2016 IL App (5th) 150081-U

NO. 5-15-0081

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

USAA CASUALTY INSURANCE COMPANY, Plaintiff-Appellee, v. CODY SULLIVAN, Defendant-Appellant, and ROBERT T. CLINTON, ROBERT LOWRY CLINTON, and GEICO INDEMNITY COMPANY, Defendants.	)	Appeal from the Circuit Court of Perry County. No. 12-CH-3 Honorable James W. Campanella, Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Justice Cates concurred in the judgment.
Justice Goldenhersh dissented.

ORDER

¶ 1 *Held*: A named driver exclusion endorsement in an automobile insurance policy was not ambiguous in spite of the fact that it omitted the last name of the excluded driver–the 20-year-old son of the named insured–where a provision on the declarations page stated that coverage was excluded for any vehicle operated by the insured's son, and that provision included the son's full name.

¶ 2 This appeal involves a named driver exclusion endorsement in an automobile insurance policy issued by the plaintiff, USAA Casualty Insurance Company (USAA), to Robert Lowry Clinton and Margaret Clinton. The Clintons have a son named Robert Tucker Clinton (Tucker). The endorsement lists the excluded driver as "Robert Tucker." In addition, the declarations page includes a statement that coverage is excluded for any vehicle driven by "Robert Tucker Clinton." The defendant, Cody Sullivan, was injured while riding as a passenger in a vehicle owned by the Clintons and driven by Tucker. He appeals a trial court order declaring that the policy unambiguously excluded Tucker from coverage. Sullivan argues that (1) the omission of Tucker's last name on the endorsement renders the exclusion ambiguous; and (2) the ambiguity must be construed against the insurer. We affirm.

¶ 3 BACKGROUND

¶ 4 On July 2, 2011, Robert Tucker Clinton, then 20 years old, was driving his family's 2008 KIA Sedona minivan when he left the roadway at a high speed. Cody Sullivan was riding as a passenger in the minivan at the time of the accident, and sustained injuries which resulted in medical bills that exceeded $160,000.

¶ 5 The minivan was owned by Tucker's parents, Robert Lowry Clinton and Margaret Clinton, and insured by USAA. The policy issued to the Clintons contained per-person liability limits of $100,000. An endorsement to the policy titled "Exclusion of Named Driver," which became effective prior to the accident, lists "Robert Tucker" as a driver who is not afforded coverage under the policy. The endorsement provides that it remains in effect and is applicable to any renewal of the policy. The declarations page in effect at

the time of the accident contains the following provision: "*** COVERAGES EXCLUDED WHEN ANY VEHICLE OPERATED BY ROBERT TUCKER CLINTON ***" (emphasis in original). On the date of the accident, Tucker was insured by an automobile policy issued by GEICO Indemnity Company (GEICO) with per-person bodily injury liability limits of $20,000.

¶ 6 On November 3, 2011, Sullivan filed a personal injury action against Robert Tucker Clinton. He alleged that Tucker negligently operated the minivan involved in the accident. This created a claim against USAA's policy on which Tucker's father was the named insured and in which the minivan was a listed vehicle.

¶ 7 On February 8, 2012, USAA filed the instant complaint for declaratory judgment, seeking a declaration that its policy did not provide any automobile insurance coverage for Tucker. It is undisputed that Tucker was driving the 2008 KIA Sedona minivan that was covered under the policy issued by USAA when the accident occurred. USAA named Sullivan, Tucker, Robert Lowry Clinton, and GEICO as defendants.

¶ 8 Tucker and Robert Lowry Clinton failed to appear or respond in the declaratory action, and default judgment was entered against them. Sullivan responded in the declaratory action and opposed USAA's request that it be relieved of any coverage responsibility. GEICO also participated in the declaratory judgment action.

¶ 9 USAA and Sullivan each filed motions for summary judgment. USAA argued that Tucker's name was listed under the exclusion endorsement, and, as such, he was unambiguously excluded from coverage under the policy. Alternatively, USAA argued

that Tucker was excluded from coverage under another policy provision because he was not a permissive driver at the time of the accident. By contrast, Sullivan argued that the exclusion endorsement was unenforceable because it was ambiguous, and that Tucker was a permissive user of the minivan involved in the accident. The trial court denied both summary judgment motions, finding that a genuine question of fact may exist.

¶ 10 The matter proceeded to a bench trial. Over Sullivan's objection, Kellie Rohner, a USAA underwriter, testified that prior to June 18, 2010, Tucker was insured under the Clintons' policy. However, in April 2010, a letter was sent to Robert Lowry indicating that Tucker was no longer an acceptable risk due to his poor driving record. The letter indicated that USAA would not renew the Clintons' policy unless they agreed to an endorsement excluding Tucker from coverage. A copy of the named driver exclusion endorsement at issue in this appeal was enclosed. Rohner testified that Robert Lowry Clinton agreed to the condition and faxed a signed copy of the endorsement to USAA's office on May 27, 2010.

¶ 11 Rohner also testified about several exhibits that were admitted into evidence. Two are relevant for purposes of this appeal. Plaintiff's Exhibit 1 was prepared for trial by the administrative support manager and custodian of records for USAA. In an attached affidavit, she averred that Plaintiff's Exhibit 1 was "an exact duplicate of the USAA Casualty Insurance Company [policy], including any applicable endorsements and forms, [that was] issued to Robert Lowry Clinton, effective July 2, 2011." The exhibit includes the standard insurance policy, the declarations page for the period of June 18 to December 18, 2011, and a copy of the named driver exclusion endorsement that was

signed by Robert Lowry and faxed to USAA. In addition, the exhibit contains a completely blank named driver exclusion endorsement form. Rohner was asked why the blank form was included in the policy. She responded, "I don't know why we would have a blank form included."

¶ 12 Plaintiff's Exhibit 2 contains copies of a letter thanking the Clintons for renewing their policy, the June 2011 declarations page, and the signed named driver exclusion endorsement from June 2010. The declarations page contains two pertinent provisions. As stated previously, it includes the following statement: "*** COVERAGES EXCLUDED WHEN ANY VEHICLE OPERATED BY ROBERT TUCKER CLINTON ***" (emphasis in original). In addition, the declarations page provides that endorsements remain in effect, including an exclusion of named driver endorsement. A parenthetical note in this provision states, "refer to previous policy." Rohner testified that Exhibit 2 consists of all of the forms that were sent to Robert Lowry Clinton as a renewal packet for the period of June 18 to December 18, 2011.

¶ 13 Rohner acknowledged that Robert Lowry never signed a named driver exclusion endorsement that included Tucker's full name. She attributed the omission of his last name on the endorsement to an oversight on the part of the person completing the form. She explained that on the declarations form, the operator number assigned to him when he was insured under the Clintons' policy was entered, and the system filled in his full name automatically. On the endorsement, however, his name had to be entered manually.

¶ 14 Robert Lowry Clinton was called as an adverse witness by USAA. He acknowledged that he understood that the name "Robert Tucker" on the named driver exclusion endorsement referred to his son, Robert Tucker Clinton. He further testified that, around the time he signed the excluded driver endorsement, he told Tucker that he would need to find other insurance for his truck. He also informed Tucker at that time that he no longer had permission to drive either of his parents' vehicles, including the Kia minivan involved in the accident. Robert Lowry Clinton further testified that there were no further discussions concerning use of the van, and that Tucker never asked for permission to drive the van. He testified that he did not provide Tucker with a set of keys to the minivan or give him permission to drive it at any time after the endorsement went into effect. Cody Sullivan, however, testified that Tucker drove the minivan several times, and that he had permission to do so.

¶ 15 On February 2, 2015, the trial court entered an order granting declaratory judgment in favor of USAA. In explaining the rationale behind its ruling, the court first noted that although it previously found that "a question of fact may exist," for purposes of its ruling, it found "no such question of fact[,] but only a question of law." The court framed that question as whether the omission of Tucker's last name from the endorsement created an ambiguity in the policy or constituted "an omission equivalent to a scrivener's error." Before answering this question, the court noted that it gave "very little, if any, weight" to the evidence presented that was extrinsic to the policy itself. However, as will become apparent, much of the court's analysis focused on that evidence.

¶ 16 The court first noted that the policy contained numerous abbreviations. The court reasoned that accepting Sullivan's argument that the omission of Tucker's last name created an ambiguity would also render the provisions containing abbreviations ambiguous. The court next found that it was clear from the arguments and testimony presented that the parties intended for Tucker to be excluded from coverage. The court next pointed to Rohner's testimony concerning the differences in preparation of the declarations page and the endorsement. The court found that her testimony "fully explained" the omission of Tucker's last name as an oversight and supported the notion that the omission "was equivalent to a scrivener's error." Finally, the court noted that there was unrefuted evidence that Robert Lowry Clinton did not pay a premium for coverage for Tucker. The court concluded that the omission did not create an ambiguity. Therefore, the court determined there was no coverage available for Tucker or Sullivan, and that USAA had no duty to defend Tucker in Sullivan's lawsuit. This appeal followed.

¶ 17 ANALYSIS

¶ 18 An insurance policy is a contract. Therefore, the rules governing interpretation of contracts are applicable to our interpretation of the policy. *Founders Insurance Co. v. Munoz*, 237 Ill. 2d 424, 433 (2010). Our primary goal is to determine and give effect to the intention of the parties as expressed in the policy. *Gillen v. State Farm Mutual Automobile Insurance Co.*, 215 Ill. 2d 381, 393 (2005); *Hobbs v. Hartford Insurance Co. of the Midwest*, 214 Ill. 2d 11, 17 (2005). Our interpretation of the policy "should be a natural and reasonable one." *Gillen*, 215 Ill. 2d at 393. Terms that are not defined in the policy must be given their plain and ordinary meanings. Put another way, contractual

language must be interpreted "with reference to the average, ordinary, normal, reasonable person." *Id.*

¶ 19 A policy provision that excludes or limits coverage must be construed narrowly. We will enforce such a provision only if its terms are "clear, definite, and specific." *Id.* In addition, any ambiguities in the policy must be construed against the insurer. *Id.* However, we will apply the terms of the policy as written unless they are ambiguous or contrary to public policy. *Hobbs*, 214 Ill. 2d at 17. As such, these rules of interpretation come into play only if the policy contains an ambiguity. *Founders Insurance Co.*, 237 Ill. App. 3d at 433.

¶ 20 A provision is ambiguous only if it is susceptible to more than one *reasonable* interpretation. *Gillen*, 215 Ill. 2d at 393. We emphasize that "reasonableness is the key." *Johnson v. Davis*, 377 Ill. App. 3d 602, 607 (2007). "We will not strain to find an ambiguity where none exists." *Hobbs*, 214 Ill. 2d at 17. Moreover, we will not find a provision to be ambiguous merely because "creative possibilities" can be suggested concerning its meaning. *Bruder v. Country Mutual Insurance Co.*, 156 Ill. 2d 179, 193 (1993); *Johnson*, 377 Ill. App. 3d at 607. To determine whether a provision is ambiguous, we must construe it in conjunction with the policy as a whole rather than by reading the provision in isolation. *Johnson*, 377 Ill. App. 3d at 607.

¶ 21 Interpretation of an insurance policy is a question of law. *Id.* at 606. Our review, therefore, is *de novo*. *Hobbs*, 214 Ill. 2d at 17.

¶ 22 Sullivan argues that the court erred in enforcing the named driver exclusion provision because it is ambiguous. He challenges the court's reliance on extrinsic evidence to find that the policy unambiguously excluded Tucker from coverage. He contends that once a court finds a policy provision excluding coverage to be ambiguous, it must construe the provision against the insurer. See *Employers Insurance of Wausau v. Ehlco Liquidating Trust*, 186 Ill. 2d 127, 141 (1999). USAA contends that the policy was unambiguous. It also argues, however, that extrinsic evidence was admissible to explain, rather than alter, the terms of the policy. We need not resolve these arguments. If we find that the trial court reached the right conclusion, we may affirm its ruling on any basis appearing in the record even if the court's reason for reaching that result was flawed. *Benson v. Stafford*, 407 Ill. App. 3d 902, 912 (2010). For the reasons that follow, we conclude that the contract clearly and unambiguously excludes coverage for Tucker. Because the contract is unambiguous, there is no need to consider the extrinsic evidence that was considered by the trial court. See *Gassner v. Raynor Manufacturing Co.*, 409 Ill. App. 3d 995, 1006 (2011).

¶ 23 As we have discussed, we must construe the policy as a whole, rather than considering the provision at issue in isolation. See *Johnson*, 377 Ill. App. 3d at 607. A provision that might seem ambiguous when viewed in isolation is not ambiguous if its meaning can be discerned from a reading of the policy as a whole. *CIMCO Communications, Inc. v. National Fire Insurance Co. of Hartford*, 407 Ill. App. 3d 32, 36 (2011); *William Blair & Co. v. FI Liquidation Corp.*, 358 Ill. App. 3d 324, 334 (2005).

¶ 24 Such is the case with the endorsement at issue here. As discussed previously, the declarations page explicitly states in capital letters: "COVERAGES EXCLUDED WHEN ANY VEHICLE OPERATED BY ROBERT TUCKER CLINTON." The declarations page also states that a named driver exclusion endorsement remains in effect, and the endorsement names the excluded driver as "Robert Tucker." Reading these provisions together and interpreting them "with reference to the average, ordinary, normal, reasonable person," we find that the only reasonable interpretation is that the parties intended to exclude Robert Tucker Clinton and the omission of his last name on the endorsement was essentially a scrivener's error. The alternative interpretation suggested by Sullivan is that the parties' intent was to exclude an unknown individual named Robert Tucker. This explanation is simply not reasonable when the endorsement is read in the context of the policy as a whole.

¶ 25 Sullivan further argues, however, that the exclusionary language in the declarations page is itself ambiguous. He asserts that it is "confusingly worded and confusingly located, and therefore susceptible to more than one reasonable meaning." We are not persuaded.

¶ 26 In support of this argument, Sullivan suggests two alternative interpretations of exclusionary language on the declarations page. He first argues that because the phrase "coverages excluded when any vehicle operated by Robert Tucker Clinton" does not contain any verbs, it does not unambiguously state that coverages *are* excluded when a covered vehicle *is* driven by Tucker. Instead, he suggests, it could reasonably be interpreted as a heading for a list of excluded types of coverage. "Because no coverages

are listed after this phrase," he argues, it is reasonable to read the provision as a statement that no coverage is excluded for Tucker. We disagree. This interpretation would render the phrase superfluous. As such, it is not a reasonable interpretation. See *CIMCO Communications*, 407 Ill. App. 3d at 37.

¶ 27 Second, Sullivan points out that there is a page break in the list of coverages listed in the declarations, and the relevant language appears after the end of the list. He suggests that because of this arrangement, the phrase can reasonably be interpreted to mean that Tucker is excluded from coverage only as to the types of coverage listed just above it on the second page of the declarations. This tortured interpretation is not a "natural and reasonable" construction (see *Gillen*, 215 Ill. 2d at 393), and it is at odds with the provision in the endorsement. We do not find that either of these "creative suggestions" amounts to a reasonable alternative interpretation of the language in the declarations page. See *Bruder*, 156 Ill. 2d at 193.

¶ 28 Finally, Sullivan asserts that the inclusion of a blank named driver exclusion endorsement form in Plaintiff's Exhibit 1 creates an ambiguity. He contends that it is reasonable to interpret this to mean that the parties did not intend for *any* driver to be excluded from coverage. Again, we do not find this to be a reasonable interpretation. We note that the form is completely blank. Unlike the endorsement form signed by Robert Lowry Clinton, it does not include an insurance policy number, the name of an insured, a date, or the name of an excluded driver. We do not believe it is reasonable to construe this completely blank form as an indication that the parties intended to alter the previous endorsement. We also note that although the blank form was inserted into a trial

exhibit containing all pertinent policy provisions, amendments, and endorsement, there is no indication that it was actually sent to the Clintons or made a part of the contract itself. In any case, we find that it does not create an ambiguity.

¶ 29 As we stated previously, we will not find an ambiguity merely because "creative possibilities" are suggested as alternative interpretations of an insurance policy. Viewing the policy as a whole, it is clear that the parties intended the endorsement to mean that Robert Tucker Clinton was excluded from coverage.

¶ 30 We note that both parties also address the question of whether Tucker's use of the minivan was permissive. The trial court did not address this question because its conclusion that the endorsement unambiguously excluded Tucker from coverage was dispositive. We need not address these arguments for the same reason.

¶ 31 CONCLUSION

¶ 32 For the foregoing reasons, we affirm the judgment of the court.

¶ 33 Affirmed.

¶ 34 JUSTICE GOLDENHERSH, dissenting:

¶ 35 I respectfully dissent. Policy provisions are deemed ambiguous if they are subject to more than one reasonable interpretation. With this in mind and all the facts of this case considered as a whole, I find a reasonable person could conclude Clinton was not excluded from the policy. While I acknowledge "Robert Tucker" is the first and middle

name of Clinton, it is not unambiguous that Clinton is the named driver under the exclusion endorsement. USAA could have specifically stated "Robert Tucker Clinton" was excluded under the policy. Instead, USAA stated "Robert Tucker" was excluded. Further, the policy also contains a blank exclusion endorsement that lists no name as an excluded driver. This blank form creates confusion as to whether any driver was excluded from the policy, leaving the door open to yet another reasonable interpretation. These are ambiguities created by USAA itself. For this reason, the policy must be construed against the insurer that drafted the ambiguity and in favor of the insured.

¶ 36 In reaching its decision, the trial court turned to extrinsic evidence outside the four corners of the policy to determine the parties' intent regarding the excluded operator. Specifically, the evidence the court considered is stated in its order granting declaratory judgment in favor of USAA:

> "Robert Lowry Clinton testified more than once that he fully knew that his son Robert Tucker Clinton had been excluded and had no insurance where the 2008 Kia automobile was concerned. Obviously, as argued, the [c]ourt is to weigh heavily the intent of the parties to a contract, i.e. insurance policy. *** The reason for the exclusion of the Clinton surname where Robert Tucker was concerned was fully explained by [p]laintiff's witness Kellie Rohner as being an operator oversight and due to manual entering of Robert Tucker's name without putting in his surname."

¶ 37 Courts may refer to extrinsic evidence to determine those words which seem unambiguous within the four corners of a contract, but are nevertheless ambiguous within

the broader context of the parties' dealing. *William Blair & Co. v. FI Liquidation Corp.*, 358 Ill. App. 3d 324, 339 (2005). However, "this cannot be transmuted into a principle that courts may summarily look to extrinsic evidence to transform language which is ambiguous on its face into unambiguous language by reference to extrinsic evidence." *William Blair & Co.*, 358 Ill. App. 3d at 339. Reference to such extrinsic evidence would concede the ambiguity of the term and the need to ascertain the intent of the parties. *William Blair & Co.*, 358 Ill. App. 3d at 339. "Although it is a primary goal of contract construction to give effect to the intentions of the parties at the time the contract was executed, that intention is to be determined objectively by examining the language the parties agreed upon rather than by any subjective explanation given in hindsight." *William Blair & Co.*, 358 Ill. App. 3d at 341.

¶ 38 The trial court erred in permitting extrinsic evidence to ascertain the intent of the parties regarding the exclusion endorsement. Rather than look to the intention of the parties as expressed in the policy language, the trial court relied, at least in part, on the testimony of Robert Lowry Clinton and Kellie Rohner, a USAA underwriter, to determine the intent of the parties regarding the excluded operator. Considering this testimony, the court found the exclusion endorsement was unambiguous and granted declaratory judgment in favor of USAA. As I have indicated above, it is well-settled that courts may not turn to extrinsic evidence to transform language which is ambiguous on its face into unambiguous language.

¶ 39 Moreover, our Illinois Supreme Court has rejected the admission of parol evidence to aid in resolving an ambiguity where a contract contains an explicit integration clause:

"[W]here parties formally include an integration clause in their contract, they are explicitly manifesting their intention to protect themselves against misinterpretations which might arise from extrinsic evidence." *Air Safety, Inc. v. Teachers Realty Corp.*, 185 Ill. 2d 457, 464 (1999). Here, the policy at issue contains the following integration clause: "The automobile insurance contract between the named insured and the company shown on the Declarations page consists of the policy plus the Declarations page and any applicable endorsements." Because this clause indicates the policy consists only of those documents listed, the trial court erred in permitting extrinsic evidence outside the four corners of the policy.

¶ 40 For these reasons, I conclude the trial court erred in granting declaratory judgment in favor of USAA and against defendant and would reverse the order of the trial court.