NO. COA01-763

NORTH CAROLINA COURT OF APPEALS

Filed: 20 August 2002

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,
Plaintiff,

v. New Hanover County
No. 99 CVS 3728

PATRICIA JOYCE FOLEY and
DAVID FOLEY, JR.,
Defendants.

Appeal by defendants from order entered 19 April 2001 by Judge W. Allen Cobb, Jr., in New Hanover County Superior Court. Heard in the Court of Appeals 27 March 2002.

Patterson, Dilthey, Clay & Bryson, L.L.P., by Scott Lewis, for plaintiff appellee.

Johnson & Lambeth, by Maynard M. Brown, for Patricia Foley defendant appellant; and Biberstein & Nunalee, LLP, by R.V. Biberstein, for David Foley, Jr., defendant appellant.

McCULLOUGH, Judge.

This case arises out of a declaratory judgment action in which the trial court granted summary judgment for plaintiff. The underlying facts are as follows: Patricia and David Foley were married and lived in Union Bridge, Maryland. Prior to her marriage, Mrs. Foley contacted State Farm Mutual Automobile Insurance Company (State Farm) and purchased policy number 2855680-C25-20C for her personal car. Due to Mr. Foley's poor

driving record, Mrs. Foley included a driver exclusion endorsement (the endorsement) in her policy, which stated:

> REQUEST FOR TOTAL DRIVER EXCLUSION ENDORSEMENT
>
> This is to certify that I have been informed of an increase in premium because of the claim experience of one or more of the persons insured under the policy(s), and of my rights under Section 240C-1(a) of Article 48A of the Annotated Code of Maryland to have the person(s) excluded from coverage. I therefore request termination of the policy as of the effective date of agreement and apply for a new policy to be issued on the above described automobile.
>
> I understand the new policy(s) will include the following endorsement:
>
> IN CONSIDERATION OF THE PREMIUM CHARGED FOR *YOUR* POLICY, IT IS AGREED THAT:
>
> 1. UNDER COVERAGE P, U, AND S THERE IS NO COVERAGE FOR *BODILY INJURY* TO
>
>   a. THE NAMED EXCLUDED DRIVER(S);
>   b. THE VEHICLE OWNER;
>   c. FAMILY MEMBERS RESIDING IN THE HOUSEHOLD OF THE EXCLUDED OPERATOR OR USER OR VEHICLE OWNER; OR
>   d. ANY OTHER *PERSON*. This does not apply to personal injury protection and uninsured motor vehicle coverages if such coverage is not available to such *person* under any other automobile policy; AND
>
> 2. UNDER ALL OTHER COVERAGES WE SHALL NOT BE LIABLE AND NO LIABILITY OR OBLIGATION OF ANY KIND SHALL ATTACH TO US FOR *LOSS* OR DAMAGE
>
> WHILE ANY MOTOR VEHICLE IS OPERATED BY
> *David Foley, Jr.*
> (Named Excluded Driver(s))
>
> WHETHER OR NOT THAT OPERATION OR USE WITH THE EXPRESS OR IMPLIED PERMISSION OF A *PERSON* INSURED UNDER *YOUR* POLICY.

> I further agree to the inclusion of the above endorsement in any subsequent transfer, reinstatement, or renewal of such policy or policies to be issued.
>
> Witness _____ Signed Patricia J. Mohr
> Date 3/27/87

From 1987 onward, the policy (with the endorsement) was repeatedly renewed in Maryland and was in effect in February 1996.

In February 1996, the Foleys came to North Carolina on business. In the final hour of 27 February or the first hour of 28 February, the Foleys were travelling south on U.S. Highway 421 from Wrightsville Beach to a condominium at Carolina Beach. Mr. Foley was driving his wife's 1992 Isuzu (the vehicle insured by the State Farm policy), and Mrs. Foley was in the front passenger seat. As Mr. Foley attempted to turn left into a private drive, he collided with a Kure Beach police car driven by Officer Andrew Lee Everhart. Mrs. Foley was injured in the accident.

On 16 March 1999, Mrs. Foley filed a complaint against the Town of Kure Beach, the Town of Carolina Beach, Officer Everhart, and Mr. Foley, alleging her injuries were proximately caused by either the singular or concurrent negligence of Mr. Foley and Officer Everhart. For his part, Mr. Foley argued State Farm was required to provide him a defense and fully pay any amount of damages he might be legally obligated to pay Mrs. Foley, up to the policy limits. State Farm denied the policy rendered it responsible to defend Mr. Foley, based on the endorsement.

On 3 September 1999, State Farm filed suit in New Hanover County Superior Court, seeking a declaratory judgment that Mrs.

Foley's alleged bodily injuries were not covered by the policy due to the endorsement she executed; that Mr. Foley was an excluded driver under the policy; and that State Farm had no duty to provide a defense for Mr. Foley in connection with Mrs. Foley's underlying lawsuit. The Foleys answered, seeking declaratory relief in their favor. On 6 April 2001, State Farm moved for summary judgment. On 19 April 2001, the trial court entered an order of summary judgment for State Farm and ordered that State Farm be relieved of its duty to defend Mr. Foley in his wife's underlying lawsuit. Defendants appealed.

On appeal, defendants argue the trial court erred by granting summary judgment for State Farm and concluding the endorsement precluded extension of liability coverage to Mr. Foley for Mrs. Foley's bodily injury claim. For the reasons stated herein, we disagree with defendants' arguments and affirm the order of the trial court.

Generally, the standard of review on appeal from a summary judgment ruling requires a two-step analysis. "Summary judgment is appropriate if (1) the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, show that there is no genuine issue as to any material fact; and (2) the moving party is entitled to judgment as a matter of law." *Gaunt v. Pittaway*, 139 N.C. App. 778, 784, 534 S.E.2d 660, 664, *appeal dismissed*, *disc. review denied*, ___ N.C. ___, 546 S.E.2d 401 (2000), *cert. denied*, 353 N.C. 371, 547 S.E.2d 810, *cert. denied*, ___ U.S. ___, 151 L. Ed. 2d 261 (2001); *see also* N.C. Gen. Stat.

§ 1A-1, Rule 56(c) (2001). However,

> [if] the court's findings of fact and conclusions of law were not challenged in any authorized way, the only questions that [the] appeal really raised are whether the facts found support the order, and whether error of law appears on the face of the order[.]

Alexvale Furniture v. Alexander & Alexander, 93 N.C. App. 478, 481, 385 S.E.2d 796, 798, *disc. review denied*, 325 N.C. 228, 381 S.E.2d 783 (1989). Furthermore,

> to raise a legal issue on appeal as to the validity of a finding of fact or conclusion of law, in addition to excepting to it it is also necessary to state by an assignment of error *why* the finding or conclusion is claimed to be erroneous.

Id. at 482, 385 S.E.2d at 798 (emphasis added). State Farm advocates this standard of review because defendants' assignments of error are "broadside assignment[s], since [they do] not state any specific basis for the alleged error as Rule 10, N.C. Rules of Appellate Procedure requires[.]" *Pamlico Properties IV v. SEG Anstalt Co.*, 89 N.C. App. 323, 325, 365 S.E.2d 686, 687 (1988).[1] In their first assignment of error, defendants argue only that "[t]he trial court erred by granting judgment in favor of the plaintiff and denying summary judgment in favor of the defendant." In their second assignment of error, defendants argue "[t]he State Farm driver exclusion endorsement does not preclude extending liability coverage to David Foley for the bodily injury claim of

[1] In addition to violating N.C.R. App. P. 10, State Farm contends defendants' appeal contains other errors that warrant dismissal. However, we have decided to exercise our discretion to address defendants' arguments. *See* N.C.R. App. P. 2 (2002).

Patricia Foley."

We must first determine which state's law to apply when interpreting the policy. State Farm maintains Maryland substantive law applies to the interpretation and application of both the policy and the endorsement. We agree. "[T]he general rule is that an automobile insurance contract should be interpreted and the rights and liabilities of the parties thereto determined in accordance with the laws of the state where the contract was entered even if the liability of the insured arose out of an accident in North Carolina." *Fortune Ins. Co. v. Owens*, 351 N.C. 424, 428, 526 S.E.2d 463, 465-66 (2000); *see also Roomy v. Insurance Co.*, 256 N.C. 318, 322, 123 S.E.2d 817, 820 (1962). "Under North Carolina law, the substantive law of the state where the last act to make a contract occurs governs all aspects of the contract." *Tolaram Fibers, Inc. v. Tandy Corp.*, 92 N.C. App. 713, 717, 375 S.E.2d 673, 675, *disc. review denied*, 324 N.C. 436, 379 S.E.2d 249 (1989). The State Farm policy was executed, delivered and renewed in Maryland, where the Foleys resided.

Although our Supreme Court has recognized an exception to the general rule (allowing the insurance contract to be interpreted under North Carolina law even when it is made elsewhere) where a close connection exists between North Carolina and the interests insured by an insurance policy, *see Johns v. Automobile Club Ins. Co.*, 118 N.C. App. 424, 427, 455 S.E.2d 466, 468, *disc. review denied*, 340 N.C. 568, 460 S.E.2d 318 (1995), the exception does not apply in this case. In the case *sub judice*, the insurance policy

was executed and delivered in Maryland, and the parties intended to be obligated by the Maryland policy. The Foleys were residents of Maryland and were merely visiting North Carolina at the time the accident occurred. The insured vehicle Mr. Foley was driving at the time of the accident bore a Maryland license plate. Because "[t]here are no significant contacts with North Carolina in this insurance contract action other than the fact that the injuries occurred in North Carolina[,]" *Johns*, 118 N.C. App. at 427, 455 S.E.2d at 468, we conclude Maryland law governs the interpretation and application of both the policy and the endorsement. *See id.;* and *Fortune Ins. Co.*, 351 N.C. 424, 526 S.E.2d 463.

Md. Code Ann., Insurance Art. 48A, § 240C-1(a)(1) (2001) states:

> In any case where an insurer is authorized under this article to cancel or nonrenew or increase the premiums on an automobile liability insurance policy issued in this State to any resident of a household, under which more than 1 person is insured because of the claim experience or driving record of 1 or more but less than all of the persons insured under the policy, the insurer *shall* in lieu of cancellation, nonrenewal, or premium increase offer to continue or renew the insurance but to exclude *all* coverage when a motor vehicle is operated by the specifically named excluded person or persons whose claim experience or driving record would have justified the cancellation or nonrenewal. The policy may be endorsed to specifically exclude all coverage for any of the following when the named excluded driver is operating the motor vehicle(s) covered under the policy *whether or not that operation or use was with the express or implied permission of a person insured under the policy*:
>
> (i) The excluded operator or user;

(ii) The vehicle owner;

(iii) *Family members residing in the household of the excluded operator or user or vehicle owner.*

(Emphasis added.) The Maryland Supreme Court has repeatedly upheld and enforced § 240C-1(a)(1) and endorsements such as the one in this case. *See Neale v. Wright*, 322 Md. 8, 585 A.2d 196 (1991); and *Nationwide Mut. Ins. Co. v. Miller*, 305 Md. 614, 505 A.2d 1338 (1986).

Defendants contend Section 240C-1(a)(1) requires an insurer to specifically list every portion of coverage that is excluded by the endorsement before a specific type of coverage can validly be excluded. Defendants argue State Farm's endorsement does not exclude Mrs. Foley's bodily injury claim because it was brought under part of the policy which does not *specifically* exclude such a claim for "bodily injury." After examining Section 240C-1(a)(1), we believe the word "specifically" modifies the phrase "exclude all coverages." Thus, the endorsement validly excludes all coverage, including coverage for bodily injury, if the endorsement "specifically exclude[s] *all coverage*" for the named excluded driver. *See* Md. Stat. Ann. § 240C-1(a)(1) (emphasis added); *Wilkerson v. Michael*, 104 Md. App. 730, 657 A.2d 818, *cert. denied*, 340 Md. 216, 665 A.2d 1058 (1995); and *Miller*. We discern nothing in Section 240C-1(a)(1) which required State Farm to specifically state "bodily injury" was excluded from coverage in order for State Farm to validly deny that type of coverage under the endorsement.

Section 2 of the State Farm endorsement states that "under all other coverages we shall not be liable and no liability or obligation of any kind shall attach to us for loss or damage while any motor vehicle is operated by *David Foley, Jr.*" We hold this language was sufficient to exclude defendant David Foley, Jr., from coverage (including coverage for bodily injury), and relieved State Farm from any duty to defend or indemnify him in the underlying lawsuit.

We note that "Maryland does not follow the rule, adopted in some states, that an insurance policy is to be construed most strongly against the insurer." *Nationwide Mut. Ins. Co. v. Scherr*, 101 Md. App. 690, 695, 647 A.2d 1297, 1300 (1994), *cert. denied*, 337 Md. 214, 652 A.2d 670 (1995). Under Maryland law, an insurance contract and its endorsements must be construed under general principles of contract law. *Id.* Paragraph 1 of the endorsement eliminates coverage for "bodily injury" under coverages P, U, and S of the State Farm policy. Paragraph 2 of the endorsement is a catch-all provision and completely eliminates State Farm's liability under all other coverages contained in the policy (except for coverages P, U, and S). Reading Paragraphs 1 and 2 together leads us to the conclusion that State Farm is not liable for Mrs. Foley's bodily injury claim.

Defendants contend the absence of the words "bodily injury" from Paragraph 2 means coverage for bodily injury must still be available. However, we are not persuaded by this argument. We

conclude the catch-all provision is unambiguous and operates to exclude liability under all coverages contained in the State Farm policy, except for coverages P, U, and S. Since Mrs. Foley's bodily injury claim was not brought under coverages P, U, or S, State Farm is not liable for her claim.

We have considered defendants' remaining arguments and find them meritless. After a careful review of the record and the arguments of the parties, the trial court's order granting summary judgment in favor of State Farm is

Affirmed.

Judges WYNN and BIGGS concur.

Report per Rule 30(e).