

2019 IL App (2d) 180154, 180159, 180860, 180861, cons.
No. 2-18-0154
Order entered January 7, 2019

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

STATE FARM MUTUAL AUTOMOBILE)	Appeal from the Circuit Court
INURANCE COMPANY,)	of Kendall County.
)	
Plaintiff-Appellee,)	
)	No. 17 MR 55
v.)	
)	
MARY MURPHY, as Executor of the Estate of)	
JAMES HOLLANDER, Deceased, SANDRA)	
WENDLAND, CHEYENNE FLOWERS,)	
PAMELA SHEPPARD, as Guardian of the)	
Estate and Person of ALYSSA GUARINO,)	
a Disabled Person,)	
)	
Defendants-Appellants.)	
)	
and)	
)	
KEITH KEIGHER and J-M TRANSPORTS,)	
INC.)	
)	
Defendants.)	
-----)	
KEITH KEIGHER, and J-M TRANSPORTS,)	
INC.)	
)	
Counterplaintiff,)	
)	
v.)	
)	
MARY MURPHY, as Executor of the Estate of)	
JAMES HOLLANDER, Deceased,)	The Honorable

Counterdefendant.) Robert P. Pilmer,
) Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Justices Hutchinson and Spence concurred in the judgment.

ORDER

¶ 1 *Held:* Where the underlying complaints did not allege liability on the part of the named insured, the trial court properly determined that, under the umbrella policy at issue, the insurer had no duty to defend and indemnify the estate of an allegedly negligent driver of the insured's automobile; trial court affirmed.

¶ 2

¶ 3 Defendants, Mary Murphy, as Executor of the Estate of James Hollander, Deceased (Murphy), Sandra Wendland (Wendland), Cheyenne Flowers (Flowers), and Pamela Sheppard (Sheppard), as Guardian of the Estate and Person of Alyssa Guarino, a Disabled Person, (collectively, defendants), appeal the trial court's grant of summary judgment in favor of plaintiff, State Farm Mutual Automobile Insurance Company (State Farm). For the following reasons, we affirm.

¶ 4

I. BACKGROUND

¶ 5 On September 11, 2015, a multi-vehicle accident occurred at the intersection of Grove Road and U.S. Route 52 in Kendall County, Illinois. Grove Road approaching Route 52 was controlled by a stop sign. Route 52, intersecting with Grove Road, was a thru road without any traffic signals. When the accident occurred, Hollander was travelling southbound on Grove Road with Wendland and Guarino as passengers in Wendland's 2015 Nissan Altima, on route to visit Wendland's daughters in Iowa. Hollander drove Wendland's Nissan, Wendland sat in the front passenger seat, and Guarino sat in the back seat. Meanwhile, Flowers was traveling eastbound on Route 52 near Grove Road. Keigher was driving a semi tractor-trailer in the scope of his employment with J-M, traveling westbound on Route 52 near Grove Road. The accident

occurred when the Nissan collided with Keigher's semi tractor-trailer, which then collided with Flowers' vehicle. As a result of the collision, Hollander died.

¶ 6 A. The Underlying Complaints

¶ 7 Wendland¹, Sheppard², and Flowers³ each filed negligence actions against Hollander's estate seeking to recover damages for injuries sustained in the multi-vehicle accident. Flowers also named as defendants Keigher and his alleged employer at the time of the accident, J-M.⁴ All of the underlying complaints alleged that the collision was caused by Hollander's negligent acts or omissions. None of the underlying complaints alleged that Hollander was vicariously liable for any acts or omissions by Wendland. None of the complaints alleged that Wendland was negligent or liable in any manner.

¶ 8 B. Complaint for Declaratory Judgment

¶ 9 On July 11, 2017, plaintiff filed a declaratory judgment action stating that it was defending Hollander's estate in the underlying lawsuits under Wendland's primary automobile policy. Plaintiff acknowledged that Hollander was a "permissive user" of the Nissan. However, plaintiff sought a declaration that it did not owe any obligation to defend or indemnify

¹ *Sandra Wendland v. Mary Murphy, as Executor of the Estate of James Hollander, Deceased*, Case No. 16 L 41 ("Wendland complaint").

² *Pamela Sheppard, as Guardian of the Estate and Person of Alyssa Guarino, a Currently Disabled Person v. Mary Murphy, as Executor of the Estate of James Hollander, Deceased*, Case No. 16 L 39 ("*Guarino* complaint").

³ *Cheyenne Flowers v. Mary Murphy, as Executor of the Estate of James Hollander, Deceased, Keith Keigher and J-M Transports, Inc.*, Case No. 15 L 87 ("*Flowers* complaint").

⁴ In addition, Keigher and J-M filed counterclaims for contribution against Hollander's estate.

Hollander's estate in the underlying lawsuits under a \$1 million umbrella policy that it had issued to Wendland that was effective at the time of the accident.

¶ 10 Plaintiff alleged and argued the following. Plaintiff had no duty to defend or indemnify Hollander under the umbrella policy in the underlying lawsuits and counterclaims "because he does not qualify as an insured" under the umbrella policy issued to Wendland. The policy provided in part:

"COVERAGE L – PERSONAL LIABILITY

If a claim is made or a suit is brought against an insured for damages because of a loss for which the insured is legally liable and to which this policy applies, we will pay on behalf of the insured, the damages that exceed the retained limit. The most we will pay for such loss is the Coverage L Limit of Liability, as shown on the declarations page, regardless of the number of insureds who may be liable, claims made, or persons injured.

* * *

DEFINITIONS

6. 'insured' means:

a. you and your relatives whose primary residence is your household;

b. any other human being under the age of 21 whose primary residence is your household and who is in the care of a person described in 6.a.;

c. any other person or organization to the extent they are liable for the use of an automobile, recreational motor vehicle or watercraft by a person included in 6.a. or 6.b.

* * *

12. 'relative' means any person related to you by blood, adoption, or marriage.

* * *

15. ‘you’ and ‘your’ mean the person or persons shown as ‘Named Insured’ on the declarations page. If a named insured shown on the declarations page is a human being then you and your includes the spouse of the first person listed as a named insured if the spouse resides primarily with that named insured.”

¶ 11 C. Motion for Summary Judgment

¶ 12 On July 11, 2017, plaintiff filed a motion for summary judgment pursuant to section 2-1005 of the Code of Civil Procedure (735 ILCS 5/2-1005 (West 2016)). Plaintiff alleged and argued, in part, that Hollander did not fall within paragraph 6.c. of the umbrella policy because he was not liable or alleged to be liable for the use of a motor vehicle by a person described in paragraphs 6.a. or 6.b. “There are no allegations in the Underlying Lawsuits that Hollander [was] alleged to be liable for anyone else’s use of an automobile who would fall within Paragraphs 6.a. or 6.b.” These undisputed material facts establish that Hollander does not fall within the definition of an “insured” under the umbrella policy and, therefore, plaintiff is entitled to summary judgment, as a matter of law.

¶ 13 Defendants filed separate responses to plaintiff’s motion. All defendants argued that Hollander was an insured under paragraph 6.c. of the umbrella policy. Murphy, as executor of Hollander’s estate, argued that the paragraph 6.c. was ambiguous because, “[r]ules of grammatical construction indicate that the limiting phrase only modifies the final word before the phrase (*i.e.*, watercraft) and not the word ‘automobile’.” Therefore, paragraph 6.c. could be interpreted to include Hollander because he was “any other person or organization to the extent [he was] liable for the use of an automobile.”

¶ 14 Sheppard responded, arguing that Hollander qualified as an insured under paragraph 6.c. of the umbrella policy because the undisputed facts establish that the “use” of the vehicle was by Wendland to visit her daughters at college as testified by Wendland in her deposition. Thus,

Hollander was an “other person *** liable for the use of an automobile *** by a person included in 6.a. [Wendland] ***.” If plaintiff asserted that there was some other interpretation of paragraph 6.c., then the language should be deemed ambiguous, which requires the trial court to construe the policy in favor of the insured and against plaintiff.

¶ 15 Wendland responded, arguing that Hollander qualified as “any other person” in paragraph 6.c. As for the remainder of paragraph 6.c., the underlying lawsuits sought to hold Hollander’s estate “liable for use of an automobile *** by a person included in 6.a.,” namely, Wendland. The umbrella policy did not limit the term “use” to “driving” or “operation.” “Use” was not defined in the umbrella policy. A reasonable interpretation of the term “use” in the context of “use of an automobile” included drivers and passengers alike. Thus, Hollander qualified as an insured under paragraph 6.c.

¶ 16 On November 8, 2017, the trial court denied plaintiff’s motion for summary judgment, determining that “the definition of insured is sufficiently ambiguous as to whether Hollander is entitled to coverage under the Umbrella Policy.”

¶ 17 Plaintiff filed a timely motion to reconsider, arguing that the trial court erred in its application of existing law in reaching its decision denying State Farm’s motion for summary judgment.

¶ 18 After hearing argument on plaintiff’s motion to reconsider, on January 30, 2018, the trial court reversed its original ruling, stating, in its written order:

“The court finds that its previous interpretation of the insurance policy, and specifically the definition of the term ‘insured,’ was incorrect; and that under the language of the policy James Hollander does not qualify as an insured under the Umbrella Policy, nor does State Farm have a duty to defend or indemnify the Estate of James Hollander.”

The trial court, therefore, vacated its November 8, 2017, order and entered summary judgment in favor of plaintiff.

¶ 19 Defendants separately filed timely notices of appeal.⁵ This court consolidated these appeals. Plaintiff correctly notes that Keigher and J-M did not file notices of appeal.

¶ 20

II. ANALYSIS

¶ 21

A. Standard of Review

¶ 22 Defendants argue that the trial court erred by determining that, as a matter of law, Hollander was not an “insured” under the umbrella policy plaintiff issued to Wendland.

¶ 23 Our review of the trial court’s grant of summary judgment is *de novo*. *Home Insurance Co. v. Cincinnati Insurance Co.*, 213 Ill. 2d 307, 315 (2004). “Summary judgment is proper where, when viewed in the light most favorable to the nonmoving party, the pleadings, depositions, admissions, and affidavits on file reveal that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Id.*; 735 ILCS 5/2-1005(c) (West 2016). A genuine issue of material fact exists when the material facts are disputed, or when the material facts are undisputed but reasonable persons might draw different inferences from those undisputed facts. *Carney v. Union Pacific Railroad Co.*, 2016 IL 118984,

¶ 25. “Although summary judgment can aid in the expeditious disposition of a lawsuit, it

⁵ On February 23, 2018, Mary Murphy, as Executor of the Estate of James Hollander, Deceased, filed her notice of appeal (appeal No. 2-18-0154). On the same day Pamela Sheppard, as Guardian of the Estate of Alyssa Guarino, a Disabled Person, filed her notice of appeal (appeal No 2-18-0159). On February 27, 2018, Cheyenne Flowers filed her notice of appeal (appeal No. 2-18-0860). On February 28, 2018, Sandra Wendland filed her notice of appeal (appeal No. 2-18-0861).

remains a drastic means of disposing of litigation and, therefore, should be allowed only where the right of the moving party is clear and free from doubt.” *Williams v. Manchester*, 228 Ill. 2d 404, 417 (2008).

¶ 24 B. Duty to Defend and Indemnify

¶ 25 In a declaratory judgment action such as the case at bar, where the issue is whether the insurer has a duty to defend pursuant to an insurance policy, a court ordinarily looks first to the allegations in the underlying complaint and compares those allegations to the relevant provision of the insurance policy. *Pekin Insurance Co. v. Wilson*, 237 Ill. 2d 446, 455 (2010); *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 107-08 (1992). An insurer’s duty to defend arises when: (1) the complaint is brought against an insured; and (2) the facts as alleged in the complaint fall, or potentially fall, within the policy’s coverage. *Pekin Insurance Co.*, 237 Ill. 2d at 455 (2010). Moreover, where an insurer has no duty to defend, the insurer has no duty to indemnify. *Id.*

¶ 26 C. Interpretation of Insurance Policies

¶ 27 The construction of the provisions of an insurance policy involves a question of law, which we review *de novo*. See *Pekin Insurance Co.*, 237 Ill. 2d at 455; *Outboard Marine*, 154 Ill. 2d at 108. When construing the language of an insurance policy, a court’s primary objective is to ascertain and give effect to the intentions of the parties as expressed in their insurance contract. *Pekin Insurance Co.*, 237 Ill. 2d at 455. If the words of the policy are clear and unambiguous, the court must afford them their plain and ordinary meaning. *Travelers Insurance Co. v. Eljer Manufacturing, Inc.*, 197 Ill. 2d 278, 292 (2001); *Outboard Marine*, 154 Ill. 2d at 108.

¶ 28 Where ambiguity exists, the policy will be construed strictly against the insurer, who drafted the policy, and liberally in favor of coverage for the insured. *Nicor, Inc. v. Associated*

Electric & Gas Insurance Services Ltd., 223 Ill. 2d 407, 417 (2006). Whether an ambiguity exists turns on whether the policy language is subject to more than one reasonable interpretation. *Hobbs v. Hartford Insurance Co. of the Midwest*, 214 Ill. 2d 11, 17 (2005). Creative possibilities may be suggested, but only reasonable interpretations will be considered sufficient to establish an ambiguity. *Id.* Thus, courts will not strain to find an ambiguity where none exists. *McKinney v. Allstate Insurance Co.*, 188 Ill. 2d 493, 497 (1999). Further, the fact that a term is not defined by the policy does not render it ambiguous. *Nicor*, 223 Ill. 2d at 417.

¶ 29 Defendants contend that Hollander was an “insured” under paragraph 6.c. because (1) Wendland was using her vehicle as a passenger to visit her daughter when the accident occurred; and (2) applying the last antecedent rule provides a reasonable interpretation of paragraph 6.c. or renders the definition of the term “insured” ambiguous. Plaintiff, on the other hand, asserts that Hollander was not an insured under the umbrella policy because the underlying complaints do not allege that Hollander is liable for Wendland’s acts or omissions.

¶ 30 Again, the umbrella policy provided:

“If a claim is made or a suit is brought against an *insured* for damages because of a loss for which the *insured* is legally *liable* and to which this policy applies, we will pay on behalf of the *insured*, the damages that exceed the retained limit.

* * *

6. ‘*insured*’ means:

a. [Wendland and]

* * *

c. any other person *** to the extent they are *liable* for the use of an automobile, recreational motor vehicle or watercraft *by a person included in 6.a.* ***.” (Emphases added.)

¶ 31 We determine that the policy language is clear and unambiguous. For coverage to exist, a claim must be brought against an “insured” for damages for which the insured is “liable.” Although Hollander’s estate was named as a defendant in the underlying lawsuits, Hollander was not named as an insured in Wendland’s umbrella policy. Further, none of the underlying lawsuits alleged that Hollander was liable for *Wendland’s* use of the Nissan. The underlying lawsuits alleged that Hollander was negligent in *his* use and operation of the Nissan. To be clear, no party alleged that Wendland, the named insured, was negligent or liable in any manner. Therefore, Hollander was not an insured under the umbrella policy and, thus, plaintiff had no duty to defend or indemnify Hollander’s estate.

¶ 32 Defendants argue that the umbrella policy “simply required [Wendland] to be ‘using’ the vehicle at the time of the occurrence.” Defendants’ interpretation ignores and eliminates the connection between “liable for the use of an automobile” and “by [Wendland]” from the definition above. If all that is required is a named insured’s use of the vehicle to trigger a duty to indemnify under paragraph 6.c., then the phrase “to the extent they are *liable* for” is mere surplusage. See *Central Illinois Light Co. v. Home Insurance Co.*, 213 Ill. 2d 141, 154 (2004) (citing *Outboard Marine*, 154 Ill. 2d at 123 (courts must strive to give each term in the policy meaning unless to do so would render the clause or policy inconsistent or inherently contradictory)). Thus, Wendland’s use of the vehicle, alone, without more, is not sufficient to trigger coverage for Hollander. Rather, the underlying complaints must allege that Hollander was liable for Wendland’s use. Because the underlying complaints do not contain any allegations that Hollander could be liable for Wendland’s use of her vehicle, Hollander is not an “insured.”

¶ 33 Our opinion comports with federal cases that analyzed similar insurance policy language and underlying lawsuits and reached the same conclusion that we reach. For example, in *Vulcan*

Materials v. Casualty Insurance Co., 723 F. Supp. 1263 (N.D. Ill. 1989), Michael Giguere, an employee of a trucking company, was killed while delivering a load of scrap metal to Vulcan Materials when he was struck by a magnet that fell from Vulcan's crane. *Id.* at 1263-64. The trucking company was insured by Casualty Insurance Company. Giguere's ex-wife and administrator of his estate sued Vulcan, and Vulcan tendered its defense to Casualty. *Id.* Casualty denied that it was required to defend Vulcan. *Id.* Vulcan sued Casualty, seeking declaratory relief, arguing that Vulcan was an "insured" under Casualty's automobile liability policy issued to the trucking company. *Id.* The policy defined "insured" as (a) the trucking company and, in pertinent part, "(d) any other person or organization but only with respect to his or its liability because of acts or omissions of an insured under (a)." *Id.* at 1264. Vulcan argued that the trucking company, the "named insured," negligently failed to train Giguere and, thus, the trucking company's liability arose "because of acts or omissions of an insured under (a)." *Id.* The court rejected Vulcan's interpretation. Instead, the court stated, "Paragraph (d) is plainly a vicarious liability provision and nothing more. It insures all those who may be vicariously liable for acts or omissions of the named insured." *Id.* at 1265. Because there was no basis for finding Vulcan vicariously liable for the trucking company's acts, the court ruled that Casualty had no duty to defend Vulcan. *Id.* at 1265-66.

¶ 34 Similarly, in *State Farm Mutual Automobile Insurance Co. v. Burgin*, 752 F. Supp. 877 (W.D. Ark. 1990), John Burgin was injured in an automobile accident when a Chevrolet van, owned by Phillip and Charlotte Steele and driven by Ron Casteel, in which Burgin was a passenger, collided with another vehicle. *Id.* at 879. Casteel sought coverage under a policy issued to the Steeles by Shelter Mutual Insurance Company (Shelter), under which the Chevrolet van qualified as a "non-owned auto." *Id.* at 79-80. State Farm brought a declaratory judgment action to determine which, if any, policy issued to the Steeles provided coverage for Burgin's

injuries. *Id.* at 878. The Shelter policy included as “insureds” “any other person or organization which does not own or hire the [non-owned] auto but is liable for its use by one of the above persons.” *Id.* at 880. The “above persons” included the Steeles and their relative using the non-owned vehicle with permission of the owner. *Id.* The court, applying Arkansas law, held that, under the terms of the insurance policy, Casteel was not an “insured,” because Casteel “cannot be ‘liable for [the van’s] use by (the Steeles or their relatives).’” *Id.* In making this determination, the court looked to the underlying complaint and stated that, “Burgin does not present a theory of liability encompassing [the Steeles or their relatives].” *Id.*

¶ 35 These cases are instructive to the extent that, defendants in this case did not present a theory of liability stemming from Wendland, and therefore, Hollander is not an insured.

¶ 36 Defendants also argue that applying the last antecedent rule provides a reasonable interpretation of paragraph 6.c. or renders the definition of the term “insured” ambiguous. The last antecedent rule, a grammatical canon, “provides that relative or qualifying words, phrases, or clauses are applied to the words or phrases immediately preceding them and are not construed as extending to or including other words, phrases, or clauses more remote.” *In re E.B.*, 231 Ill. 2d 459, 467 (2008). Again, the umbrella policy provided:

“6. ‘insured’ means:

a. [Wendland and]

* * *

c. any other person *** to the extent they are *liable* for the use of an automobile, recreational motor vehicle or watercraft by a person included in 6.a. ***.” (Emphases added.)

Thus, by applying the last antecedent rule, defendants contend that the final phrase, “by a person included in 6.a.” modifies only the word “watercraft” and not “automobile” or “recreational

motor vehicle.” Under defendants’ interpretation, an “insured” includes any person who is liable for the use of any automobile regardless of their connection with the named insured or the insured vehicle. Defendants’ use of the last antecedent rule eliminates the phrase “by a person included in 6.a. [the named insured, *i.e.*, Wendland].”

¶ 37 We reject defendants’ interpretation. The last antecedent rule is a grammatical canon of construction resorted to only when terms are deemed ambiguous. We believe the terms of the umbrella policy at issue here are clear and unambiguous. As such, there is no need to resort to canons of construction such as the last-antecedent rule. See *Doctors Direct Insurance, Inc. v. Bochenek*, 2015 IL App (1st) 142919, ¶ 26 (rejecting use of the last antecedent rule where statute was clear and unambiguous). Further, we reject defendants’ creative interpretation because it is strained, forced, unnatural, and unreasonable, and one that leads to an absurd result. See *Bozek v. Erie Insurance Group*, 2015 IL App (2d) 150155, ¶ 19.

¶ 38 Accordingly, we determine that the trial court properly granted summary judgment in plaintiff’s favor.

¶ 39 **III. CONCLUSION**

¶ 40 For the reasons stated, we affirm the trial court’s order.

¶ 41 Affirmed.