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IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

LINDA I. SHIELDS, *Plaintiff/Appellee*,

v.

PROVIDENT LIFE AND ACCIDENT INSURANCE COMPANY,
Defendant/Appellant.

No. 1 CA-CV 22-0057

FILED 11-22-2022

Appeal from the Superior Court in Maricopa County

No. CV2020-010987

The Honorable Christopher A. Coury, Judge

AFFIRMED

COUNSEL

Burch & Cracchiolo PA, Phoenix
By Ralph D. Harris, Daryl Manhart
Co-counsel for Plaintiff/Appellee

Dell & Schaefer Chartered, Hollywood, FL
By Steven Jay Dell
Co-counsel for Plaintiff/Appellee

Gregory L. Denes PC, Juno Beach, FL
By Gregory L. Denes
Co-counsel for Plaintiff/Appellee

Lewis Roca Rothgerber Christie LLP, Phoenix
By Stephen M. Bressler, Nicole G. True, Lawrence A. Kasten
Counsel for Defendant/Appellant

MEMORANDUM DECISION

Judge Randall M. Howe delivered the decision of the court, in which Presiding Judge David D. Weinzweig and Judge D. Steven Williams joined.

H O W E, Judge:

¶1 Provident Life and Accident Insurance Company (“Provident”) appeals the trial court’s granting summary judgment to Linda I. Shields. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Shields, a gastroenterologist, applied for an individual disability insurance policy with Provident in 1988. Provident issued the policy on November 16, 1988; the policy’s “Effective Date” was December 1, 1988, and the “First Renewal Date” was December 1, 1989. Two years later, she applied for additional coverage. Provident issued an update rider and increased benefit amendment, which explained that an automatic annual increase of monthly benefits would occur each December 1 through 1993. Both documents listed the premium term as “twelve months.” The update rider also identified the updated amount for the policy as “New [A]nnual Premium For This Policy.” It also stated that “[i]f an [update] increase [d]ate shown does not coincide with a renewal date for this policy, the increase will be effective on the next renewal date.” Shields initially paid the premium semi-annually, then quarterly from June 1991 for more than 25 years.

¶3 The policy provided that insureds who become totally disabled before age 60 have lifetime benefits. Insureds who become totally disabled “starting at age 60 but before age 61” may receive benefits until age 65. The policy provided: “‘age,’ when used before a number, such as ‘age 65,’ means the ending date of the policy term in which you attain that age.” The policy defined “policy term” in its “Premiums and Renewals” section:

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The first term of this policy starts on the Effective Date . . . It ends on the First Renewal Date also shown. Later terms will be the periods for which you pay renewal premiums when due. All terms will begin and end at 12:01 A.M., Standard Time, at your home. The renewal premium for each term will be due on the day the preceding term ends, subject to the grace period.

The “Grace Period” provided that “if a renewal premium is not paid on or before the date it is due, it may be paid during the next 31 days. During the grace period, the policy will stay in force.” The policy will lapse if insureds did not pay the renewal premium before the grace period ends.

¶4 Over the years, Shields developed health issues, including headaches, cervical spine pain, numbness, and spinal stenosis. On June 1, 2017, she became partially disabled as defined under the policy and reduced her working hours. She turned 60 years old on June 4, 2017. On October 9, 2017, she became totally disabled and ceased working altogether. She requested total disability benefits, and Provident accepted her claim. But Provident notified her that her coverage would last only until age 65 because she became totally disabled after she reached policy-defined age 60 on August 31, 2017, its alleged end-date of her policy term.

¶5 Shields sued Provident seeking declaratory relief that the end-date of the policy was December 1, 2017, rather than August 31, 2017, which meant that she was age 59 for purposes of the policy and was entitled to lifetime benefits. She also argued that Provident unilaterally changed her billing to quarterly for her twelve-month premium term, and that Provident never informed her that it was changing the length of her policy term.

¶6 Shields stated that she understood “renewal premium” to mean the renewal term in the policy schedule, which was twelve months. She added that she understood her policy term covered twelve months because her renewal term was always twelve months, as acknowledged in her update rider and increased benefit amendment. She added that Provident never explained that her policy would change once she changed her payment frequency.

¶7 Shields deposed several employees of Provident’s parent corporation, Unum. Sheridan Parker, a lead benefit specialist at Unum, testified that the renewal term relates to Shields’s specific policy and interpreted Shields’s twelve-month renewal term to mean “[t]hat her policy

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is renewable yearly.” She also testified, however, that she did not refer to Shields’s twelve-month renewal term in evaluating her claim because it was “irrelevant to [her] decision.” She explained that a “premium term” was the “mode of when the premiums are paid”: monthly, quarterly, semi-annually, or annually. She added that “nothing in the policy changed,” including the benefit amount when she moved from semi-annual to quarterly payments. Lynn McGuiness, Unum’s lead appeals specialist, testified that she did not know what “renewal term” referred to and would not expect Shields to understand its meaning under the policy. She added that “renewal term” could refer to a “time to pay premiums” and did not know if “premium paying method” differed from “renewal premium.”

¶8 Mark Chavez, a claim manager at Unum, drafted an internal document stating that Shields’s “annual renewal term date would be 12/01/2017,” and her “quarterly renewal term date would be 09/01/2017.” Using the annual renewal term date would result in lifetime benefits for Shields, while a quarterly policy term would end her benefits at age 65. Chavez noted that Provident “historically[] used the premium mode to help determine the term dates.” He testified that “renewal” meant the “point of time when somebody [could] opt to renew their policy,” and “term” meant “when somebody [could] opt to renew the policy.”

¶9 Shields moved for summary judgment on four counts in her complaint. On the first count, she argued that a plain and ordinary reading of the policy established that she was policy age 60 on December 1, 2017, because the premium and renewal term was for twelve months, beginning and ending on December 1 each year. Under count two, she argued alternatively that Provident’s interpretation created ambiguity with the plain meaning of the policy. Under count three, she argued that any documents purportedly changing the billing frequency of the renewal and premium terms were not approved by a company officer and violated the policy. Under count four, she argued that no later terms became due because Provident waived her premiums after June 1, 2017, and refunded any payments made thereafter. She did not move under the fifth count in her complaint, wherein she argued that she reasonably expected her policy term was for twelve months.

¶10 Provident opposed the motion and itself moved for summary judgment, arguing that Shields’s quarterly payments determined the date of her policy term. Her policy terms began December 1, March 1, June 1, and September 1 each year, and ended on November 30, February 28, May 31, and August 31 respectively. Thus, she attained age 60 during the policy term from June 1, 2017, through August 31, 2017. Provident also argued that

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Shields conflated “policy term,” “renewal term,” and “premium term,” but that the policy’s definition of age unambiguously used “policy term.” It also argued that officer approval was not necessary to change the billing cycle, that the policy term remained in place even when it waived Shields’s premiums, and that Shields’s reasonable expectations could only be what the policy unambiguously stated.

¶11 The court granted Shields summary judgment on the first count, rendering the alternative counts moot, and denied Provident’s motion. The court found that her policy was a twelve-month term that expired on December 1, 2017. It reasoned that the policy schedule listed the renewal term as twelve months, and a quarterly amount was merely listed under “Other Premium Paying Methods.” The policy schedule did not “conspicuously identify that selection of the payment method governed, and potentially limited, the length of future renewal terms.” It concluded that “[a]s written, so long as the annual premium was paid when due—irrespective of what method a policy holder selected for payments—the policy was for a twelve-month term.” Even when she paid semi-annually, the update rider identified her premium as annual. Further, the update rider and increased benefit amendment both identified the premium term as twelve months. It concluded that Provident’s construction of the policy allowed Provident to “reduce the express length of the policy term as stated in the Policy.” The trial court added that it would have entered judgment in Shields’s favor on her reasonable expectations argument had she moved for summary judgment on that count.

¶12 The court entered a declaratory judgment that Shields was entitled to lifetime disability benefits under the policy because her total disability occurred before policy age 60. The court also awarded Shields \$199,050.21 in attorneys’ fees and taxable costs. Provident timely appealed.

DISCUSSION

¶13 Provident argues that the trial court erred in granting Shields summary judgment because her payment frequency governed her policy term under the plain definitional language in the policy. Shields argues that the policy presented an annual policy term, relying on the policy’s description of annual renewal and annual premium terms. We review a grant of summary judgment de novo, “considering the facts and any inferences drawn in the light most favorable” to Provident. *Deal v. Deal*, 252 Ariz. 387, 390 ¶ 11 (App. 2021). A court properly grants summary judgment if no genuine dispute of material fact exists and “the moving party is entitled to judgment as a matter of law.” Ariz. R. Civ. P. 56(a). Whether an

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insurance contract's terms are ambiguous is a question of law for the court to decide. *Thomas v. Liberty Mut. Ins. Co.*, 173 Ariz. 322, 324 (App. 1992).

¶14 We first examine whether the policy is ambiguous, whether “conflicting reasonable interpretations” exist. *Teufel v. Am. Family Mut. Ins. Co.*, 244 Ariz. 383, 385 ¶ 10 (2018). We review insurance policies de novo and “accord words used in policies their plain and ordinary meaning, examining the policy from the viewpoint of an individual untrained in law or business.” *Id.* (internal quotation marks omitted). The court construes an insurance contract “according to the entirety of its terms and conditions as set forth in the policy and as amplified, extended or modified by any rider, endorsement or application attached to and made a party of the policy.” A.R.S. § 20-1119(A). If the language is ambiguous, we must examine the whole transaction, giving “a reasonable and harmonious meaning and effect to all provisions,” rendering none meaningless. *Tritschler v. Allstate Ins. Co.*, 213 Ariz. 505, 511 ¶ 12 (App. 2006); *Am. Family Mut. Ins. Co. v. White*, 204 Ariz. 500, 504 ¶ 9 (App. 2003). We apply a “rule of common sense,” *Employers Mut. Cas. Co. v. DGG & CAR, Inc.*, 218 Ariz. 262, 264 ¶ 9 (2008), and if still ambiguous, construe any ambiguity against the insurer, *Walker v. Auto-Owners Ins. Co.*, 517 P.3d 617, 620 ¶ 10 (Ariz. 2022); *First Am. Title Ins. Co. v. Johnson Bank*, 239 Ariz. 348, 352 ¶ 19 (2016).

¶15 The trial court erred in finding that the policy was unambiguous in Shields's favor. The parties have conflicting reasonable interpretations rendering the policy, when considered as a whole, ambiguous. First, Provident employees' conflicting testimonies show that the policy was ambiguous. One employee testified that “nothing in the policy changed” when Shields changed her premium payment method from semi-annual to quarterly. She also testified that a renewal term of twelve months meant that “[Shields's] policy is renewable yearly,” but did not refer to the renewal term in evaluating Shields's claim because it was “irrelevant to [her] decision.” A different employee drafted an internal document stating that Shields's “annual renewal term date would be 12/01/2017,” and her “quarterly renewal term date would be 09/01/2017.” Another employee testified that Shields was not expected to understand the meaning of “renewal term.” In fact, most insurance contracts use terms that “consist of boilerplate [language], not bargained for, neither read nor understood by the buyer, and often not even fully understood by the selling agent.” *Darner Motor Sales, Inc. v. Universal Underwriters Ins. Co.*, 140 Ariz. 383, 390 (1984).

¶16 Second, the policy does not equate Shields's payment cycle to her policy term. Rather, ambiguity arises when considering different parts

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of the policy together. The policy defines “age” as “the ending date of the policy term in which you attain that age.” The policy defines “policy term” as “the periods for which you pay renewal premiums when due.” In relying on these definitions, Provident argues that Shields’s payment cycle unambiguously governs the policy term and that “renewal premium” does not mean “renewal term” or “premium term” found in other portions of the policy. Shields, on the other hand, relies on other documents in the policy that demonstrate that she has an annual premium term. Essentially, she equates “renewal premium” with “premium term” and “renewal term.” The policy itself does not define these terms. We do not try to resolve the meanings of each provision but construe the ambiguities in the policy against Provident. *Johnson Bank*, 239 Ariz. at 352 ¶ 19.

¶17 Third, the policy does not provide that Shields’s payment cycle governs her policy term. “If an insurer desires to limit its liability under a policy, it should employ language which clearly and distinctly communicates to the insured the nature of the limitation.” *Sparks v. Republic Nat’l Life Ins. Co.*, 132 Ariz. 529, 535 (1982) (holding that the policy was ambiguous and silent on the limitation that insurer is not obligated to pay continuing benefits for accident that occurred before termination). In fact, “exclusions that lessen the protection sought as the primary purpose of the transaction must be called to the customer’s attention, conspicuously placed, and written in plainly-stated and readily identifiable language so that they can be easily noticed and comprehended under the circumstances in which such transactions take place.” *Phila. Indem. Ins. Co. v. Barerra*, 200 Ariz. 9, 18 ¶ 24 (2001).

¶18 Here, the trial court properly granted Shields summary judgment but “reached the right result for the wrong reason” in finding that the policy was unambiguous. *BNCCORP, Inc. v. HUB Int’l Ltd.*, 243 Ariz. 1, 8 ¶ 29 (App. 2017). The policy does not state that the premium payment method governs the length of the premium coverage. Rather, looking at the policy through the lens of an ordinary person, its term is annual. Shields’s update rider and increased benefit amendment, which she received when paying semi-annually, listed her premium term as twelve months. Her update rider expressly listed the amounts of her annual premium from December 1, 1991, through December 1, 1993. The policy noted that her benefit increases coincided with the annual renewal date, December 1. Her policy schedule also stated that her renewal term was twelve months. These are sections of the policy that an insured would reasonably look to for guidance on their coverage. *See Sparks*, 132 Ariz. at 537 (stating that a court is concerned not with the “commercial customs” of the insurance industry, but what “the ordinary person’s understanding of the policy would be”). A

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Provident employee in fact noted that an annual renewal term would result in lifetime benefits for Shields. Further, Provident never updated Shields's policy term, such as in her rider or amendment, after she changed from a semi-annual to quarterly payment cycle. And Provident never notified her that paying quarterly would result in less than annual coverage.

¶19 For these reasons, an ordinary person untrained in business or law would not understand that her insurance policy tied her payment cycle, whether semi-annual or quarterly, to the period of her policy. After all, Shields's policy schedule listed "Other Premium Paying Methods," which showed that she had the option of paying her annual coverage in monthly, quarterly, or semi-annual installments. Further, paying an annual premium in installments is not uncommon, *see, e.g., Sereno v. Lumbermens Mut. Cas. Co.*, 132 Ariz. 546, 547 (1982); *Young v. Nw. Mut. Life Ins. Co. of Milwaukee, Wis.*, 40 Ariz. 340, 347 (1932); *Equitable Life Assurance Soc'y of U.S. v. Pettid*, 40 Ariz. 239, 242 (1932), and is for the insured's convenience, *Young*, 40 Ariz. at 347.

¶20 Provident also argues that the grace period and reinstatement provisions would lose effect under Shields's interpretation, since she could fail to pay her quarterly amount and her policy would not lapse until the end of the year. Provident's application of Shields's policy interpretation does not necessarily hold. An insured who does not pay her premiums will lose her coverage, no matter the frequency of her payments.

¶21 Provident points to *Dameron v. Provident Life & Accident Ins. Co.*, No. 8:99-CV-2181-T-17TBM, 2001 WL 37134779 (M.D. Fla. Sept. 28, 2001), to argue that it should prevail in the same way it did in that case: the payment frequency unambiguously governed the policy term. But *Dameron* is an unpublished Florida district court case from 2001 and is not binding on this court. Ariz. R. Sup. Ct. 111(c)(1)(C) (unpublished decisions have persuasive value only if issued on or after January 1, 2015). Even so, *Dameron* has no persuasive value here. *Kotterman v. Killian*, 193 Ariz. 273, 291 ¶ 68 (1999) ("We alone must decide how persuasive the legal opinions of other jurisdictions will be to our holdings."). In *Dameron*, the insured had initially paid annual premiums – reflected in his policy schedule – but later opted for monthly and then quarterly payments. *Dameron*, 2001 WL 37134779 at *4. He had received a rider reflecting the change from annual to monthly, but not from monthly to quarterly. *Id.* at *4.

¶22 Contrary to our finding, the court concluded that a "person of ordinary intelligence" would understand that the policy term matched "whatever period of time the premium payment cover[ed]." *Id.* at *5.

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Although unclear whether the insured's rider indicated an annual policy term, as in Shields's case, the insured nonetheless did not argue that the payment frequency did not govern his policy term. *Id.* Nor does the case indicate whether the insured's policy, like Shields's, generally reflected an annual renewal term despite his quarterly payments. *See generally id.* The insured instead argued that his quarterly payments were not effectively noted in the policy, and the policy was ambiguous. *Id.* at *4-5. Although Shields has made similar arguments, our conclusion is based on the plain reading of the whole policy. Even though the age and policy term definitions are identical here, Shields has shown, and other policy provisions support, a conclusion that an ordinary person would not have understood the payment frequency to govern the policy term.

¶23 Although Provident argued at oral argument that the issue of Shields's reasonable expectations is properly before us through its own motion for summary judgment, we do not reach that issue, or the others raised, because we find that the policy is ambiguous and construe it in favor of Shields. Thus, the trial court properly granted Shields summary judgment.

CONCLUSION

¶24 For the reasons stated, we affirm. Both parties request attorneys' fees on appeal under A.R.S. § 12-341.01, which authorizes a discretionary award to the successful party arising out of a contract. We award Shields her reasonable attorneys' fees and costs upon compliance with ARCAP 21.



AMY M. WOOD • Clerk of the Court
FILED: AA