

No. 1-17-0354

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

AMERICAN ACCESS CASUALTY COMPANY,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 15 CH 09624
)	
DANIELA MENDOZA, ROSA ALONZO, and)	
GOVERNMENT EMPLOYEES INSURANCE)	
COMPANY,)	Honorable
)	Thomas R. Allen,
Defendants-Appellees.)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Delort concurred in the judgment.

ORDER

Held: In this coverage case involving one driver insured by Government Employees Insurance Company, and the other driver insured by American Access Casualty Company, we affirmed the grant of summary judgment for Government Employees Insurance Company, finding its policy did not provide coverage to its insured for the accident at issue here and that, in the absence of such coverage, the uninsured motorist provision of the American Access Casualty Company policy was triggered.

¶ 1 Evan Fronauer, whose vehicle was insured under a Florida insurance policy issued by Government Employees Insurance Company (GEICO), was involved in an automobile accident in Illinois with defendants-appellees, Daniela Mendoza and Rosa Alonzo, whose vehicle was insured by American Access Casualty Company (AACC). Ms. Mendoza and Ms. Alonzo claimed they sustained bodily injuries as a result of the accident. GEICO denied bodily injury

liability coverage to Mr. Fronauer. In response, Ms. Mendoza and Ms. Alonzo filed uninsured motorist claims against AACC. AACC filed a complaint seeking a declaratory judgment that GEICO's Florida policy provided bodily injury liability coverage to Mr. Fronauer for the Illinois accident and, as such, that the uninsured motorist provision of the AACC policy was never triggered. The circuit court granted summary judgment for GEICO, finding that the GEICO policy did not provide bodily injury liability coverage to Mr. Fronauer for the Illinois accident and, therefore, Mr. Fronauer was uninsured for the claims of bodily injury made by Ms. Mendoza and Ms. Alonzo, triggering AACC's uninsured motorist provision. AACC appeals. We affirm.

¶ 2 I. Mr. Fronauer's GEICO Policy

¶ 3 Mr. Fronauer's GEICO policy is a Florida no-fault insurance policy. The declarations page lists the applicable coverage of the policy. The coverages listed on the declaration page are: property damage liability; personal injury protection (which protects Mr. Fronauer and occupants of his vehicle for their personal injuries without offering any coverage for claims by third parties against Mr. Fronauer); comprehensive; collision; emergency road service; and rental reimbursement. Bodily injury liability coverage (which would cover injury claims by third parties against Mr. Fronauer) is absent from the declarations page of the GEICO policy.

¶ 4 An endorsement to the policy contains an "out of state coverage" provision stating:

"When the policy applies to the operation of a motor vehicle outside of *your* state, we agree to increase *your* coverage to the extent required of out-of-state motorists by local law. This additional coverage will be reduced to the extent that *you* are protected by another insurance policy. No person can be paid more than once for any item of loss.

We will not provide coverage for injury to a person, caused by accident, including resulting sickness, disease or death.” (Emphasis in the original.)

¶ 5 The policy provides that it applied to “accidents, occurrences or losses during the policy period within the United States of America, its territories and possessions, or Canada and while an *owned auto* is being transported between ports thereof.” (Emphasis in the original.)

¶ 6 II. The AACC Policy

¶ 7 The AACC policy insuring Ms. Mendoza’s vehicle states, in pertinent part, that it will “pay all sums which the insured or his/her legal representative shall be legally entitled to recover as compensatory damages *** from the owner or operator of an uninsured motor vehicle.” An “uninsured motor vehicle” is defined as “a motor vehicle or trailer with respect to the ownership, maintenance or use for which, there is no bodily injury liability bond or insurance policy applicable at the time of the accident with respect to any person or organization legally responsible for the use of such motor vehicle, or said bond or insurance policy has limits less than required by the Illinois Financial Responsibility Law.”

¶ 8 III. The Accident

¶ 9 On August 10, 2012, Daniel Caceres was driving a 2000 Nissan Altima insured under an AACC insurance policy. Mr. Caceres’ daughter, Ms. Mendoza, was driving a 2005 Nissan Altima insured under the same AACC policy. Ms. Alonzo was traveling as a passenger in Ms. Mendoza’s vehicle. Mr. Fronauer allegedly rear-ended Ms. Mendoza’s 2005 Nissan which, in turn, collided with Mr. Caceres’ 2000 Nissan, which was stopped directly in front of it at a stoplight on Lewis Road in Waukegan, Illinois. Ms. Mendoza and Ms. Alonzo claimed they sustained bodily injuries as a result of the accident.

¶ 10 GEICO denied bodily injury liability coverage to Mr. Fronauer for the alleged injuries of Ms. Mendoza and Ms. Alonzo. Ms. Mendoza and Ms. Alonzo made uninsured motorist claims under the AACC policy. Neither Ms. Mendoza, nor Ms. Alonzo, filed suit against Mr. Fronauer, and the two-year limitations period (735 ILCS 5/13-202 (West 2012)), for filing such an action against Mr. Fronauer has expired.

¶ 11 On June 19, 2015, more than two years after the accident, AACC filed a complaint for declaratory judgment with two counts and, on March 21, 2016, AACC filed an amended complaint adding a third count. Count I sought a declaration that the uninsured motorist provision of the AACC policy was never triggered, and that AACC owes no duty to indemnify Ms. Mendoza and Ms. Alonzo, because the at-fault driver, Mr. Fronauer, was insured by GEICO at the time of the accident. Count II was dismissed and is not a subject of this appeal. Count III sought a declaration that, if any provision of the GEICO policy is found to exclude bodily injury liability coverage to Mr. Fronauer for the claims of Ms. Mendoza and Ms. Alonzo, then that provision should be found void for violating Illinois public policy as set forth in section 7-601 of the Illinois Vehicle Code, which states:

“No person shall operate, register or maintain registration of, and no owner shall permit another person to operate, register or maintain registration of, a motor vehicle designed to be used on a public highway unless the motor vehicle is covered by a liability insurance policy.” 625 ILCS 5/7-601 (West 2012).

¶ 12 The parties filed cross-motions for summary judgment. The circuit court granted GEICO’s motion for summary judgment and denied AACC’s motion for summary judgment. The court found that the GEICO policy did not provide bodily injury liability coverage to Mr. Fronauer for the Illinois accident and, therefore, Mr. Fronauer was uninsured for the claims of

bodily injury made by Ms. Mendoza and Ms. Alonzo, triggering AACC's uninsured motorist provision. AACC appeals.

¶ 13

IV. ANALYSIS

¶ 14 Summary judgment is appropriate where the pleadings, depositions, and admissions on file, together with any affidavits, show no genuine issue of material fact exists, and that the moving party is entitled to judgment as a matter of law. *Shared Imaging, LLC v. Hamer*, 2017 IL App (1st) 152817, ¶ 13. “Although the filing of cross-motions for summary judgment does not necessarily establish the lack of an issue of material fact or obligate a court to render summary judgment, it does indicate that the parties agree that the case involves a question of law and that they invite the court to decide the issues based on the record.” *Id.* We review *de novo* the circuit court's summary judgment determination. *Id.*

¶ 15 AACC argues that the circuit court erred in finding that the GEICO policy issued to Mr. Fronauer did not provide bodily injury liability coverage to him for the Illinois accident involving Ms. Mendoza and Ms. Alonzo. “In construing an insurance policy, the primary function of the court is to ascertain and enforce the intentions of the parties as expressed in the agreement. [Citations.] To ascertain the intent of the parties and the meaning of the words used in the insurance policy, the court must construe the policy as a whole, taking into account the type of insurance for which the parties have contracted, the risks undertaken and purchased, the subject matter that is insured and the purposes of the entire contract. [Citations.] If the words in the policy are plain and unambiguous, the court will afford them their plain, ordinary meaning and will apply them as written.” *Crum & Forster Managers Corp. v. Resolution Trust Corp.*, 156 Ill. 2d 384, 391 (1993).

No. 1-17-0354

¶ 16 Examining Mr. Fronauer's GEICO policy, as a whole, we consider that the declarations page lists the coverage as: property damage liability; personal injury protection; comprehensive; collision; emergency road service; and rental reimbursement, but it does not list bodily injury liability coverage.

¶ 17 AACC argues, though, that since Mr. Fronauer's GEICO policy was issued in Florida, and this accident occurred out of state in Illinois, we must examine the out-of-state coverage provision. We note that AACC cites the language of the original out-of-state coverage provision in section one of the GEICO policy. However, that provision was replaced and restated by the out-of-state coverage provision in the endorsement to the policy, which was in effect at the time of the accident. Accordingly, we consider the language of the endorsement, the first sentence of which states: "When the policy applies to the operation of a motor vehicle outside of *your* state, we agree to increase *your* coverage to the extent required of out-of-state motorists by local law." (Emphasis in the original.)

¶ 18 There is no dispute that the GEICO policy applied to Mr. Fronauer's operation of his vehicle in Illinois at the time of the accident, and that section 7-601 of the Illinois Vehicle Code requires bodily injury liability coverage for all motor vehicles designed to be used on a public highway in Illinois. AACC argues that the first sentence of the out-of-state coverage endorsement to the GEICO policy increased Mr. Fronauer's coverage to comply with section 7-601, *i.e.*, it provided him with bodily injury liability coverage at the time of the Illinois accident. AACC contends that, as Mr. Fronauer had bodily injury liability coverage under the GEICO policy, the uninsured provision of the AACC policy was never triggered and, therefore, AACC owes no duty to indemnify Ms. Mendoza and Ms. Alonzo.

¶ 19 GEICO responds that the first sentence of the out-of-state coverage endorsement serves only to increase the policy limits of existing coverage, and does not create an entirely new coverage (*e.g.*, bodily injury liability coverage) that was not originally provided by GEICO or paid for by Mr. Fronauer. This same argument was addressed and rejected in *Hamilton v. Government Employees Insurance Co.*, 283 N.J. Super. 424 (1995). *Hamilton* examined an out-of-state coverage extension in a GEICO policy that stated: “When the policy applies to the operation of a motor vehicle outside of your state, we agree to increase your coverages to the extent required of out-of-state motorists by local law.” *Id.* at 430. *Hamilton* held that the out-of-state coverage extension provides new types of coverage when necessary to comply with the out-of-state law and does not merely increase policy limits. *Id.* In support, *Hamilton* noted the term “coverage” as used throughout the policy was consistent with its interpretation:

“The policy itself provides for different types of ‘coverage,’ without any reference to the amounts thereof (‘liability coverages,’ ‘automobile medical payments coverage,’ ‘physical damage coverages,’ and ‘uninsured motorist coverage’). *** If GEICO had intended to limit its extension of out-of-state coverage to amounts, it could have easily specified such a limitation in its policy.” *Id.* at 430-31.

¶ 20 Here, GEICO’s insured, Mr. Fronauer, was involved in a motor vehicle accident out-of-state (in Illinois), and the first sentence of the out-of-state coverage endorsement to his GEICO policy increases “coverage” to the extent required of out-state-motorists by local law. As in *Hamilton*, which we find persuasive, the GEICO policy provides throughout for different types of “coverage” without reference to the amounts thereof and GEICO could have easily specified that its extension of out-of-state coverage only: (1) increased the policy limits of existing coverage; and (2) did not provide new types of coverage. GEICO did not so expressly limit its

extension of out-of-state coverage. Accordingly, we hold that the first sentence of Mr. Fronauer's out-of-state coverage endorsement to his GEICO policy provides for new types of coverage, where necessary, to comply with out-of-state law.

¶ 21 However, although the first sentence of GEICO's out-of-state coverage endorsement generally increases Mr. Fronauer's coverage to comply with Illinois law—including, where necessary, to provide new types of coverage—the fourth sentence provides an exception thereto by specifically stating: “We will not provide coverage for injury to a person, caused by accident, including resulting sickness, disease or death.” We consider whether the fourth sentence renders the out-of-state coverage provision to be illusory and, thus, void.

¶ 22 “An illusory promise is an expression cloaked in promissory terms, but which, upon closer examination, reveals that the promisor has committed himself not at all.” J. Calamari & J. Perillo, *Contracts*, § 70, at 133 (1970). “If what appears to be a promise is an illusion, there is no promise.” 2 J. Perillo & H. Bender, *Corbin on Contracts*, § 5.28, at 142 (1995). An illusory promise is not contractually binding as it lacks consideration, and is therefore void. *Id.* Case law in Florida, where the GEICO policy was entered into, and case law in Illinois, where the accident occurred, hold, in accordance with the treatises cited above, that an illusory promise is void for lack of consideration. See *Rosenberg v. Lawrence*, 541 So. 2d 1204, 1206-07 (Fla. 3d DCA 1988); *Mimica v. Area Interstate Trucking, Inc.*, 250 Ill. App. 3d 423, 432 (1993).

¶ 23 The GEICO policy promised, in the first sentence of the out-of-state coverage endorsement, to cover Fronauer “to the extent required” by Illinois law. Illinois law requires mandatory bodily injury liability coverage. 625 ILCS 5/7-601 (West 2012). The fourth sentence of GEICO's out-of-state coverage endorsement revealed, contrary to the first sentence's promise, that GEICO has *not* committed itself to providing bodily injury liability coverage to the extent

No. 1-17-0354

required by Illinois law. The result is that the promise of coverage contained in the out-of-state coverage endorsement was illusory and void in this case, leaving Mr. Fronauer with no coverage under the GEICO insurance policy for Ms. Mendoza's and Ms. Alonzo's injuries.

¶ 24 Therefore, for purposes of the claims of bodily injury by Ms. Mendoza and Ms. Alonzo, Mr. Fronauer's vehicle was uninsured under the GEICO policy. Accordingly, Ms. Mendoza and Ms. Alonzo may file a claim under the uninsured motorist provision of the AACC policy.

¶ 25 For the foregoing reasons, we affirm the circuit court.

¶ 26 Affirmed.