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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-162

Filed: 16 May 2017

Onslow County, No. 14 CVS 2747

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Plaintiff,

v.

TURRAN PHILLIPS, Defendant.

Appeal by defendant from orders entered on or about 26 August 2015 and 3 December 2015 by Judge Benjamin G. Alford in Superior Court, Onslow County. Heard in the Court of Appeals 22 August 2016.

Hendrick Gardner Kincheloe & Garofalo, LLP, by Conor Regan, for plaintiff-appellee.

Clayton, Myrick, McClanahan & Coulter, PLLC, by Robert D. McClanahan and Thomas J. Felling, for defendant-appellant.

STROUD, Judge.

I. Background

In November of 2013, 29-year-old defendant Turran Phillips was a passenger in his girlfriend's car when she lost control of her vehicle and defendant was injured in the accident. Defendant Phillips's medical expenses from the accident were in

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excess of \$30,000.00. Defendant Phillips's girlfriend's insurance company paid him its per-person liability limit of \$30,000.00. In February of 2014, defendant Phillips then submitted a claim to State Farm for underinsured motorist coverage under a policy belonging to his father, Mr. Patrick Sharpless.

On 28 July 2014, plaintiff State Farm Mutual Automobile Insurance Company ("State Farm") filed a complaint against defendant Turran Phillips for a declaratory judgment "declaring defendant Turran Phillips is not entitled to underinsured motorist coverage under the terms of Patrick Sharpless's State Farm automobile insurance policy" because defendant is not a "resident" of his father's "household" as required for coverage under the policy with plaintiff State Farm. The complaint acknowledges that State Farm issued an automobile insurance policy to Sharpless and sets forth the factual circumstances of the accident and underinsured claim. In pertinent part, the complaint identifies the specific issue upon which a declaratory judgment is sought:

19. Sharpless's State Farm policy provides underinsured motorist coverage, subject to the policy's other terms and conditions, to the named insured (Sharpless) and any "person related to [Sharpless] by blood, marriage or adoption who is a resident of [Sharpless's] household."

20. The term "resident" is not defined in the policy.

21. North Carolina's appellate courts have held that a person will be a "resident" of a family member-

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insured's household where there exists "a continuing and substantially integrated family relationship" between the insured and the person seeking coverage. *Davis v. Maryland Casualty Co.*, 76 N.C. App. 102, 105, 331 S.E.2d 744, 746 (1985).

22. Defendant was not residing at the 165 John Pickett property on the date of the accident as part of a continuing and substantially integrated family relationship with Sharpless.

23. State Farm therefore requests a declaration from this Court that defendant is not entitled to coverage under the underinsured motorist coverage provisions of Sharpless's State Farm policy.

In October of 2014, defendant Phillips answered State Farm's complaint by admitting most of the factual allegations but denying that he was not a resident of his father's household for purposes of recovery under the policy.

During the trial on the declaratory judgment claim, for reasons discussed below, defendant presented evidence first, as the party with the burden of proof as to coverage. At the close of defendant's case-in-chief, plaintiff State Farm moved for a directed verdict because defendant Phillips

has failed to put into evidence sufficient materials to meet [his] burden; specifically, [defendant] has not put into evidence the State Farm policy that's at issue in this lawsuit. The burden here rests on [defendant] to show they're entitled to coverage under the policy, and specifically the issue here is whether or not Mr. Phillips meets the definition of an insured under the family, which – specifically, the definition of family member.

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The trial court allowed plaintiff State Farm's motion for directed verdict and dismissed the jury.

In August of 2015, the trial court entered a written order based upon the oral rendition at trial allowing the motion for a directed verdict because "the evidence presented by Defendant regarding his asserted right to coverage under the subject policy was not legally sufficient to support a right to coverage[.]" Defendant Phillips filed a motion for a new trial and then a subsequent amendment to that motion; the trial court denied the amended motion for a new trial. Defendant Phillips appeals both the order allowing plaintiff State Farm's motion for a directed verdict and the order denying his motion for a new trial.

II. Directed Verdict

Before we address defendant Phillips's arguments on appeal we note that before the trial began, the parties and trial court engaged in a lengthy discussion regarding which party had the initial burden of proof and where each party should sit. Although plaintiff State Farm filed the complaint, its counsel directed the trial court to case law determining that the initial burden of proof is on the alleged insured to prove he falls under the policy. Defendant Phillips's counsel stated that "there is no case law that I could find where there is a D.J. action and the insurance carrier brought the action[.]" The trial court stated that "case law seems to support the idea that the person who claims benefits under the policy would bear the burden of

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production and proof as it relates to whether or not he’s a member of household of his dad, and that would be the ruling of the Court.”

The trial court then instructed the parties to switch tables after lunch since plaintiff State Farm had initially been seated closer to the jury, as customary in North Carolina. Defendant Phillips moved to the table closer to the jury since he would present evidence first, but the defendant has not raised this particular ruling – that defendant should present evidence first as the party with the burden of proof – on appeal. The only questions before this Court are whether the trial court properly allowed directed verdict and denied the motion for a new trial, and thus we address only those issues.

Defendant Phillips first contends that “the trial court erred in granting plaintiff’s motion for directed verdict and entering judgment in favor of the plaintiff pursuant to Rule 50 of the North Carolina Rules of Civil Procedure[,]” (original in all caps)[,] because he “offered sufficient evidence to support a jury verdict that he was a resident of his father’s household on 19 November 2013.”

A. Standard of Review

On appeal, the standard of review on a motion for directed verdict is whether, upon examination of all the evidence in the light most favorable to the nonmoving party, and that party being given the benefit of every reasonable inference drawn therefrom, the evidence is sufficient to be submitted to the jury. The party moving for a directed verdict bears a heavy burden in North Carolina. A motion for directed verdict should be denied where there

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is more than a scintilla of evidence supporting each element of the plaintiff's case. In addition, when the decision to grant a motion for directed verdict is a close one, the better practice is for the trial judge to reserve his decision on the motion and submit the case to the jury.

Wilson v. Burch Farms, Inc., 176 N.C. App. 629, 635-36, 627 S.E.2d 249, 255 (2006)

(citations and quotation marks omitted). As discussed above, because defendant Phillips is an individual seeking insurance coverage, defendant Phillips actually has the initial burden of proof:

In North Carolina, the general rule is that when an insured claims benefits under a policy, the burden is on him to prove coverage. But the burden of showing an exclusion or exception is on the insurer. A showing by an insured that he is covered establishes a prima facie case that shifts the burden to the insurer.

Reliance Ins. Co. v. Morrison, 59 N.C. App. 524, 525-26, 297 S.E.2d 187, 188 (1982)

(citations omitted). Thus, defendant Phillips had the burden of presenting sufficient evidence to prove that he would be entitled to coverage under the language of the policy at issue. In this case, that evidence would include evidence of the policy as well as evidence that defendant is covered by the policy because he is a resident of his father's household. Once that evidence is presented, the burden would shift to State Farm to present evidence supporting its contention that defendant was not a resident of his father's household and thus excluded from coverage. *See id.* If defendant Phillips failed to meet his burden, State Farm would properly prevail on a motion for a directed verdict. *See generally Wilson*, 176 N.C. App. at 635-36, 627 S.E.2d at 255;

Reliance Ins. Co., 59 N.C. App. at 525–26, 297 S.E.2d at 188.

B. Policy Not in Evidence

At trial, defendant presented evidence of his living circumstances at the time of the accident seeking to show that he was a “resident” of his father’s household. We will not address whether that evidence would have been sufficient to show he was a resident of the household, since plaintiff State Farm based its motion for a directed verdict on defendant Phillip’s failure to place the policy at issue into evidence. We are not sure why or how the insurance policy was never actually admitted during the trial, but even defendant, without explanation, concedes it was not.¹ Defendant Phillips argues on appeal that the relevant portion of the policy was before the trial court; defendant relies on a single allegation in plaintiff State Farm’s complaint that quotes the policy, which he admitted in his answer. The entirety of the complaint language quoting the policy is, “person related to [Sharpless] by blood, marriage or adoption who is a resident of [Sharpless’s] household.”

Our court has previously noted that an insurance policy is a contract which must be “enforced as written”:

Insurance policies are contracts and as such, their provisions govern the rights and duties of the parties thereto. Where a policy defines a term, this Court must use that definition. If the meaning of the policy is clear on its

¹ Both parties identified the insurance policy as a potential exhibit in the pretrial order. During testimony by Mr. Sharpless, defendant’s father and holder of the policy in question, he identified Exhibit 10 as his insurance policy, and this exhibit was admitted as evidence. But Exhibit 10 is not the insurance policy, nor is any other exhibit.

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face, the policy must be enforced as written. . . . Thus, to determine if coverage exists, the Court compares the complaint with the policy to see whether the allegations describe facts which appear to fall within the insurance coverage.

Production Sys., Inc. v. Amerisure Ins. Co., 167 N.C. App. 601, 605, 605 S.E.2d 663, 665 (2004) (citations, quotation marks, and brackets omitted).

Even if we assume that the phrase from the policy alleged in the complaint can be considered as “evidence,” one phrase with no context is not sufficient evidence of the terms of the policy. Though defendant Phillips argues the term “resident” is not defined in the policy, as alleged by State Farm, there may be other relevant definitions and terms in the policy. Furthermore, even if none of the definitions in the policy would be relevant, the sentence fragment does not address any exceptions or restrictions.

Defendant also argues that a fact alleged in the complaint and admitted by the answer must be taken as true and no evidence need be brought before the trial court regarding that fact. Again, even if we assume that is true, defendant needed to present evidence of the other sentences surrounding the phrase quoted in the complaint -- in other words, the policy. Without the whole policy in evidence or at least major relevant portions thereof, defendant Phillips failed to carry his burden of production to bring himself “within the insurance coverage.” *Id.* The trial court properly allowed plaintiff State Farm’s motion for a directed verdict. *Wilson*, 176

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N.C. App. at 635-36, 627 S.E.2d at 255. This argument is overruled.²

III. New Trial

Defendant Phillips next challenges the trial court order denying his motion for a new trial. Defendant Phillips again contends that the trial court erred because “the necessary portions of the State Farm insurance policy were in evidence and judicially binding on this court” based upon the one phrase from State Farm’s complaint. Because we have already determined the one phrase in the complaint was not sufficient evidence of the relevant policy language, we need not address this argument.

IV. Conclusion

For the foregoing reasons, we affirm.

AFFIRMED.

Chief Judge McGEE and Judge INMAN concur.

Report per Rule 30(e).

² We note that especially where the parties have presented all of the evidence in a jury trial, the better practice is for the trial court to reserve ruling on the motion for directed verdict and then allow judgment notwithstanding the verdict, should the jury return a verdict contrary to how the trial court would have ruled on the motion for directed verdict. Here, it seems very likely the jury would not have found defendant to be a “resident” of his father’s household, perhaps avoiding the need for this appeal and avoiding the potential for another entire jury trial, if the trial court’s ruling on the motion for directed verdict had been reversed on appeal.