

FOURTH DIVISION
February 6, 2014

No. 1-13-1661

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

AMERICAN ACCESS CASUALTY, CO.,)
)
Plaintiff-Appellant,)
)
v.)
)
ERIKA RODRIGUEZ and NYESHA MORRIS,)
)
Defendants-Appellees.)

Appeal from the
Circuit Court of
Cook County.
No. 12 CH 16384
Honorable
David B. Atkins,
Judge Presiding.

PRESIDING JUSTICE HOWSE delivered the judgment of the court.
Justices Lavin and Epstein concurred in the judgment.

ORDER

¶ 1 *HELD:* The trial court's order denying AACC's motion for summary judgment and finding that AACC must defend and indemnify Rodriguez in an underlying personal injury lawsuit filed by Morris is affirmed.

¶ 2 Nyesha Morris filed a personal injury lawsuit against Erika Rodriguez for personal injuries she sustained as a result of an automobile collision that occurred on February 10, 2011.

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Rodriguez's insurer, plaintiff American Access Casualty Co. (AACC), filed a declaratory judgment action against Morris and Rodriguez arguing that it had no duty to defend or indemnify Rodriguez in the underlying personal injury lawsuit. AACC filed a motion for summary judgment and on March 22, 2013, the trial court entered an order denying the motion for summary judgment. At a subsequent status hearing held on April 30, 2013, the trial court determined that there were no questions of fact to be determined and made a finding that based upon its order of March 22, 2013, defendants were entitled to judgment as a matter of law. The court then entered summary judgment in favor of Morris and Rodriguez. AACC now appeals the trial court's order denying its motion for summary judgment. For the reasons below, we affirm the trial court's order denying AACC's motion for summary judgment.

¶ 3 BACKGROUND

¶ 4 On February 10, 2011, Rodriguez was driving the vehicle she owned from one meeting for her employer to another meeting for her employer when she struck Morris, a pedestrian. Subsequent to the collision, Morris filed a personal injury lawsuit against Rodriguez for the injuries she sustained in the collision.

¶ 5 At the time of the collision, Rodriguez was insured under an insurance policy issued by AACC. The policy issued to Rodriguez

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contained the following provision, which is the focus of this appeal:

"Exclusions. This policy does not apply to and does not provide coverage under Part A-'Bodily Injury Liability and Property Damages Liability' Coverage for:

* * *

b) any automobile while used in the delivery, or any activity associated with delivery, of food, mail, newspapers, magazines, or packages for an employer or business or in any trade or business."

¶ 6 Based upon the above policy exclusion, AACC filed a declaratory judgment action against Morris and Rodriguez seeking declaration that it had no duty to defend or indemnify Rodriguez in connection with the underlying personal injury lawsuit because Rodriguez was driving her vehicle for business purposes at the time of the collision. There is no allegation in the declaratory judgment complaint that Rodriguez was making any type of delivery at the time of the collision. It is uncontested that Rodriguez was using her vehicle for the benefit of her employer when the collision occurred as she was traveling from one meeting to another meeting.

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¶ 7 On November 27, 2012, AACC filed a motion for summary judgment. The motion argued that AACC had no duty to defend or indemnify Rodriguez in the underlying personal injury lawsuit because Rodriguez was using her vehicle for business purposes at the time of the collision, which, according to AACC, was activity excluded from coverage within the policy it issued to Rodriguez. On March 22, 2013, the trial court denied AACC's motion for summary judgment and granted summary judgment in favor of defendants, Rodriguez and Morris. The trial court ruled in favor of defendants because it found that the language in the exclusion was ambiguous and, as a result, had to be interpreted against the drafter, AACC. On April 30, 2013, the trial court entered its final judgment in favor of defendants and this appeal followed. For the reasons below, we affirm the trial court's order denying AACC's motion for summary judgment and finding that AACC must defend and indemnify Rodriguez in the underlying personal injury lawsuit.

¶ 8 ANALYSIS

¶ 9 Summary judgment is appropriate only when the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. See 735 ILCS 5/2-1005(c) (West 2008); *Coole v.*

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Central Area Recycling, 384 Ill. App. 3d 390, 395 (2008). The construction of an insurance policy and a determination of the rights and obligations thereunder are questions of law for the court and appropriate subjects for disposition by summary judgment. *Konami (America) Inc. v. Hartford Insurance Co. of Illinois*, 326 Ill. App. 3d 874, 877 (2002). Our review of the trial court's entry of summary judgment is *de novo*. *Clausen v. Carroll*, 291 Ill. App. 3d 530, 536 (1997). *De novo* review is also appropriate where the construction of an insurance policy is at issue. *Shefner v. Illinois Farmers Insurance Co.*, 243 Ill. App. 3d 683, 686 (1993).

¶ 10 Because an insurance policy is a contract, the rules applicable to contract interpretation govern the interpretation of an insurance policy. *Nicor, Inc. v. Associated Electric & Gas Insurance Services Ltd.*, 223 Ill. 2d 407, 416 (2006). Our primary function is to ascertain and give effect to the intention of the parties, as expressed in the policy language. *Founders Insurance Co. v. Munoz*, 237 Ill. 2d 424, 433 (2010). If the language is unambiguous, the provision will be applied as written, unless it contravenes public policy. *Nicor*, 223 Ill. 2d at 416-17.

¶ 11 Conversely, if the terms of the policy are susceptible to more than one meaning, they are considered ambiguous and will be

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construed strictly against the insurer who drafted the policy. *American States Insurance Co. v. Koloms*, 177 Ill. 2d 473, 479 (1997). A policy provision is not rendered ambiguous simply because the parties disagree as to its meaning. *Rich v. Principal Life Insurance Co.*, 226 Ill. 2d 359, 372 (2007).

Rather, an ambiguity will be found where the policy language is susceptible to more than one reasonable interpretation. *Hobbs v. Hartford Insurance Co. of the Midwest*, 214 Ill. 2d 11, 17 (2005).

¶ 12 In determining whether the terms of a policy are ambiguous, we consider not what the insurer intended its words to mean, but what a reasonable person in the position of the insured would understand them to mean. *Aurelius v. State Farm Fire & Casualty Co.*, 384 Ill. App. 3d 969, 973 (2008). The insurer bears the burden of showing that a claim falls within a policy exclusion. *Continental Casualty Co. v. McDowell and Colantoni, Ltd.*, 282 Ill. App. 3d 236, 241 (1996). Provisions that limit or exclude coverage will be interpreted liberally in favor of the insured and against the insurer. *Koloms*, 177 Ill. 2d at 479; *Aurelius*, 384 Ill. App. 3d at 973 ("Ambiguous provisions or equivocal expressions whereby an insurer seeks to limit its liability will be construed most strongly against the insurer and liberally in favor of the insured.").

¶ 13 The policy language at issue here (subsection (b)) states

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the following policy exclusion: "any automobile while used in the delivery, or any activity associated with delivery, of food, mail, newspapers, magazines, or packages for an employer or business or in any trade or business." AACC argues that this clause provides for a delivery-use exception as well as a business-use exception because the fourth "or" signals a separation between an exclusion for deliveries and an exclusion for the use of a vehicle that is used "in any trade or business." Morris argues that the clause only provides for a delivery-use exception because the fourth "or" merely indicates separate categories or business enterprises that may be engaged in delivery activities. The trial court ruled that the clause was ambiguous given the multiple reasonable interpretations of the clause and, accordingly, interpreted the language against the insurer, AACC, and found that there was coverage for Rodriguez in the underlying personal injury lawsuit. We agree with the trial court's ruling.

¶ 14 At first glance, it appears that the policy exclusion at issue here (subsection (b)) only encompasses a delivery-use exclusion to coverage, as each separate exclusion appears to be separated by subparagraphs and not combined within subparagraphs. However, a closer look at the language of subsection (b) reveals that it is unclear whether the phrase "or in any trade or

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business" is intended to be separate from the rest of the delivery-use exclusion encompassed in subsection (b), thereby acting as a broad business-use exclusion, or whether the "or in any trade or business" phrase modifies the language in subsection (b) to include exclusions on deliveries in "any trade or business." As such, we find that the language of the exclusion in subsection (b) of the AACC policy is susceptible to more than one reasonable interpretation and, therefore, is ambiguous. See *Koloms*, 177 Ill. 2d at 479 (if the terms of the policy are susceptible to more than one meaning, they are considered ambiguous).¹ Given that the language of the exclusion in subsection (b) is ambiguous and any ambiguities in insurance policy exclusions are to be construed strongly against the insurer and in favor of the insured (see *Koloms*, 177 Ill. 2d at 479 (ambiguous terms in policy exclusions will be construed strictly against the insurer who drafted the policy)), we find that AACC failed to meet its burden of showing that Rodriguez's actions fell within the exclusion in subsection (b). Accordingly, we find that the trial court was correct in denying

¹ Further, in its reply brief, AACC actually inserts words into the language of subsection (b) in an effort to emphasize its argument that subsection (b) includes both a delivery-use and a business-use exclusion. Reply Br. at 1. AACC's need to insert additional language into the policy exclusion in order to make its point only further demonstrates that the policy language, as written, is ambiguous.

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AACC's motion for summary judgment and finding coverage exists for Rodriguez in connection with the underlying personal injury lawsuit.²

¶ 15 CONCLUSION

¶ 16 For the reasons stated above, we affirm the trial court's order denying AACC's motion for summary judgment and finding that coverage existed for Rodriguez in connection with the underlying personal injury lawsuit filed by Morris.

¶ 17 Affirmed.

² Additionally, AACC's citation to *Progressive Universal Insurance Co. of Illinois v. Liberty Mutual Fire Insurance Co.*, 215 Ill. 2d 121 (2005), is misplaced. The *Progressive* court ruled that a delivery-use exclusion in an insurance policy was valid. Here, neither party argues that the exclusion in subsection (b) is invalid for any reason. Instead, the issue here is whether subsection (b) encompasses both a delivery-use exclusion and a business-use exclusion, an issue clearly not contemplated by the *Progressive* court.