RENDERED: FEBRUARY 27, 2015; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-000318-MR

HALLIE WOOTON — APPELLANT

v.

APPEAL FROM LESLIE CIRCUIT COURT
HONORABLE OSCAR G. HOUSE, JUDGE
ACTION NO. 12-CI-00107

KENTUCKY FARM BUREAU
MUTUAL INSURANCE COMPANY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: DIXON, STUMBO AND VANMETER, JUDGES.

DIXON, JUDGE: Appellant, Hallie Wooton, appeals from an order of the Leslie Circuit Court granting summary judgment in favor of Appellee, Kentucky Farm Bureau Mutual Insurance Company. Finding no error, we affirm.

The facts herein are straightforward and not in dispute. On December 9, 2009, a tree fell on Wooton's mobile home. Farm Bureau thereafter adjusted the

claim and paid Wooton for the damage done by the tree. According to Wooton, she noticed gradual water damage in her home for about a year and a half after the initial insurance adjustment. Sometime in 2011, Wooton had a contractor inspect the underneath of her home at which time he informed her that the mobile home's frame was broken. The contractor opined that that the frame damage probably occurred when the tree fell on Wooton's home in 2009. Wooton then contacted Farm Bureau and requested a readjustment of the damage caused by the fallen tree. Farm Bureau denied any further claim.

On May 30, 2012, Wooton filed an action in the Leslie Circuit Court against Farm Bureau seeking compensatory and punitive damages for its failure to pay her claim under her homeowner's policy for damages to her home that were not known at the time of the initial insurance adjustment in 2009. Subsequently, in September 2013, Farm Bureau filed a motion for summary judgment claiming that Wooton's action was barred by a contractual limitation in her homeowner's policy that provided:

> **Suit Against Us**: No action can be brought unless the policy provisions have been complied with and the action is started within one year after the date of loss.

Since Wooton's action was not filed until May 2013, Farm Bureau claimed she was outside of the policy provisions. On February 6, 2014, the trial court entered an order granting summary judgment in favor of Farm Bureau. The trial court concluded that the homeowner's policy's contractual statute of limitations was enforceable and superseded any general statute of limitations codified in KRS

Chapter 413, and further that any damage to the underneath of the mobile home was easily discoverable after the tree fell in 2009. Wooton thereafter appealed to this Court.

Our standard of review on appeal of a summary judgment is "whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law." *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1996). Summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show 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." Kentucky Rules of Civil Procedure 56.03. The trial court must view the record "in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor." *Steelvest, Inc. v. Scansteel Serv. Ctr., Inc.*, 807 S.W.2d 476, 480 (Ky. 1991). Summary judgment is proper only "where the movant shows that the adverse party could not prevail under any circumstances." *Id.*

On appeal, Wooton argues that summary judgment was improper and that the trial court should have applied the discovery rule to the contractual limitation on filing suit. Specifically, Wooton contends that this case is inherently similar to a medical malpractice action in that the damage to the underside of her mobile home was "inherently unknowable" and, as such, the discovery rule should toll the

running of the limitations period until she knew or should have known that the damage occurred. We must disagree.

Kentucky law has long recognized "the validity of insurance contract provisions requiring as a condition to sue that the action must be 'commenced within the time specified by the policy.'" *Edmondson v. Pennsylvania Nat'l Mut. Cas. Ins. Co.*, 781 S.W.2d 753, 756 (Ky. 1989) (internal citations omitted). Courts typically will enforce such provisions unless they unreasonably limit the time in which a party can file an action. *See Ashland Finance Co. v. Hartford Accident & Indemn. Co.*, 474 S.W.2d 364, 366 (Ky.1971).

In concluding that Wooton's action was barred by the expiration of the limitations clause contained in her homeowner's policy, the trial court herein relied upon *Webb v. Kentucky Farm Bureau Ins. Co.*, 577 S.W.2d 17, 18 (Ky. App. 1978). Therein, an insured brought suit against his own insurance carrier, Farm Bureau, to recover for a fire loss under his homeowner's policy. The trial court dismissed the suit because it was not brought within twelve months following the loss, as required by the policy. On appeal, this Court affirmed the trial court, holding that, absent an inhibitive statute, a limitation for a period shorter than that provided by the statute could be legally written into an insurance policy, if it was not unreasonably short. The court noted:

> In Kentucky, there is no statute proscribing contractual shortening of limitations periods. In fact, there is a provision in the Insurance Code, KRS 304.14–370, which allows foreign insurers to limit actions against them to one year. While we do not believe this provision

> is conclusive as to the question before us, we are of the opinion that a statutory provision which allows an insurer to limit an action against it certainly indicates that the public policy of Kentucky favors such limitations.

Id. at 18.

In arguing that the discovery rule should apply in this case, Wooton cites to *Tomlinson v. Seihl*, 459 S.W.2d 166 (Ky. 1970), a medical malpractice action wherein the court held that when an injury is "inherently unknowable" the statute of limitations does not begin to run until discovery of the injury. *Id.* at 167. We agree with the trial court, however, that the holding in *Tomlison* is limited to medical malpractice actions and that it in no manner extends the discovery rule to a contract limitations clause such as is contained in Wooton's policy.

Even if we were to accept Wooton's premise that the discovery rule should apply in a contract case such as this, she nevertheless cannot prevail on her claim. The damage to her mobile home presumably caused by the tree occurred in 2009. Such would have easily been discoverable by having someone crawl under the mobile home at that time. Wooton acknowledged that she began having water leakage issues after the incident, yet she did not have anyone inspect the underneath of her home until 2011. Simply because Wooton did not discover the damage to the mobile home's frame does not mean that it was inherently unknowable.

We agree with the trial court that Wooton's rights under her homeowner's policy could be ascertained on the date of her loss or soon thereafter, and one year

was not an unreasonably short time to require that a suit be commenced. She was given adequate opportunity within the year from the date of loss to determine all of the damage that was caused by the tree and whether or not such had been properly repaired. Accordingly, the trial court did not err in finding that her action against Kentucky Farm Bureau was barred by the expiration of the limitations clause contained in the policy.

The order of the Leslie Circuit Court granting summary judgment in favor of Kentucky Farm Bureau and dismissing Wooton's action is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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