2018 IL App (1st) 172857-U

SIXTH DIVISION
JUNE 8, 2018

No. 1-17-2857

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

DIRECT AUTO INSURANCE COMPANY,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
v.	)	
	)	No. 16 CH 3658
JONATHAN N. SINCLAIR,	)	
	)	
Defendant-Appellee	)	Honorable
	)	Pamela McLean Meyerson,
(Maria Hurtado, Defendant).	)	Judge Presiding.

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

ORDER

¶ 1 *Held*: The circuit court correctly found that the defendant's insurance policy was not null and void.

¶ 2 The plaintiff-appellant, Direct Auto Insurance Company (Direct Auto), filed a complaint seeking a declaratory judgment that the insurance policy it issued to the defendant-appellee, Jonathan Sinclair, was null and void due to an alleged misrepresentation in Sinclair's application.

The circuit court found in favor of Sinclair and Direct Auto now appeals. For the following reasons, we affirm the judgment of the circuit court of Cook County.

¶ 3 BACKGROUND

¶ 4 Direct Auto is an insurance company with its principal place of business in Chicago, Illinois. Direct Auto is duly licensed to underwrite policies for automobile insurance, and to sell such policies and coverage to members of the general public. On July 17, 2014, Sinclair called Northwest Insurance Network (Northwest)[1], an insurance broker, to apply for automobile insurance from Direct Auto for his 1986 Oldsmobile Cutlass Supreme (the vehicle). Sinclair completed the application by answering questions put to him by a Northwest agent over the telephone. Northwest then submitted the electronic application to Direct Auto. Northwest never sent Sinclair the application for his review or signature.

¶ 5 The insurance application asked the applicant to list "principal driver and all others." Sinclair's application listed himself, as well as John R. Sinclair[2], who was excluded from the policy. The application also asked "Have all residents of the household 15 [years] and older and all permit or other operators been listed on the application?" The response to this question on Sinclair's application was "Yes." Vanessa Sinclair (Vanessa)[3] was over the age of 15 and resided with Sinclair in his household, but was not listed on the application. However, the Northwest agent never asked Sinclair about other residents of his household before submitting the electronic application to Direct Auto.

[1] Northwest is not a party to this lawsuit.

[2] The record is silent as to what John R. Sinclair's relationship is to Sinclair.

[3] The record is silent as to what Vanessa's relationship is to Sinclair.

¶ 6 After receiving Sinclair's application, Direct Auto issued an insurance policy to him for the vehicle (the policy). No other names were included on the policy.

¶ 7 On August 23, 2014, Sinclair was driving the vehicle and came into contact with another vehicle driven by Maria Hurtado[4] (the accident). Hurtado, through her automobile insurance carrier, submitted a claim to Direct Auto for damages allegedly sustained in the accident.

¶ 8 On March 14, 2016, Direct Auto filed a complaint against Sinclair seeking a declaratory judgment that the policy which it had issued to Sinclair was null and void and, therefore, there was no coverage under the policy for the accident. The complaint alleged there was a material misrepresentation in Sinclair's insurance application because Vanessa had not been listed anywhere on his application. The complaint further alleged that, had Vanessa been disclosed in Sinclair's application, the premium on his insurance policy would have increased around 40%, from $205.00 to $283.00.

¶ 9 The case proceeded to a bench trial, in which the parties jointly stipulated to all of the foregoing facts. After closing arguments, the trial court found that there was no intent to deceive by Sinclair. The court also found that there was no material misrepresentation because Direct Auto had "not shown that there is a substantial increase in the likelihood of an accident because of the nondisclosure of the person over the age of 15 years old in the household." The trial court further stated: "I don't see that showing that there might have been a higher premium is the same as showing a substantial increase in the likelihood of an accident." The court then entered judgment in favor of Sinclair, holding that his automobile insurance policy from Direct Auto was not null and void and that it provided coverage for the accident. Direct Auto subsequently appealed.

[4] Hurtado is not a party to this appeal.

¶ 10 ANALYSIS

¶ 11 We note that we have jurisdiction to review the trial court's final order as Direct Auto filed a timely notice of appeal. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); R. 303 (eff. Jan. 1, 2015).

¶ 12 Direct Auto contends that the trial court erred when it held that the automobile insurance policy issued to Sinclair was not null and void. Specifically, Direct Auto argues that the court erred when it found there was no actual intent to deceive by Sinclair and further when it failed to find that the misrepresentation made in Sinclair's application was material. Direct Auto stresses that the parties stipulated that had Sinclair's application listed Vanessa, the premium amount would have increased around 40%. Direct Auto argues that any misrepresentation that creates an increased premium is material enough to void coverage. Accordingly, Direct Auto requests that we reverse the trial court and find that the insurance policy is null and void.

¶ 13 Section 154 of the Illinois Insurance Code provides that an insurance policy can be voided when a false statement was made by the insured "with actual intent to deceive or *materially* affects either the acceptance of the risk or the hazard assumed by the [insurance] company." (Emphasis added.) 215 ILCS 5/154 (West 2014). "Whether an insured's statements are material 'is determined by whether reasonably careful and intelligent persons would have regarded the facts stated as substantially increasing the chances of the events insured against, so as to cause a rejection of the application.' " *Direct Auto Insurance Co. v. Beltran*, 2013 IL App (1st) 121128, ¶ 47 (quoting *Northern Life Insurance Co. v. Ippolito Real Estate Partnership*, 234 Ill. App. 3d 792, 801 (1992)).

¶ 14 The parties disagree as to the standard of review. Direct Auto contends that the proper standard of review is *de novo*, whereas Sinclair claims that it is whether the judgment goes against the manifest weight of the evidence. Direct Auto is correct because the evidence before the trial court consisted solely of stipulated facts and documentary evidence. "Generally, the manifest weight of the evidence standard of review applies if the trial court heard courtroom testimony, but a *de novo* standard applies when the trial court heard no testimony and ruled solely on the basis of documentary evidence." *Rosenthal-Collins Group, L.P. v. Reiff*, 321 Ill. App. 3d 683, 687 (2001). Accordingly, we review this matter *de novo*.

¶ 15 We first address Direct Auto's argument that the trial court erred when it found that there was no intent to deceive by Sinclair. The parties stipulated that the Northwest agent never asked Sinclair about other residents in his household and that Northwest never sent Sinclair the application for his review or signature. Our supreme court has established that stipulations are intended to place the issues therein beyond dispute. *People v. Woods*, 214 Ill. 2d 455, 468-69 (2005). Given that that these facts are not in dispute, we do not find that Sinclair even had the opportunity to deceive, let alone actually intended to deceive Direct Auto on his application. Thus, we reject this argument by Direct Auto and find that the trial court did not err in finding that there was no intent to deceive.

¶ 16 We now examine Direct Auto's argument that the trial court erred when it failed to find that the misrepresentation made in Sinclair's application was material. The focus of the materiality analysis is whether reasonably careful and intelligent persons would have regarded the misrepresentation as substantially increasing the chances of the events insured against. *Beltran*, 2013 IL App (1st) 121128, ¶ 47. The alleged misrepresentation here was the failure to disclose Vanessa, a person over the age of 15 residing in Sinclair's household, on the

application.[5] And the event insured against was an accident involving the vehicle and the only known driver, Sinclair. Sinclair was driving the vehicle when the accident occurred. It was never stipulated that Vanessa was an additional driver of the vehicle. It is not even known from the record if she had a driver's license. It cannot be said that any reasonable person would have regarded Sinclair's alleged misrepresentation of not disclosing Vanessa on his application as substantially increasing the chances of an accident in general and specifically the accident in question.

¶ 17 Direct Auto avers that it is irrelevant that the misrepresentation was unrelated to the accident, and cites to *Weinstein v. Metropolitan Life Insurance Co.*, 389 Ill. 571 (1945). In *Weinstein*, the insured applied for life insurance policies after being diagnosed with intercostal myalgia, duodenal ulcer, and infected tonsils. *Id.* at 573-74. The insured did not disclose that he suffered from any illness on his insurance applications. *Id.* at 574-75. The insured later died of angina pectoris, which had nothing to do with his intercostal myalgia, duodenal ulcer, or infected tonsils. *Id.* at 575. Our supreme court held that the insurance policies were void due to the insured's material misrepresentation, even though he died of an illness unrelated to his undisclosed medical issues. *Id.* at 579. The court stated: "That an ailment or malady, knowledge of which an applicant withheld from an insurer, was not actually the cause of death is not decisive against a finding of materiality. Materiality to risk may exist notwithstanding proof of fatality owing to another cause." *Id.* at 578–79. Direct Auto's reliance on this case is misplaced, notwithstanding that our supreme court found that the insurer was entitled to truthful answers related to the insured's *health* when considering coverage for *life insurance*. *Id.* The court stated:

[5] We emphasize that the Northwest agent completed the application and never sent it to Sinclair for his signature or review before submitting it to Direct Auto.

"An insurer, informed even of a possibility of duodenal ulcer, would hardly ignore the information and issue a standard insurance policy covering the life of one likely to be so afflicted." *Id*. Any serious health issue is likely to substantially increase the chances of death, the event insured against in a life insurance policy. Nevertheless, the existence of an additional person over the age of 15 in the household, as in this case, does not substantially increase the chances of an accident where there is no evidence that the person is an additional driver of the vehicle.

¶ 18 We are also not persuaded by Direct Auto's argument that the increased premium renders the misrepresentation material. In support of this argument, Direct Auto directs us to *Ratliff v. Safeway*, 257 Ill. App. 3d 281 (1st Dist. 1993). In *Ratliff*, this court held that the insured's nondisclosure of her 20-year-old son on her insurance application was a material misrepresentation. *Id*. at 288. There, we stated: "[the] additional premium is clearly a different condition of the contract of insurance, caused by listing [the son] as a driver and disclosing his age." *Id.* at 289. However, *Ratliff* is still distinguishable from this case because there, the insured's son drove the car twice a week and was the person driving the car when the accident occurred. In *Ratliff*, we focused on the additional driver *which caused* the increased premium, not on the increased premium in isolation.

¶ 19 Although it may be true that premium amounts are calculated based on risk, it does not necessarily follow that an increased premium creates a different condition or terms in the policy. Direct Auto does not argue that it would have rejected Sinclair's application or changed the policy in any way based on Sinclair's alleged misrepresentation. Direct Auto argues only that the premium amount would have increased had Sinclair disclosed Vanessa, the underpinning of the argument being that Sinclair intentionally withheld important information. Ultimately, a

potentially increased premium, under these facts, is not material enough on its own to find that Direct Auto can now void coverage under the policy. Further, as the parties acknowledge, the application was completed over the telephone by the agent and Sinclair never had an opportunity to review it for accuracy before it was submitted to Direct Auto. Thus, under these facts, we find that Sinclair's alleged misrepresentation in his application was not material, and accordingly, we affirm the trial court's judgment that the policy was not null and void at the time of the acccident.

¶ 20 CONCLUSION

¶ 21 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 22 Affirmed.