State of New York
Court of Appeals

To be argued Tuesday, September 12, 2023

No. 59 Nitkewicz v Lincoln Life & Annuity Company of New York

In 2011 the Lincoln Life & Annuity Company of New York issued a universal life insurance policy to the Joan C. Lupe Family Trust to insure the life of Joan C. Lupe for $1.5 million. Unlike term life insurance, the universal life policy combines regular life insurance with an investment component, an interest-bearing "Policy Account" that can build cash value, which the policyholder may withdraw or use to secure a loan. The policyholder pays premiums into that account and once a month Lincoln Life deducts money from it to pay for insurance coverage and other expenses. The insurer offered a flexible payment schedule and Lupe chose to pay an annual "Planned Premium" of $53,878 once a year. She paid her last premium in May 2018 and she died five months later. Lincoln Life paid out the policy death benefit of $1.5 million, but refused to refund any part of the last annual premium Lupe had paid.

Andrew Nitkewicz, as trustee of the Lupe Family Trust, brought this breach of contract action again Lincoln Life in federal court, alleging that the insurer's refusal to refund a prorated portion of the last premium payment violated New York Insurance Law § 3203(a)(2). The statute states that "if the death of the insured occurs during a period for which the premium has been paid," the insurer must provide "a refund of any premium actually paid for any period beyond the end of the policy month in which such death occurred...." Nitkewicz contended that Lincoln Life must refund a prorated share of the last annual premium for the seven months remaining in the coverage period after Lupe's death, a total of $31,428.83.

U.S. District Court granted Lincoln Life's motion to dismiss the suit, holding that section 3203(a)(2) did not apply to Lupe's annual payment into the interest-bearing account because it was not a "premium actually paid for any period." It said Lupe's Planned Premium was not "paid for any specific period" because it could be "less than or greater than the monthly cost of insurance." The court also found the premium was not "actually paid" for a period of coverage because Lupe's payments into the interest-bearing account "do not actually pay for any insurance until they are taken from the Policy Account via the monthly deduction" by Lincoln Life. It rejected Nitkewicz's arguments that the premiums were "actually paid" by Lupe and that, because she paid them annually, they were made for a year of coverage.

The U.S. Court of Appeals for the Second Circuit, noting that "no New York court has interpreted Section 3203(a)(2) or discussed the meaning of the phrases 'actually paid' or 'for any period,'" is asking this Court to determine whether Lupe's annual premium payment falls within the scope of the statute by answering a certified question: "Whether a planned payment into an interest-bearing policy account, as part of a universal life insurance policy, constitutes a 'premium actually paid for any period' under the refund provision of New York Insurance Law Section 3203(a)(2)."

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For respondent Lincoln Life: John LaSalle, Manhattan (212) 446-2300

State of New York
Court of Appeals

To be argued Tuesday, September 12, 2023

No. 7 Matter of Brookdale Physicians' Dialysis Associates, Inc. v Department of Finance of the City of New York

The New York City Department of Finance (DOF) is appealing a decision that requires it to reinstate a property tax exemption for a two-story Brooklyn building owned by the Samuel and Bertha Schulman Institute for Nursing and Rehabilitation Fund (Schulman Fund), a not-for-profit corporation that provides funding for two other non-profits, Brookdale Hospital Medical Center and the Schulman and Schachne Institute for Nursing and Rehabilitation (Nursing Institute). Since 1996, the Schulman Fund has leased the first floor and basement of its building to Brookdale Physicians' Dialysis Associates (Brookdale Dialysis), a for-profit corporation that is staffed by physicians and other employees of Brookdale Hospital and pays the hospital a fee for the staffing. Brookdale Dialysis also pays for and provides all dialysis services for patients at the hospital and Nursing Institute. The lease required Brookdale Dialysis to pay 60.9 percent of any property taxes that "become payable" and, when DOF revoked the building's tax exemption for the 2015-16 tax year, the company applied to DOF to reinstate it pursuant to Real Property Tax Law (RPTL) 420-a, which provides a tax exemption for property owned by a charitable organization and "used exclusively" for its charitable purposes. DOF denied the application, saying the building was not eligible for the exemption because the Schulman Fund was making a profit through its rental income under the lease and Brookdale Dialysis was profiting by operating its for-profit business in a tax-exempt building. Brookdale Dialysis and the Schulman Fund brought this proceeding to annul the determination.

Supreme Court annulled DOF's decision to revoke the tax exemption and the Appellate Division, First Department affirmed, saying the lower court "correctly determined that the building owned by [the Schulman Fund] and used for the provision of a critical healthcare service qualifies for tax-exempt status, notwithstanding the for-profit status of the provider of the service." The Appellate Division said the three non-profits "participate in an arrangement by which Brookdale Dialysis renders a critical healthcare service ... to Brookdale Hospital and the Nursing Institute at little to no direct cost to the non-profit entities. Although the non-profit entities received an ostensible financial benefit, and Schulman's rent receipts exceed its building maintenance expenses, no benefit exists because Schulman placed the profit back into its healthcare-provider affiliates. The provision of dialysis services for Brookdale Hospital and Nursing Institute patients qualifies the building for tax-exempt status, because it is 'reasonably incident' to Schulman's purpose of funding and supporting its healthcare affiliates...."

The DOF argues, "The decision of the Appellate Division directly contravenes the plain language of [RPTL] 420-a, Court of Appeals precedent, and the mandate of the Legislature to construe 420-a tax exemptions strictly and narrowly because it has improperly granted a tax exemption to a not-for-profit entity that does not use or occupy the building, but instead leases it to a for-profit dialysis center which uses the exempt property for its own pecuniary gain."

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State of New York
Court of Appeals

To be argued Tuesday, September 12, 2023

No. 60 Matter of Celinette H.H. v Michelle R.

Celinette H.H. and Willie R., who were never married, are the biological parents of three children, a daughter born in 2010 and twins born in 2011. The children lived with their mother in Manhattan while their father resided in South Carolina. The children's paternal grandmother, Michelle R., lived in New York and in 2018 she brought a proceeding against both parents seeking custody of the children. Instead, with the parties' consent, Family Court granted the grandmother visitation rights that entitled her to pick up the children from school each day and take them to their mother's home by 5:30 p.m. In April 2020, the grandmother took all three children, with their mother's consent, on a vacation to visit their father in South Carolina. She returned to New York in July 2020 without the children.

In September 2020, the mother filed this habeas corpus proceeding against the father and grandmother, seeking to compel them to return the children to her. Family Court denied the petition and dismissed the proceeding in July 2021, holding, "This case is not properly before this court as [the mother] has failed to file a petition for custody with this court.... [Mother] never petitioned this court for custody."

The Appellate Division, First Department affirmed without opinion, implicitly rejecting the mother's argument that under Domestic Relations Law §§ 70 and 240)(1) and Family Court Act § 651(b) "a mother doesn't need a prior custody order or a pending custody petition ... to successfully reclaim custody on the writ of three children" who had lived with her in New York for nine years before the habeas petition was filed. The court granted the grandmother's cross-motion to "dismiss the aforesaid appeal on the grounds that the [mother] has no standing to seek habeas corpus relief without an order of custody in place."

Celinette H.H., the mother, is arguing here that the 2018 visitation order granted to the grandmother, allowing her to pick the children up after school and requiring her to return them to their mother's home by 5:30 p.m., "was simultaneously a physical custody order" granted to the mother that can serve as the basis for this habeas corpus petition. She also contends that Family Court abused its discretion by failing to convert her habeas proceeding into a custody proceeding under Family Court Act § 651(b) and CPLR 103(c).

For appellant Celinette H.H. (mother): Carol Kahn, Manhattan (212) 744-7365
For respondent Willie R. (father): Geoffrey P. Berman, Larchmont (914) 419-8407
Attorney for the child: Philip Katz, Manhattan (212) 385-1373

State of New York
Court of Appeals

To be argued Tuesday, September 12, 2023

No. 61 Matter of Hon. Robert J. Putorti, a Justice of the Whitehall Town and Village Courts

Whitehall Town and Village Justice Robert Putorti is asking this Court to reject a determination of the Commission on Judicial Conduct that he should be removed from office for brandishing his loaded handgun at a criminal defendant in his courtroom in late 2015. Putorti was licensed to carry the gun. The Commission further found that Putorti, who worked as an equipment operator for the town, violated his ethical obligations by promoting fundraisers for himself and for the Whitehall Elks Lodge on his Facebook page, which did not identify him as a judge.

According to an agreed statement of facts, Putorti was interviewed about the gun incident by a cousin, a journalism student at Hofstra, shortly after it occurred and he showed the resulting article to his courthouse colleagues, telling them he had pulled his gun on a "big Black man" who approached him too quickly at the bench. The incident came to wider attention in 2018, when he described it at a meeting of the Washington County Magistrates Association during a discussion of courthouse security, telling other judges that he pulled his gun on a "large black man" who rushed past the "stop line" where defendants are supposed to stand. A police officer was present to provide security. After a colleague raised concerns, Putorti was counseled by his supervising judge and agreed to never display his gun in court unless he or others were facing deadly force.

The first of the fundraisers Putorti used his Facebook page to promote was a spaghetti dinner in November 2019, which raised $9,400 for medical expenses he incurred after a motorcycle accident two months earlier. In 2020, he helped promote seven small fundraisers for the Elks Lodge, of which he was an officer.

The Commission determined Justice Putorti should be removed on a 10-1 vote, saying he "engaged in highly inappropriate conduct when he brandished his loaded gun in the courtroom at a litigant. Respondent acknowledged that his repeated mention of [the litigant's] race when recounting the gun incident may have created the appearance of racial bias. In addition, respondent compounded his misconduct and exhibited a serious lack of judgment when he boasted about brandishing his gun in the courtroom.... Respondent also showed his lack of attention to his ethical obligations when he engaged in improper fundraising. Given the seriousness of his conduct and the totality of the evidence, we find respondent's misconduct to be egregious."

The dissenter said, "The sanction of removal is unjust, unwarranted, and overly harsh for respondent's conduct. Based on the Agreed Statement of Facts..., the appropriate sanction for both charges should be admonition, or at the very worst, censure. The single isolated courtroom incident ... in 2015, when the respondent briefly displayed a gun to a criminal defendant (who was previously sentenced by respondent in connection with a violent knife assault on two people) who rushed the bench and crossed over the 'stop line' in the courtroom, constituted at worst, poor judgment." Putorti's Facebook activity "does not warrant removal either, particularly since respondent has no prior disciplinary history."

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