2019 IL App (1st) 181077-U

SIXTH DIVISION
MARCH 22, 2019

No. 1-18-1077

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MARIETTA JONES,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
v.	)	
	)	No. 15 L 9111
AMERICAN FAMILY MUTUAL INSURANCE	)	
COMPANY,	)	Honorable
	)	Lorna E. Propes,
Defendant-Appellant.	)	Judge Presiding.

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

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in awarding attorney fees and penalties to the plaintiff.

¶ 2 The plaintiff-appellee, Marietta Jones (plaintiff), brought this matter against the defendant-appellant, American Family Mutual Insurance Company (defendant), her automobile insurer, alleging that it wrongly denied her claim for coverage. Following a jury verdict in favor of the plaintiff, the circuit court awarded her attorney fees and penalties pursuant to Section 155 of the Illinois Insurance Code (215 ILCS 5/155(1) (West 2018)). The defendant now appeals the

circuit court's judgment awarding attorney fees and penalties. For the following reasons, we affirm the judgment of the circuit court of Cook County.

¶ 3 BACKGROUND

¶ 4 The plaintiff's vehicle was insured through a policy with the defendant. On May 4, 2011, the plaintiff reported to the defendant that her vehicle had been damaged by arson while it was parked on the street at 1316 Arthur Avenue in Joliet, Illinois. She submitted a claim for coverage.

¶ 5 The plaintiff reported to the defendant that on April 26, 2011, while in the course of her employment, she left the home of her client, Levi Ervins, and noticed that she had a flat tire. The plaintiff parked her car across the street from Ervins's house, at 1316 Arthur Avenue. The spare tire in her trunk was damaged, so she called her brother to give her a ride home.

¶ 6 The plaintiff reported to the defendant that she returned to her vehicle a few days later with a friend, Clint Evans, who agreed to help her replace the flat tire. Her friend did not have the necessary tools with him at the time, and recommended that the plaintiff buy a new spare tire. The plaintiff then purchased a tire from T&S Auto Recycling and placed it in the trunk of her vehicle next to the damaged spare tire. She placed her car key under the front seat and left her vehicle unlocked so that Evans could open the vehicle and change the tire at a later time.

¶ 7 The plaintiff reported to the defendant that on May 4, 2011, at approximately 10:30 a.m., she received a phone call from Levi Ervins, her client, who told her that her vehicle had been "torched" while parked across the street from his house at 1316 Arthur Avenue. The plaintiff immediately went to her vehicle, and observed that the vehicle's interior had been badly burned. She called the police and gave them a statement, and then submitted a claim to the defendant that same day.

¶ 8 The defendant assigned an investigator, David O'Carroll, to assess the plaintiff's claim. Although the plaintiff initially told the defendant that she did not know who lived at 1316 Arthur Avenue, where she had parked her vehicle, O'Carroll learned that the plaintiff's ex-boyfriend, Nathan Hill, resided at that address. The plaintiff told O'Carroll that she did not know that Hill lived there and that it was simply a coincidence that her vehicle was parked in front of Hill's house when it was set on fire.

¶ 9 The defendant engaged a company called FireTech to perform a fire examination of the plaintiff's vehicle. FireTech's report indicated that the original factory-installed spare tire was in the trunk, but that there was no other tire in the trunk. O'Carroll visited T&S Auto Recycling, the place the plaintiff said she purchased the additional spare tire, but T&S Auto Recycling did not keep records of purchases. The plaintiff stated that either she was not given a receipt by T&S Auto Recycling or she had lost it.

¶ 10 O'Carroll also reviewed the plaintiff's cell phone records and found no record of a call to her brother to give her a ride home on April 26, 2011, and no record of any calls from Ervins to the plaintiff on the morning of May 4, 2011. During an examination under oath on November 10, 2011, the plaintiff told O'Carroll that she had called her boss, not her brother, after she first discovered her flat tire on April 26, 2011. She also said that an unknown person, not Ervins, called her on the morning of May 4, 2011, to tell her that someone had set her vehicle on fire.

¶ 11 On November 22, 2011, the defendant denied the plaintiff's claim on the basis that she concealed or misrepresented material facts surrounding the fire damage to her vehicle. The plaintiff subsequently filed a one-count complaint in the circuit court of Cook County alleging that the defendant wrongfully failed and refused to make payment on the plaintiff's claim under the policy.

¶ 12 The case proceeded to mandatory arbitration and an award was entered in favor the defendant. The plaintiff exercised her right to reject the award and filed a Notice of Rejection of Commercial Mandatory Arbitration Award. The case was returned to the trial call.

¶ 13 A jury trial commenced on February 13, 2018. The jury heard the same evidence discussed herein and returned a verdict in favor of the plaintiff for damages in the amount of $24,350. The plaintiff filed a post-trial motion pursuant to Section 155 of the Illinois Insurance Code (the Code) (215 ILCS 5/155 (West 2018)) requesting costs, penalties, and attorney fees. The defendant responded by arguing that a reasonable dispute existed as to the circumstances of the plaintiff's loss, and therefore penalties and attorney fees were inappropriate.

¶ 14 Following a hearing[1], the trial court entered an order granting the plaintiff's motion and awarded costs in the amount of $1,510.94, penalties in the amount of $7,000, and attorney fees in the amount of $8,116.56. This appeal followed.

¶ 15 ANALYSIS

¶ 16 We note that we have jurisdiction to review this matter as the defendant filed a timely notice of appeal. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); R. 303 (eff. July 1, 2017).

¶ 17 The defendant's brief presents the following sole issue: whether the trial court abused its discretion in awarding attorney fees and penalties in favor of the plaintiff.[2] The defendant argues that it reasonably believed that the plaintiff intentionally concealed or misrepresented material facts surrounding the fire damage to her vehicle. Specifically, the defendant points to the plaintiff's inconsistent statements regarding her phone calls, the fact that the spare tire she said

[1] The record indicates that a hearing was held on the plaintiff's motion. However, a transcript from the hearing is not included in the record on appeal.

[2] The defendant is not challenging the jury verdict in favor of the plaintiff or the award of costs on appeal.

she purchased was not found, and her failure to disclose that her ex-boyfriend lived at the location where she left her vehicle. The defendant argues that these circumstances were sufficient to create a *bona fide* defense, precluding the award of attorney fees and penalties. The defendant also highlights the fact that the arbitrator entered an award in its favor as evidence that its refusal to pay the plaintiff's claim was not unreasonable.

¶ 18 Section 155 of the Code allows a trial court to award attorney fees and penalties in "any action by or against a company wherein there is in issue the liability of a company on a policy or policies of insurance or the amount of the loss payable thereunder, or for an unreasonable delay in settling a claim, and it appears to the court that such action or delay is vexatious and unreasonable." 215 ILCS 5/155(1) (West 2018). This section of the Code was enacted by the legislature to make lawsuits by policyholders economically feasible and to punish insurance companies for misconduct. *McGee v. State Farm Fire & Casualty Co.*, 315 Ill. App. 3d 673, 681 (2000). The key question in an action under section 155 is whether the conduct of the insurance company was unreasonable and vexatious. *O'Connor v. Country Mutual Insurance Co.*, 2013 IL App (3d) 110870, ¶ 13. And the relevant inquiry is whether the insurer had a *bona fide* defense to the insured's claim. *Id*. "Whether an insurer's conduct is vexatious and unreasonable is a matter committed to the trial court's discretion, and that determination will not be reversed on appeal absent an abuse of that discretion." *McGee*, 315 Ill. App. 3d at 681. An abuse of discretion will be found where no reasonable person would take the view adopted by the trial court. *Hale v. Odman*, 2018 IL App (1st) 180280, ¶ 25.

¶ 19 At the outset, we note that the defendant failed to include a transcript from the hearing on the plaintiff's motion for attorney fees and penalties in the record on appeal. Our supreme court has long held that in order to support a claim of error on appeal, the appellant has the burden to

present a sufficiently complete record. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391–92 (1984)). "Any doubts arising from an incomplete record must be resolved against the appellant." *In re Marriage of Sharp*, 369 Ill. App. 3d 271, 278 (2006). In the absence of transcripts, it is presumed that the trial court acted in conformity with the law and that the findings were based on the evidence presented. *Watkins v. Office of State Appellate Defender*, 2012 IL App (1st) 111756, ¶ 19. Thus, because the record does not allow us to know what occurred at the hearing or the basis for the trial court's order, we must presume that the court followed the law and had a sufficient factual basis for its ruling.

¶ 20 The defendant nonetheless asserts that the trial court abused its discretion because of the inconsistencies surrounding the plaintiff's claim, particularly the phone calls, the missing spare tire, and her ex-boyfriend's residence. However, while these inconsistencies may have reasonably caused the defendant to pause, doubt, or investigate the matter further, it cannot be said that they created a *bona fide* defense warranting the denial of the plaintiff's claim. The record shows that the defendant merely suspected that the plaintiff had misrepresented several facts surrounding the damage to her vehicle. There was no dispute that the vehicle was damaged by fire. And the defendant did not present any evidence of fraud at trial. Moreover, despite the inconsistencies, the plaintiff consistently maintained that her vehicle was damaged by arson on May 4, 2011. Under these circumstances, and without the record before us, we cannot say that it was unreasonable for the trial court to find that the defendant acted in a vexatious and unreasonable manner by denying the plaintiff's claim.

¶ 21 Finally, we reject the defendant's argument that the fact that the arbitrator entered an award in its favor shows that it acted reasonably in denying the plaintiff's claim. That is irrelevant as to whether the trial court abused its discretion. The trial court is the relevant finder

of fact in this appeal. Simply because the arbitrator reached a different conclusion than the jury does not mean that the trial court was unreasonable in awarding attorney fees and penalties. Thus, we cannot say that no reasonable person would take the view adopted by the trial court. Accordingly, we find that the trial court did not abuse its discretion, and we affirm its judgment awarding attorney fees and penalties to the plaintiff.

¶ 22 CONCLUSION

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

¶ 24 Affirmed.