

Commonwealth Of Kentucky

Court Of Appeals

NO. 1997-CA-001292-MR

NATIONAL INSURANCE ASSOCIATION

APPELLANT

v. APPEAL FROM FLEMING CIRCUIT COURT
HONORABLE ROBERT I. GALLENSTEIN, JUDGE
ACTION NO. 96-CI-000116

GWENDOLYN T. APPLGATE,
BY AND THROUGH JANET
TIMBERLAKE, HER GUARDIAN

APPELLEE

OPINION
AFFIRMING IN PART,
VACATING IN PART, AND REMANDING

** ** * * *

BEFORE: JOHNSON, KNOX, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: This is an appeal from a declaratory judgment finding that appellee, Gwendolyn Applegate (Applegate), was insured by National Insurance Company (National) on June 30, 1996, when she and her husband were involved in a tragic car accident. National argues that the trial court erred in finding coverage and that the Notice of Cancellation clearly provided that Applegate was not insured on the date of the accident. We disagree and therefore affirm that part of the judgment which found that Applegate had until July 27, 1996 in which to pay the

additional premium to reinstate her policy, but remand for a finding as to whether the premium was actually timely tendered so as to reinstate coverage, and if not, whether Applegate's ongoing disability extended the grace period.

Appellee's automobile was covered by National policy number KY113725, which was effective from February 15, 1996 through August 15, 1996. However, once National discovered that Applegate had failed to disclose her husband's conviction for reckless driving, it sent her a bill on March 12, 1996, for an additional amount due to maintain coverage. When no payment was received, National sent Applegate a document entitled "NOTICE OF CANCELLATION," dated March 26, 1996. When National denied coverage of the June 30, 1996 accident, appellee sought a declaration that the policy was in effect at that time.

The NOTICE OF CANCELLATION indicates that the policy number is KY113725. Under the title "IMPORTANT," it states, in relevant part:

YOUR PREMIUM PAYMENT OF \$28.50 HAS NOT BEEN RECEIVED. THE KENTUCKY INSURANCE DEPARTMENT REQUIRES A CANCELLATION NOTICE BE SENT TERMINATING COVERAGE ON 6/28/96. IF WE RECEIVE YOUR PAYMENT OF \$28.50 BEFORE THE CANCELLATION EFFECTIVE DATE, YOUR POLICY WILL NOT BE CANCELED. IF YOUR PAYMENT IS RECEIVED AFTER THE CANCELLATION EFFECTIVE DATE, A NEW POLICY WILL BE ISSUED. YOUR NEW POLICY WILL BEGIN AT 12:01 AM THE DAY FOLLOWING THE POSTMARK DATE OF YOUR PAYMENT AS SHOWN BELOW.

The document further notifies that "your insurance will cease at and from the hour and date mentioned above due to NONPAYMENT OF PREMIUM." June 28, 1996 is clearly indicated as the effective date of cancellation.

The bottom third of the document is labeled "REINSTATEMENT BILLING." It also notes the policy number as being KY113725 and states in bold, capital letters, "OFFER VALID FOR 30 DAYS." It states that if payment is postmarked on or before June 27, 1996, the amount due is \$28.50, but if payment is postmarked after June 27, 1996, the amount due is \$95.50. It also instructs appellee to write her policy number on her check. No other policy number besides KY113725 is mentioned on the document.

The trial court considered the document ambiguous inasmuch as it indicated on one hand that payment would reinstate the policy but that on the other it would cause coverage to lapse and a new policy to be issued. The court relied on rules of construction as they apply to insurance policies and concluded that, "the ordinary person reading the purported cancellation notice would reasonably expect provision of a 'thirty (30) day grace period' rather than forfeiture." Thus, National's purported cancellation of the policy was deemed ineffective, and Applegate's coverage was found to be effective on the date of her accident.

National contends that the notice was not a contract to be construed and that Applegate had to prove that she relied upon the notice to her detriment. In the alternative, appellant maintains that when read as a whole, the notice specifically informed Applegate of the effect of a payment made after the cancellation date, and that by not so construing the notice, the court improperly made a new contract for the parties.

The trial court clearly had to construe the notice in order to determine whether the policy was in effect on the date of the accident. However, we do not find the notice ambiguous, but we agree with that part of the trial court's finding that the original policy may have been in effect. The upper two-thirds of the document clearly informs the policy holder that if National received the additional premium of \$28.50 by the cancellation effective date, June 28, 1996, the policy would not be canceled. It further stated that if the payment were received after June 28, 1996, a new policy would be issued and effective the day after the postmark of the payment. This is reinforced by the statement that the insurance would cease at 12:01 a.m. on June 28, 1996 if the premium were not paid. We consider this part of the document to set forth the company's general rule on cancellation due to nonpayment of premium.

The lower third of the instrument entitled "REINSTATEMENT BILLING," however, acts as an exception to the general provision. In the first place, its very title reveals that payment will result in reinstatement. "Reinstatement" is defined as:

a restoration of the insured's rights under a policy which has lapsed or been cancelled. To reinstate a policy holder or one who has allowed his policy to lapse does not mean new insurance or taking out a new policy, but does mean that the insured has been restored to all the benefits accruing to him under the policy contract, the original policy.

Black's Law Dictionary 1157 (5th ed. 1979). But see the minority point of view, 43 Am. Jur. 2, Insurance, § 453 (1982). Kentucky follows the majority view that reinstatement of an insurance

policy that was cancelled for nonpayment of premiums has been held to restore or reinstate all the benefits accruing to the policy holder under the original contract. Commonwealth Life Ins. Co. v. Haskins, 259 Ky. 780, 83 S.W.2d 457, 459 (1935); Sun Life Assur. Co. of Canada v. Wiley, 258 Ky. 311, 79 S.W.2d 937 (1935); Home Insurance Company of New York v. Caudill, Ky., 366 S.W.2d 167, 170 (1963). See Carden v. Liberty Mutual Ins. Co., 278 Ky. 117, 128 S.W.2d 169 (1939) for the proposition that the insurer may place conditions on reinstatement in addition to payment of past due premiums. Also, in New York Life Ins. Co. v. Duff's Adm'r., 207 Ky. 800, 270 S.W. 51 (1925), the Court said the insurer could condition reinstatement on certain terms, like proof of insurability. In the case sub judice, the only conditions for reinstatement were: (1) if the premium of \$28.50 is paid and postmarked on or before June 27, 1996; and (2) if the premium of \$95.50 is paid and postmarked after June 27, 1996 but before July 27, 1996. We believe the reasonable interpretation of the language "OFFER VALID FOR 30 DAYS" is that the policy holder had thirty days from June 27, 1996 in which to reinstate her coverage by paying the \$95.50 premium. The additional premium required if the payment were postmarked after June 27, 1996 is further indication that the same policy would be reinstated, but because payment was made within thirty days after the otherwise effective date of cancellation, National demanded further consideration. The record doesn't reveal whether or not the \$95.50 was offered or tendered in a timely manner, nor if the

grace period was tolled by Applegate's disability. Therefore, the case must be remanded for these findings.

Accordingly, we agree with the trial court that under the exception to the notice of cancellation, Applegate had until July 27, 1996 in which to pay \$95.50 to reinstate policy number KY113725, and we remand to the Fleming Circuit Court for further proceedings.

ALL CONCUR.

BRIEF FOR APPELLANT:

Ronald L. Green
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BRIEF FOR APPELLEE:

John F. Estill
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