IN THE COURT OF APPEALS OF IOWA

No. 1-721 / 11-0570
Filed November 23, 2011

DALE BOELMAN and NANCY BOELMAN,
Plaintiffs-Appellees,

vs.

GRINNELL MUTUAL REINSURANCE COMPANY,
Defendant-Appellant.

GRINNELL MUTUAL REINSURANCE COMPANY,
Counterclaimant,

vs.

DALE BOELMAN and NANCY BOELMAN,
Counterclaim Defendants.

Appeal from the Iowa District Court for Butler County, Stephen P. Carroll, Judge.

Grinnell Mutual Reinsurance Company appeals a summary judgment ruling in favor of their insureds, Dale and Nancy Boelman. **AFFIRMED.**

Douglas A. Haag of Patterson law Firm, L.L.P., Des Moines, for appellant.

Bruce J. Toenjes of Nelson & Toenjes, Shell Rock, for appellees.

Heard by Vaitheswaran, P.J., and Potterfield and Doyle, JJ.

DOYLE, J.

Insurance company Grinnell Mutual Reinsurance Company appeals a summary judgment ruling in favor of their insureds, Dale and Nancy Boelman. We affirm.

***I. Background Facts and Proceedings*.**

There is no dispute concerning the underlying facts. On October 4, 2008, 535 feeder pigs suffocated and died in a building on the Boelmans' farm. The pigs, owned by Budke Farms, were in the exclusive care, custody, or control of the Boelmans pursuant to a "Sew Nursery Agreement." The Boelmans paid Budke Farms $24,075 as compensation for the dead pigs, then made a claim under their Grinnell Mutual "Farm Guard" insurance policy for the casualty loss. Grinnell Mutual denied coverage.

The Boelmans filed their petition, later amended, against Grinnell Mutual for breach of contract under the insurance policy. Grinnell Mutual answered and filed a counterclaim seeking a declaratory judgment that the Boelmans' loss was not covered under the insurance policy. Grinnell Mutual later filed a motion for summary judgment asserting there was no genuine issue as to any material fact and that as a matter of law, the Boelmans' claim was not covered under the policy. The Boelmans also sought summary judgment, agreeing the background facts were not in dispute, but disagreeing with Grinnell Mutual's assertion their claim was not covered under the policy.

Grinnell Mutual argued exclusions within the policy precluded any liability coverage to the Boelmans for the pig loss. The Boelmans argued the custom feeding endorsement they purchased negated the exclusions. The amount of the

loss was not in dispute. Following a hearing, the district court entered its ruling, concluding:

> Under the objectively held expectations of reasonable persons in the [Boelmans'] position, coverage under the policy should obtain. [The Boelmans'] reasonable expectations arise not from sources totally extrinsic to the policy but from the policy language itself, as contained in the endorsement for their custom feeding operation.

The court denied Grinnell Mutual's motion for summary judgment, granted the Boelmans' motion for summary judgment, and entered a $24,075 judgment in favor of the Boelmans. Grinnell Mutual appeals.

***II. Scope and Standards of Review*.**

We review the district court's summary judgment rulings for the correction of errors at law. Iowa R. App. P. 6.907; *Travelers Indem. Co. v. D.J. Franzen, Inc.*, 792 N.W.2d 242, 245 (Iowa 2010). "To obtain a grant of summary judgment on some issue in an action, the moving party must affirmatively establish the existence of undisputed facts entitling that party to a particular result under controlling law." *Farm Bureau Life Ins. Co. v. Chubb Custom Ins. Co.*, 780 N.W.2d 735, 739 (Iowa 2010) (citation omitted). "When no extrinsic evidence is offered on the meaning of language in a policy, 'the interpretation and construction of an insurance policy are questions of law for the court.'" *Id.* (citation omitted). "If the only conflict concerns the legal consequences flowing from undisputed facts, entry of summary judgment is appropriate." *Nationwide Agri-Business Ins. Co. v. Goodwin,* 782 N.W.2d 465, 469 (Iowa 2010) (citation omitted).

***III. Analysis*.**

On appeal, Grinnell Mutual contends the district court erred in finding the "custom feeding endorsement" negated all of the relevant exclusions contained in the policy. Grinnell Mutual argues the exclusions under Coverage A, excluding coverage for "'property damage' to property . . . in the care, custody or control of any 'insured person,'" and Coverage A-1, excluding coverage for "'property damage' arising out of 'custom farming,'" unambiguously exclude the Boelmans' liability for the loss of the pigs and the "custom feeding endorsement" does not modify those exclusions. The Boelmans assert the policy does not unambiguously exclude coverage for the custom feeding of livestock and when the policy is read as a whole, it either provides coverage for their loss or it is ambiguous.

***A. Principles of Construction and Interpretation*.**

The crux of the dispute in this case centers on the appropriate construction and interpretation of the Grinnell Mutual policy.

> The construction of an insurance policy is the process of determining the policy's legal effect; interpretation is the process of determining the meaning of the words used in the policy. . . . In the construction of insurance policies, the cardinal principle is that the intent of the parties must control; and except in cases of ambiguity this is determined by what the policy itself says.

Id. at 470 (internal citations and quotations omitted). "When construing insurance policies we consider the effect of the policy as a whole, in light of all declarations, riders, or endorsements attached." *Ferguson v. Allied Mut. Ins. Co*., 512 N.W.2d 296, 299 (Iowa 1994).

> The test for ambiguity is an objective one: Is the language fairly susceptible to two interpretations? Only when the policy

> language is susceptible to two reasonable interpretations do we find an ambiguity.

Nationwide Agri-Bus. Ins. Co., 782 N.W.2d at 470 (internal citations and quotations omitted). A mere disagreement between parties will not establish ambiguity. *Kibbee v. State Farm Fire & Cas. Co.*, 525 N.W.2d 866, 868 (Iowa 1994). "Ambiguity exists if, after the application of pertinent rules of interpretation to the face of the instrument, a genuine uncertainty results as to which one of two or more meanings is a proper one." *Cairns v. Grinnell Mut. Reins. Co.*, 398 N.W.2d 821, 824 (Iowa 1987) (citations and internal quotation omitted).

> [The Iowa Supreme Court] has held that an insurer assumes a duty to define any limitations or exclusionary clauses in clear and explicit terms. Thus, when an exclusionary provision is fairly susceptible to two reasonable constructions, the construction most favorable to the insured will be adopted. Nonetheless, if there is no ambiguity, the court will not write a new contract of insurance for the parties. If exclusionary language is not defined in the policy, we give the words their ordinary meaning. An exclusion that is clear and unambiguous must be given effect.

Nationwide Agri-Bus. Ins. Co., 782 N.W.2d at 470 (internal citations and quotations omitted).

B. The Policy.

The Boelmans were issued a "Farm Guard" insurance policy by Grinnell Mutual for farm and personal liability protection. The policy set forth five different types of liability coverages: A, A-1, B, C, and D. Relevant here, Coverage A (LIABILITY TO PUBLIC) stated:

> [Grinnell Mutual] will pay subject to the liability limits shown for LIABILITY TO PUBLIC COVERAGE and the terms of the policy all sums arising out of any one loss which any "insured person" becomes legally obligated to pay as damages because of "bodily injury" or "property damage" covered by this policy.

Coverage A-1 (DAMAGE TO PROPERTY OF OTHERS) provided:

> [Grinnell Mutual] will pay subject to the liability limits shown for LIABILITY TO PROPERTY OF OTHERS COVERAGE and the terms of the policy all sums arising out of any one loss for "property damage":
>
> 1. to property owned by others in the care of any "insured person".

The policy then set forth exclusions that generally applied under any of the coverages, as well as specific exclusions under Coverage A, Coverage A-1, and other coverages not relevant here. The exclusions set forth "**UNDER ANY OF THE COVERAGES**" stated, among other things:

> 6. [Grinnell Mutual does] not cover "bodily injury" or "property damage" arising out of:
>
> a. "custom farming" operations of any "insured person" if the "total gross receipts" from all "custom farming" exceed $2,000 in the twelve months of the prior calendar year. For purposes of this provision, the phrase "total gross receipts" means all monetary amounts received by any "insured person" or his agent or employee arising out of the "custom farming" operations . . . .

The policy defined "custom farming" as

> any activity arising out of or connected with:
>
> a. the use, lease, rental, maintenance, or transportation of any . . . animal for agricultural purposes; or
>
> b. care or raising of "livestock"[1] . . . by any "insured person" for any other person or organization in accordance with a written or oral agreement.

Additionally, the policy defined "property damage" as "the physical injury to or destruction of tangible property. 'Property damage' does not include loss of use unless the property has been physically injured or destroyed."

The exclusions set forth "**UNDER LIABILITY TO PUBLIC—COVERAGE A**," included, in relevant part:

---

[1] "Livestock" under the policy included "swine."

> 5. [Grinnell Mutual does] not cover "property damage" to property . . . in the care, custody or control of any "insured person" . . . .

Similarly, the exclusions set forth "**UNDER DAMAGE TO PROPERTY OF OTHERS—COVERAGE A-1**," stated, in relevant part:

> 3. [Grinnell Mutual] will not pay for "property damage" arising out of "custom farming".

The Boelmans were issued a "Custom Feeding Endorsement" by Grinnell Mutual, for which they paid an additional premium. A copy of the endorsement is set forth below:

PLEASE READ THIS ENDORSEMENT CAREFULLY, AS IT MODIFIES THE POLICY.

CUSTOM FEEDING ENDORSEMENT

Attached to and forming a part of:

Farm-Guard Policy

EXCLUSIONS

UNDER ANY OF THE COVERAGES

In consideration of the premium charged, exclusion 6.a. under this section of the policy does not apply if:

1) the "bodily injury" or "property damage" arises from the activities of care or raising of "livestock" or "poultry" by any "insured person" for any other person or organization in accordance with a written or oral agreement; and

2) "your" "total gross receipts" for the prior calendar year from the activities described in paragraph 1) do not exceed the amount of gross receipts as stated on "your" declaration page or are:

(Please check box which applies)

- [x] not more than $150,000
- [ ] not more than $300,000
- [ ] not more than $600,000
- [ ] not more than $900,000

If the amount of "total gross receipts" is not listed on your Declaration page and no box is checked, the minimum of not more than $150,000 applies.

3) For purposes of this provision, the phrase "total gross receipts" means all monetary amounts received by any "insured person" or his agent or employee arising out of the activities described in paragraph 1) above.

All other terms and provisions of the policy apply.

This endorsement may not be changed or waived except by a written document issued by "us".

C. Discussion.

In the "**EXCLUSIONS**" portion of the policy, under the "**UNDER ANY OF THE COVERAGES"** heading, paragraph 6(a) expressly provides, without applying the custom feeding endorsement, that Grinnell Mutual does not cover bodily injury or property damage arising out of custom farming operations where the total gross receipts from the custom farming exceeds $2,000 a year. Without the custom feeding endorsement, there is no question the Boelmans' liability stemming from their custom feeding operation would not be covered by the policy. But, the Boelmans requested, and paid a premium to Grinnell Mutual, for the custom feeding endorsement, which expressly and unequivocally negates the paragraph 6(a) exclusion. On its face, the endorsement appears to provide an insured with bodily injury and property damage coverage for liability arising "from the activities of care or raising of "livestock" . . . by any "insured person" for any other person . . . in accordance with a written . . . agreement . . . ," so long as gross receipts do not exceed $150,000.

Because, by the words of Grinnell Mutual's own endorsement, the endorsement applies "**UNDER ANY OF THE COVERAGES**," the Boelmans argue the endorsement negates exclusion 5 ("care, custody or control") under Coverage A and exclusion 2 ("custom farming") under Coverage A-1. As the district court aptly stated:

> This endorsement, removing the exclusion at 6(a), which was explicitly agreed to, and for which the Boelmans paid a premium, would be eviscerated by accepting [Grinnell Mutual's] argument that the "care, custody and control" exclusion nevertheless precluded coverage. . . . [I]f enforced, [the exclusion] would "withdraw with the policy's left hand what is given with its

> right." [*Clark-Peterson Co., Inc. v. Indep. Ins. Assocs., Ltd.*, 492 N.W.2d 675, 679 (Iowa 1992).]

Grinnell Mutual counters that reading the endorsement as Boelmans request would negate and render meaningless all of the exclusions contained in the policy, not just the exclusions in question. Pointing out the endorsement specifically states that "All other terms and provisions of this policy apply," Grinnell Mutual argues the custom feeding endorsement does nothing more than modify exclusion 6(a). It concludes exclusion 5 under coverage A and exclusion 2 under coverage A-1 remain unchanged, and therefore applicable to the Boelmans' loss. Further, Grinnell Mutual asserts the "**UNDER ANY OF THE COVERAGES**" language of the endorsement is merely a reference to the section of the policy containing exclusion 6(a), and not intended to provide insureds with universal or unlimited coverage.

Under the circumstances presented in this case, we find each party's interpretation of the policy and endorsement to be reasonable. Having found the language in question to be fairly susceptible to two reasonable interpretations, we conclude the policy is ambiguous. We are therefore required to construe the contract in the Boelmans' favor. *Nationwide Agri-Bus. Ins. Co.*, 782 N.W.2d at 470.

It was Grinnell Mutual's duty to define any limitations or exclusionary clauses in clear and explicit terms. *Id.* It could have clearly and explicitly stated in its custom feeding endorsement that, despite purchase of the endorsement, property damage to property in the insureds' care, custody, or control, i.e., the pigs in this case, was not covered under Coverage A. It did not. Similarly,

Grinnell Mutual could have clearly and explicitly stated in the endorsement that property damage arising out of "custom farming" was not covered under Coverage A-1. It did not. Accordingly, we affirm the ruling of the district court.[2]

AFFIRMED.

---

[2] Because we find the policy to be ambiguous, we do not address the district court's application of the reasonable expectations doctrine. *See Nationwide Agri-Bus. Ins. Co.*, 782 N.W.2d at 473-74 (discussing the reasonable expectations doctrine).