IN THE COURT OF APPEALS OF IOWA

No. 8-061 / 07-0007
Filed May 29, 2008

SHELTER MUTUAL INSURANCE COMPANY,
Plaintiff-Appellee,

vs.

PAUL DAVIS and KERRY DAVIS,
Defendants-Appellants.

PAUL DAVIS and KERRY DAVIS,
Third-Party Plaintiffs-Appellants,

vs.

RYAN A. EIFLER, by and through his Parents, Legal Guardians and Next Friends TERRY L. EIFLER and RENEE A. EIFLER, TERRY L. EIFLER, and RENNEE A. EIFLER,
Third-Party Defendants-Appellants.

Appeal from the Iowa District Court for Polk County, Donna L. Paulsen, Judge.

Paul and Kerry Davis appeal from a declaratory judgment ruling that found neither their homeowners' nor umbrella insurance policies provided coverage for their insurance claim. **REVERSED.**

J. Russell Hixson and Terrence Brown of Hixson & Brown, P.C., Clive for appellants.

Brian C. Ivers of McDonald, Woodward & Ivers, P.C., Davenport, for appellee.

Heard by Sackett, C.J., and Huitink and Mahan, JJ.

MAHAN, J.

Paul and Kerry Davis appeal from a district court declaratory judgment ruling that found neither their homeowners' nor umbrella insurance policies provided coverage for claims arising out of an accident involving their all terrain vehicle (ATV). We reverse.

I. Background Facts and Prior Proceedings

At the times pertinent to this appeal, Paul and Kerry Davis owned a vacation home in Panora, Iowa. At some point, the Davises met with Rod Brannan, a Shelter Mutual Insurance Company agent, and asked for insurance with "full liability coverage on everything." The Davises requested full liability coverage on their Ankeny home, their Panora vacation home, their vehicles, their watercraft, and each and every piece of "recreational equipment." Brannan sold them policies for homeowners' insurance, automobile liability, and watercraft liability. Brannan also sold them a $1 million umbrella policy to provide excess personal liability coverage.

In October 2002, after he had purchased the above-mentioned policies, Paul purchased two ATVs. Paul contacted Brannan, provided him the necessary information about the ATVs, and requested that he provide "full coverage" for the ATVs. Brannan told him that he would have "full coverage" for the ATVs.

On May 31, 2003, Paul gave his sons Zach and Alex permission to invite several friends to their Panora vacation home. Paul kept the keys to the ATVs hidden in his bedroom. Some of the boys snuck into his bedroom, took the keys, and went for a ride on the ATVs. One of the boys, third-party defendant Ryan Eifler, drove an ATV off the Davises' property onto a road owned and maintained

by the local homeowners' association. Eifler lost control of the ATV, struck a tree, and came to rest in a "community area" of the local homeowner association. Eifler sustained serious injuries in the crash. Eifler's parents brought a suit against Paul and Kerry Davis for their son's injuries.

Shelter filed a petition for declaratory judgment and motion for summary judgment asking the district court to declare that Shelter had no coverage obligations to Paul and Kerry Davis[1] in connection with the Eiflers' lawsuit. Shelter noted that the ATVs were not listed under the Davises' automobile policy, and that the provisions in the homeowners' and umbrella policies excluded coverage for recreational vehicle accidents that occurred away from the premises insured by the homeowners' policy.[2] The Davises resisted Shelter's motion and filed a cross-motion for summary judgment claiming that, even if the coverage was excluded under the precise terms of these policies, the exclusions should be avoided under the reasonable expectations doctrine.

The parties agreed there were no disputed issues of material fact and agreed to a "stipulated trial" on the merits. The district court issued a ruling

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[1] The action was filed against Paul and Kerry Davis and was later amended to include Alex Davis and another boy at the party, Alexander Hanson. The Eiflers were later brought into the declaratory judgment action via the Davises' third-party petition.

[2] The homeowners' policy provided:

> Under Personal Liability and Medical Payments to Others, we do not cover:
>
> 1. bodily injury or property damage arising out of the ownership, maintenance, use or entrustment of:
>
> . . . .
>
> (c) any recreational motor vehicle . . . owned by an insured, if the bodily injury or property damage occurs away from the insured premises . . . .

The homeowners' policy defined "insured premises," in relevant part, to include "any structures or grounds used by [the insured] in connection with [the insured's] residence premises."

requiring Shelter to provide coverage. The court found the homeowners' and umbrella policies provided coverage because the accident did not occur away from the insured premises; it occurred in an area used "in connection with" the vacation home and "owned in part" by the Davises.

On appeal, our court reversed the district court's decision, specifically concluding the accident did not occur on property used "in connection with" the vacation home or "owned in part" by the Davises. *Shelter Mut. Ins. Co. v. Davis*, 6-072 (Iowa Ct. App. April 12, 2006). However, we remanded the case back to the district court for further proceedings so that the court could address the Davises' reasonable expectations argument. *Id.*

On remand, the parties agreed to submit the reasonable expectations issue to the court on the record presented at the original stipulated trial. The district court granted judgment for Shelter, noting the doctrine of reasonable expectations did not apply because the Davises did not own the ATVs when they purchased the homeowners' and umbrella policies. The court also concluded the doctrine did not apply because "general descriptions of 'full coverage' are [not] enough to invoke reasonable expectation and grant coverage."

The Davises and Eiflers now appeal, claiming the court erred when it found the doctrine of reasonable expectations inapplicable to the case.[3]

[3] Once proof briefs were filed in this case, Shelter filed a motion to strike portions of appellants' reply brief. The appellants responded with a motion to strike portions of Shelter's proof brief. We deny both motions and note that we decide this case on issues that were not the subjects of dispute in the two post-brief motions.

II. Standard of Review

Our review of actions for declaratory relief is governed by the manner in which the action was tried in district court. *See Smith v. Bertram*, 603 N.W.2d 568, 570 (Iowa 1999). This declaratory judgment action was at law. Our review, therefore, is for correction of errors at law. *Id.* While we are not bound by the district court's legal conclusions, we are bound by its findings of fact if such findings are supported by substantial evidence in the record. *Id.* In this case there are no disputed facts. Therefore, our only concern is the application of the law to those facts. *See Kulish v. Ellsworth*, 566 N.W.2d 885, 889 (Iowa 1997) ("Where the only dispute concerns legal consequences flowing from undisputed facts, our review is limited to whether the district court correctly applied the law.").

III. Merits

The Davises raise numerous arguments on appeal. Because we find the issue dispositive, we focus on their claim that they relied on Brannan's assurance that they would have "full coverage" on their newly purchased ATVs and that a reasonable person would expect, based on this assurance, to be covered for accidents such as the one at issue in this case.

Rodman v. State Farm Mutual Automobile Insurance Co., 208 N.W.2d 903 (Iowa 1973), is the seminal case setting forth the doctrine of reasonable expectations in Iowa. Under this doctrine, the reasonable expectations of the insured may not be frustrated even though a "painstaking study" of the policy would negate those expectations. *Rodman*, 208 N.W.2d at 906 (quoting Keeton, Insurance Law-Basic Text §6.3(a), at 351 (1971)). The court explained the rationale of the doctrine in this way:

> While insurance policies and binders are contractual in nature, they are not ordinary contracts but are 'contracts of adhesion' between parties not equally situated. . . . *The company is expert in its field and its varied and complex instruments are prepared by it unilaterally* whereas the assured or prospective assured is a layman unversed in insurance provisions and practices. *[The insured] justifiably places heavy reliance on the knowledge and good faith of the company and its representatives and they, in turn, are under correspondingly heavy responsibility to him*.

Id. at 905-06 (citations omitted) (emphasis added).

Under this doctrine an insured can avoid an exclusion of coverage if that exclusion "(1) is bizarre or oppressive, (2) eviscerates a term to which the parties have explicitly agreed, or (3) eliminates the dominant purpose of the policy." *Benavides v. J.C. Penney Life Ins. Co.*, 539 N.W.2d 352, 356 (Iowa 1995). However, as a prerequisite to the applicability of this doctrine, the insured must show the policy is such that "an ordinary layperson would misunderstand its coverage" or that there were "circumstances attributable to the insurer that fostered coverage expectations." *Id.* at 357. Those circumstances include, among other things, the underlying negotiations between the parties. *Clark-Peterson Co. v. Indep. Ins. Assoc., Ltd.*, 492 N.W.2d 675, 677 (Iowa 1992). When analyzing the negotiations between the insurer and insured, we review "with a view to the liability for which insurance coverage was sought." *Id.*

The district court relied on *Vos v. Farm Bureau Life Insurance Co.*, 667 N.W.2d 36, 50 (Iowa 2003), for its conclusion that no expectations of coverage could have been created concerning the ATVs because the Davises did not own the ATVs when the Shelter policies were purchased. *Rodman* and *Vos* both state that the doctrine applies only to representations made by the insurer at the time of policy negotiation and issuance. *Vos*, 667 N.W.2d at 50; *Rodman*, 208

N.W.2d at 908. However, *Rodman*, the first case in which Iowa set forth the doctrine, states that there may be "other circumstances attributable to the insurer" which could cause expectations. *Rodman*, 208 N.W.2d at 908.

Upon our review of the undisputed facts in this case, we conclude that the conversation between Paul and his Shelter agent where Paul asked for full coverage on his new ATVs constitutes a distinct set of negotiations to purchase coverage on these new ATVs or at least sufficient "other circumstances attributable to the insurer" which would foster coverage expectations on these new ATVs. We also find the off-premises exclusions effectively eliminated the dominant purpose for this requested policy.

The facts in this case are undisputed. The evidence regarding the negotiations between Paul and his Shelter insurance agent is limited to the following excerpt from an affidavit by Paul:[4]

> I have purchased insurance from my Shelter Insurance Agent Rod Brannan, for the past few years. I had all my personal liability policies with Shelter and Mr. Brannan, including our home, our lake home, and all of our motor vehicles, boats, jet skis and ATVs. I intended and directed that Mr. Brannan and Shelter provide full liability coverage on everything, and I purchased a one million dollar ($1,000,000) umbrella policy form Shelter to provide excess coverage. I relied on Mr. Brannan to see to it that each and every vehicle and piece of recreational equipment was fully insured for personal liability, and after looking over the "schedule of underlying insurance" charted on the declarations page for this umbrella policy, I believed that I was fully covered across the board.
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> Immediately after I purchased the ATVs for my sons, including the 450cc ATV involved in Ryan Eifler's accident, I contacted Mr. Brannan, provided him with the necessary information, and requested that he provide full coverage for these vehicles. I was specifically told that I would have full coverage on the ATVs.

[4] Shelter did not present any evidence refuting Paul's statement describing these negotiations.

> . . . I now understand it is Shelter's position that the 450cc ATV did not have liability coverage for the accident under my homeowner's or my umbrella policies because the accident occurred off my lot at Lake Panorama and that it was supposed to have been listed and covered instead under my automobile policy. It was Mr. Brannan and Shelter Insurance Company's decision to list the ATVs under the homeowner's policy. I was not told that the coverage for an accident depended upon which policy it was under, or where an accident might take place. If I had been made aware that there was any need to list the ATVs under my auto policy, I would have done so.

In a pretrial deposition, an underwriter for Shelter[5] described how an individual insured by a Shelter homeowner's policy had "limited" coverage for recreational vehicles. The underwriter went on to state that if an individual asked for the broadest and most extensive liability for their ATV, then he or she would need an automobile policy for the ATV.

Despite Paul's specific request for full coverage and Brannan's assurance that he would be fully covered, Brannan did not place the ATVs under the Davises' automobile policy nor did he tell them that they would only be covered so long as they used their ATVs in a specific geographic area.

The insurance company "is expert in its field" and the insured is forced to place a "heavy reliance" on the "varied and complex instruments" prepared by the insurance company and on the "good faith of the company and its representatives." *Id.* at 905-06. Accordingly, the company and its representatives likewise have a "heavy responsibility" to the insured. *Id.* at 905.

Had Paul not called Brannan and asked for "full coverage" on these newly purchased ATVs, our decision on appeal would hinge upon whether the Davises'

[5] Although not explicitly stated in the record, the appellants, in their appellate brief, identify Reta Collins as an underwriter for Shelter insurance. Shelter insurance does not dispute this description of Reta's title in its appellate brief.

conversations with Brannan at the time they purchased the multiple insurance policies were sufficient to foster "full," rather than "limited," coverage expectations for any ATVs that may have been purchased in the future. However, the facts in this case establish that Paul called Brannan and engaged in a second set of negotiations in which he specifically asked for "full coverage" on his newly purchased ATVs. Paul provided Brannan with the necessary information about the ATVs and Brannan told Paul he would have "full coverage" on the ATVs. Paul relied on his Shelter agent's expertise to carry out his request and walked away from this second set of negotiations with the understanding that he now had an agreement with Shelter for "full coverage" on the new ATVs.

Shelter contends that regardless of its agent's statement or actions, the phrase "full coverage" is too vague to support a reasonable expectations argument and too vague to constitute the "dominant purpose" of the policy. The district court agreed with Shelter's argument and found our supreme court's holding in *LeMars Mutual Insurance Co. v. Joffer*, 574 N.W.2d 303 (1998), established that statements regarding "full coverage" were insufficient to foster coverage expectations. We disagree with this interpretation of *Lemars*.

In *LeMars*, John and Ruth Joffer were involved in an accident with an uninsured motorist while they were driving their Buick LeSabre for business purposes. 574 N.W.2d at 305. At the time of the accident, the Joffers held two separate policies with LeMars Mutual Insurance Company. *Id.* One policy covered their personal vehicles, including the Buick, with an uninsured motorist coverage limit of $25,000 per person and $50,000 per accident. *Id.* The second policy was a business automobile policy for their two-ton truck. *Id.* This policy

provided uninsured motorist coverage up to a limit of $500,000. *Id.* LeMars Mutual paid the Joffers the limits of the uninsured motorist coverage pursuant to their personal automobile policy, but refused to provide additional coverage under their business automobile policy. *Id.*

LeMars Mutual filed a petition for declaratory judgment requesting the court to rule that the business policy did not provide additional coverage based on an owned-but-not-insured exclusion in the business policy. *Id.* The court received evidence that when the Joffers had questioned their agent about the extent of their automobile coverage, she had told them they were "fully covered." *Id.* at 307-08. However, the Joffers' insurance agent testified that she had encouraged the Joffers to purchase higher uninsured motorist coverage limits on their personal vehicles, but they had declined to do so. *Id.* at 311. The district court granted summary judgment for LeMars Mutual, finding the accident was only covered under the Joffers' personal policy, rather than both the personal policy and the business policy. *Id.* at 308.

The Joffers appealed, challenging the court's interpretation of the owned-but-not-insured exclusion provision and claiming the district court erred when it did not invalidate the exclusion under the doctrine of reasonable expectations. *Id.* at 308-11. The Joffers claimed their interpretation of the agent's use of the phrase "fully covered" meant that their business automobile policy limits for damages would be stacked on top of their existing personal automobile liability limits. *Id.* Our supreme court disagreed, noting it would not require LeMars Mutual to provide "higher" coverage through both policies based upon the clear and applicable exclusion in the business policy. *Id.* at 311. The court also

rejected the Joffer's argument that the owned-but-not-insured exclusion was contrary to their reasonable expectations of full coverage because "the agent's general statements regarding coverage [were] insufficient to foster coverage expectations *such as the Joffers allege*." *Id.* (emphasis added).

Because there is a significant difference between the full coverage alleged in *LeMars* and the full coverage alleged in the present case, we find the phrase "full coverage" is not inapplicable to the doctrine of reasonable expectations. As noted above, the Joffers claimed the phrase "fully covered" meant "higher" coverage than that actually contained in their personal automobile policy. In essence, the Joffers had coverage, they just had lower dollar-value limits then they had anticipated. The present case is not a dispute about the dollar value of policy limits. Brannan told Paul that he would have "full coverage" on the ATVs. However, the Davises actually had no coverage unless the accident occurred on their premises.

A reasonable interpretation of the phrase "full coverage" under the circumstances of this case does not suggest that the Davises would only be covered if the vehicle was used in a very limited area. The phrase "full coverage" suggests coverage for accidents both on and off the insured premises.

Paul contacted his Shelter agent for the sole purpose of acquiring "full coverage" on his newly acquired ATVs. When his agent told him he would be fully covered, Paul reasonably relied on this representation and believed that he had just procured coverage on his new ATVs. Because Paul received far less than the "full coverage" he thought he had purchased, we find the off-premises

exclusion should be voided under the reasonable expectations doctrine because it eliminated the dominant purpose of his request for “full coverage” for the ATVs.

IV. Conclusion

Because we find the off-premises exclusion effectively eliminated the dominant purpose of this policy, we find as a matter of law that coverage should be afforded under the doctrine of reasonable expectations for the limits set forth in both policies.

REVERSED.