STATE OF MINNESOTA
IN COURT OF APPEALS
A11-870

Minnesota Workers' Compensation Assigned Risk Plan,
as administered by RTW, Inc.,
Appellant,

vs.

Lance Coppin Sewer and Water Service, Inc.,
Respondent,

Lawrence Coppin d/b/a Coppin Plumbing Company, et al.,
Respondents,

Christopher Scott Coppin,
Respondent,

Integrity Mutual Insurance Company
and/or Integrity Property & Casualty Insurance Company,
Wisconsin corporations,
Defendant.

Filed April 2, 2012
Affirmed
Johnson, Chief Judge

Hennepin County District Court
File No. 27-CV-10-16072

Mark G. Pryor, Brown & Carlson, P.A., Minneapolis, Minnesota (for appellant)

Lance Coppin Sewer and Water Service, Inc., Maple Plain, Minnesota (respondent)

Lawrence Coppin, Maple Plain, Minnesota (pro se respondent)

Anthony J. Nemo, Meshbesher & Spence, Ltd., Minneapolis, Minnesota (for respondent Christopher Scott Coppin)

Considered and decided by Johnson, Chief Judge; Hudson, Judge; and Huspeni, Judge.*

U N P U B L I S H E D O P I N I O N

JOHNSON, Chief Judge

A man was injured on the job while performing construction work for his father's company. The son was excluded from the company's workers-compensation coverage by the workers-compensation statute. After the son commenced a negligence action against the father and his company, the company's employer-liability insurer sought a declaratory judgment that it had no duty to defend or indemnify the father or his company against the son's negligence claim. The district court concluded that the insurer is obligated by the terms of its policy to defend and indemnify the father and his company. We conclude that the employer-liability insurance policy issued to the company provides coverage for the son's injuries because it applies to injuries sustained by the company's "employees," without any limitation or qualification. Therefore, we affirm.

FACTS

In July 2008, Christopher Scott Coppin performed work for Lance Coppin Sewer and Water Service, Inc., a company owned and operated by his father, Lawrence (Lance) Coppin, who generally operates under the name of Coppin Plumbing Company. For

*Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

purposes of this opinion, we will refer to Lance Coppin and his business collectively as Coppin Plumbing.

On July 17, 2008, Christopher Coppin was injured on the job while he and another employee were installing sewer and water lines for a new single-family home in the city of Eden Prairie. At the time of the incident, Coppin Plumbing carried both workers-compensation and employer-liability insurance coverage. The Minnesota Workers' Compensation Assigned Risk Plan (hereinafter the Plan) had issued Coppin Plumbing a policy entitled "Standard Workers' Compensation and Employers' Liability Policy." Part One of the policy, which is captioned "Workers Compensation Insurance," obligates the Plan to "pay promptly when due the benefits required of you by the workers compensation law." Part Two of the policy, which is captioned "Employers Liability Insurance," obligates the Plan to "pay all sums you legally must pay as damages because of bodily injury to your employees." Part Two also contains a number of exclusions, including one that provides, "This insurance does not cover . . . any obligation imposed by a workers compensation, occupational disease, unemployment compensation, or disability benefits law, or any similar law."

By statute, certain persons are excluded from the workers-compensation scheme, including "(d) a sole proprietor, or the spouse, parent, and child . . . of a sole proprietor," "(g) an executive officer" of some closely held corporations, and "(i) a spouse, parent, or child . . . of an executive officer of a closely held corporation who is referred to in clause (g)." Minn. Stat. § 176.041, subd. 1 (2006). Notwithstanding these presumed exclusions, an insured may elect to provide coverage for injuries to an excluded person in certain

circumstances. *Id.*, subd. 1a. When Lance Coppin first applied for insurance with the Plan in 1988, he specifically elected coverage for another son, William Coppin. Lance Coppin rescinded that election in 1995. Lance Coppin did not elect coverage for Christopher Coppin at any time after he began working for Coppin Plumbing.

In August 2009, Christopher Coppin commenced a negligence action against Lance Coppin and Coppin Plumbing. Coppin Plumbing tendered the claim to Integrity Mutual Insurance Company, which had issued it a commercial general liability insurance policy, but Integrity Mutual promptly denied coverage. In October 2009, Christopher Coppin's attorney informed the Plan that he had commenced an action against Coppin Plumbing and that Coppin Plumbing had not responded to the summons and complaint. In January 2010, the Plan commenced this action in the Hennepin County District Court against Lance Coppin and Coppin Plumbing as well as Christopher Coppin and Integrity Mutual. In its complaint, the Plan sought a declaratory judgment that it has no duty to defend or indemnify Coppin Plumbing against Christopher Coppin's negligence claim.

In December 2010, the Plan moved for summary judgment, arguing that its policy does not provide employer-liability coverage to Coppin Plumbing under Part Two because Coppin Plumbing did not elect workers-compensation coverage for injuries to Christopher Coppin under Part One. In March 2011, the district court issued an order denying the Plan's motion. Two days later, counsel for the parties informed the district court by letter that all issues had been resolved and that there was no need for a trial. The district court then entered judgment in favor of the defendants and against the Plan.

The Plan appeals. Christopher Coppin filed a responsive brief and presented oral argument in support of the district court's judgment. Coppin Plumbing has not participated in this appeal.

D E C I S I O N

The Plan argues that the district court erred by denying its motion for summary judgment and by ordering judgment as a matter of law in favor of the defendants and against the Plan. Because the Plan does not challenge the procedural aspects of the entry of judgment, *see Hebrink v. Farm Bureau Life Ins. Co.*, 664 N.W.2d 414, 419-20 (Minn. App. 2003), we focus on the district court's analysis of the Plan's arguments in support of its summary judgment motion.

A district court must grant a motion for summary judgment if the evidence demonstrates "that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03. A genuine issue of material fact exists if a rational trier of fact, considering the record as a whole, could find for the non-moving party. *See Frieler v. Carlson Mktg. Grp., Inc.*, 751 N.W.2d 558, 564 (Minn. 2008). This court applies a *de novo* standard of review to a grant of summary judgment, and we view the evidence in the light most favorable to the nonmoving party. *Osborne v. Twin Town Bowl, Inc.*, 749 N.W.2d 367, 371 (Minn. 2008).

Generally, an employee may not recover from his or her employer in tort for personal injuries if the employer has workers-compensation insurance. Minn. Stat. § 176.031 (2006); *Stringer v. Minnesota Vikings Football Club, LLC*, 705 N.W.2d 746, 754 (Minn. 2005). Christopher Coppin's lawsuit against Coppin Plumbing is not barred

because his injuries are not covered by Coppin Plumbing's workers-compensation insurance policy. Consequently, Christopher Coppin seeks to take advantage of Coppin Plumbing's employer-liability insurance coverage.

Part Two of the insurance policy, which concerns employer-liability coverage, provides, in part, as follows: "We will pay all sums you legally must pay as damages because of bodily injury to your employees, provided the bodily injury is covered by the Employers' Liability Insurance." The crux of this appeal is the meaning of the term "your employees," as used in Part Two. The term is not defined within the policy, either in Part Two or Part One or any other part. The district court interpreted the term "your employees" by adopting the plain and ordinary meaning of the word "employee," as reflected in a leading legal dictionary: "A person who works in the service of another person (the employer) under an express or implied contract of hire, under which the employer has the right to control the details of work performance." *Black's Law Dictionary* 602 (9th ed. 2009). The district court then analyzed whether Christopher Coppin was an employee of his father's business, rather than an independent contractor, by using the five-factor test in *Guhlke v. Roberts Truck Lines*, 268 Minn. 141, 143, 128 N.W.2d 324, 326 (1964). The district court determined that Christopher Coppin was an employee of Coppin Plumbing and, thus, concluded that the Plan had a duty to defend and indemnify Coppin Plumbing in the underlying negligence action brought by Christopher Coppin.

The Plan concedes that Christopher Coppin was an "employee" of Coppin Plumbing "in the 'ordinary' sense of the word." The Plan contends, however, that Part

Two of the policy must be interpreted to provide coverage that is coextensive in scope with the coverage provided by Part One. In other words, the Plan contends that because Christopher Coppin is not a covered employee under Part One, he is not within the scope of the term "your employees" under Part Two. The Plan's argument is logical in the sense that it reflects an approach that would be sensible for an insurer in terms of underwriting an insurance policy. But the question for this court is not what an insurer ought to do but, rather, what this insurer actually did when issuing this particular policy to this particular policyholder. To resolve that question, we must focus on the evidence that is capable of proving the substance of the agreement between the parties to this insurance policy.

When interpreting an insurance policy, we apply general principles of contract interpretation. *Lobeck v. State Farm Mut. Auto. Ins. Co.*, 582 N.W.2d 246, 249 (Minn. 1998). We give the language used in the policy its "natural and ordinary meaning." *American Family Ins. Co. v. Walser*, 628 N.W.2d 605, 609 (Minn. 2001). If a contract is "clear and unambiguous," a court "should not rewrite, modify, or limit its effect by a strained construction." *Valspar Refinish, Inc. v. Gaylord's Inc.*, 764 N.W.2d 359, 364-65 (Minn. 2009). "Whether a contract is ambiguous is a question of law that we review *de novo*." *Carlson v. Allstate Ins. Co.*, 749 N.W.2d 41, 45 (Minn. 2008).

In light of this caselaw, we first must determine whether the policy is ambiguous or unambiguous. The Plan contends that the term "your employees" is unambiguous but is limited to those employees who are subject to workers-compensation coverage. The district court also considered the term "employee" to be unambiguous but not so limited

in its meaning. We agree with the district court on this point. Part Two of the policy is unambiguous in defining the category of persons whose injuries are within the scope of Coppin Plumbing's employer-liability coverage. Part Two of the policy states that the Plan will pay all sums Coppin Plumbing must pay for damages arising from "bodily injury to your employees." No other provision of Part Two restricts the scope of the term "your employees" or otherwise limits the category of persons whose injuries are subject to Part Two of the policy. The simple fact is that coverage under Part Two extends to injuries sustained by any and all employees of Coppin Plumbing, and it is undisputed that Christopher Coppin was an employee of Coppin Plumbing at the time of his injuries.

The Plan's argument is not so much based on linguistic considerations as concerns about the breadth of the district court's interpretation. But as the supreme court has recognized, that "contractual language is broad does not mean it is ambiguous." *Latterell v. Progressive N. Ins. Co.*, 801 N.W.2d 917, 921 (Minn. 2011). Rather, "[i]nsurance policy provisions are ambiguous only when they are 'reasonably subject to more than one interpretation.'" *Id.* at 920 (quoting *American Commerce Ins. Brokers, Inc. v. Minnesota Mut. Fire & Cas. Co.*, 551 N.W.2d 224, 227 (Minn. 1996)). The Plan has identified only one alternative interpretation for the term "your employees," but that alternative interpretation is not a reasonable one in light of the language of the policy. The Plan's interpretation of the word "employees" would cause it to mean, in essence, employees who are covered by the workers-compensation scheme. That interpretation would require us to add language to the policy so as to create an ambiguity, which we cannot do. *See Valspar Refinish*, 764 N.W.2d at 364-65; *Gabrelcik v. National Indem. Co.*, 269 Minn.

445, 447, 131 N.W.2d 534, 536 (1964). The Plan, of course, may revise the language of its policies for future purposes.

The Plan urges us to interpret Part Two by considering the language of the policy as a whole. *See Jarvis & Sons, Inc. v. International Marine Underwriters*, 768 N.W.2d 365, 370 (Minn. App. 2009). That type of analysis does not help the Plan. In at least three ways, the policy makes distinctions between the coverage provided by Part One and the coverage provided by Part Two. First, the entire policy is entitled, "Standard Workers' Compensation *and* Employers' Liability Insurance Policy" (emphasis added), which indicates that the policy provides for two distinct types of coverage. Second, the first page of the policy states that Part One "applies to Workers' Compensation Law," while Part Two "applies to work" in Minnesota, which indicates that the scope of coverage under Part Two may be broader than under Part One. Third, Part One specifically conditions coverage on the application of the law of workers' compensation, while Part Two does not. In fact, Part Two *excludes* from coverage any obligation arising under the workers-compensation laws.

Even if we were to determine that Part Two of the policy is ambiguous, we nonetheless would reach the same ultimate conclusion in this case. If the policy were ambiguous as to who is an "employee" for purposes of Part Two, the meaning of the policy would be a question of fact. *See Savela v. City of Duluth*, 806 N.W.2d 793, 808 (Minn. 2011); *Denelsbeck v. Wells Fargo & Co.*, 666 N.W.2d 339, 346 (Minn. 2003). Thus, to obtain reversal of the district court's judgment under an ambiguous-contract analysis, the Plan would need to show that there is a genuine issue of material fact

concerning the parties' intent as to the meaning of the term "your employees." In that event, a factfinder would be permitted to consider extrinsic evidence of the parties' intent. The parol evidence rule generally "'prohibits the admission of extrinsic evidence of prior or contemporaneous oral agreements, or prior written agreements, to explain the meaning of a contract when the parties have reduced their agreement to an unambiguous integrated writing,'" *Alpha Real Estate Co. v. Delta Dental Plan*, 664 N.W.2d 303, 311 (Minn. 2003) (quoting Richard A. Lord, 11 *Williston on Contracts* § 33:1 at 541 (4th ed. 1999)), but the parol evidence rule does not exclude such evidence if the written agreement is "ambiguous or incomplete," in which case "'evidence of oral agreements tending to establish the intent of the parties is admissible,'" *Gutierrez v. Red River Distrib., Inc.*, 523 N.W.2d 907, 908 (Minn. 1994) (quoting *Material Movers, Inc. v. Hill*, 316 N.W.2d 13, 17 (Minn. 1982)).

If we were to inquire whether the Plan has evidence capable of creating a genuine dispute of material fact on the meaning of the term "your employees," we would conclude that the Plan did not introduce evidence sufficient to prove that the term "your employees" was intended by the parties to mean only those employees who are within the scope of workers-compensation coverage. In his deposition, Lance Coppin conceded that Christopher Coppin was excluded from Coppin Plumbing's coverage for workers-compensation liability under Part One, but he did not give any testimony about whether he intended to exclude Christopher Coppin from employer-liability coverage under Part Two. For example, he was asked, "you knew that you were taking Chris Coppin outside of the Workers' Compensation system?" He responded, "Yes." But that question and

similar questions do not shed any light on the question whether Lance Coppin intended to exclude Christopher Coppin *from employer-liability coverage under Part Two*, or whether Lance Coppin understood that his decision to not include Christopher Coppin in the company's workers-compensation coverage also might operate to remove Christopher Coppin from the company's employer-liability coverage. Remarkably, the Plan did not submit any evidence concerning its own intent regarding the scope of Part Two of the policy. Thus, the summary judgment record is devoid of any evidence that either party to the insurance contract intended Part Two to apply only to employees whose injuries were subject to the coverage in Part One.

The Plan makes several additional arguments that are not based on the language of Part Two of the policy. For example, the Plan contends that Coppin Plumbing should not receive coverage for liability arising from Christopher Coppin's injuries because Lance Coppin never paid a premium for employer-liability coverage arising from Christopher Coppin's injuries. That argument is beside the point because it goes to the amount of consideration, which is immaterial. *See Koehler & Hinrichs Mercantile Co. v. Illinois Glass Co.*, 143 Minn. 344, 346, 173 N.W. 703, 704 (1919); *Brooksbank v. Anderson*, 586 N.W.2d 789, 794 (Minn. App. 1998), *review denied* (Minn. Jan. 27, 1999). As another example, the Plan contends that we should interpret the policy in light of the entire workers-compensation scheme. It is appropriate to do so in a case that concerns workers-compensation insurance coverage. *See Paradigm Enterprises, Inc. v. Westfield Nat'l Ins. Co.*, 738 N.W.2d 416, 419 (Minn. App. 2007). But that principle does not extend to a case in which employer-liability insurance coverage is at issue. Lastly, the Plan contends

that "public policy mandates that [Coppin Plumbing] be denied coverage under the . . . Policy" to ensure that other small-business owners do not benefit from employer-liability insurance coverage without paying for the coverage. As suggested above, however, the Plan is in a position to revise the scope of its employer-liability coverage for future purposes.

In sum, the district court did not err by interpreting Part Two of the policy to apply to injuries sustained by Christopher Coppin, by concluding that the Plan is obligated to defend and indemnify Coppin Plumbing against Christopher Coppin's claim, by denying the Plan's motion for summary judgment, and by entering judgment against the Plan and in favor of Coppin Plumbing and the other defendants.

Affirmed.