis Tool Company. We believe these may be considered for purposes of awarding work-loss benefits under the Act.

Sections 201(a) and 202(b), *id.*, provide for the award of work-loss benefits to an accident victim. "Work-loss" is defined as the loss of *gross income* of a victim as calculated pursuant to the provisions of Section 205" and "loss of income" as "*gross income* actually lost by a victim." Section 103, *id.* (emphasis added). Previously, our courts have defined "income" as one's financial contribution to his family. *Smith v. United States*, 437 F.Supp. 1004, 1010 (E.D. Pa. 1977); *Allstate Insurance Company v. Heffner*, 491 Pa. 447, 458, 421 A.2d 629, 635 (1980). Therefore, where a decedent's only income at the time of his death and the only foreseeable source of income for the future are disability benefits they must be considered in determining a victim's loss of

income. *Smith*, at 1010-1011.¹

It can be said that both the Social Security and Landis Tool Company benefits are derived from employment, and when they stop it is a work-loss. Be that as it may, the No-fault Act permits an award even though the victim was not employed. It "does not require questions to be asked as to the reason why a victim is not employed at the time of the accident. . . It provides some recovery of work-loss benefits for those who were not employed at the time of the accident." *Minier v. State Farm Mutual Auto Insurance Co.*, Pa. Super. , 454 A.2d 1078, 1079 (1982). In determining a work-loss award, Section 205, *supra*, makes absolutely no reference to "employability" or "opportunity" of future employment. *Kotofsky v. Erie Insurance Co.*, No. 80-16189, Delaware County (April 21, 1982), slip opinion p.3. Even though section 205(d) generally defines "probable annual income" as income from work, the beginning of this same section does not restrict an award of work-loss to this formula when it is shown that the victim's annual income "is or would be some other amount." Section 205(d), *supra*; *Kotofsky*, *supra*, at p.3.

Social Security disability benefits are "some other amount" for the purposes of work-loss benefits, *Kotofsky*, *supra*, at p.3, and we believe company retirement or disability benefits are in the same category. Those which Spangler was receiving at the time of the accident causing his death may serve as the source for an award of work-loss benefits. Mrs. Spangler, an executrix of her husband's estate, is entitled to be awarded work-loss benefits.

Finally, Spangler's No-fault policy with defendant covered two automobiles for which separate premiums were paid. Mrs. Spangler argues that this entitles her and the estate to recover from both policies under a theory called "stacking." This issue, which has caused a split among the lower courts of our Commonwealth, was directly addressed and resolved recently by the Superior Court in *Antanovich v. Allstate Insurance Co.*, Pa. Super. , 467 A.2d 345 (1983). In that case it was held

¹In *Smith*, the widow's decedent was negligently killed while receiving treatment at a Veterans Administration facility. At his death, decedent had been declared to be totally disabled and his only source of income was disability benefits received from the Veterans Administration. The widow brought this action for Wrongful Death, 12 P.S. 1604, for loss of earnings pursuant to the Federal Torts Claim Act, 28 U.S.C. Sec. 2671 et seq. In awarding damages the court found that the difference between the veterans' benefits Smith's family would have received had he not died and those received after his death was the item of loss of income.

that basic loss benefits may not be "stacked." *Id.* at 346. Accordingly, it is clear that Mrs. Spangler may not recover survivor benefits, individually, nor work-loss benefits, in her capacity as executrix of the estate, under more than one policy.

ORDER OF COURT

January 5, 1984, plaintiff's Motion for Summary Judgment is granted. Defendant is directed to pay plaintiff \$15,000 plus interest at the rate of 18% per annum payable from January 8, 1983.

Defendant shall pay the costs.

ROBINSON v. TIMMONS, C.P. Franklin County Branch, No. A.D. 1983 - 5

Quiet Title - Actual Possession - Evidence of Title

1. In an action to quiet title, the plaintiff has the burden of proving by a preponderance of the evidence his title to the real estate and that he has actual possession.
2. Where the land in question is unimproved mountain land, proof of title will carry with it proof of possession.
3. Where the plaintiffs proof involves a survey which has a significant course error, he has failed to show title and as mountain land it is generally considered open to the public.

George E. Wenger, Esq., Counsel for Plaintiffs

Deborah K. Hoff, Esq., Counsel for Defendants

ADJUDICATION AND DECREE NISI

KELLER, J., February 6, 1984:



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P.O. Drawer 391
717-762-8161



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