2017 IL App (3d) 160200-U

Order filed May 1, 2017
Modified Upon Denial of Rehearing July 20, 2017

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IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2017

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| MARK MITCHELL; MITCHELL FAMILY FARMS, | ) | Appeal from the Circuit Court of the 13th Judicial Circuit, LaSalle County, Illinois, |
| Plaintiffs-Appellees, | ) | |
| | ) | Appeal No. 3-16-0200 |
| v. | ) | Circuit No. 14-L-109 |
| | ) | |
| GRINNELL MUTUAL REINSURANCE COMPANY, | ) | Honorable Joseph P. Hettel, |
| Defendant-Appellant. | ) | Judge, Presiding. |

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JUSTICE WRIGHT delivered the judgment of the court.
Presiding Justice Holdridge and Justice McDade concurred in the judgment.

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**ORDER**

¶ 1 *Held*: The roadway was part of the insured's premises as defined under the Farm-Guard Policy. The court's order granting partial summary judgment in favor of the insured is affirmed.

¶ 2 Mark Mitchell and Mitchell Family Farms filed a complaint against Grinnell Mutual Reinsurance Company seeking indemnity for an automobile collision under a Farm-Guard insurance policy Grinnell sold to Mark Mitchell and Mitchell Family Farms. The trial court

granted partial summary judgment in favor of Mark Mitchell and Mitchell Family Farms and denied Grinnell's motion for summary judgment. Grinnell appeals the trial court's rulings.

¶ 3 FACTS

¶ 4 On July 11, 2014, Mark Mitchell (Mark) and Mitchell Family Farms (MFF) filed a complaint alleging breach of contract against Grinnell Mutual Reinsurance Company (Grinnell). The complaint alleged that Mark and MFF purchased a property and casualty liability insurance policy (the Farm-Guard Policy) from Grinnell.[1] The complaint further alleged that on October 7, 2012, an auto collision occurred when a pickup truck operated by Mark struck a pickup truck driven by Kevin Carr on East 28th Road. The collision resulted in bodily injury and property loss. Grinnell denied coverage for the collision based on the motor vehicle exclusionary language of the Farm-Guard Policy.

¶ 5 The pertinent language of the Farm-Guard Policy contains the following exclusionary language and definitions:

"EXCLUSIONS

A. UNDER ANY OF THE COVERAGES

> The following exclusions apply to all coverages afforded by this policy, unless the exclusion explicitly states that it does not apply to a particular type of coverage:
>
> ***
>
> 2. "We" do not cover any "Motor Vehicle Liability" unless at the time of the "occurrence" the involved "motor vehicle" is:
>
> ***
>
> b. Used exclusively on the "insured premises[.]"

[1]A copy of the Farm-Guard Policy was attached to the complaint.

¶ 6 The Farm-Guard Policy also provides the following definitions that are relevant to this appeal:

"DEFINITIONS

3. "Aircraft Liability", "Hovercraft Liability", "Motor Vehicle Liability", "Recreational Vehicle Liability", and "Watercraft Liability", subject to the provisions in b. below, mean the following:

a. Liability for "bodily injury" or "property damage" arising out of the:

***

2) Maintenance, occupancy, operation, use, loading, or unloading of such vehicle or craft by any person;

***

8. "Farming" means the ownership, maintenance, or use of any "insured premises" for production of crops or the raising or care of "livestock" or "poultry"

***

13. "Insured premises" means:

a. The farm premises which "you" own, rent, lease, or control as part of "your" farming operation and other locations "you" maintain as a "residence premises"

***

16. "Motor vehicle" means:

a. A motorized land vehicle designed for travel on public roads or subject to motor vehicle registration or a compulsory financial responsibility law or regulation issued by a government agency, except a "farm implement"

***

> 23. "Residence premises" means the one- to four-family dwelling where the first Named Insured or an Additional Named Insured lives, and which is shown in the Declarations, including the immediate grounds not used for "farming[.]"

¶ 7 The undisputed facts set forth in the pleadings establish Mark is employed as a school administrator but also engages in farming activities. Mark and his brother, Daniel, comprise the partners of MFF. According to Mark's deposition testimony, the "Family Farm Title" includes over 2,000 acres of farmland.[2] MFF farmed land which included property owned by the Carol Mitchell Trust and the William Mitchell Trust. The Carol Mitchell Trust holds title to the property located at 2950 East 28th Road. The William Mitchell Trust holds title to the property located across the road from 2950 East 28th Road. The trusts owned the land on both sides of East 28th Road to the center of East 28th Road. The boundary of each trust owned parcel met in the center of the roadway at the site of the collision. Based on a verbal lease with his parents, Mark resides at a rural home located at 2950 East 28th Road, Marseilles, IL.[3]

¶ 8 On Sunday, October 7, 2012, Mark intended to drive his 1999 Dodge Ram pickup truck about one-half mile from his residence at 2950 East 28th Road, Marseilles, IL, to repair a corn drying bin located at the "home farm," on 2738 North 2950th Road, Marseilles, IL. East 28th Road is a single-lane, blacktopped, township road. Mark's truck collided with a GMC 1500 pickup truck driven by Kevin Carr on East 28th Road as Mark left his driveway. At the time of the collision, Mark's pickup truck was licensed and insured in Mark's name under an automobile policy issued by Country Financial with a liability limitation of $250,000.

¶ 9 Following the collision, Carr made a demand in excess of Mark's automobile policy limits for Carr's injuries. Carr settled the claim by accepting $250,000 from Country Financial

[2]This was the acreage amount at the time of the occurrence.
[3]William and Carol Mitchell are Mark's parents.

and $75,000 from Mark, personally. On January 13, 2014, Grinnell issued a letter denying Mark's demand for liability coverage under the Farm-Guard Policy based on the motor vehicle exclusion to the Farm-Guard Policy.

¶ 10 On April 24, 2015, Mark and MFF filed a motion for summary judgment concerning the breach of contract action against Grinnell. Mark and MFF submitted that summary judgment should be granted in their favor because an exception applied to the motor vehicle liability exclusion under the Farm-Guard Policy. Specifically, Mark alleged he was operating a farm vehicle on the insured's farm premises at the time of the collision, thereby warranting coverage under the Farm-Guard Policy.

¶ 11 Grinnell filed a motion seeking summary judgment in their favor on July 10, 2015. Grinnell argued the undisputed facts revealed the motor vehicle liability exclusion under the Farm-Guard Policy applied because the collision occurred on a public road, not on the insured's farm premises.

¶ 12 On August 20, 2015, following arguments, the trial court denied both parties' motions for summary judgment. The trial court found summary judgment was not appropriate because of an existing dispute concerning a material fact pertaining to whether Mark or MFF used the 1999 Dodge Ram pickup exclusively for farm purposes.

¶ 13 On December 9, 2015, Mark and MFF filed a supplemental partial motion for summary judgment addressing the factual dispute. On February 24, 2016, Grinnell filed a reply to Mark and MFF's supplemental partial motion for summary judgment, together with a separate motion for reconsideration of Grinnell's prior motion for summary judgment.

¶ 14 The trial court held arguments on the pending motions on March 3, 2016. Following the hearing, the trial court found "it is common sense that the farm is not simply the tillable soil of the land." The trial court also found:

> "Mr. Hupp has established that this was owned. It's part of the farm. It was never taken away and became a public road exclusive of the ownership of Mr. Mitchell or the control of Mr. Mitchell in this particular case. So it's part of the farm."

¶ 15 Consequently, the court granted partial summary judgment in favor of Mark and MFF. On March 15, 2016, the trial court ordered Grinnell to pay Mitchell $75,000 plus the costs of the suit. Grinnell filed a timely notice of appeal on April 12, 2016.

¶ 16 ANALYSIS

¶ 17 This appeal involves an action filed by Mark and MFF against Grinnell for breach of contract after Grinnell refused to provide liability coverage under the Farm-Guard Policy pertaining to the collision on East 28th Road in Marseilles, Illinois. On appeal, Grinnell challenges the trial court's ruling granting partial summary judgment in favor of MFF based on an exception to the motor vehicle exclusion contained in the Farm-Guard Policy. Our decision affirms the trial court's ruling in favor of Mark and MFF.

¶ 18 A trial court's grant of a motion for summary judgment is subject to *de novo* review on appeal. *Central Illinois Light Co. v. Home Insurance Co.*, 213 Ill. 2d 141, 153 (2004). The construction of an insurance policy is a question of law which is also subject to *de novo* review. *Id*.

¶ 19 An insured shoulders the burden of proving that coverage is afforded by a policy. *Addison Insurance Co. v. Fay*, 232 Ill. 2d 446, 453 (2009). Once the insured meets their burden

of establishing that a claim for coverage falls within the terms of an insurance policy, the burden shifts to the insurer to prove that the loss is excluded by a provision of the contract. *Id*. at 453-54.

¶ 20 First, we focus on the shifting burdens of proof subject to the request for summary judgment in this case. We conclude Grinnell established an exclusion from coverage applies. Therefore, the only issue at hand is whether Mark and MFF established an exception applies in this unique factual situation. The trial court decided Mark and MFF established an exception applies. We agree.

¶ 21 Specifically, Grinnell has elected to challenge the trial court's summary judgment ruling in favor of Mark and MFF on the narrow issue of whether the collision took place on the "insured premises" as defined by the Farm-Guard Policy. Grinnell argues the road, regardless of ownership, use, or lease status, cannot be reasonably construed to constitute "insured premises" because the roadway does not qualify as "farm premises."

¶ 22 Importantly, for purposes of this appeal, Grinnell does not dispute that the motor vehicle Mark operated on East 28th Road at the time of the collision was used exclusively for farm purposes. Similarly, Grinnell does not contest that MFF leased the land owned by the family trusts which met in the middle of East 28th Road at the site of the collision. Therefore, we focus on the very narrow issue as formulated by Grinnell and presented to this court for review.

¶ 23 The issue before this court is whether the roadway qualifies as the "insured premises," meaning, "[t]he farm premises which 'you' own, rent, lease, or control as part of 'your' farming operation ***". " 'Farming' 'means ownership, maintenance, or use of any insured premises for the production of crops ***".

¶ 24 In their petition for reconsideration of this court's decision, Grinnell argues that "when the definition of 'farming' is read into the definition of 'insured premises,' *** it is plain that the

road surface where this collision occurred was not used 'for production of crops' and therefore cannot constitute 'insured premises' ***".

¶ 25 After carefully considering Grinnell's petition for reconsideration, we are not persuaded that the language of this particular policy restricts the definition of "farm premises" only to the ground where a plant erupts from the soil. Rather, the Farm-Guard policy's definition of farming means the "farm premises" encompasses other areas within the property that are used to maintain the property with the end goal of producing crops. Therefore, we conclude "farm premises," as prescribed under the definition of "insured premises," includes other areas within the physical boundaries of the land leased by MFF, not just areas upon which crops sprout. In this case, it is uncontested that this section of East 28th Road is squarely situated on and is wholly encompassed within the boundaries of the land owned or leased by MFF. In addition, Mark's testimony established that on the day in question he drove his truck on East 28th Road for the purpose of bringing necessary parts to another location within the property, the "home farm," where he intended to perform maintenance on a corn drying bin.

¶ 26 In the petition requesting this court to reconsider our decision in this case, Grinnell argues that to ascertain the intent of the parties and the meaning of the words used in the policy, this court must take into account the type of insurance for which the parties contracted, the risks undertaken and purchased, the subject matter that is insured, and the purposes of the entire contract. See *Maxum Indemnity Co. v. Gillette*, 405 Ill. App. 3d 881, 885 (2010). When taking these factors into consideration, Grinnell asserts it becomes clear that the policy in question is meant to insure the risks undertaken by MFF as part of the production of crops on their farm properties.

¶ 27 Certainly farmers must travel through their farm properties when conducting maintenance on their farms with the goal of producing crops. MFF was unique in that they owned or leased both sides of this portion of East 28th Road to the center of the road. The evidence presented to the trial court established that MFF satisfied the burden of proof to show the collision took place within the legal boundaries of the "insured premises" while driving a farm vehicle on an errand concerning the maintenance of farm equipment necessary for the production of crops.

¶ 28 We recognize that generally, motor vehicle accidents occurring on public roads will not be afforded coverage under similar policies. However, based on the specific language of this policy, coupled with this very narrow and unusual set of facts, we conclude the trial court properly granted partial summary judgment in favor of Mark and MFF.

¶ 29 CONCLUSION

¶ 30 The judgment of the circuit court of LaSalle County is affirmed.

¶ 31 Affirmed.