STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1556

Minnesota Sporting Clays Association,
Appellant,

vs.

National Casualty Company, et al.,
Respondents.

Filed July 19, 2021
Reversed and remanded
Segal, Chief Judge

Hennepin County District Court
File No. 27-CV-20-8871

Corie J. Anderson, Peters, Revnew, Kappenman & Anderson, P.A., Minneapolis, Minnesota (for appellant)

Theodore J. Waldeck, Allan M. Tritch, Waldeck Law Firm, P.A., Minneapolis, Minnesota (for respondents)

Considered and decided by Bjorkman, Presiding Judge; Segal, Chief Judge; and Larkin, Judge.

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

Appellant-insured challenges the district court's grant of summary judgment dismissing appellant's breach-of-contract action against respondent-insurers for failure to defend appellant against a counterclaim in a separate lawsuit. Because the district court committed an error of law in interpreting the insurance agreement, we reverse and remand.

FACTS

This suit involves a breach-of-contract claim brought by appellant Minnesota Sporting Clays Association (MSC) against its insurers for failure to defend against counterclaims in a lawsuit brought by MSC against Caribou Gun Club (CGC) to recover certain fees allegedly owed by CGC to MSC. In August 2017, CGC hosted the National Sporting Clays Association North Central Regional Championship. MSC sought payment of daily/target fees from CGC that MSC claimed it was owed in connection with the championship event. CGC disputed MSC's claim and MSC ultimately sued CGC to recover the fees. CGC responded to the lawsuit with counterclaims against MSC (the counterclaims) and a third-party complaint against the National Sporting Clays Association.

The counterclaims included counts against MSC for intentional interference with contractual relations, intentional interference with prospective economic advantage, and a violation of the Minnesota Deceptive Trade Practices Act, Minn. Stat. § 325D.44 (2020). CGC asserted in its counterclaims that MSC and its board members made statements falsely claiming that CGC owed MSC unpaid fees and as a result CGC had been placed "not in good standing" by the National Sporting Clays Association. CGC alleged as an element of damages that MSC's actions caused CGC damages for "[d]isparagement of its reputation and credibility within shooting sports, not only nationally but across the [w]orld."

MSC tendered defense of the counterclaims to its insurers, respondents National Casualty Company and K&K Insurance Group, Inc. (the insurers). MSC claimed that a

section of its commercial general-liability insurance policy titled "personal and advertising injury" provided coverage of the counterclaims. Section H.14. of the policy defined "personal and advertising injury" as

> injury, including consequential "bodily injury," arising out of one or more of the following offenses:
>
> a. False arrest, detention or imprisonment;
>
> b. Malicious prosecution or abuse of process;
>
> c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
>
> d. Any publication of material including, but not limited to oral, written, televised, videotaped or electronically transmitted publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
>
> e. Any publication of material, including but not limited to oral, written, televised, videotaped or electronically transmitted publication of material that violates a person's right of privacy;
>
> f. The use of another's advertising idea in your "advertisement"; or
>
> g. Infringing upon another's copyright, trade dress or slogan in your "advertisement."

The insurers declined coverage and MSC retained its own counsel to defend against the counterclaims. The underlying lawsuit and the counterclaims were eventually resolved. MSC then sued the insurers for reimbursement of the costs and attorney fees it incurred in defending against the counterclaims in the amount of $57,430.93.

The parties brought cross-motions for summary judgment. The district court granted summary judgment in favor of the insurers and denied MSC's motion, concluding that the counterclaims did not assert an "advertising injury" and the insurers therefore had

no duty to provide a defense because the claims were not covered under MSC's policy. MSC now appeals the grant of the insurers' motion for summary judgment.

DECISION

We review a grant of summary judgment "de novo to determine whether there are genuine issues of material fact and whether the district court erred in its application of the law." *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017) (quotation omitted). "On appeal from a grant of summary judgment, we view the evidence in the light most favorable to the party against whom summary judgment was granted." *Eng'g & Constr. Innovations, Inc. v. L.H. Bolduc Co.*, 825 N.W.2d 695, 704 (Minn. 2013) (quotation omitted). Interpretation of the coverage provisions of an insurance policy is a question of law subject to de novo review. *Depositors Ins. Co. v. Dollansky*, 919 N.W.2d 684, 687 (Minn. 2018).

"An insurer's obligation to defend is contractual in nature." *Polaris Indus., L.P. v. Cont'l Ins. Co.*, 539 N.W.2d 619, 621 (Minn. App. 1995), *review denied* (Minn. Jan. 25, 1996). We determine whether the insurer had a duty to defend by comparing "the allegations in the complaint . . . in the underlying action with the relevant language in the commercial general liability policy." *Ross v. Briggs & Morgan*, 540 N.W.2d 843, 847 (Minn. 1995). Under Minnesota law, "if any part" of a cause of action asserted against the insured in the underlying case "arguably falls within the scope of [the policy's] coverage," the insurer has a duty to defend. *Id.*

The "objective when interpreting insurance contracts is to 'ascertain and give effect to the intentions of the parties as reflected in the terms of the insuring contract.'" *Eng'g &*

Constr. Innovations, 825 N.W.2d at 704 (quoting *Jenoff, Inc. v. N.H. Ins. Co.*, 558 N.W.2d 260, 262 (Minn. 1997)). We read the terms within the context of the policy as a whole, in order to avoid neutralizing any provisions or creating absurd results. *Id.* at 705. If "the language of an insurance policy is clear and unambiguous, we effectuate the intent of the parties by interpret[ing] the policy according to plain, ordinary sense." *Id.* at 704 (alteration in original) (quotations omitted). With this background in mind, we now turn to our analysis of the issues.

MSC's central argument is that the district court erred in its ruling because the deceptive-trade-practices count of the counterclaims falls within the coverage of the "personal and advertising injury" section of its insurance policy. Section H.14.d. of the policy defines "personal and advertising injury" as including claims for injuries "arising out of . . . [a]ny publication of material . . . that slanders or libels a person or organization or disparages a person's or organization's goods, products or services." The deceptive-trade-practices count of the counterclaims alleges that MSC disparaged CGC's business in violation of the Minnesota Deceptive Trade Practices Act, Minn. Stat. § 325D.44, by making false statements that CGC failed to pay fees to MSC and that it was "not in good standing" with the National Sporting Clays Association. The Minnesota Deceptive Trade Practices Act provides, in relevant part:

> A person engages in a deceptive trade practice when, in the course of business, vocation, or occupation, the person:
>
> . . . .
>
> (8) disparages the goods, services, or business of another by false or misleading representation of fact[.]

Minn. Stat. §§ 325D.44, subd. 1(8).

The insurers oppose MSC's argument relying, as did the district court, on caselaw interpreting "advertising injury" provisions of commercial general-liability policies. Specifically, the district court held, as the insurers argue here, that the test set out in the *Polaris* case is the proper test to analyze coverage of MSC's policy. The test in *Polaris* includes three prongs: the injury must (1) arise out of the insured's advertising activity, (2) "fall within the policy's definitional scope of advertising injury," and (3) not be within a policy exclusion. 539 N.W.2d at 621-23. In granting summary judgment to the insurers, the district court concluded that MSC failed to satisfy the first prong of the *Polaris* test—that the public statements at issue in the counterclaims arose out of MSC's "advertising activities."[1]

The district court's analysis and the insurers' arguments, however, misapply *Polaris*. As set out in *Polaris*, the question of whether an insurer has an "obligation to defend is contractual in nature." *Id.* at 621. *Polaris* provides no authority that would justify deviating from standard principles of contract construction in construing insurance-coverage provisions. The district court was thus required to analyze the actual coverage provisions in MSC's insurance contract instead of simply applying the *Polaris* test and then seeking to force the MSC policy language into that framework.

[1] We note that the insurers based their motion for summary judgment on several grounds, including arguments that coverage of the counterclaims were barred by the breach-of-contract and intentional-acts exclusions of the MSC policy. The district court addressed only the question of whether the first prong of the *Polaris* test was satisfied. The district court did not reach the insurers' other arguments.

A review of the coverage provision in the MSC policy reveals significant differences from the coverage provision in the *Polaris* policy. For example, in *Polaris*, the applicable coverage section is titled "advertising injury." *Id.* In contrast, the applicable section of the MSC policy is titled "*personal and* advertising injury," signaling an intent to provide a broader scope of coverage than the policy in *Polaris*. (Emphasis added.)

In addition, the policy in *Polaris*, defined "advertising injury" as follows:

> [A]dvertising injury whenever used herein means only such injury as arises out of:
>
> (1) libel, slander or defamation of character,
>
> (2) infringement of copyright, title or slogan,
>
> (3) piracy, unfair competition or idea misappropriation,
>
> (4) invasion of rights of privacy,
>
> *during the course of advertising activities of the Named Insured*.

Id. (alternation in original) (emphasis added). The *Polaris* policy, as this court held, thereby expressly limited coverage to only those injuries that occurred "during the course of advertising activities of the . . . [i]nsured." *Id.* The MSC policy has no such limitation. The definition of "personal and advertising injury" in the MSC policy provides, in relevant part, that the injury just has to "aris[e] out of . . . [a]ny publication of material . . . that slanders or libels a person or organization or disparages a person's or organization's goods, products or services." There is no requirement that the publication be connected to MSC's "advertising activities." Indeed, the phrase "advertising activities" does not even appear in the MSC policy. The only reference in the "personal and advertising injury" coverage

section of the policy related to advertising is set out in subsections H.14.f. and g., not in the applicable subsection H.14.d.[2]

The district court noted the absence in the MSC policy of the phrase "advertising activities," but nevertheless proceeded to interpret that phrase. The district court looked to and applied the policy's definition of "advertisement" to MSC's claim, despite the fact that the word "advertisement" appears only in subsections H.14.f. and g., and not in subsection H.14.d. Using the policy's definition, which provides that an "advertisement" is "a notice that is broadcast or published . . . about [the insured's] goods, products or services for the purpose of attracting customers or supporters," the district court concluded that the statements at issue in the counterclaims were not made in the context of advertising MSC's "goods, products or services" and, therefore, were not covered under the policy. But, as we stated above, *Polaris* provides no legal authority for reading into an insurance policy a limitation that is not justified by the plain language of the policy.

For the above reasons, we conclude that the district court erred in finding that the MSC policy coverage was limited to injury arising out of MSC's "advertising activities." We reverse the grant of summary judgment in favor of the insurers and remand for further proceedings.

Reversed and remanded.

[2] Subsections H.14.f. and g. reference coverage for injury arising out of "[t]he use of another's advertising idea in your 'advertisement'" and "[i]nfringing upon another's copyright, trade dress or slogan in your 'advertisement.'"