Affirmed and Memorandum Opinion filed August 12, 2010.

In The

Fourteenth Court of Appeals

NO. 14-09-00456-CV

JOSE A. PEREZ AND NANCY C. PEREZ, Appellants

V.

OLD AMERICAN COUNTY MUTUAL FIRE INSURANCE COMPANY, Appellee

On Appeal from the 165th District Court
Harris County, Texas
Trial Court Cause No. 2008-02691

MEMORANDUM OPINION

In this insurance coverage dispute, the owners of a vehicle damaged in a collision appeal the trial court's judgment that the insurer has no duty to defend the insured or pay damages arising from the accident. We affirm.

I. FACTUAL AND PROCEDURAL HISTORY

On October 4, 2007, seventeen-year-old Maria Nambo was involved in a motor vehicle accident with Jose A. Perez. Although Maria was unlicensed, her mother, Virginia Nambo, permitted her to drive the car. At that time, Maria's father, Mario Nambo, had an automobile insurance policy issued by appellee Old American County Fire Insurance Company ("Old American"). In the application for the policy, Mario warranted that he and Virginia were the only drivers in the household, and he excluded Virginia from coverage. He further denied that there were any residents of his household over the age of fifteen who were not listed in the application. During its investigation of the accident, Old American learned that Maria Nambo resided with Mario and Virginia, and it immediately rescinded the policy and refunded Mario's premiums. It is undisputed that Mario received and cashed the refund check.

Old American then filed suit against Maria and Mario Nambo and Jose Perez seeking a declaratory judgment that the policy was validly rescinded and that Old American therefore had no duty to defend or indemnify the Nambos in connection with the accident. Perez, joined by his wife Nancy, counterclaimed for benefits under the policy and sought treble damages under the Deceptive Trade Practices-Consumer Protection Act. Old American and the Perezes filed cross-motions for summary judgment, which the trial court denied.

The Nambos appeared at trial, but the Perezes did not. Old American offered Mario's deemed admissions that he intentionally failed to disclose Maria's residence and her unlicensed status in order to deceive Old American and avoid paying higher insurance premiums. In addition, Old American offered uncontroverted evidence that Virginia had allowed Maria to drive the car on other occasions, and that Old American would not have accepted the risk of insuring Mario's vehicle if he had disclosed that his unlicensed teenager would be driving the car. Proceeding pro se, Mario offered evidence that he

identified Maria as a resident of his household when he applied for an earlier policy from a different agency. Maria was excluded from coverage under the prior policy, and Mario testified through an interpreter that if Maria had been identified in the policy in effect at the time of the accident, she still would have been excluded from coverage because she did not have a driver's license.

The trial court ruled in favor of Old American and declared that (a) Mario failed to disclose Maria as a driver or a resident of his household, (b) Old American relied on these nondisclosures in issuing the policy, (c) the policy properly was rescinded, and (d) Old American has no duty to defend Mario or Maria Nambo or to pay damages to them or to Jose Perez in connection with the accident. Noting that the Perezes failed to appear, the trial court dismissed their claims with prejudice, and their motion for new trial was overruled by operation of law.

II. ISSUES PRESENTED

In their first issue, the Perezes contend that the trial court erred in denying their motion for summary judgment. They argue in their second issue that the trial court failed to provide them with forty-five days' notice of the trial setting as required by Texas Rule of Civil Procedure 245. In their third issue, they challenge the legal sufficiency of the evidence, arguing that Old American presented no evidence that Mario intended to deceive or that he had actual knowledge that he was required to disclose the fact that his seventeen-year-old daughter resided with him. The Perezes assert in their fourth issue that the trial court violated Mario's due process rights by failing to provide a licensed or certified translator at trial.

III. ANALYSIS

A. Legal Sufficiency

Because it is potentially dispositive of the appeal, we begin our analysis with the Perezes' challenge to the legal sufficiency of the evidence. They argue that the evidence is legally insufficient because a motor vehicle liability insurance policy may not be canceled for any reason after an accident has occurred. *See* TEX. TRANSP. CODE ANN. § 601.073(c) (Vernon 1999) ("The liability of the insurance company for the insurance required by this chapter becomes absolute at the time bodily injury, death, or damage covered by the policy occurs."). Nevertheless, an insurer may avoid liability under a policy if it issued the policy in reliance on a false representation that was material to the risk. TEX. INS. CODE ANN. § 705.004 (Vernon 2009); *see also Odom v. Ins. Co. of the State of Pa.*, 455 S.W.2d 195, 198 (Tex. 1970) (affirming cancelation of automobile liability policy based on material false statements in the policy application).

The Perezes next contend there is no evidence that Mario had actual knowledge that he was required to disclose that Maria resided with him. The record, however, establishes that Mario signed the application for insurance representing that Mario and Virginia Nambo were the only possible drivers of his car and the only household residents over the age of fifteen. One who signs a document is presumed to know its contents. *In re Int'l Profit Assocs., Inc.*, 286 S.W.3d 921, 923 (Tex. 2009) (per curiam).[1] The Perezes also assert that there is no evidence of Mario's intent to deceive, but this was conclusively

[1] The Perezes suggest that this evidence is insufficient because Old American "failed or refused to introduce the testimony of the agent who sold the policy to Mr. Nambo attesting that he either translated or caused the documents to be translated into Spanish." In support of their argument that such evidence is required, the Perezes cite only *Storage & Processors, Inc. v. Reyes*, 134 S.W.3d 190 (Tex. 2004). In *Reyes*, the Texas Supreme Court held that "an employer must satisfy the fair notice requirements of the express negligence doctrine and conspicuousness when it enrolls employees in a non-subscriber workers' compensation benefits plan," but that these requirements do not apply if the employee had actual knowledge of the plan's terms. *Id.* at 191, 194. *Reyes* has no application to this case.

established by Mario's deemed admissions. *See* TEX. R. CIV. P. 198.3. We therefore overrule the Perezes' challenge to the legal sufficiency of the evidence.

B. Denial of Summary Judgment

On appeal, the Perezes also argue that the trial court erred in denying their motion for summary judgment. The general rule, however, is that there is no appeal from the denial of a motion for summary judgment because such a ruling is interlocutory. *Cincinnati Life Ins. Co. v. Cates*, 927 S.W.2d 623, 625 (Tex. 1996); TEX. R. CIV. P. 166a cmt. to 1997 change. The Perezes do not contend that any exception to the rule applies here; thus, we overrule this issue.

C. Notice of Trial Setting

According to the Perezes, the trial court violated Texas Rule of Procedure 245 in that it failed to give them forty-five days' notice of the trial setting. *See* TEX. R. CIV. P. 245 ("The Court may set contested cases . . . with reasonable notice of not less than forty-five days to the parties of a first setting for trial, or by agreement of the parties . . . ."). In August 2008, the parties were notified of the docket control order in which the trial date is identified as April 13, 2009 and followed by the notation, "If not assigned by the second Friday following this date, the case will be reset." The Perezes do not contend that the docket control order provided them insufficient notice of the trial setting; rather, they argue that the trial court violated Rule 245 in that it notified them by letter dated April 7, 2009 that their case was assigned for trial on April 14, 2009. This argument is without merit because after the case initially was set for trial, the parties were not entitled to an additional forty-five days' notice when the case was assigned for trial one day after the original setting. *Id.* ("[W]hen a case previously has been set for trial, the Court may reset said contested case to a later date on any reasonable notice to the parties . . . ."); HARRIS (TEX.)

CIV. DIST. CT. LOC. R. 3.4.2 (parties are not entitled to an additional forty-five days' notice when the case is assigned for trial by the second Friday after the trial setting).

D. Failure to Provide a Licensed or Certified Translator

Lastly, the Perezes seek reversal on the ground that the trial court violated Mario Nambo's due process rights by failing to appoint a licensed translator. In support of this argument, they rely on section 57.002(a) of the Texas Government Code, which provides that "[a] court shall appoint a . . . licensed court interpreter if a motion for the appointment of an interpreter is filed by a party or requested by a witness in a civil or criminal proceeding in the court." TEX. GOV'T CODE ANN. § 57.002(a) (Vernon 2005 & Supp. 2009). This argument fails because the record does not show that any party or witness asked the trial court to appoint an interpreter.[2]

IV. CONCLUSION

We overrule each of the issues presented on appeal and affirm the trial court's judgment.

/s/ Tracy Christopher
Justice

Panel consists of Justices Brown, Sullivan, and Christopher.

[2] Although Mario "came with his daughter as interpreter," the trial court not only explained in Spanish the effect of Mario's deemed admissions, but it also administered an oath to assistant court clerk Emir Duarte to translate from English to Spanish and from Spanish to English so that, as the trial court explained, Mario would have an interpreter "who understands the legal language." *See id.* § 57.002(b) ("A court may, on its own motion, appoint a certified court interpreter or a licensed court interpreter."). The record does not show that Duarte was unlicensed or that there was any objection to using his services.